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RACHEL'S ENVIRONMENT & HEALTH NEWS #780
---October 16, 2003---
(Published November 13, 2003)

HEADLINES:
CHALLENGING CORPORATE "RIGHTS"

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CHALLENGING CORPORATE "RIGHTS"

This week we introduce Mike Ferner (mike@poclad.org) and some new ideas about challenging corporate rights. Mike served two terms as an independent member of the Toledo, Ohio, City Council, 1989-93. Before that, he was an organizer for the American Federation of State, County and Municipal Employees (AFSCME). From 1969 to 1973 he served in the U.S. Navy Hospital Corps. He is one of 13 individuals who make up the Program on Corporations, Law and Democracy (POCLAD).

From 1970 to 1995, the environmental and labor movements in the U.S. often focused on the failures of government to protect human health and the environment. Today it is safe to say -- thanks to POCLAD's work -- most of us understand that "the corporation" lies near the heart of most major problems.

In POCLAD's view, "Giant corporations govern, even though they are mentioned nowhere in our Constitution or Bill of Rights. So when corporations govern, democracy is nowhere to be found. There is something else: when people live in a culture defined by corporate values, common sense evaporates. We stop trusting our own eyes, ears, and feelings. Our minds become colonized. POCLAD invites you to work with us to change this." www.poclad.org

People are challenging corporate "rights" in many ways. In Pennsylvania, attorney Tom Linzey of the Community Environmental Legal Defense Fund is challenging corporate rights in court. Take a look at www.celdef.org. In New Jersey, legislation has been drafted. See <http://rachel.org/library/getfile.cfm?ID=324> and <http://rachel.org/library/getfile.cfm?ID=323> In Ohio, people are making films, writing books, and much more. See, for example, <http://www.afsc.net/corp-dem.htm>.

History shows us that there is no silver bullet for these deep problems. What did it take to end slavery, gain the vote for women, and get working people what rights they've got? Education, pamphleteering, organizing, ballot initiatives, marches, demonstrations, protests, strikes, creative legal work and -- yes -- civil disobedience. Hats off to POCLAD and to Mike Ferner!

--Peter Montague

CHALLENGING CORPORATE "RIGHTS"

by Mike Ferner (mike@poclad.org)

The Fourth Amendment to the U.S. Constitution states: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

What has this got to do with a rail shipment of leaking radioactive waste on its way from the

Big Rock Point Nuclear Plant near Charlevoix, Michigan to the nuclear waste dump at Barnwell, South Carolina? Furthermore, what's it got to do with my getting arrested recently, in Walbridge, Ohio?

When Consumer's Power Co. in Michigan had wrung all the possible profits out of its Big Rock Point reactor, it shut it down and "decommissioned" the 580,000-pound, stainless steel reactor vessel that had been bombarded with radiation for over 30 years. Barnwell is the only place in the nation that accepts this kind of radioactive garbage, and Walbridge is on the CSX Corp. rail line between there and Michigan.

As the train crept along its route through cities and farms, it leaked a little radiation here and a little radiation there; none of it requested by people or nature in its path; all of it cumulative in its health effects. In Walbridge, it made an unscheduled overnight stop, irradiating that village a little more than most.

Just how much radiation leaked from the shipment we'll never know, since the only figures kept on it come from Consumer's Power Co. Even the public's toothless lapdog, the Nuclear Regulatory Commission, can't find out without first getting permission from the electric company. And that's where the 4th Amendment and my arrest come in.

These days, many more people are becoming aware that over the past 100+ years, the U.S. Supreme Court has given corporations an increasing number of Constitutional rights intended for flesh-and-blood persons. They recognize the name for this nefarious usurpation of our rights as "corporate personhood."

Coincidentally, it was lawyers arguing for a railroad company, Southern Pacific Railroad, in an 1886 case against Santa Clara (Calif.) County, who first succeeded in convincing the U.S. Supreme Court that for purposes of the equal protection provisions of the 14th Amendment (passed, by the way, to protect slaves freed in the Civil War), corporations should be considered legal "persons." With the floodgates so opened, one right after another was extended to these aggregations of property in the corporate form.

In 1906 (*Hale v. Henkel*), the Court nullified a grand jury subpoena issued to compel tobacco companies to produce documents in a price fixing investigation, saying it violated the companies' "rights" against unreasonable searches and seizures. In 1978 (in *Marshall v. Barlow's Inc.*), the Court said that the federal Occupational Safety and Health Administration (OSHA) could not inspect the company's workplace without first securing a search warrant.

So there we were in Walbridge, Ohio looking across 350 feet of private property at the reactor vessel sitting in a CSX Corp. rail yard, recording the slightly elevated readings registering on our radiation monitors. We knew the radiation dose would increase the closer we got to the cask, but to do so we would need permission from the legal "person" known as CSX Corp. If that legal fiction didn't have to let the NRC monitor it without a warrant, it certainly wasn't going to allow me.

And isn't that the way the rule of law works? Grind up workers on the job, bury the amber waves of grain in asphalt, irradiate the countryside, send a generation off to war -- and by

and large, it's all legal. But try to see how much radioactive poison a rail cask is leaking, and son, you're going to jail!

That's why I couldn't just stand there on the side of the road in Walbridge, being a nice, law-abiding citizen. Nice, law-abiding citizens had stood by the side of the road for the last 100 years and watched as corporations became persons and took 14th Amendment rights, and 4th Amendment rights, and 1st Amendment rights -- and used them to run our society and govern our nation.

So instead, I turned to Kevin Kamps from the Nuclear Information and Resource Service (or NIRS; see www.nirs.org) and asked him if he wanted to get arrested. He answered "yes" and attorney Terry Lodge said he'd represent us. With monitors in hand, and carrying a banner that read "End the Atom Age," Kevin and I strode through briars and mud towards the train. As we suspected, our readings jumped as we got closer. But when we reached the cask, the railroad cops were waiting with handcuffs and hauled us away before we could get a final reading.

We will plead innocent to misdemeanor charges of criminal trespass and demand a jury trial. We will see what our fellow citizens have to say about the 4th Amendment, leaking nuke trains and corporate "persons."

There's a new tool we may employ in our defense, one that looks promising for citizens who want to redefine what kind of commerce comes to their towns. It's called the "Model Legal Brief to Eliminate Corporate Rights." It is available on the web at

<http://www.poclاد.org/ModelLegalBrief.cfm> and also at <http://rachel.org/library/getfile.cfm?ID=321> [The original hyperlinked-rich version, which POCLAD includes on its website, was created by David Ratcliffe and is available at <http://www.ratical.org/corporations/demoBrief.html> . The front page of the Community Environmental Legal Defense Fund's site (www.celdef.org) links to this version. --ratitor]

The Model Legal Brief was written by Richard Grossman, founder of the Program on Corporations, Law and Democracy (POCLAD), Tom Linzey, president of the Community Environmental Legal Defense Fund (www.celdef.org), and Dan Brannen, a Santa Fe (N.M.) attorney. The brief begins with a "Preface" that lets activists know right off that this is not your grandfather's legal brief:

"This Brief is intended to assist communities organizing to challenge the United States government's gift of constitutional powers to property organized as corporations. Accordingly, this Brief is NOT about corporate responsibility, corporate accountability, corporate ethics, corporate codes of conduct, good corporate 'citizenship,' corporate crime, corporate reform, consumer protection, fixing regulatory agencies, or stakeholders."

In the "Summary of Argument," the brief clearly states who's supposed to be running the show:

"...[T]he people of these United States -- the source of all governing authority in this nation -- created governments to secure the people's inalienable right that the many should govern, not the few. That guarantee -- of a republican form of government -- provides the foundation for securing people's other inalienable rights (life, liberty and the pursuit of happiness) and vindicates the actions of people and communities seeking to secure those rights."

One of the brief's assets is that, while it undoubtedly will inform legal decisions to come, it also becomes a useful educational tool for today's activists by succinctly answering the perennial question, "How did we get into this mess?" It makes clear how corporations are supposed to fit into U.S. society, just how they became insubordinate, and who contributed to their delinquency at key moments.

"Corporations are created by State governments through the chartering process. As such, corporations are subordinate, public entities that cannot usurp the authority that the sovereign people have delegated to the three branches of government. Corporations thus lack the authority to deny people's inalienable rights, including their right to a republican form of government, and public officials lack the authority to empower corporations to deny those rights."

"Over the past 150 years," Grossman, Linzey and Brannen write, "the Judiciary has 'found' corporations within the people's documents that establish a frame of governance for this nation, including the United States Constitution. In doing so, Courts have illegitimately bestowed upon corporations immense constitutional powers of the Fourteenth, First, Fourth, and Fifth Amendments, and the expansive powers afforded by the Contracts and Commerce Clauses.

It then cites chapter and verse of when and how the judiciary "found" corporations in our governing documents. It's clear that human beings -- federal judges to be exact -- agreed over time with people generally of their own social class -- corporate attorneys -- that greater rights should be extended to property organized in the corporate form. I've described above how that worked for the 4th Amendment. The brief gives you the whole ball of wax.

The next three sentences of the Summary cut like a laser to the heart of the problems facing us today. "Wielding those constitutional rights and freedoms, corporations regularly and illegitimately deny the people their inalienable rights, including their most fundamental right to a republican form of government. Such denials are beyond the authority of the corporation to exercise. Such denials are also beyond the authority of the Courts, or any other branches of government, to confer."

And it ends with an appeal that, with enough organizing in the streets, will once again be recognized in the courtrooms of our land: "Accordingly, the constitutional claims asserted by the [x corporation] against [y government] must be dismissed because those claims deny the people's rights to life and liberty, and their fundamental right to self-governance."

Such is our hope and our life's work.

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--Peter Montague, Editor