

HAPPY CONSTITUTIONAL HOLIDAYS

By Michael Ventura

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Merry Christmas, done anything lately to defend your Constitution?

The Founders provided no loopholes. Not about the judicial process. The Sixth Amendment reads: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury."

Our Founders knew about the emergencies of war; they'd just fought a long conflict to free themselves of tyranny. Because they hated tyranny, they specified all criminal prosecutions. No exceptions. A public trial. No exceptions. And their Sixth Amendment does not apply only to citizens: the accused -- whomever the accused may be. No exceptions. That's the law.

To do anything less, or anything else, is to go against the intent as well as the letter of the law. If President George W. Bush and Attorney General John Ashcroft fail to uphold the Sixth Amendment, they fail the Constitution they have sworn to protect.

In my last column I detailed in sequence how swiftly we are losing our Constitutional rights. A quick refresher course. On October 25, Congress passed the USA-PATRIOT Act against terrorism, defining "terrorism" so broadly as to include any acts that "appear intended to intimidate or coerce the civilian population, to influence the policy of a government by intimidation or coercion" -- a definition that could easily include peaceful protest, civil disobedience, and even troublesome writers and publishers. That act also dispensed with the principle of "probable cause," allowing wiretaps and searches on American citizens if the government felt a vague "significant purpose" connecting the investigation with suspected terrorism. On November 1, President Bush signed an executive order allowing a president to veto the release of any documents from past administrations, thereby in practice allowing the presidency to operate under a cloak of secrecy. On November 13 came his executive order dispensing with the Sixth Amendment, allowing for secret military tribunals answerable only to the president himself, in which defendants cannot select their own lawyers, have no right of appeal, and may not be allowed to see the evidence against them. The same day, Attorney General Ashcroft ordered 5,000 Middle Eastern men on legal visas picked up and questioned. On November 26 Ashcroft still refused to reveal even the names of the 1,000 or so men being held without bond and without specific charges, though The New York Times reported that sources within the FBI said only "10 or 12" of them even might be al Qaeda. On November 28, The New York Times revealed that Ashcroft's Justice Department assumed the power to override federal immigration judges who had already decided to release an accused person for lack of evidence. Then I ran out of space. To continue:

On November 28, Ashcroft, under fire from a free press doing its patriotic duty, revealed

that of the 600 detainees still in custody 104 had been charged with crimes -- but almost all those crimes had nothing to do with terrorism. .e., his department had come up with nothing.

The next day, November 29, again because they were feeling the heat, the Bush administration backed off a little and said that military tribunals would apply only to "war criminals" overseas, not the hundreds detained in the United States. This was far from his original position. At the risk of being preachy may I say: Do you see why making yourself heard is so important?

On the same day, November 29, the Egyptian foreign minister protested to Secretary of State Colin Powell that Egypt had not yet even been given the names of the dozens of its citizens being detained in the United States, nor told on what charges they were being held. Yet Egypt is supposed to be an ally.

Bush said one thing then another, but didn't rescind and hasn't yet rescinded his order. On December 4, Anthony Lewis of The New York Times quoted that order: "The individual shall not be privileged to seek any remedy or maintain any proceeding, directly or indirectly, or to have any such remedy or proceeding sought on the individual's behalf, in (i) any court of the United States, or any State thereof, (ii) any court of any foreign nation, or (iii) any international tribunal." The order clearly sweeps aside the Sixth Amendment (read it again at the head of this column), sweeps aside state's rights, and, while we're at it, the rights of our allies.

Our allies don't like that. On December 6, the well-connected conservative William Safire wrote in The New York Times: "At the State Department, word is coming from Spain, Germany, and Britain -- where scores of al Qaeda suspects have been arrested -- that the U.N. human rights treaty pioneered by Eleanor Roosevelt prohibits turning over their prisoners to military tribunals who ignore such rights." Safire made the point that Bush's executive order thus "denies us valuable information about 'sleepers' in Osama bin Laden's cells ... in the U.S. planning future attacks."

Then the kicker ... hilarious really, if the situation wasn't so urgent. On December 5, it came out that, since October, Ashcroft has refused to allow the FBI to check Justice Department records to discover whether the 1,200 detained after September 11 had ever bought guns. No less an organization than the International Association of Chiefs of Police wrote Ashcroft protesting the order. Larry Todd, police chief of Los Gatos, Calif., said, "This is absurd and unconscionable. The decision has no rational basis in public safety." But the order does prove that Ashcroft is afraid of public opinion. In this case, the opinion of the National Rifle Association. (Make yourself heard.)

On December 6, Ashcroft testified before a Senate committee. He threatened: "To those who scare peace-loving people with phantoms of lost liberty, my message is this: Your tactics only aid terrorists." Make no mistake, that is a threat. Because the USA-PATRIOT Act states that if Ashcroft has a "significant" reason (and he gets to define "significant") to think you're aiding terrorists, you can be wiretapped without a court order while your

e-mail can be investigated and your home can be searched without a warrant. He tried to buttress his scare tactics by saying that people who thought there would be no future attacks "were living in a dream world." Thus in one breath he condemned and threatened those of us who disagree with him (implying we are not "peace-loving," thereby giving himself a "significant purpose" to investigate us), while admitting his own impotence -- admitting that his measures aren't going to stop future attacks. Then he lamely defended ordering the FBI not to look at the gun records of suspected terrorists: "I believe we did the right thing in observing what the law of the United States compels to observe." As Carl Hiassen wrote in *The Miami Herald*: "In other words, we'll lock you up with no trial, interrogate you with no lawyer present, secretly wiretap your friends and relatives -- but heaven forbid we invade your privacy by checking to see whether you've bought any guns."

The next day, December 7, *USA Today* (not exactly a radical alarmist paper) reported that "U.S. agents now doubt that any of the more than 600 people who have been detained ... in the September 11 probe actually was involved in the hijacking plot. That includes 10-15 men who are being held as 'material witnesses' ... sources close to the FBI probe say the evidence against several of those in custody is not as clear as Attorney General John Ashcroft has made it seem." Also on December 7, *The New York Times* reported that "immigration courts from coast to coast are conducting scores of hearings in secret, with court officials forbidden even to confirm that the cases exist." Said Nadine K. Wettstein of the American Immigration Law Foundation: "I appreciate that there's a lot of concern about the military tribunals, but it's speculative. But this is happening right now, and it's happening all over the country."

On December 11, the government brought charges against a French citizen, Zacarias Moussaoui, believed to be the 20th man of the September 11 attacks. He'd been arrested in August on other charges. The administration decided to prosecute him in an open and constitutional criminal court, not a military tribunal. *The New York Times*, on December 12, cited White House sources who said "recent criticism of military tribunals helped to shape the decision."

There's much more, but I'm out of space again. The decision to try Moussaoui in accordance with our Constitution should prove to you why it's so important to make yourself heard: It is possible to defend your rights through peaceful, patriotic dissent. They don't want to listen -- but they have to, if enough people speak up. Jefferson said it all in our Declaration of Independence: Governments depend upon the consent of the governed.

Happy New Year, raise your voice.

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