

By Ray McGovern

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Ambiguous but alarming new wording, which is tucked into the National Defense Authorization Act (NDAA) and was just passed by the Senate, is reminiscent of the “extraordinary measures” introduced by the Nazis after they took power in 1933.

And the relative lack of reaction so far calls to mind the oddly calm indifference with which most Germans watched the erosion of the rights that had been guaranteed by their own Constitution. As one German writer observed, “With sheepish submissiveness we watched it unfold, as if from a box at the theater.”

The writer was Sebastian Haffner (real name Raimond Pretzel), a young German lawyer worried at what he saw in 1933 in Berlin, but helpless to stop it since, as he put it, the German people “collectively and limply collapsed, yielded and capitulated.”

“The result of this millionfold nervous breakdown,” wrote Haffner at the time, “is the unified nation, ready for anything, that is today the nightmare of the rest of the world.” Not a happy analogy.

The Senate bill, in effect, revokes an 1878 law known as the *Posse Comitatus Act*, which banned the Army from domestic law enforcement after the military had been used —and often abused — in that role during Reconstruction. Ever since then, that law has been taken very seriously — until now. Military officers have had their careers brought to an abrupt halt by involving federal military assets in purely civilian criminal matters.

But that was before 9/11 and the mantra, “9/11 changed everything.” In this case of the Senate-passed NDAA – more than a decade after the terror attacks and even as U.S. intelligence agencies say al-Qaeda is on the brink of defeat – Congress continues to carve

away constitutional and legal protections in the name of fighting “terrorism.”



Detainees at Guantanamo Bay in 2002

The Senate approved the expanded military authority despite opposition from Defense Secretary Leon Panetta, Director of National Intelligence James Clapper and FBI Director Robert Mueller – and a veto threat from President Barack Obama.

The Senate voted to authorize – and generally to require – “the Armed Forces of the United States to detain covered persons” indefinitely. And such “covered persons” are defined not just as someone implicated in the 9/11 attacks but anyone who “substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act or has directly supported such hostilities in aid of such enemy forces.”

Though the wording is itself torturous – and there is a provision for a waiver from the Defense Secretary regarding mandatory military detentions – the elasticity of words like “associated forces” and “supported” have left some civil libertarians worried that the U.S. military could be deployed domestically against people opposing future American wars against alleged “terrorists” or “terrorist states.”

The Senate clearly wished for the military's "law and order" powers to extend beyond the territory of military bases on the theory that there may be "tersorsymp" (short for "terrorist sympathizers") lurking everywhere.

Is the all-consuming ten-year-old struggle against terrorism rushing headlong to consume what's left of our constitutional rights? Do I need to worry that the Army in which I was proud to serve during the 1960s may now kick down my front door and lead me off to indefinite detention — or worse?

My neighbors have noticed, after all, that I now wear a longish beard and, sometimes, even a hat like Muslim cleric Anwar al-Awlaki. And everyone knows what a tersorsymp he was. "If you see something, say something!"

Worse still, a few of my neighbors overheard me telling my grandchildren that President Obama should be ashamed to be bragging about having Awlaki, an American citizen, and later his 16 year-old son murdered without a whiff of due process. "If you hear something, say something!"

### **A Lost Respect**

Citizens of powerful countries used to have their rights widely respected — at home and abroad. "I am a Roman citizen"—"Civis Romanus Sum" — once counted for something. Even more respect tended to greet "I am an American" — because of our power abroad and our once famous adherence to a written Constitution at home.

Adherence? Lately not so much. Not since power-hungry politicians set out to exploit 9/11 so that "everything changed," including even the rights formerly guaranteed us by the Bill of Rights and the habeas corpus protection in the Constitution itself.

Awlaki's is an interesting case in point. A Muslim whose moderating influence was sought after by the Washington Establishment in the immediate aftermath of 9/11, he became "radicalized" by our warring on his fellow Muslims. By noting that little-known fact, am I showing "support"

for “al-Qaeda, the Taliban or associated forces”? Will the U.S. military be obliged to target me, too?

“Not you, Grandpa,” my grandchildren reassured me at Thanksgiving. “Even with the beard and the hat, you don’t really look very much like Awlaki, or like any kind of terror-symp. You look different; and your light skin and American citizenship should suffice to keep you safe.”

I agreed that I would probably be okay, even if I kept up my vocal criticism of what is happening. But, truth be told, I harbored doubts even on Thanksgiving. And that was *before* the Senate version of the defense appropriation bill passed last Thursday.

*Civis Americanus Sum.* Yes, I am. But does that really count for much today? It certainly offered no protection to Awlaki, or to his son. What’s to prevent one of my former colleagues at the military or the CIA — those I have roundly criticized for endorsing and cheering on the kidnappers, torturers and assassins in their employ — from adding me to the “kill-or-capture-but-preferably-kill list”?

What has been happening in this continuation of a seemingly endless “war on terror” – amid widespread public indifference – makes Richard Nixon’s “Enemies List” look like a board game. At least, the Nixon White House had a modicum of good sense not to flaunt its skirting the law and violating constitutional rights.

It is a safe bet that functionaries at the National Security Council are updating the kill-or-capture list even now, confident that President Obama will sign the Senate version of the bill into law once it gets predictably endorsed by the Republican-controlled House.

Then, what is to prevent NSC “counterterrorist” functionaries from summoning the go-to lawyers still ensconced in the Justice Department and asking them for help in navigating what appear to be deliberate ambiguities in the new bill’s language.

Backed by a John Yoo-style “legal justification,” an order could be issued to “terminate” me, while reassuring my neighbors that, yes, just as you suspected, he was a terror-symp. Or

maybe they'll simply order some troops from the 82<sup>nd</sup> Airborne at Fort Bragg, where I was stationed a half-century ago, to apprehend me and give me a free one-way ticket to Guantanamo.

After all, how bad could that be? Former Defense Secretary Donald Rumsfeld explained to CNN's Wolf Blitzer in June 2005 that the detainees at Guantanamo were "living in the tropics. They're well fed. They've got everything they could possibly want." And would Rumsfeld lie?

### Early Obfuscation

From my erstwhile colleagues at CIA, there has been more mumbo-jumbo aimed at disguising what is really afoot. According to press reports, the CIA general counsel has already said, disingenuously: "American citizens are not immune from being treated like an enemy if they take up arms against the United States."

But one does not need to "take up arms" in order to be labeled a "combatant," as the government is defining such terms. Awlaki didn't take up arms; he was said to have provided "material support to terrorism" by his alleged – but unproven – encouragement of terrorist attacks on the United States. (Under the new NDAA, a similar fate could befall someone who advocates resistance to "coalition partners," like NATO countries or some corrupt governments that are U.S. allies, such as the Karzai regime in Afghanistan or the terror-linked government of Pakistan).

In the broad strokes of defining American "partners" and al-Qaeda/Taliban "associated forces," will Israel fall into the first group and Iran, Hamas and Hezbollah get lumped into the second?

Could material support be nothing more than providing financial support for the U.S. Boat to Gaza, which challenged the Israeli embargo of Hamas-ruled Gaza? If creative lawyers for this or some future administration get busy, would the new NDAA provide authority for the military to detain such a U.S. citizen under the Law of War and transfer him or her to Guantanamo or elsewhere?

Conflicting legal interpretations of the bill are now more about whether military detentions would be mandatory or would the president still retain some discretion.

In sum, the wording appears to create a parallel military justice system that, theoretically, we are all subject to. All that would be needed is an allegation by someone that we assisted someone who in some way assisted someone else in some way. An actual terrorist act would not be needed – and neither would a trial by one's peers as guaranteed by the Constitution to determine actual "guilt."

Should you be tempted to dismiss this as "liberal fear-mongering," take a look at this item from FoxNews.com with its gleeful headline: "Democrat-Controlled Senate Passes Constitution-Shredding Defense Authorization Bill":

"The bill would require military custody of a suspect deemed to be a member of Al Qaeda or its affiliates and involved in plotting or committing attacks on the United States. ... The legislation also would give the government the authority to have the military hold an individual suspected of terrorism indefinitely, without a trial.

"'Since the bill puts military detention authority on steroids and makes it permanent, American citizens and others are at greater risk of being locked away by the military without charge or trial if this bill becomes law,' said Christopher Anders, senior legislative counsel for the American Civil Liberties Union."

A key element in the Senate bill, like the House version, is to expand the original Authorization of the Use of Military Force Act (AUMF) of September 2001 so it no longer links exclusively to 9/11. This creates the kind of ambiguity that allows Sens. John McCain, R-Arizona, and Lindsey Graham, R-South Carolina, to claim that the bill's stringent provisions do apply to U.S. citizens, as well as non-citizens.

In addition, the new wording adds "associated forces" (whatever that means) to the previous AUMF's list of targets. The language of the AUMF of September 2001 was limited to "those nations, organizations, or persons he [the President] determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons."

### Burning the Midnight Oil

It is a safe guess that the legal pharisees were burning the midnight oil, dissecting how the draft bill can say, on the one hand, that this or that provision does not apply to American citizens — but, oops, this other provision seems to allow them to be shipped off to Guantanamo, too.

Not being expert enough to do so, I happily leave it to them to parse the language, diagram the sentences, and do surgery on each jot and tittle. There will be a veritable feast for the legal beagles.

What speaks loudest to me is the fact that two key amendments did not pass. Senate Amendment 1125 would have limited the mandatory detention provision to persons captured abroad. And Amendment 1126 would have provided that the authority of the military to detain persons without trial until the end of hostilities would not apply to American citizens. Both amendments were voted down 45 to 55.

Though President Obama has objected to the Senate bill as going too far even by his “death-to-Awlaki” standard, a more troubling question is what might these new powers mean if, say, another terrorist attack hits the United States or if a more hard-line president comes to power.

Take, for example, Texas Gov. Rick Perry, one of the Republican presidential hopefuls. Before a stump speech in Manchester, New Hampshire, on Tuesday, Perry gave us a hint of what his policies, and maybe even his Cabinet, would look like.

Perry flew in none other than racial profiler *par excellence*, the sheriff of Maricopa County, Arizona, Joe Arpaio. No, I’m not kidding; Perry apparently saw this as a way to strengthen his “law and order” credentials (accent, of course, on “order”).

As I sat in the audience, Arpaio's arrival took me by surprise, so perhaps I can be forgiven for reflexively bellowing a prolonged boo, as Arpaio made his way slowly and carefully up to the lectern to warm up the crowd. Later it occurred to me that booing may be something that gets you on the chain gang in Maricopa County; Arpaio did not seem at all used to it, and he did not take it well.

Reaching the podium, he turned and demanded to know who was booing, so I stood up from my second-row-center seat and raised my hand high. Fortunately for me, he had none of his deputies along, and booing is apparently not yet banned at Town Hall meetings in New Hampshire. Only Arpaio seemed to pay much heed.

Although I knew enough about Arpaio to consider him fully deserving of a loud boo or two, I did not know the half of it. Let me treat you to some encomia from the sheriff's own official Web site:

"Arpaio knows what the public wants, [and] has served them well by establishing several unique programs. Arpaio ... started the nation's largest Tent City for convicted inmates. Two thousand convicted men and women serve their sentences in a canvas incarceration compound. It is a remarkable success story. ...

"Of equal success and notoriety are his chain gangs, which contribute thousands of dollars of free labor to the community. The male chain gang, and the world's first-ever female and juvenile chain gangs, clean streets, paint over graffiti, and bury the indigent in the county cemetery.

"Also impressive are the Sheriff's get tough policies. For example, he banned smoking, coffee, movies, pornographic magazines, and unrestricted TV in all jails. He has the cheapest meals in the U.S. too. The average meal costs between 15 and 40 cents, and inmates are fed only twice daily, to cut the labor costs of meal delivery. He even stopped serving them salt and pepper to save tax payers \$20,000 a year.

"Another program Arpaio is very well known for is the pink underwear he makes all inmates wear. Years ago, when the Sheriff learned that inmates were stealing jailhouse white boxers, Arpaio had all inmate underwear dyed pink for better inventory control. ... Arpaio looks forward



to many more years as Sheriff of Maricopa County.”

Again, I am not making this up. You can check out the sheriff’s [Web site](#) for yourself for still more.

I have to concede that I find the last sentence about Arpaio’s future plans somewhat reassuring because if he plans to stay in Maricopa County, it means his policing policies would stay limited to a fairly small geographic area (although perhaps that’s not good news for the people of Maricopa County).

But things could be worse if a President Perry picked Arpaio to take over the Department of Justice and Attorney General Arpaio had a chance to incarcerate more of us in tent prisons. But Obama’s Attorney General Eric Holder hasn’t exactly shown himself to be a great defender of constitutional rights either.

### **Perry Strutting His Stuff**

Back in New Hampshire, after Arpaio provided a lackluster introduction, Perry took the stage, offering unctuous thank yous to Sheriff Joe. Perry then reminded us forcefully that he is a “law and order guy.”

That resonated with me in an unusually personal way — so much so, that I missed some of his other by now notorious remarks, like his appeal for all those 21 or over (sic) to vote for him in the New Hampshire primary and those from 18 to 21 to work hard and look toward the day when they too can vote. (sic)

Still, the words “law and order” stuck in my mind. I thought under what law did Perry several months ago call on Attorney General Holder to prosecute me and the other passengers on the *Audacity of Hope*, the U.S. Boat to Gaza as it challenged Israel’s blockade?

Because Perry had been busy glad-handing folks off to the side when I rose to plead guilty to booing Arpaio, the governor didn't see who it was. And, as luck would have it, he called on me for the first question of the Q & A:

"I'm Ray McGovern, and I thank you for coming here, Governor Perry. My question pertains to a letter that you wrote to Attorney General Eric Holder on the 28th of June of this year, and I quote: 'As governor of one of the largest states, I write to encourage you to aggressively prosecute those on the U.S. Boat to Gaza, who plan to interfere with Israel's maritime blockade of Gaza.'

"You may not have been aware that, three days previous, the State Department spokeswoman was asked three times whether Israel's maritime blockade of Gaza was legal and she refused to say the blockade was legal. I was one of those passengers on the U.S. Boat to Gaza, and with my co-passengers we were wondering what you, as the governor of Texas, a 'law and order' person ... under what law did you wish to prosecute my co-passengers and me?"

Perry turned his response into a commentary on how much he supports Israel — no matter what. Like all of his rivals for the Republican nomination (except Ron Paul, who generally refuses to play this craven game), Perry is not about to let anyone outdistance him in expressing unqualified support for Israel. And so, he began:

"The issue was that ... a ... I am a very strong supporter of Israel. ... I've made my point; I must stand with Israel. ... I'm going to stand with Israel. ... And you're free to go stand with who you want to, Sir, ... but I will be standing with Israel."

"No matter what?" I asked. "No matter what" was his emphatic response that can be heard beneath a crescendo of applause from Perry supporters. [To watch the video of this encounter, [click here](#).]

### How Far Will It Go?

With the new language in the NDAA, it would appear that Gov. Perry and others might soon have all the law they need to stifle acts or words that give support to Hamas, Hezbollah, Iran or any other perceived threat to Israel, at least after Obama signs the legislation and some smart lawyers get to work on the definition of “associated forces.”

Then, will the 82<sup>nd</sup> Airborne be sent to fetch me if I continue to write and speak what I believe to be the truth on issues like these? What will I be risking if I keep hammering home little known facts like the following, which seldom, if ever, find their way into the Fawning Corporate Media (FCM)?

–Israel itself helped to create Hamas in 1987 as a Muslim fundamentalist, divide-and-conquer counterweight to the secular Palestine Liberation Organization (PLO).

–The bulk of Hamas’s popular appeal — like that enjoyed by Hezbollah in Lebanon — stems not from the crude rockets fired toward Israel, but rather from the tangible help Hamas provides to oppressed Palestinians.

Is James Clapper, Director of National Intelligence, now treading on thin ice? This is what Clapper included as a sort of afterthought at the end of his 34-page “Worldwide Threat Assessment” before the House Intelligence Committee on Feb. 10, 2011. (You guessed right; the FCM, for some reason, missed it):

“We see a growing proliferation of state and non-state actors providing medical assistance to reduce foreign disease threats to their own populations, garner influence with affected local populations, and project power regionally. ... In some cases, countries use health to overtly counter Western influence, presenting challenges to allies and our policy interests abroad over the long run.

“In last year’s threat assessment, the Intelligence Community noted that extremists may take advantage of a government’s inability to meet the health needs of its population, highlighting that HAMAS’s and Hizballah’s provision of health and social services in the Palestinian Territories and Lebanon helped to legitimize those organizations as a political force. This also has been the case with the Muslim Brotherhood in Egypt.”

This, most assuredly, is not the Official Washington party line. Could the Director of National Intelligence himself be prosecuted by those who believe that any good word for those that Israel considers enemies — like Hamas, Hezbollah and Iran — is tantamount to “material support” for terrorism?

(I do hope readers were not shocked by the diabolically clever way these “terrorist” movements garner public support — by providing life-saving medical care, for example.)

—It was on that public-service record (and also because of wide awareness of flagrant corruption in the PLO), that Hamas won a key parliamentary election in January 2006, defeating the PLO-affiliated Fatah party. While the election results were not disputed, they were not what the U.S., Israel and Europe wanted. So the U.S. and the EU cut off financial assistance to Gaza.

—Confidential documents, corroborated by former U.S. officials, show that thereupon the White House had the CIA try in 2007, with the help of Fatah strongman Muhammad Dahlan, to defeat Hamas in a bloody civil war. That, too, did not go as expected. Hamas won handily, leaving it stronger than ever. [See “The Gaza Bombshell” by David Rose, in *Vanity Fair*, April 2008, for the entire sad story.]

—Israel and Egypt then imposed an economic blockade on Gaza eventually reducing virtually all Gazans to a bare subsistence level, with 45 percent unemployment.

—From Dec. 27, 2008, to Jan. 18, 2009, while President George W. Bush was a lame duck, Israel launched an armed attack on Gaza, killing about 1,400 Gazans compared to an Israeli death toll of 13. Israel’s stated aim was to stop rocket fire into Israel and block any arms deliveries to Gaza.

President-elect Barack Obama said nothing. His unconscionable silence at the slaughter should have told us at that early juncture that he, too, would feel so politically intimidated that he would mute any objections to Israeli behavior. Since then, he has retreated from even his mild objections to Israel’s expanded settlements on Palestinian lands.

### **Guilt by Association**

The United States is widely seen as responsible for Israel's aggressive behavior, which is hardly surprising. It is no secret that Israel enjoys financial assistance (\$3 billion per year), military backing, and virtually unquestioned political support from Washington.

What is surprising, in the words of Salon.com commentator Glenn Greenwald, is "how our blind, endless enabling of Israeli actions fuels terrorism directed at the U.S.," and how it is taboo to point this out.

Take for example former CIA specialist on al-Qaeda, Michael Scheuer, who had the audacity to state on C-SPAN: "For anyone to say that our support for Israel doesn't hurt us in the Muslim world ... is to just defy reality."

The Likud Lobby got Scheuer fired from his job at the Jamestown Foundation think tank for his forthrightness, and the Israeli media condemned his C-SPAN remarks as "blatantly anti-Semitic." There can be a high price to pay for candor on this issue.

That is what those behind the noxious language in the NDAA seem to intend. Sens. Carl Levin and John McCain are said to be the driving force behind the new language. No one in the Senate or House has received more funding from donor institutions related to the American Israel Public Affairs Committee (AIPAC) than Levin, a Michigan Democrat.

For his part, McCain loves to demonstrate his unquestioning support for Israel — no matter what. He has even called for the release of convicted Israeli spy Jonathan Pollard, who is currently serving a life sentence for passing highly sensitive, highly damaging U.S. secrets to Israel.

A few weeks ago, McCain parroted Tel Aviv's line on Iran alleged drive to acquire a nuclear weapon (for which U.S. intelligence sees no concrete evidence) and how that creates a "direct

existential threat to the state of Israel.” McCain added that Israel “may feel compelled to neutralize this threat.”

Would it be risking running afoul of the language in the defense authorization bill to expose this rhetoric for what it is — rubbish — noxious rubbish that makes it easier for Israel to believe it will enjoy full U.S. support, no matter what, should Israeli leaders decide to attack Iran?

The supreme irony is that such an attack would probably bring on a major war, global economic collapse, and possibly the destruction of Israel itself. Oops, what was that sound at the door? What do you mean — the 82nd is on the front porch?

Sorry; gotta go. Send cards and letters. My wife will probably be told, in due course, where they’ve put me. My only hope now is that Rumsfeld, for once, was telling the truth about detainees having “everything they could possibly want” in that tropical resort named Guantanamo?