



TRAFFIC LAW NEWSLETTER February, 2007

“WE THE PEOPLE”

In January of this year, the Attorney General for the United States testified in front of the Senate Judiciary Committee, and made one of the most absurd and yet chilling statements to come out of the Bush administration:



That the Constitution does not guarantee every individual in the United States the right of “habeas corpus.”

The right of habeas corpus (Latin for “you have the body”) gives a person the right to ask a court to release him from unlawful imprisonment. Known as “the Great Writ”, it was first recognized in medieval England in the Magna Carta around 1215 AD as a shield against the king’s power to imprison opponents without legal cause.

Historically, the Georgia Constitution of 1777 was the first state constitution to make habeas corpus a constitutional right. At the 1787 Federal Constitutional Convention held in Philadelphia, the Georgia delegation voted unanimously against ever permitting habeas corpus to be suspended.

Article 1, Section 9 of the U.S. Constitution plainly states 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 spite of the obvious, the Attorney General insisted that “there is no express grant of habeas in the Constitution”, leading to an incredulous Senator Arlen Specter asking how the Constitution could bar the suspension of a right that didn’t exist? (San Francisco Chronicle, Jan 24, 2007) The Bush administration’s position is that the writ of habeas does not apply to non citizens nor to “enemy combatants”. This position has brought criticism from both liberals and conservatives.

“If there is no habeas corpus, and the government wants to pick you or me off the street and hold us indefinitely, how do we get our release?”, asks Erwin Chemerinsky, a Duke law professor.

Chemerinsky was joined by Douglas Kmiec, a Pepperdine law professor and former official under President Reagan: “If Gonzales’ view prevailed, one of the basic protections of human liberty against the powers of the state would be embarrassingly absent from our constitutional system.”

As far as I can tell, there is not a rebellion going on in this country, nor have we been invaded. Even so, it is important to (continued...)

“WE THE PEOPLE” (continued)

note that the Constitution gives Congress the authority to suspend habeas during those two events; it DOES NOT give that authority to the President!

After learning of this chilling testimony by the top law enforcement official in this country, I thought that it would be a good idea to take a close look at our Constitution. What powers does the President actually have under our Constitution? Is it possible that President Bush has exceeded those powers? After all, our government is derived by “We the people” as stated in the preamble to the Constitution.

Over the course of the next year, I will be devoting much of these letters to studying the Constitution; in the meantime, I would encourage you to purchase a copy for yourself. After all, if we do not know what powers we as the people have given our government, how can we know whether our government has exceeded those powers?

Stay tuned for next month’s edition: Powers of the Congress;
Georgia Legislature Proposes New Traffic Laws

At least 2 new bills have been proposed in this year’s Georgia legislature affecting traffic laws. One bill, sponsored by Mary Oliver of Decatur, would create a new traffic offense of “driving while distracted” while using a wireless phone.

The other bill, sponsored by Kevin Levitas of Dekalb County, would increase minimum jail time on a first DUI with a blood alcohol level of above a .15 to 4 days, and would make a 3rd DUI conviction a felony, punishable from 1 to 5 years in prison.

From the I NEVER KNEW THEY WERE CALLED "CAKES" category

I'm thinking of using this as my next marketing tool. What do you think??



SANTA FE -- New Mexico has taken its fight against drunken driving to men's restrooms around the state. The state has ordered 500 talking urinal cakes that will deliver a recorded anti-DWI message to bar and restaurant patrons who make one last pit stop before getting behind the wheel. The top of the devices feature the state DWI slogan -- "You drink, you drive, you lose."

Some Albuquerque bars installed the devices this week. And the state Transportation Department plans to distribute them to Santa Fe bars and restaurants as well as establishments in Farmington, Gallup and Las Cruces. The state spent \$21 for each talking urinal cake for the pilot program but will ask bars and restaurants to pay for future orders if the idea catches on. The cakes have enough battery power to last about three months.

**MY 4 SIMPLE RULES
IF YOU ARE STOPPED BY POLICE**

1. DON'T ADMIT DRINKING (OR ANYTHING ELSE)
2. DON'T DO ANYTHING ON SIDE OF ROAD
3. DO TAKE BREATH TEST IF YOU'VE REALLY HAD 2 DRINKS
4. DON'T TAKE TEST IF MORE THAN 2 DRINKS*



* Refusing to take the State test (at jail or hospital) could result in losing your license for a full year; the only way of getting the license back earlier is to win the DUI; on the other hand, if the officer does not try to suspend the license because of a refusal, the State does not have a blood alcohol level to use against you!

MY 1 SIMPLE RULE FOR PARENTS OF CHILDREN UNDER AGE 21

If your child gets a traffic ticket, regardless of how minor you may think it is, **DO NOT PAY TICKET WITHOUT CALLING ME!!!**

WHAT DO I DO IF STOPPED BY THE POLICE??

For the answer, [see my page on "your legal rights"](#) and [print out a copy](#) to keep in your car!



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Practice dedicated exclusively to defense of those accused of DUI, serious traffic offenses, and drug offenses.

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