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George W. Obama After his first year, Obama shows his true face

By Nat Hentoff

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Before President Obama, it was grimly accurate to write, as I often did in the *Voice*, that George W. Bush came into the presidency with no discernible background in constitutional civil liberties or any acquaintance with the Constitution itself. Accordingly, he turned the "war on terror" over to Dick Cheney and Donald

Rumsfeld—ardent believers that the Constitution presents grave obstacles in a time of global jihad.

But now, Bush's successor—who actually taught constitutional law at the University of Chicago—is continuing much of the Bush-Cheney parallel government and, in some cases, is going much further in disregarding our laws and the international treaties we've signed.

On January 22, 2009, the apostle of "change we can believe in" proclaimed: "Transparency and the rule of law will be the touchstones of my presidency." But four months into his first year in command, Obama instructed his attorney general, Eric Holder, to present in a case, *Jewel v. National Security Agency*, a claim of presidential "sovereign immunity" that not even Dick Cheney had the arrant chutzpah to propose.

Five customers of AT&T had tried to go to court and charge that the government's omnipresent spy, the NSA, had been given by AT&T private information from their phone bills and e-mails. In a first, the Obama administration countered—says Kevin Bankston of Electronic Frontier Foundation, representing these citizens stripped of their privacy—that "the U.S. can never be sued for spying that violated federal surveillance statutes, the Foreign Intelligence Surveillance Act, or the Wiretap Act."

It is one thing, as the Bush regime did, to spy on us without going to court for a warrant, but to maintain that the executive branch can never even be charged with wholly disregarding our rule of law is, as a number of lawyers said, "breathtaking."

On the other hand, to his credit, Obama's very first executive orders in January included the ending of the CIA "renditions"—kidnapping terrorism suspects off the streets in Europe and

elsewhere and sending them for interrogation to countries known to torture prisoners. However, in August, the administration admitted that the CIA would continue to send such manacled suspects to third countries for detention and interrogation.

Why send them to a foreign prison if they're not going to be tortured to extract information for the CIA? Oh, the U.S. would get "guarantees" from these nations that the prisoners would not be tortured. That's the same old cozening song that Condoleezza Rice and George W. Bush used to sing robotically.

President Obama also solemnly pledged to have "the most open administration in American history." Nonetheless, his Justice Department lawyers have already invoked "state secrets" to prevent cases brought by victims of the CIA renditions from being heard.

In February, in a lawsuit brought by five graduates of CIA "black sites" before the Ninth Circuit Court of Appeals in San Francisco, one of the judges, visibly surprised at hearing the new "change" president invoking "state secrets," asked the government lawyer, Douglas Letter, "The change in administration has no bearing on this?"

The answer: "No, your honor." This demand for closing this case before it can be heard had, he said, been "thoroughly vetted with the appropriate officials within the new administration, [and] these are authorized positions."

Said the torture graduates' ACLU lawyer, Ben Wizner: "Much is at stake in this case. If the CIA's overboard secrecy claims prevail, torture victims will be denied their say in court solely on the basis of an affidavit submitted by their torturers."

Barack Obama a torturer? Not exactly. In this particular case, the torture policy had been set by George W. Bush. President Obama is just agreeing with his predecessor. Does that make Obama complicit in these acts of torture? You decide.

What is clear, beyond a doubt—and not only in "rendition" cases, but in other Obama validations of what Dick Cheney called the necessary "dark side" of the previous administration—has been stated by Jameel Jaffer. Head of the ACLU's National Security Project, he is the co-author of the definitive evidence of the Bush-Cheney war crimes that Obama is shielding, *Administration of Torture* (Columbia University Press).

After the obedient Holder rang the "state secrets" closing bell in the San Francisco case, Jaffer described the link between the Bush and Obama presidencies: "The Bush administration constructed a legal framework for torture, but the Obama administration is constructing a legal framework for impunity."

It's become an Obama trademark: reversing a vigorous position he had previously taken, as when he signed into law the FISA (Foreign Intelligence Surveillance Act) Amendments Act that, as a senator, he had vowed to filibuster as a protest against their destruction of the Fourth Amendment. And now he's done it again. His government is free to spy on us at will.

For another example of the many Obamas, the shifting president had supported the release of photographs of Bush-era soldier abuses of prisoners in Iraq and Afghanistan. (The Second Circuit Court of Appeals in New York had approved the publication of these "intensive interrogations.") But Obama changed his mind, and Defense Secretary Robert Gates flat-out censored the photos. Not surprisingly, the Roberts Supreme Court agreed with Gates and Obama and overruled the Second Circuit.

In a December 5 editorial, *The New York Times* helped explain why Obama—who doesn't want to "look backward" at Bush cruelties—changed his mind: "The photos are of direct relevance to

the ongoing national debate about accountability for the Bush-era abuses. No doubt their release would help drive home the cruelty of stress positions, mock executions, hooding, and other 'enhanced interrogation techniques' used against detainees and make it harder for officials to assert that improper conduct was aberrational than the predictable result of policies set at high levels."

Barack Obama may well go down in history as the President of Impunity for Bush, Cheney, and, in time, himself, for continuing the CIA "renditions."

But he will also be long remembered as the President of Permanent Detention. At the Supreme Court in 1987, in *U.S. v. Salerno*, Justice Thurgood Marshall, strenuously dissenting, warned: "Throughout the world today there are men, women, and children interned indefinitely, awaiting trials which may never come or which may be a mockery of the word, because their governments believe them to be 'dangerous.' Our Constitution . . . can shelter us forever against the dangers of such unchecked power."

Not forever. The Obama government is working to assure that its purchase of the supermax prison, the Thomson Correctional Center in Illinois, will be the permanent forced residence of certain Guantánamo terrorism suspects who can't be tried in our regular courtrooms because—gasp—they have been tortured, preventing the admission of "incriminating" statements they have made or—"state secrets" again!—a due process trial "would compromise sensitive sources and methods."

Like torture.

I increasingly wonder whose Constitution Barack Obama was teaching at the University of Chicago. China's? North Korea's? Robert Mugabe's? Glenn Greenwald, a former constitutional lawyer, whose byline I never miss on the Internet, asks: "What kind of a country passes a law that has no purpose other than to empower its leader to suppress evidence of the torture it inflicted on people?"

You may not be surprised to learn that my next book—to be published by Cato Institute, where I'm now a senior fellow—will be titled, *Is This America?*

I often disagree with ACLU Executive Director Anthony Romero—though I'm almost always in synch with his lawyers in the field—but Romero is right about Obama creating "Gitmo North": "While the Obama administration inherited the Guantánamo debacle, this current move is its own affirmative adoption of those policies. It is unimaginable that the Obama administration is using the same justification as the Bush administration used to undercut centuries of legal jurisprudence and the principle of innocent until proved guilty and the right to confront one's accusers. . . . The Obama administration's announcement contradicts everything the president has said about the need for America to return to leading with its values. American values do not contemplate disregarding our Constitution and skirting the criminal justice system."

If Dick Cheney were a gentleman, instead of continuing to criticize this president, he would congratulate him on his faithful allegiance to many signature policies of the Bush-Cheney transformation of America.

But never let it be said that President Obama is neglecting the patriotic education of America's young. On December 13, Clint Boulton reported on eweek.com, "The Electronic Frontier Foundation and Berkeley's Samuelson Clinic have sued the Department of Justice and five other government organizations (including the CIA and the Office of the Director of National Intelligence) for cloaking their policies for using Facebook, Twitter, and other social networks to investigate citizens in criminal and other matters. [The plaintiffs] want to know exactly how, and what kinds of information, the feds are accessing from users' social networking profiles."

Maybe Dick Cheney can ask Barack to confirm him as a friend on Facebook.

Charlie Savage, the *Times* ace reporter of constitutional violations, chillingly shows how Yale Law School professor Jack Balkin got to the core of the consequences of our "yes, we can" president by predicting that "Mr. Obama's ratifications of the basic outlines of the surveillance and detention policies he inherited would reverberate for generations. By bestowing bipartisan acceptance on them," Mr. Balkin said, "Mr. Obama is consolidating them as entrenched features of government."

Do Congressional Democratic leaders Harry Reid and Nancy Pelosi give a damn about this historic legacy of the Obama administration that they cluelessly help to nurture by providing lockstep Democratic majorities for?

Do *you* give a damn?