

A Minority View

By Walter E. Williams

Liberty in retreat

Another July Fourth celebration is behind us. But the question is: Do we have as much liberty now as we had in 1990, and come July 4, 1992, will we have as much as we have today? Trends and the individual plight of Americans yield a big fat no. Let's look at some cases of a new form of government abuse.

According to William P. Pendley, chief legal officer of the Mountain States Legal Foundation in Denver, Colo., Dennis and Nile Gerbaz, two elderly gentlemen living near Carbondale, Colo., were ordered by the Environmental Protection Agency to report to federal court and pay a fine of \$45 million. Their neighbor had performed some work that diverted the Roaring Fork River and caused it to flood about 10 acres of the Gerbaz land. The EPA denied the brothers a permit to remove the obstruction and rebuild their levee. The Gerbazes thought they had the right to protect their land without a permit and restored the river to its original channel. The EPA claimed that when the river flooded Gerbazes' land it created a "wetland," and you can't destroy wetlands without a permit, even if it's your own land.

The Pacific Legal Foundation has weighed in as a friend of the court for Mr. Adam Sparks, who is in violation of San Francisco's Residential Hotel Anti-Condominium Conversion and Demolition Act. The law requires Mr. Sparks to set aside 69 units of his tourist hotel as rental residential units for low- and moderate-income families. If Sparks were to obey the city's mandate, he couldn't cover his expenses and earn the market rate of return on equity. Besides, he isn't in the residential rental market in the first place. The court has fined him more than \$100,000 and ordered him to spend 178 days in jail. His case is currently under appeal.

We could talk about how the Fish and Wildlife Service fined a Nevada mining company \$500,000 for accidentally killing 25 birds on its property. We can put this in greater perspective if we consider that America's 57 million cats kill more than 400 million birds each year. What about putting a few cats in jail? How about the EPA's implementation of Section 404 of the Clean Water Act that is virtually confiscating the property of farmers? According to the Pike County Farm Bureau, the U.S. Department of Agriculture Soil Conservation Service has identified "wetlands" on 70 percent of Pike

County, Ill., farms.

Much of what's done under the pretext of environmentalism is in egregious violation of Fifth Amendment prohibitions against taking private property and represents violation of the principle of the "rule of law." It's common for shortsighted legislators, in the pursuit of what they consider an important social goal, to violate our constitutional guarantees. But what's worse is that courts either sanction the behavior or are too timid to even rule on the constitutionality of those practices.

Americans are well on their way toward totalitarianism by ignoring and even promoting the steady ero-



sion of constitutional principles and the rule of law. It's easy to ignore what the government is doing to people like the Gerbaz brothers, Adam Sparks or the farmers in Pike County. We're busy trying to raise kids, pay bills and keep body and soul together. But if nobody cries out about the injustices against these little people, when it becomes our turn to be victimized by our government, who will have the freedom to cry out for us?

By the way, if the EPA were to retroactively apply its wetlands policy to Washington, D.C., I'd stand up and cheer. © Creators Syndicate

HOW TO TAKE SOMETHING THAT ISN'T YOURS:

THE DIRECT APPROACH



THE INDIRECT APPROACH

