

# Obama's War Crimes Debated in Washington

by Carl Osgood

Nov. 21—The question of impeaching President Barack Obama for war crimes was placed before the public in Washington, D.C., on Nov. 18. The topic of the debate, sponsored by Ralph Nader's Center for the Study of Responsive Law, was "Bush and Obama: War Crimes or Lawful Wars?" But while the word "impeachment" was only mentioned twice, it was an undercurrent throughout the entire event. For if the answer to the question posed is "war crimes," then the U.S. Congress has the responsibility to repudiate those crimes by removing Obama from office by impeachment.

One side of the debate featured Bruce Fein, who has drafted a resolution of impeachment against Obama; Fein served in the Reagan Justice Department, and as counsel in the lawsuit filed by Rep. Dennis Kucinich (D-Ohio) and other members of Congress against Obama over the illegal Libya War; and Army Reserve Lt. Col. Tony Shaffer, who became famous in 2005 for his exposure of the Pentagon data-mining program known as Able Danger, and whose memoirs of secret operations in Afghanistan, *Operation Dark Heart*, had its entire first run purchased and destroyed by the Defense Department last year. Fein and Shaffer argued that, indeed, Obama, and Bush before him, have committed war crimes in their conduct of the so-called war on terror.

Opposing them were two lawyers, Lee Casey and David Rivkin, both of whom have been collaborators with the Mt. Pelerin Society-linked Heritage Foundation for many years. Their arguments echoed the Hitlerian *Führer Prinzip* theory of emergency rule invoked

so often by the legal theorists of the G.W. Bush Administration, in order to justify that Administration's rapid expansion of executive authority after the 9/11 attacks.

While the debate took place before an audience of several hundred people, and C-SPAN's cameras, there has been, as far as can be ascertained so far, no mainstream press coverage of this important event.

## Emergency Powers Theory Debated

To recap: Under the Unitary Executive theory as adopted by Cheney-Bush, the President rules by invoking a state of "emergency," such that there is very little, if any, check on the power of the President to wage war anywhere in the world, against anyone he deems an enemy of the United States. Historically, this theory is associated with Adolf Hitler's *Führer Prinzip*, but actually derives from the imperial principle of international monetary power, as expressed by the Roman, Byzantine, and Hapsburg Empires and, today, the British Empire of monetary interests headquartered in London.

The American Republic was established in explicit opposition to this principle, with its commitment to republican government and a credit system of national development, and was successfully defended, for example, by President Abraham Lincoln during the U.S. Civil War, and again by President Franklin Roosevelt for the entirety of his 12 years in office.

However, U.S. resistance to that imperial principle has been considerably eroded in the post 9/11 period. Unilateral executive power was invoked repeatedly by the Bush Administration in order to wage its so-called war on terror, and has been enthusiastically embraced, even expanded, by the succeeding Obama Administration. Informed by this outlook, the essence of Casey's and Rivkin's arguments were, therefore, that the President can do whatever he thinks necessary in the name of protecting the American people, with few, if any, checks on his power.

The subject of impeachment was first raised by Rivkin, who, when asked what he thought the proper role of the Congress was in war-making, said that there



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*Bruce Fein has drafted an impeachment resolution against Obama.*

are only two ways the Congress can discipline the President: by cutting off funds for the war, or by impeachment. Otherwise, the President can use force whenever he wants to.

Later, Fein raised impeachment in a different way. The moderator asked him, if the war that the President is waging is, indeed, illegal, what are the obligations of American citizens under the Nuremberg principles. "The first obligation, under Nuremberg is to petition Congress for impeachment of the President for high crimes and misdemeanors," Fein said. He noted that the Declaration of Independence states that if "the government intends to reduce us to vassalage we have the right to resort to arms and establish a new dispensation."

### **The Awlaki Case**

The targeted assassination of American citizen Anwar al-Awlaki, on Obama's orders, was a focus of the debate. Casey, from the standpoint of his Hitlerian theory, claimed that Obama had the right to order Awlaki's assassination. "If you are a combatant, you are a military target wherever in the world you are," he said, although with the minor caveat that such attacks have to follow the rules. "Awlaki was an operative" of al-Qaeda, Casey claimed, "Therefore, he was a legitimate target" and his citizenship was irrelevant.

But as Fein noted, the Obama Administration has not produced a single fact showing that Awlaki was engaged in hostilities against the United States. In response, Casey gave away the game when he declared that "when engaged in legally cognizable armed conflict like we are, the government is not required to prove beyond a reasonable doubt that individuals are, indeed, combatants...."

Shaffer raised the Awlaki killing in his opening remarks, countering the assertion by Rivkin and Casey, that the wars since 9/11 are defensive wars. Awlaki was "by all accounts, a pretty bad guy," Shaffer said. "But again, if we're talking about defensive war, how far does this pro-active defense extend? And under what authority? Under what authority was Anwar al-Awlaki, as an enemy of the state, assassinated?" The Constitution prohibits the taking of life, liberty, or property, without due process.

"The argument that we have these individuals who are 'combatants' is, I find, unsupportable in the Constitution," Shaffer said. "No law, no rule that I understand anywhere, allows for the government to unilaterally say Anwar al-Awlaki is no longer a citizen, therefore he is

not afforded the protection of the Constitution. Within the context of the Constitution, it is in our interests to prosecute him on the violations."

The killing of Osama bin Laden, by a CIA-led SEAL team last May, differs from the Awlaki killing, primarily in the fact that bin Laden was not a U.S. citizen, but how much of a difference should that have made? In Shaffer's view, not much. Shaffer said that, from discussions he's had with people inside the Special Operations community, he believes that the decision was made at the outset that bin Laden would be killed, rather than captured.

"I don't believe it was the correct decision," he said. "I do believe that, in a situation like that, you actually belittle our system. It's not about him, it's about us. Our rule of law. The idea is that we capture people." Shaffer also pointed out that dead men tell no tales. As an intelligence officer, he can get much more information out of a living person than he can a dead one.

### **The Assault on the Constitution**

Fein captured the nature of the Hitlerian unitary executive theory in his closing summation. "I believe the wars have been unprecedented in their assault on the Constitution of the United States, the very first casualty," he said. "All of our liberties rest upon the benevolence of the President of the United States. Under the principles that we have established and been touted by the opponents, here, a President could go on television, today, and announce that he's got secret evidence that there's going to be even worse devastation than 9/11 unless we suspend the Constitution. He's empowered to detain anyone in the United States that he thinks is subversive at Guantanamo Bay, maybe at Bagram, and he's going to suspend the entire Constitution because his first duty is to save us from danger! And that would be lawful authority according to the prevailing legal principles that have been announced" by Rivkin and Casey.

Fein called that outlook "frightening" and said "we need to remember that we adhere to certain principles because of what it says about us, irrespective of what it says about the enemy or the adversary. Abraham Lincoln said as he would not be a slave, so he would not be a master. As we would not be colonized, so we would not be colonizers. As we would not want to be tortured, we would never stoop to committing torture or violating the rule of Law. And that's basically what this is about."