

COMMUNITY COMMENTARY

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Don't Ignore Due Process

By **Richard Seeley**

Perhaps we should begin to pay more attention to our Constitution and to where our leaders, on both sides of the aisle, are taking us.

We are misinterpreting or just ignoring our Constitution, especially the 5th, 6th, and 14th Amendments, either intentionally, or otherwise.

While terrorism is a reality in this world of ours, it is my opinion that violating or eliminating our rights in the name of security is without merit and is dangerous. Once the rights that honor us with life, liberty and the pursuit of happiness are tinkered with or thrown asunder, they are difficult, if not impossible to reinstate.

Habeas corpus is the Latin meaning, "you have the body!" Sounds like something you would see in a hospital or hear a doctor say.

Actually, it's something a lawyer or a judge would deal with, as a writ of habeas corpus, which signifies that someone in authority must produce a prisoner or a detainee at a specific time and place. Such a writ provides a powerful means to correct legal errors by releasing those detained even after all appeals have been administered.

The habeas corpus concept was first expressed in the Magna Carta, a document that was forced upon England's King John by landowners on June 15, 1215. One of the liberties declared therein was, "No free man shall be seized, imprisoned, outlawed, exiled or injured in any way nor will we enter upon him or send against him except by the lawful judgment of his peers or by the law of the land."

Eventually, this principle evolved to mean that no person should be deprived of freedom without due process of law.

These writs were used by the English common-law courts in the 13th and 14th centuries and continued through the 16th and 17th centuries, where they enabled persons to be released from the royal courts such as the Chancery, the Admiralty courts and the Star Chambers – the latter were particularly dastardly affairs – where those charged were deemed guilty before being tried. The English Parliament enacted the Habeas Corpus Act in 1679.

The privilege of the writ of habeas corpus was highly regarded by the British colonists in America and wrongful refusals to issue such a writ were one of the grievances involved in the American Revolution.

Accordingly, the Constitution of the United States provides, in Article I, Section 9 that, "the privilege of the writ of habeas

corpus shall not be suspended, unless when in cases of rebellion or invasion, the public safety may require it."

In 1789, Congress passed the Judiciary Act, which granted to federal courts the power to hear the habeas corpus petitions of federal prisoners.

And on Feb. 5, 1867, Congress passed another habeas corpus act, which gave the federal courts the power to issue habeas corpus writs for "any person restrained in violation of the Constitution or of any treaty or law of the United States."

President Abraham Lincoln, in 1861, suspended the writ of habeas corpus and ordered his generals to arrest anyone thought dangerous. He even went so far as to order civilians tried in military courts.

This action created legal furor, particularly due to the fact that Article I containing the habeas corpus provision deals with legislative powers entrusted to the Congress and not Article 2, which deals with executive functions. It would appear that the framers of the Constitution had Congress in mind and not the president when they provided for the suspension of habeas corpus. Chief Justice Roger Taney challenged Lincoln's suspension but was unsuccessful.

However, in 1866, in *Ex Parte Milligan*, the Supreme Court ruled that the president had no power to order civilians tried in military courts. That ruling apparently has been violated just once since then and that was during World War II.

It must be remembered that a petition for a writ of habeas corpus is a civil action against a jailer or an authority. It is not an appeal nor is it a continuation of the criminal case of the person confined.

It is not used to determine guilt or innocence. Its sole purpose is to determine whether the confinement is in violation of a constitutional right. Thus, the scope of the complains a petitioner may use as a basis for the writ is limited.

The passage in September, 2006 of the Military Commissions Bill (S 3930 and H.R. 6166), denies terrorism suspects the right to file a writ of habeas corpus and strips legal residents of the United States of the same right if they are accused of being enemy combatants.

It also re-establishes military tribunals, prevents anyone harmed by the U.S. in violation of the Geneva Convention from filing a claim in federal court and a few other provisions, all of which are unique to American jurisprudence.

In other words, we are misinterpreting or ignoring our Constitution.

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