

OUR CONSTITUTIONAL RIGHTS

FROM A STATEMENT READ BEFORE THE SAN FRANCISCO GRAND JURY JANUARY – FEBRUARY 1973 BY CLAYTON VAN LYDEGRAF

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Members of the grand jury have legal and constitutional responsibility for the decisions that they make.

People don't have to be helpless before the experts because of the mystery and trickiness of the law, especially with fundamental and constitutional law. If you just assume that the Constitution of the United States and its Bill of Rights ought to mean what they say in plain English, you can hold your own.

I have no special legal training either, but right now, just like you, I have to decide to oppose or support the various ways the present authorities are using the law to oppress people.

When these things happen, ordinary people have to make extra efforts to understand what is going on. Not to become amateur lawyers, but so as to know and feel the strength of how people have resisted oppressive law for centuries. It's interesting that one way people did that was to take a feudal document like England's Magna Carta of the year 1215 and turned it into a weapon to struggle for their own rights. They strained and stretched its words to fit their own needs. And they made the King's courts accept that many times.

FIRST PRINCIPLES

Legal authorities are fond of saying that a frequent return to fundamentals (first principles) is essential. If they would actually do that, we wouldn't have so many of these troubles. In any case, the statement is made in most early state constitutions, and it is in the constitution of the State of Washington, where I lived much of the time since going to school in Oregon. The constitution of the State of California states, "The provisions of this constitution are mandatory and prohibitive." So what is involved are first principles. I am asking that you uphold them.

The Bill of Rights of the U.S. was not handed down from above. It came

from centuries of struggle against oppressive governments and church authorities. The starting point is in English and Colonial common law.

ENGLAND

The practices of the Grand Inquisition and its compulsory testimony and its compulsory Oath ex-officio were brought to England in the year 1236.¹ They were brought by Cardinal Otho, a Papal legate who was made welcome by King Henry III. Compulsory oaths and testimony were previously unknown.

Over the next 550 years, hundreds of men and women resisted. These were people charged with religious and political heresy and sedition. They refused to take the oath or testify. What these people wanted were things like being able to read the Bible in English instead of having it served to them in Latin. Or not to have the Queen as the head of their church. Or not to be thrown in jail at the will of the King without indictment of knowing the charges or having a trial by jury.²

Hundreds, thousands, were imprisoned, tortured, be-headed, banned, burned, crushed to death during those centuries.³

It took all that and two revolutions to put the Bill of Rights in the U.S. Constitution.

The Cromwellian revolution of the Puritans in England resulted in the Long Parliament outlawing the Oath Ex-Officio in 1641. It also abolished the Star Chamber - the King's own prerogative court - and the High Commission of the church courts. Both of these courts used the oath and compelled testimony and denied legal rights to defendants and witnesses.⁴

UNITED STATES

The same process took place in the American Colonies of Great Britain where at first the main resistance was to the colonial oppression by the King and Parliament of England. Hence the American Revolution of 1776. Hence the struggle over the nature of the new government in the former colonies.

Having experience with oppression, people feared a strong central government and insisted on curbing the powers of both the Congress and the executive by adding onto the constitution a Bill of Rights. For example, during that time the people of New Hampshire four times voted down proposed state constitutions that did not have strong enough Bills

of Rights.⁵

In that situation, Thomas Jefferson and James Madison were actually moderates. That is, they were for a functional federal union, but for one with powers limited by a Bill of Rights and by the common law and by powers reserved to the states.⁶

Facts like this must be kept in mind to properly consider all the constitutional objections to what the government is trying to do here.

A MODERN INQUISITION

The government has called myself and other people here and it is now demanding compulsory testimony under a compulsory oath to force us to confess and to become informers. The only difference in this inquisition and that of the colonial times is that there are twenty or so people here instead of one or two bishops or a King's Privy Council, and the courts use imprisonment instead of heaving kinds of bodily torture. Otherwise the procedures are precisely those that people fought for half a thousand years to abolish.

Some of us know that we have to resist like John Latimer, and John Lilburn and Elizabeth Crane and like the 19 witches executed in Salem, Mass. in 1692.⁷ We are brought here as witches of the 20th century.

This is exactly what the 5th and the 1st and the 6th and the 9th and 10th Amendments are all about. Nowhere in the entire U.S. Constitution is anyone or anybody given power to compel unwilling testimony by torture of coercion (now politely called civil contempt), by jailing people for up to 18 months. To the contrary, these things are forbidden. And nowhere is any compulsory oath authorized other than for office holders and those who want to accuse somebody.

OATH EX-OFFICIO

The Oath Ex-Officio is directly unconstitutional. It is forbidden by the opening statement of the 5th Amendment: "No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury... nor shall be compelled, in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law;..."

An attempt is being made here to hold me to answer, to force me to give compulsory testimony against my will, to deprive me of life, liberty, and property without due process. There is here no presentment nor

indictment of a grand jury, no charges, no counsel except myself, no right of jury trial or cross-examination, or confrontation, no witnesses on my own behalf, no public trial and no writ of habeas corpus.

In making these attempts, the government's paid men are violating their own voluntary oaths to uphold the constitution.

I do not, therefore, stand upon the narrow ground of any so-called "privilege against self-incrimination;" that is a prosecutor's arbitrary limit. I stand upon the unadulterated right as stated in the Constitution, as amended in 1792. This includes its protection against being defamed and degraded and due process and all the common law protection of the 9th and the 10th and other Amendments.

THE RIGHT NOT TO BE HELD TO ANSWER

If it does have to be said in a nutshell, it is the right not to be held to answer. And that includes the right to silence, which is vital, although less broad. This brings in all the rights of the 1st Amendment. There can be no right of free speech or association, or of the press, without the right to silence, as reporters are now discovering.

The 5th fortifies and is itself fortified by the rights of the people to be secure in their persons, houses, papers and effects... as provided by the 4th Amendment. Government wants to ransack my brain and my private and public life without any warrant, or cause, or limit.

This government is also in violation of Article III, sec. 2 of the main body of the Constitution and Art. VI of the Bill of Rights, trial by jury and due process, and it threatens to proceed to violate Art. VII and VIII at the very next succeeding steps via prosecution for "Civil Contempt" which is itself another unconstitutional legal trick.

The government is also in violation of Article IX, the common law rights of people and of Article X that reserves powers not delegated to the Federals, to the states or to the people. Those who created the Bill of Rights often said: whatever is against natural law or common law or against the Constitution is null and void.⁸

IMMUNITY

As to so-called immunity. The immunity statutes, both of the "transactional" and of the "use" variety are unconstitutional on the face of it. Both substitute and nullify in various ways the Constitution of the U.S. and the Bill of Rights. For immunity purports to reduce the 5th to a bare privilege against "self-incrimination" and then wipes out even that narrow

mis-definition.

After 150 years of at least partial enforcement of the rights of the 5th and other Amendments, the courts have now upheld immunity laws. It is appropriate to comment that while courts also sent people to burn and hang as heretics and witches from 1250 to 1692, that didn't make it right or even lawful. Nor did it prevent either English or American Revolutions. On the contrary, such practices made up apart of the causes that motivated revolt and rebellion.

Beyond the content, immunity is in flagrant violation of Article VI, sec. 2, making the Constitution the supreme law of the land in that the Congress has drastically amended, reversed, revised, substituted and nullified the 5th Amendment and the Bill of Rights without following Article V, amendment procedures. This violates due process on a grand scale.

WAIVER

Another mutilation of the 5th Amendment is the doctrine of waiver. By this modern invention, if you momentarily yield to threats and promises to answer just one question, you have to answer all related questions. If you waver, you have "waived" your rights.

NATIONAL INTEREST

An even greater breach of constitutionality is using talk about some vague "national interest" to justify wiping out people's rights.

Under all possible theories of the Constitution by those who swear to uphold it, the basic interest and rights of the people are, or ought to be, ruling. That is: until overthrown or amended by the people, the Constitution is the ultimate, final, and holy of holies. That is the idea.

Therefore, neither Congress nor the President nor the courts are supposed to disregard the plain meaning and intent of the Constitution, which is held to be the highest legal authority on the national interest.

But suddenly I sit in court and watch some little pip-squeak of an appointed office holder, not even elected, ruling on national interest: to remove my and your Constitutional rights. He cannot be challenged, or "checked and balanced" by anyone or anything.

That is amending and nullifying the Constitution by magic incantation. Nobody has that right - Congress cannot delegate power that it doesn't possess itself and is forbidden to touch. Nor can the President, nor the Supreme Court. That is the very best constitutional theory. It gets

violated every day - no one seems to notice. But those who do these things will have no ground for complaint when we do notice and sweep them away.

PERSONAL VIOLATIONS

There are also several violations the government has committed against my own rights in a very personal way.

There has been long standing surveillance and interference by the FBI and other departments of the government into my personal life and private affairs. I and my family have been subject to illegal wire-taps, to observation of our house and the comings and goings of friends and visitors. There were even attempts to lure my then six year old daughter into the car of government agents during my absence from home.

In Seattle, Washington, on December 13, 1956, I was publicly charged with a "capital or otherwise infamous crime" by an officially designated (but illegally acting) representative of the United States Government. This charge was and remains totally false and in violation of all the above rights. Nevertheless, it remains on the record, never having been withdrawn or apologized for, or tried or compensated. It is a crime without a statute of limitations. Therefore, the present subpoena is tainted, unlawful and the present grand jury can have no jurisdiction over me in any way as I am being unlawfully accused and held to answer by the Congress of the United States in guise of its investigative powers. I am asserting that I cannot be held to answer, not that I am guilty of any crime.⁹

All these things are being done to me and to others although we have not done injury to anyone. On the contrary, we are suspected of political heresy because we opposed the crimes and colonizing wars of an oppressive government. That is why they ordered us to appear here.

CHANGE AND REVOLUTION

Changes and revolutions have been going on for thousands of years. Many people have come to believe that it is time to create a social system that is not based on rights and privileges for some at the expense of others. That means to reject and eliminate all discrimination, oppression and exploitation of race, nationality, sex, age, and economic classes.

General motion toward that objective is the great merit of the movements of our time and of the young people, third world people, and women who want to move right on. This government hates us all. It calls

us witches. What it sees is its worst nightmares are millions of Sojourner Truths and John Browns.

Considering the dignity and self-respect that should belong to a human being and the obligation due those who died and suffered so that we could have some meager share of human rights, and to my contemporaries and to women and men now growing up, I have to refuse any part in any kind of grand inquisition, no matter how slicked-up.

The government has investigated me for years. It knows all these things. It has called me here in bad faith to punish me and to try to use me to put down all that I believe in. It wants to make me inform on people, old and close friends or casual new acquaintances alike.¹⁰

I suggest that grand jurors uphold the Bill of Rights.

I shall not take any inquisitional OATH-EX-OFFICIO.

I shall not dishonor my people by testifying about WITCHES.

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 2. Levy, Leonard W., *Origins of the 5th Amendment*, New York, 1968, p. 54, and Rogge, pp. 156-61, 151-54.
 3. Levy, p. 69. 51 persons burned for heresy from 1534 – 1547, p. 75, about 273 from 1555 – 1558.
 4. Levy, pp. 266-300.
 5. Rutland, Robert, *The Birth of the Bill of Rights*, Chapel Hill, 1955, pp. 74-78.
 6. Rutland, pp. 106-218.
 7. Levy, pp. 3, 163, 266-332, 362-64. McWilliams, Carey, *Witch Hunt*, Boston, 1950, pp. 246-59.
 8. Rutland, pp. 3-77.
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