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## Radley Balko Reason Magazine Interview Stewart Rhodes

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*Radley Balko, Senior Editor for*

*REASON Magazine*

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### ***Constitutional Refuseniks***

***Stewart Rhodes on his controversial group the Oath Keepers and***

***the orders they won't obey***

**By Radley Balko for the May 2011 Issue of Reason Magazine**

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When you run down the list of issues the Oath Keepers are worried about, it reads a lot like a bill of particulars from the American Civil Liberties Union. The Oath Keepers don't like warrantless searches. They're upset that the executive branch has claimed the power to classify American citizens as enemy combatants, detain them indefinitely, and try them before military tribunals. They worry that a large-scale terrorist attack similar to 9/11 could lead to the mass detention of Arabs or Muslims, just as Japanese Americans were detained during World War II. They worry about crackdowns on political speech, protest, and freedom of assembly. They are concerned about the Army 3rd Infantry's 1st Brigade Combat Team, a military unit that is training to deploy domestically in response to terrorist attacks or other national emergencies. And yet the group is a frequent target of the left.

Oath Keepers was founded in 2009 by Stewart Rhodes, a Yale Law School graduate and a former staffer

for Rep. Ron Paul (R-Texas). Rhodes, 44, considers himself a constitutionalist and a libertarian. His organization's mission: to persuade America's soldiers and cops to refuse to carry out orders that violate the Constitution. On its website, Oath Keepers lists 10 orders its members will always refuse, including commands to conduct warrantless searches, to disarm the public, blockade an American city, or do anything that infringes "on the right of the people to free speech, to peaceably assemble, and to petition their government for a redress of grievances." According to Rhodes, the group has about 30,000 dues-paying members.

Unlike the ACLU, the Oath Keepers are staunch defenders of the Second Amendment. They worry about the forcible disarming of American citizens, as happened after Hurricane Katrina, and as they fear could happen again after another terrorist attack or major natural disaster. The Oath Keepers are also federalists, vowing to disobey orders that violate state sovereignty. Most of their members are conservative or libertarian. Some of them espouse conspiracy theories that doubt President Barack Obama's citizenship or blame the federal government for the September 11 attacks.

These latter positions have drawn suspicion and, at times, outright contempt from liberal groups such as the Southern Poverty Law Center, which lumps Oath Keepers in with militias and hate groups. (The Oath Keepers also have been denounced by some prominent conservatives, including Bill O'Reilly and Michelle Malkin.) Last year Mother Jones accused the organization of promoting treason.

Senior Editor Radley Balko spoke with Stewart Rhodes about these criticisms and more in January.

reason: What is the purpose of Oath Keepers?

Stewart Rhodes: The mission of Oath Keepers is to persuade the guys with the guns not to violate the Constitution. I look at it as constitutional triage. I worked for a congressman; I've worked with judges. And it seems clear to me that judges and politicians don't really care about our rights that the Constitution is supposed to protect. So I'm focusing on the guys with the guns, the ones who ultimately enforce the laws, on educating them about the Constitution. I think most of them are honorable people, but there's an ethos, especially in the officer corps in the military, that focuses on following orders. It's almost as if they're taking the oath to uphold the Constitution to mean that you should categorically defer to the president. Now I think civilian authority is important, but if the president asks the military to do something that isn't constitutional, their loyalty is to the Constitution, not the president.

In the police context, some have the mistaken idea that you're always to enforce the law—leave it up to the politicians, lawyers, and judges to figure out what's right and what's wrong after the fact. That's not what the Founders intended, and that's not what the Constitution calls for. So the point of Oath Keepers is to remind the military and law enforcement that they are supposed to be thinking about the Constitution, and especially the Bill of Rights, and they need to be thinking about the lawfulness of the orders they're given. And they actually have a duty to refuse when it's unlawful or violates fundamental human rights. The military has learned this overseas, with the Nuremberg trials, with My Lai, with Abu Ghraib. And they get training in the laws of war, so they know when to refuse unlawful orders in the context of a foreign battlefield.

But cops get very little training in the Bill of Rights. And when the military is used domestically—as we saw with Katrina, and as we're seeing more and more—they're also now butting up against the rights of American citizens. They need to know what those rights are, and how they can be sure they don't violate them. They're not getting that training either. And I find that disturbing.

reason: Oath Keepers has been described as a militia group, a hate group, even as an organization that promotes treason. Do you advocate violence or overthrow of the government?

Rhodes: Absolutely not.

reason: Is there any scenario under which you would encourage your members to respond to a government policy with violence?

Rhodes: No. That's the strange thing about the criticism we get. The entire point of Oath Keepers is to

advocate nonviolence. We're telling police and soldiers that if they're asked to do something unconstitutional, or asked to violate the rights of Americans, that they should put down their guns. We just saw this with the Tunisian military, by the way, when it refused orders to fire on protesters.

reason: One example you've given is the government's disarming of New Orleans residents after Katrina. So your advice to those officers would not have been to forcibly oppose the disarmament but to simply refuse to participate in it?

Rhodes: That's correct. In fact, that happened during Katrina. There was a sergeant in the National Guard from Utah, Joshua May, who was deployed to Louisiana after Katrina. His unit was initially deployed in a rural area and got along fine with the residents there. But he was then deployed to New Orleans, and he had heard about the gun confiscations. And so Sgt. May, on behalf of his entire unit, did a pre-emptive refusal. He sought out his commander and he told him, "If you give us orders to confiscate guns, we will refuse to enforce them." This was at least half the company. This went up the chain of command, and when it came back, they were told not to worry, that they wouldn't be asked to do that. Basically, Big Army blinked. There were no courts martial. No one was shot at dawn.

reason: That sort of scenario seems less plausible in a police department.

Rhodes: Not necessarily. A good example is our vice president, Dave Freeman. He was a Las Vegas Metro police officer for over 30 years. And as a rookie, right out of the gate, he was doing a patrol with a senior sergeant, and there were three black men on the main strip, two of them trying to prop up a drunk buddy. And it was clear they were just trying to get him home. A commander showed up on the scene and told his officers to arrest them for the noncrime of what was then crudely called "nigger on the strip." Freeman as a rookie turned to the sergeant and said, "I'm not going to do that." And they let them go. Now the commander called him later and yelled at him. But he wasn't disciplined or fired. And in fact they never asked him to make an arrest like that again.

reason: OK, that was a single incident from 40 years ago. But cops today who report other officers for violating a citizen's rights generally don't fare very well. The Blue Wall of Silence is pretty tight. Do you see Oath Keepers at some point providing legal aid to police officers who may suffer professional repercussions for doing the right thing?

Rhodes: Yes. We've already set up a legal defense team for that. We set it up after the case a few months ago where a newborn child was taken from its parents at the hospital by child protective services because the father was a member of our organization, which they wrongly called a militia.

reason: Wasn't there also a history of abuse in that case?

Rhodes: It turns out it was a case of mistaken identity. They were attributing to the father abuse that had been committed by someone else. In the end, all the charges were dropped, and the child was returned to the parents. But we got involved because the father's membership in our organization was actually listed on the affidavit as one of the factors for taking the child away. If there were a history of abuse, the abuse should be the reason the parents lose custody. Membership in a political organization can never be a reason to take someone's children away. I don't care if it's Oath Keepers, the ACLU, the NRA, or anyone else.

But to answer your question, yes, we'd do the same for a police officer. We actually have a state police officer—he's our state chapter president in Pennsylvania—who refused an order to arrest some protesters on a college campus. They told him to arrest them, and he refused. So they suspended him and sent him home. He has already won in court on the order. He was right that it was an unlawful order, so he has saved his career. So he's now fighting the suspension in civil court.

It doesn't always turn out well. But when you take an oath you're not saying, "I'll abide by this oath only if it turns out well for me." You're saying that the oath is important enough that you'll abide by it no matter how things turn out.

reason: You once worked for Rep. Ron Paul. Do you agree with him that the federal drug war is

unconstitutional?

Rhodes: Yes.

reason: So are Oath Keepers encouraged to refuse to enforce federal drug laws?

Rhodes: We try to focus on the sorts of issues that could fundamentally alter our constitutional system. So we're focused right now on the big picture stuff, the sorts of orders that could lead to the imposition of martial law, for example. So that's what our "Ten Orders We Will Not Obey" mostly address. But if a member asks, I'll tell them point blank that the drug war is unconstitutional. Under the concept of enumerated powers, most criminal law should be left to the states.

reason: Oath Keepers seems to be primarily focused on the federal government. But state and local governments are certainly capable of violating the Constitution. Do you think the 14th Amendment allows the federal government to intervene if, say, a local sheriff is violating the rights of the residents of his county?

Rhodes: I don't think it allows it; I think it compels it. But that's not incompatible with the idea that the states should be left alone to make and enforce their own criminal laws. They should be free to do that. But if a state or local government isn't respecting the Bill of Rights, then yes, the federal government should intervene and investigate. Take Sheriff Joe Arpaio in Arizona. I think he's a terrible sheriff. And I think it's really unfortunate that he's held up as some kind of a hero in parts of the freedom community. He's a constitutional disaster, a Bill of Rights disaster. So yes, in that case, you have a sheriff who's violating due process and who's violating the Eighth Amendment. There's definitely a role for the federal government to come in and say no.

But as long as they're respecting the Bill of Rights, it should be up to the people of each state, or each county, to determine what's legal and what isn't. Look at medical marijuana. It was just wrong of the Bush administration to say, "We don't care what the people of California want; we're going to step in and arrest this cancer patient, Angel Raich, under the Commerce Clause because she's violating federal law." That was terrible. We had made so much progress since the Lopez decision [the 1995 Supreme Court ruling that overturned the Gun-Free School Zones Act] in turning back some of the Commerce Clause insanity, and all of a sudden this takes us right back to Wickard [the 1942 decision that upheld federal crop quotas]. If Congress can regulate medical marijuana, it can regulate just about anything. But because it was a drug case, all the Republicans cheered the ruling, and you had Antonin Scalia going along with the liberals on the Court, and the result is an absurdly expansive interpretation of the Commerce Clause.

reason: So you favor federal intervention to prevent civil rights abuses; you strongly criticize Joe Arpaio; you oppose military tribunals, indefinite detention, and warrantless searches; you're anti-war....

Rhodes: Well, I'm opposed to unconstitutional wars. However, Oath Keepers stays neutral on Iraq or Afghanistan, although I think any soldier who chooses not to deploy on constitutional grounds should be allowed to make his case. It's not that the wars aren't important, but we want to reach as many active-duty troops as possible, so they don't violate our rights here at home. That's our priority.

reason: But these are all positions you share with the left. Why do you think you've been characterized as far right wing? Is it the support for gun rights? Your membership does seem to be quite a bit more conservative than you are. It seems like many of them would disagree with you about Arpaio, for example. Is it just the timing of when you started Oath Keepers?

Rhodes: To be honest, I don't think it would make a difference what I did or said. The attack from the leftist media and leftist groups like the Southern Poverty Law Center—I mean right out of the gate, before we had really even done anything, they tried to associate us with racists. I'm a quarter Mexican. I'm part Apache Indian. I'm hardly a poster child for white supremacy. I'd probably be killed if this country were run by white supremacists.

reason: I think I read on one critical site that you're also part Jewish.

Rhodes: No, I'm not Jewish. But that's funny too. Because we don't tolerate anti-Semitism, there are some neo-Nazis who are certain that must mean I'm Jewish. You know, clowns to the left of me, jokers to the right.

But this is the problem. The critics don't actually challenge or criticize me for what I do or say. They criticize me for what they want me to have done or said. So they can criticize me. When I did that interview with Chris Matthews of MSNBC, he asked, "So how many men do you have ready to fight the government?" I said, "What are you talking about? We don't want to fight the government." He said, "Well, aren't your members armed?"

Well, yeah. They're cops and soldiers. That's the whole point. We're trying to make sure that the guys with the guns know that they can't follow orders that tell them to use those guns the wrong way. I mean, to say our members have guns is such a disingenuous way to scare people about what we're actually trying to do.

In that Mother Jones article, the reporter, Justine Sharrock, could have spoken with anyone who held a leadership position in our organization. We could have set her up with someone who is typical of our membership. Instead, she finds this private, the scariest guy she could find, this guy who talks about using violence against his fellow soldiers, and who poses for her with his gun, even though we explicitly denounce violence as an organization. It was just irresponsible. But you know, we're trying to prevent the government from doing the things the Constitution prevents it from doing. And right now the Democrats are in control of the government. So I guess the liberal groups see us as an enemy.

reason: There's one criticism of your group that's similar to those directed at the Tea Parties. You've said that Bush was just as hostile to the Constitution as Obama has been, indeed that most of the worst executive power grabs began under Bush. So why did Oath Keepers spring up only after Obama took office?

Rhodes: I just hadn't gotten the idea yet. I got the idea during the 2008 election campaign. I worked for Ron Paul during the primary, and when it became clear that he wasn't going to get the nomination, I started to think about what I wanted to do next. And that's when the idea came to me that I wanted to do something involving the military and the police. And that was no matter who became president. At the time we didn't know if it would be McCain, Obama, or Hillary Clinton.

But it's true. All of this began or really started to get worse under Bush. That's when you had this wave of unconstitutional federal power. In particular, I was worried about this claim that the president could detain American citizens as unlawful enemy combatants. A president who would make that claim assumes powers that could be used in so many other ways too. I wrote a paper on that issue while I was at Yale Law School, during the Bush administration, which actually won the Yale Prize for best paper on the Bill of Rights. I was an outspoken critic of Bush then. I had a blog at the time that was very critical of Bush and his assumption of unconstitutional powers. I called the neocons in the Bush administration "national security New Dealers." They expanded the power of the federal government at least as much as the New Deal did, but they did it through the lens of national security. The warrantless spying was unconstitutional. The detention of José Padilla was unconstitutional. The detentions without trial were unconstitutional. Most of the new powers Bush claimed were unconstitutional.

But now you have Obama, who has not only not renounced those powers but has expanded them. He also now claims the power to assassinate American citizens his administration deems enemy combatants with no oversight. That's just frightening.

At this point I do really wish I had started Oath Keepers during the Bush administration. It would have been a good test. My guess is that I'd have started with a lot of liberals joining up, and you'd have seen conservatives and neocons howling that I'm a traitor. I think it's just human nature and the cycle of politics. When the left is in power, they forget about the Constitution because it limits what they can do. So they characterize people who stand by the Constitution as reactionary or dangerous. But when they were out of power, they were citing the Constitution all of the time. They were quoting Ben Franklin about sacrificing liberty for security.

And it's the same for the right. The Republicans clamoring for the Constitution now had no respect for it when Bush was in power. They thought he could do no wrong.

reason: Do you have any leftists or left-libertarians in your membership?

Rhodes: We have some, but they're few and far between right now. I wish we had more. And I suspect that when we get a Republican president again, we'll get more members who identify with the left. I do think more and more people are understanding that neither party has any fidelity to the Constitution, and you are starting to see some honest liberals and some honest conservatives who are more willing to criticize their own side while in power. I think you saw a lot of that in the Ron Paul campaign, where he ran on a platform that was very critical of his own party's president. On the left, you're seeing it now with people like Glenn Greenwald. I hope there's more of that.

reason: You've also been accused of associating with people who spread paranoia or conspiracy theories. So let me ask you straight up: Do you think President Obama was born in the United States?

Rhodes: Oath Keepers doesn't get into all of that. I know some of our members think he isn't eligible to be president. Others think that's nonsense. I guess if he weren't constitutionally eligible you could have some chain-of-command problems. But for me that's all really beside the point. I care about how the structure of the federal government makes abuse possible. If Obama weren't in office, it would be someone else who had the potential to commit the same abuses.

reason: What about the September 11 attacks? Do you think the government played any role in or had advance knowledge of the attacks?

Rhodes: Again, that's just something we just stay out of. We have members who believe that, or at least believe there should be an investigation. And we have members who think those members are crazy. We certainly don't promote the idea. But from my standpoint, it's just not a topic that's relevant to what we're trying to do, so there's no point in taking a position.

reason: Do you personally believe in either theory?

Rhodes: Well, I'm talking to you as the head of the organization, and the organization doesn't take a position on either of those issues. So I don't think my personal views are relevant. It just doesn't make sense to take positions on issues that may alienate some of our members and that aren't relevant to our goal, which is educating police officers and soldiers on the importance of not following unconstitutional orders.

reason: Let's talk about a conspiracy theory often batted around on the right that's more aligned with your mission. Do you think the Obama administration is secretly planning to set up detention camps through the Federal Emergency Management Agency?

Rhodes: Well, something like that has already happened. Look at the internment of Japanese Americans during World War II. That was done very quickly. All they had to do was string some wire up around old military barracks. So do I think there are detailed plans sitting in an office somewhere? I don't know, but that really doesn't matter. I'm concerned about the structures in place that could enable it to happen. So what I am concerned about is the creation of NORTHCOM, which for the first time in our history is a standing military command for the deployment of standing military troops domestically. That's very dangerous.

And there is reason to worry about FEMA. From its start in the Reagan administration, FEMA was never just about emergency relief. It was about continuity of government, about governing during a disaster. The structures put in place by people like Cheney, Rumsfeld, and Oliver North during the Reagan administration, they contemplate the executive branch taking over all three branches of government during an emergency. I think that's very dangerous. And we saw later the limitless power Cheney thought the executive should have to fight terrorism. FEMA has always been part of that. And you have things like Garden Plot, which are actual plans to impose martial law in the event of a civil disturbance.

And remember that during the Bush years we saw prominent conservatives such as Michelle Malkin openly defend the internment of the Japanese Americans during World War II as being necessary—as though that would make it constitutional—with an eye toward doing the same thing with Muslim Americans. Malkin even wrote a book called *In Defense of Internment*.

So it isn't really about whether President Obama has specific plans for that sort of thing. It's about questioning the constitutionality of the structures in place that could allow it to happen, no matter who is president. And for us, it's about making sure soldiers and police know that if they're ever ordered to carry out something like the Japanese internment camps again, their duty is not to follow orders but to respect the constitutional rights of their fellow citizens.

reason: Is there any scenario under which you think the government would be justified in quarantining or involuntarily detaining American citizens? For example, what if there were a smallpox attack in a major urban area?

Rhodes: I think it would be up to the state. Article 4, Section 4 of the Constitution, for example, allows for the marshaling of federal resources to help states quell an insurrection, but only at the invitation of the state's governor. So that's why this is one of our 10 rules. Our members who are in the military won't follow orders to enter a state without approval from that state's legislature or governor. So if there were an attack, and the state governor asked for federal assets to come in to help set up a quarantine, that would at least be constitutional. I think I'd still have problems with it. I just don't like the idea of blockading cities, under any circumstances.

We saw some of that during Katrina, where you had troops and police officers who were preventing people from leaving the city. And that wasn't even a quarantine. Remember that? You had Shepard Smith of Fox telling the world, "They won't let these people cross. They won't let them go from there to here." Why was that? What possible reason could there have been for police officers and National Guard troops to not let people escape a flooding city? Were they afraid of what would happen if black people got out of New Orleans? That should never have happened.

reason: On the Danziger Bridge, they shot the people who tried to get out.

Rhodes: That's right. I don't want that to ever happen again. So I'd really prefer the default position in the mind of a soldier or police officer to be that you simply don't block people from leaving or moving freely. In limited circumstances, like a smallpox attack, then maybe you reconsider. But the starting point should always be to let people move freely.

reason: What do you make of what we've seen in Tunisia and Egypt?

Rhodes: I like it. What happened in Tunisia is an excellent example of the military doing the right thing. When Ben Ali ordered the senior military general to shoot the protesters, he refused, and the Tunisian military simply stood down and got out of the way. And without the military, the secret police were overwhelmed by the people, and the dictator was done. He fled for his life. Note that the Tunisian military did not remove the dictator in a coup, which would just lead to another dictator. But instead, they simply stood down and let the people of the nation decide their own fate. That was precisely the right thing to do, and I hope the military in Egypt does likewise. A military coup is like jumping from the frying pan into the fire, so we don't want to see that. But we do want to see the military refuse to be tools of oppression. When the military withdraws its support, a dictator is powerless, just as happened in Romania when Ceausescu was overthrown in 1989. Mubarak is a dictator, and there is never any excuse for propping up dictators. He needs to go, and he will, so long as the Egyptian military does the right thing.

reason: The scenarios Oath Keepers are most worried about seem like those that are least likely to happen. If you're worried about constitutional rights, wouldn't you do more good to educate police officers about Bill of Rights violations like stop-and-frisk searches, SWAT raids for consensual drug crimes, civil asset forfeiture, and other ongoing, everyday abuses?

Rhodes: You have to start somewhere. Certainly the long-term militarization of the police, which I know

you've covered, is a disturbing problem. And I think the drug war in general has been destructive of freedom in America. One thing to remember is that the 10 orders Oath Keepers won't follow isn't a comprehensive list. There are countless possible unlawful orders I'd hope our members wouldn't follow. But when I was thinking about starting Oath Keepers, I tried to think of what sorts of policies the Bush administration could implement that would do long-term, irreversible damage to the Constitution, and what orders officials would have to give to the military to implement them. So I think when we're talking about where to start, you start with the most potentially damaging policies, things like internment camps, martial law, detaining American citizens without a trial.

It's part strategy too. These are also the issues where I think it's easiest to build a consensus. So we should start there. But the bigger idea is to get police and soldiers to at least start thinking about the Constitution, and that their first loyalty is to the Constitution and the rights of American citizens. Their first loyalty shouldn't be to their commanding officer. It isn't really about me coming down from the mountain with tablets inscribed with what orders you should and shouldn't obey. But there some core principles, things that should never happen, and things that the government should know we will never allow to happen.

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