

## Can the First Amendment survive imperious presidents?

by Nat Hentoff, Aspen Daily News Columnist

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In my protests against George W. Bush's and Barack Obama's administrations' eroding of our constitutional identities as free Americans, I try to avoid the term "police state." Some of us do actively continue to exercise our ultimate First Amendment weapon against imperious administrations that refuse to be limited by the separation of powers.

For example, Michael Opitz, who is running against Rep. Phil Gingrey in the July 31 Republican primary in Georgia's 11th congressional district, has charged the incumbent with voting for the National Defense Authorization Act (NDAA). Under the NDAA, Opitz told The Marietta Daily Journal, the president alone can decide who is a terrorist, allowing indefinite military detention of American citizens ("Opitz objects to Gingrey's vote for Defense Authorization Act," July 1).

"And," said Opitz, "this applies to American citizens, so you give up habeas corpus. And that's a suspension of our individual rights."

How many campaigns this year have made habeas corpus an issue? Or the president's sole authority to assassinate an American citizen alleged to be associated with terrorism — as Obama has done?

But opposition goes on.

However, in joining other constitutionalists who encourage protestors to have more of a "street presence" against the Bush-Obama legacy, I have underestimated how presidents and aspirants to that office can create powerfully imposing obstacles to organized, visible displays of our First Amendment freedom of association to assemble and petition the government.

John Whitehead, president of the Constitution-defending Rutherford Institute, foresees what to look for at this summer's Republican and Democratic National Conventions in Tampa, Fla., and Charlotte, N.C., and what is already happening around the country:

"Government agencies in conjunction with the militarized police are already preparing to head off any protests, refusing to issue permits, cordoning off city blocks, creating 'free speech' zones and passing a litany of laws banning everything from protestors wearing masks to carrying string. And the few protestors who manage to take to the streets will be faced with an array of non-lethal weapons meant to incapacitate them.

"Originally designed to help restrain violent individuals, so-called 'non-lethal' weapons such as tasers, sound cannons and tear gas were first introduced with a government guarantee of safety for the citizens. However, the 'non-lethal' label seems to have caused police to feel justified in using these dangerous weapons much more often and with less restraint — with some even causing death."

What follows from Whitehead on taser use has a touch — not an equivalency, just a chilling touch — of Iran or Zimbabwe:

"For instance, a 9-year-old Arizona run-away was tasered as she sat in the back seat of a police car with her hands cuffed behind her back. In Texas, a 72-year-old great-grandmother was tasered after refusing to sign a speeding ticket."

Meanwhile, continuous advances in crowd-menacing digital technology are, says Whitehead — a ceaseless, careful researcher in these fearful controls that George Orwell could not have possibly imagined — "providing police with ever-greater weapons of compliance.

"For example, Intelligent Optics Systems, Inc. has developed a hand-held, flashlight-like device that uses light emitting diodes 'to emit super-bright pulses of light at rapidly changing wavelengths, causing disorientation, nausea and even vomiting in whomever it's pointed at.' Raytheon has developed a 'pain ray' which shoots an electromagnetic beam composed of high frequency radio waves, causing a burning sensation on the target's skin.

"In December 2011, the (London) Telegraph reported that police in the U.K. were planning on testing a shoulder-mounted laser that can temporarily blind protestors and rioters" ("The New American Order: Using Weapons of Compliance to Stamp Out Protest," rutherford.org, May 21).

We don't know which, if any, of these First Amendment traumatizers will be used at the Democratic and Republican National Conventions this year but, as Whitehead notes, they have been used — or are in the planning stages — against protesters around the nation.

During the Vietnam War, when some of our forces were "destroying villages in order to save them," I, with trepidation, joined two groups here that were committing civil disobedience in protest. Only old-time physical force was used against us then. I, managing not to look into the eyes of the cops, wasn't among those hauled away.

Now, at 87, with arthritis limiting my gait in one foot, I will only be attending the conventions on television, but more hardy octogenarians may be among those in the streets. And surely other protestors of all ages will be there as well.

"So where does this leave us?" asks Whitehead. "Does the way protestors are treated in Chicago, Charlotte or Tampa really have any bearing on how law-abiding citizens are treated in small-town America? Of course it does. The militarization of the police, the use of sophisticated weaponry against Americans and the government's increasing tendency to clamp down on dissent have colored our very understanding of freedom, justice and democracy."

However, as he knows, not all Americans have lost their understanding, but the America that our grandchildren and their own children will live in depends on how we vote, how we demonstrate in the streets and how urgently we get civics classes back in our schools.

The First Amendment and I will have more about that in future columns. I defy any president and his or her minions to stop me.

*Nat Hentoff is a nationally renowned authority on the First Amendment and the Bill of Rights. He is a member of the Reporters Committee for Freedom of the Press, and the Cato Institute, where he is a senior fellow.*