

By Daniel M. Kowalski

IDENTITY

In 1926 the author we know as B. Traven wrote "The Treasure of the Sierra Madre," in which bandits posing as *federales* shout the famous lines (somewhat altered in the 1948 film,) "We have no badges. In fact, we don't need badges. I don't have to show you any stinking badges." That same year Traven wrote "The Death Ship," the story of an American sailor who loses his passport and seaman's book and is deported from one country to another in Europe before signing on to his last ship, the only ship that will hire the undocumented.

Traven was fascinated, even obsessed, with identity, nationality, borders, and the indicia (such as badges and passports) of who we are, what we do and where we "belong." What would he make of the events of 9-11-01, of terrorists posing as students, of America's schizophrenic immigration policies, and of our ambivalence toward a secure national ID card?

How did the suicide hijackers identify themselves to themselves, and to each other? As citizens of a particular nation? Partisans to an international cause? Or as "holy" warriors unbound by notions of mere nationality or even personality?

And how do we, as Americans, identify ourselves? Even before 9-11, the question of what it means to be a citizen of the United States had become increasingly problematic. Now, in the flag-frenzied aftermath, we ask ourselves even more urgently: Who are we? Are we merely the current ruler of the world stage, the empire *du jour*, the team with the fastest fighter jets and most aircraft carriers? Do we have nothing more to offer than powerful computers and Hollywood stars?

As American lawyers we must ask ourselves (so that we may answer our friends, neighbors, colleagues and families) if we have no concept of justice to offer the world beyond the confines of a military tribunal, no confidentiality to offer our clients beyond conversations monitored by federal agents, no dedication to a Bill of Rights in the face of indefinite detention of unindicted material witnesses. As American citizens, when we look in the mirror in the morning, do we see friends of freedom, defenders of the Constitution? Or, blinded by rage and paralyzed by fear, are we willing to forfeit freedom because we are "at war?" Who are we, and who do we want to be?

As American citizens we can identify ourselves to the world, if we are brave enough, by our commitment to self-government and slow but steady self-criticism, inexorably freeing ourselves of the shackles of racism, sexism and bigotry of all kinds. This is our passport to freedom. And as American lawyers we can identify ourselves to each other by our commitment to a legal system that has the potential for great justice, if we are courageous enough to live up to it. This is our badge of honor.

In the end, "Traven" was a pen name; to this day, his biographers are not completely sure when or where he was born, or what his "true" identity was. His dissimulation was an act of protest, of protection, and of creative expression. The dissimulation of terrorists, of course, both foreign and domestic, is nothing but destructive.

Bender's Immigration Bulletin

1147

After John F. Kennedy was assassinated, Leonard Bernstein said, "This will be our response to violence: to make music more intensely, more beautifully, more devotedly than ever before." As Americans, and as lawyers, let us proudly identify ourselves to each other, to the world and to the future by the intensity, the beauty and the devotion with which we try to fulfill the promise of our Constitution.