

NATIVE INTELLIGENCE

A column by

Jack D. Forbes

WHO IS JOSE PADILLA, AND DOES THAT MATTER?

The case of Jose Padilla presents a major threat to the U.S. Constitution and to all of our civil liberties as US citizens, and especially to those of Indigenous Americans.

Padilla was seized some three and one-half years ago at Chicago's O'Hare Airport, but we have been presented with only a very few "facts" about him. We have seen only one photograph. In that picture, Padilla appears to be an American Indian, racially, probably of Taino-Arawak heritage from the Caribbean. He is dark brown with Indigenous American features. But since he has been in a military brig for over three years, we do not know what he looks like today.

Padilla has been reported to be a former "gang member" in Chicago, but we are never supplied with any details. Surely the enterprising reporters who cover his case might have discovered his innocence, his guilt, what he was charged with, and so on. He also is said to have been born in Brooklyn, presumably of Puerto Rican-derived parents. But no details are ever provided. He also is alleged to have lived in Florida, but again no details. He is said to have converted to Islam. Now he has been arbitrarily removed from military confinement, charged with different crimes, and has appeared in

court in Florida. He has entered a plea of “not guilty” to the new charges of, essentially, being a bad guy.

The Justice Department has presented very little data on Padilla and reporters covering the case have been able to add next to nothing. Padilla has obviously been held incommunicado with no voice of his own. The press has apparently not been able to interview him, nor has the Bush administration given us any full biography. The “gang member” label seems to be designed to prejudice the public against the prisoner.

For more than three years Padilla, a U.S. citizen, has been denied habeas corpus and other constitutional protections. No formal charges were brought against him until recently. All of this is typical of totalitarian regimes and is unconstitutional, in my opinion. In addition to other issues, by what right can the government deny a citizen the right to speak? Where in the Constitution does the government acquire the authority to deny speech to a person when freedom of speech is specifically guaranteed?

Padilla has been categorized as an “enemy combatant,” a characterization that seems meaningless at law since it simply means “hostile warrior” or “hostile fighter.” None of those terms constitutes a category punishable by law since the world is full of warriors or soldiers who can be categorized as “enemies” of the USA (being classed as an enemy would often seem to be an ambiguous, emotional categorization, rather than a formal, legal category, absent an actual physical assault).

The original evidence against Padilla, which is basically secret, could well be derived from the use of torture on other prisoners of the

USA or its proxies. But I believe there are other legal issues to explore.

First, few if any writers have understood that the practice of categorizing broad classes of people as enemy combatants (hostile fighters) originated in the US treatment of Native Americans. From the 1770s on, US officials regarded all resistant Native Nations as “hostiles” including men, women, and children. From then until the early 20th century American Indian persons were consistently denied habeas corpus, denied First and Fifth Amendment rights, and all other common law and constitutional rights and protections, even when inhabiting territory claimed as being part of the USA and subject to the latter’s jurisdiction. Native People were often treated as animals to be imprisoned, killed, executed, concentrated, moved, deprived of assets, and put through death marches at will.

As enemy combatants First Americans could be confined, like Padilla, in military prisons without any civil judicial proceedings. I believe that it is legally significant that it is mostly non-whites and/or Muslims who are being today categorized as enemy fighters. It is a legal continuation of the “Indian wars.”

In Padilla’s case, however, we also might wish to ask these questions: (1) as a young man was Padilla ever given any education about his own Taino or other heritage; and did he ever have exposure to broader issues of Puerto Rican and Caribbean history ? (2) Were any of his teachers Puerto Ricans of Taino identity or background? (3) Did he have an education that meaningfully exposed him to the struggle for racial justice and equal opportunity in the USA? (4) Was

he ever exposed to any positive information about Native American spirituality and philosophy?

If Padilla were a person of Indian ancestry raised in an often profoundly anti-Indian society, then I would argue that that is pertinent to his plight.

Might we not see Jose Padilla as a person caught up in a Stalinist-type police state bureaucracy, one determined to hold on to unconstitutional powers at any cost? Some would argue that holding a man in a cell for three and one-half years, without access to the outside, is a form of both physical and psychological torture. What would such treatment do to you, or I? Does it constitute “cruel and unusual punishment” outlawed by our now tattered constitution?

Feb. 13, 2006

[Jack D. Forbes is an authority on Native American history and related issues. He is of Powhatan-Delaware and other background]
Copyright by the author.