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On war powers, Obama errs like Bush

By Robyn E. Blumner

June 26, 2011

When it comes to Libya, President Barack Obama has missed an important opportunity to differentiate himself from his predecessor, George W. Bush, and to remind his supporters why they voted for him so enthusiastically in 2008.

Bush acted as if the presidency was the equivalent of being elected king. He regarded the legal limits placed on presidential power as inconveniences to be overcome or ignored, not as great, enduring strengths of the American system of government. Candidate Obama condemned Bush's excesses and vowed to be different.

But that was then.

Only a few years ago, Obama promised to respect the Constitution, the rule of law and the separation of powers. But it feels like a generation ago.

No longer do we hear Obama declaim on the "false choice between the liberties we cherish and the security we demand," or how, under his administration, "we will again set an example for the world that the law is not subject to the whims of stubborn rulers."

These rhetorical criticisms that the candidate leveled at Bush are sad reminders of what we expected of Obama. He was to dismantle the prior occupant's jerry-built rationales for unlimited

and unanswerable executive power. But Obama's refusal to follow the strictures of the War Powers Act says that he, too, is willing to manipulate language to ignore inconvenient limits on his power. Bush had John Yoo at the Office of Legal Counsel approving the use of torture by absurdly defining it so narrowly that it no longer included waterboarding.

On Libya, Obama is claiming that the "hostilities" referred to in the War Powers Act for which a president is required to obtain congressional approval within 60 or 90 days do not apply to the U.S. role in the now-NATO led mission. That's pure sophistry. American troops may not be on the ground, but at Obama's direction the U.S. military is using predator drones to bomb targets and kill.

The War Powers Act fleshes out the Constitution's demand that only Congress may declare war, an essential check on a president's penchant for using military force. Just because modern warfare allows America to attack the enemy by manipulating remote joysticks without risk to our soldiers doesn't change the character of the act. Obama is wrong. And instead of drawing a clear line between his presidency and that of Bush, Obama is showing us how much he learned from the guy.

In another disappointing turn, Obama's Justice Department is making it easier for the FBI to investigate people and organizations without cause. A new edition of the FBI's operation manual gives agents broad additional powers to nose around before there is a basis to suspect wrongdoing.

Now agents will be able to search law enforcement and private databases without having to make a record of the search, and they will be free to infiltrate a lawful group for up to five meetings before having to follow the rules governing "undisclosed participation."

Giving agents this kind of discretion will inevitably lead to abuses. This is what happened after 9/11 when the Patriot Act loosened the rules for the FBI to gather business and personal records using "national security letters" that don't require a judge's oversight or approval. This led to tens of thousands of additional letters issued annually, with many used improperly or illegally, according to the Justice Department's inspector general. Meanwhile, Obama just willingly and without a hint of objection signed a four-year extension to some of the most controversial surveillance powers contained in the Patriot Act.

"(The Bush) administration acts like violating civil liberties is the way to enhance our security. It is not," is what Obama declared as a candidate. But on this and the undue assertion of presidential authority, Obama's clear demarcation from Bush is getting murkier by the day.