

remely selfish of me to insist on *EW*'s continued publication of Savage just so I can have my weekly hoot and to hell with even considering how it might affect the children in our community.

Mitch Moore
Eugene

TOP TEN

Top 10 Reasons to Suspect You've Been Classified as an Enemy Combatant (with apologies to David Letterman):

10. You buy a plane ticket to Disney World and find that your flight is being

rerouted to Guantanamo Bay.

9. You're learning the hard way the difference between surfboarding and waterboarding.

8. You sit down to watch a war movie on TV, and you can't tell the difference between the Americans and the bad guys.

7. Your "Get Out of Jail Free" card can't be used until after Bush leaves office.

6. *The New York Times* reports that Scooter Libby has been talking about you to Judith Miller.

5. President Bush mentions you by name in his next "Axis of Evil" speech.

4. You discover that your court-appointed lawyer thinks "Habeas Corpus" is a sandwich special at Quiznos.

3. The Bill of Rights contains a special subsection exempting you from coverage.

2. A "Wanted" poster of you is on the wall at the local branch of The Jackbooted Thugs Club.

1. Pastor Niemoller speaks of you as the first person they came for.

Mike Bonner
Eugene

ALARM!

If you thought that President Bush's troop surge was a dangerous escalation of an irresponsible war, what about this? The Department of Energy just announced the development of a new H-bomb. Really! This is the first new nuclear warhead in more than 23 years. If you are alarmed, let DeFazio, Wyden and Smith know. An *Associated Press* story said that Congress has given "cautious support" to the program.

Margaret Brye
Eugene

viewpoint BY ELDEN ROSENTHAL

Suing Alters Behavior

But don't expect apologies

Elden Rosenthal is a Portland civil rights lawyer well known and respected in Lane County courtrooms. He recently advocated for several of the women abused by Eugene police officers Lara and Magaña. In Portland his most famous recent client was Brandon Mayfield, falsely accused and jailed for the Madrid bombings. That's the level of lawyering that moved the ACLU Foundation of Oregon to give Rosenthal one of Oregon's most prestigious honors, the E.B. MacNaughton Civil Liberties Award, on March 3 in Portland. EW is proud to bring our readers the text of his remarks at the award dinner. We believe civil liberties in this America need the fiercest advocacy that Elden Rosenthal, the American Civil Liberties Union and the rest of us can muster.

I decided I wanted to become a lawyer when I was a junior in high school. I took my first constitutional law class as an undergrad at UCLA and found it fascinating. I decided I wanted to try cases and joined a plaintiff's personal injury firm here in Portland. My first civil rights case came almost immediately. I represented an Hispanic NGO that was trying to enforce new government regulations designed to keep school age Hispanic children in school and out of the fields. But it was strawberry season, and as I quickly learned, Oregonians at that time, the early '70s, believed that picking strawberries was a time honored ritual for school age children and that school was not as important as picking strawberries. The case was argued before a three-judge federal panel in Portland, and, although we won, procedural delay gave the farmers one last season of underage cheap labor.

I learned several lessons in that first case. One of them was to master the procedural rules so your opponents don't win while losing. And I began to realize that not suing for money damages in a civil rights case can be a mistake. I'm sure the outcome would have been swifter and more certain had I asked the court to award damages. But no one in law school taught me about what type of lawsuits change behavior.

Society assaults basic civil rights in a never-ending variety of ways. In my career I've handled cases that involve police officers fabricating evidence to convict a suspect, the city of Portland literally buying votes on annexation issues, the state of Oregon violating a court order regarding the placement of children who were wards of the state, the port of Portland discriminating against foreign-born black van drivers, the FBI lying to federal judges. I've sued police departments, municipal bus companies, cities, counties, the state and federal government. And *never, not once*, has the defendant in these cases conceded that they were wrong, that they violated anyone's civil rights. Juries have told the defendant, "You violated the plaintiff's rights." Judges have told the defendant, "You violated the plaintiff's rights." But never has a government representative said to me when I became involved in a case, or even when a case ended: "You know, Elden, you are right, the government should not act this way."

Why is that? Why is it that government leaders and government bureaucrats will blatantly violate the civil rights of citizens and then refuse to admit what they have done? I don't have a satisfactory answer. There is some basic American principle on exhibit here. Some psychological truth that the government can never admit it is wrong, that elected officials and high ranking bureaucrats simply cannot bring themselves to admit that they have violated a person's civil rights. I suppose on one level this is reassuring: In the U.S.A., no one fails to at least give lip service to civil liberties. Even the Bush administration claims that its many documented civil rights violations are not violations; even the Bush administration claims to be supportive of the Bill of Rights.

But there is a lesson here for us. When things don't seem right, when it appears our rights are being taken from us, the lesson is: Don't believe them when they say it is OK. They may or may not be lying when they claim our civil liberties are safe, but they will never admit it when they are taking our rights away.

I want to talk for a moment about fulcrums and levers.

The Bill of Rights is a fulcrum. Civil rights advocates, civil rights lawyers and civil juries are the lever. We can change federal and local government policy, compensate victims when government employees act wrongly, when we properly use the fulcrum.

But the fulcrum can do nothing by itself. It is inanimate; it does not move. It can exert great force with the help of a correctly placed lever. But it will not help us one iota if left sitting on the mantle, if left standing even in the center of the room.

I've come to believe that in America, where justice is usually interpreted in dollars and cents, civil rights are best vindicated when money changes hands, when those guilty of efforts to take away our rights, pay for their misconduct. I've come to believe that bad actions and bad policies are least likely to be repeated when there is a price tag placed on the misconduct.



There is a serious movement afoot to restrict access to the courts, to limit jury awards, to curtail jury trials, in short to dismantle the civil justice system. Did you know that the Bush administration has been successful in asking federal judges to simply dismiss damages claims when the government claims that the lawsuit will jeopardize national security?

"Don't sue us for torture," the government cries, "because you will learn things and force information to become public that will help our enemies." Judges have accepted this argument, have given credence to this verbal garbage. "Trust us," the government says.

Well, don't trust them. Not if we cherish our country.

And don't allow them to dismantle the civil justice system. The two most significant cases in my career were civil cases brought to vindicate civil rights. In 1990 a Portland jury awarded a \$12.5 million judgment to the family of an Ethiopian immigrant when he was murdered because of the color of his skin. That judgment put the White Aryan Resistance out of business.

And last year the federal government, scared witless by what a civil jury would do if given the chance to compensate the Mayfield family for the incompetence and lies of federal agents, paid \$2 million to avoid going before a civil jury. [Brandon Mayfield was falsely charged with the train bombings in Madrid.]

In countless cases, in courtrooms across the country, civil juries vindicate the rights of citizens who are the victims of government and private misconduct that strip them of their dignity and their civil rights. We are the guardians of a civil justice system that is the lever operating on the fulcrum of the Bill of Rights.

Just about the time I first met Brandon Mayfield and began working on his case, my wife and I took a few days vacation in Moab, Utah. We flew to Salt Lake City and rented a car to drive across the state. About 15 miles from Moab there is a roadside history sign at a place known as Dalton Wells. I had never heard of the place before, so we pulled over to read the sign. It turns out this was the location of an internment camp set up in 1943 for "troublemakers" from the California and Arizona camps to which Americans of Japanese ancestry had been forcibly relocated. The sign recounted how the "inmates" were sent to Dalton Wells without any hearings or any form of due process, in total violation of their civil rights. They were there, the sign noted, because of "wartime hysteria, racial bigotry, and greed." The sign told a familiar tale of mistreatment and concluded with these words: "All of these men were U.S. citizens; some were veterans of WW I, others were family men, college graduates and responsible U.S. citizens. Their incarceration here is a vivid example of how our Japanese-American citizens were treated during World War II. May this sad, low point in the history of our democracy never be forgotten, in the hope that it will never happen again."

1943 was before my time. But now it is our watch. And we know full well it can happen again, that it is happening again right now at the hands of the U.S. government in Guantanamo and elsewhere. And because it is our watch, we are obligated to fight and struggle for social justice and to preserve our basic rights as human beings so that our generation's legacy will not be another sad roadside history sign.