

**Richard Grossman Letter on
the USA Patriot Act, We The People,
Corporations and the U.S. Constitution
co-founder, Program on Corporations, Law & Democracy (POCLAD)**

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A form of the paper referenced below, "The Silencing of Political Dissent ... How the USA Patriot Act Undermines the Constitution," by Nancy Chang, was published in 2002 by Seven Stories Press as *Silencing Political Dissent: How Post-September 11 Antiterrorism Measures Threaten Our Civil Liberties*. An earlier version originally appeared on the Center for Constitutional Rights (CCR) website in November 2001 entitled, "The USA PATRIOT Act: What's So Patriotic About Trampling on the Bill of Rights?". It was eventually taken off CCR's site but is viewable on ratinal in triplicut.

--ratitor

Richard Grossman
email: people@poclad.org

11 December 2001

Dear X,

Thanks for sending the Center for Constitutional Rights pamphlet, "The Silencing of Political Dissent . . . how the usa patriot act undermines the Constitution . . .", by Nancy Chang.

I appreciate Nancy's efforts -- I know how much work goes into producing such a work, and how challenging it is to rush such a piece through.

However, I think the pamphlet is conceptually flawed. Or, perhaps there is simply a need for a different pamphlet. Either way, here's some stuff to provoke.

Only at the end (bottom of p.12) do we get historical perspective . . . too late to frame the pamphlet effectively. The usa patriot act had already been presented in the context of "shameful episodes" when "the judiciary . . . consistently bowed to the wishes of the political branches of government in times of crisis by finding the state interest in national security to be paramount to all competing interests."

Nancy offers two examples: Debs' imprisonment for speaking out against WWI, and the government's imprisonment of Japanese-Americans during WWII. In both instances, the US Supreme Court vigorously supported these imprisonments.

How does this pamphlet begin? " . . . a jittery Congress . . . capitulated to the Bush Administration's demands for a new arsenal of anti-terrorist weapons."

How does this pamphlet conclude? By wondering about "the extent to which the judiciary will defer to the Administration's views on the troubling First and Fourth Amendment issues presented by the usa patriot act . . ."

What's to wonder about? Sounds to me that Nancy believes the three branches of government are all locked up. Is this new? Is this old? Given such reality, where can We the People turn for remedies? What assumptions can inform our thinking? What information should we carry with us? How are we to frame our work? What should we *DO*?

Isn't there is need for a pamphlet which *BEGIN* s with people's histories and the Constitution? Which asks questions, such as: have government denials of people's rights been "episodes" -- or the "norm"? What *IS* the Constitution?

Whose obedience was the Constitution written to compel?

When "The Supreme Court rejected President Richard Nixon's ambitious bid for the unchecked executive power to conduct warrantless wiretaps . . ." (p. 8) what was going on? Were the justices responding to an isolated rabble of 'civil libertarians,' or rather to a propertied class which -- after years of pressure by people's movements -- had enough of Nixon and the Viet Nam War era problems?

You sent me that *NYTimes* clip about the USA government opposing other countries' restrictions on tobacco corporation advertising based on our Constitution's First Amendment as a corporate right and power. Whose Constitution is that?

If Nancy and CCR assume that the Constitution fundamentally enables and empowers the majority to be self-governing, to function as the source of all political authority, to exercise rights as a norm, then it is logical for them to claim that the usa patriot act violates the sacred text, and to suggest that people seek redress from public officials, grounded on the language of the Constitution.

But if Nancy and CCR reject the myth, they would free themselves to start from other places. It would become logical to ask questions, such as:

- why was it so easy for the administration to pass this bill? How could the vote have been 98-1 in the Senate? What else has been going on? How was the way paved for this vote generations ago?
- the legislation is 342 pages -- which Congresspeople actually read it? The Telecommunications Act of 1996 was longer, and also denied people in communities our fundamental rights. Did legislators read that one? What *IS* our Congress? etc., etc.
- can we get an accurate picture of this country by pouring through each section of this act? Isn't that like Sierra Club analysts pouring through each toxics reg act & each forestry act, explicating every section, noting over and over again the loss of yet one more people's right to shape political debate, to participate meaningfully with other people in the decisionmaking that shapes their communities, that defines their health, that decides what's left for the kids . . . and then recommending a little reform here, a word change here, stepped up scrutiny of the EPA, grassroots activists mobilizing to lessen a part per million here, to save a forest there . . . ?

- how have people's movements sought redress in the past? where did they seek? how did they deal with the catch-22 of appealing to a government run from the beginning by a privileged few committed to denying rights backed by their Constitution and by their Supreme Court designed to enable a few to govern the many?
- what is the Supreme Court?
- what do all the activist newsletters and tracts I'm getting these days mean when they say that people need "to defend the Constitution" against Bush and Ashcroft? Which people? What in the Constitution should people at CCR defend? What in the Constitution do people seeking to rein in the USA Empire need to challenge and change? What constitutional histories and definitions do we accept? Must we reject and challenge?

Do we need merely to elect new, nicer people to office?

(p. 3) Nancy says the act "portend[s] a wholesale suspension of civil liberties . . . First, the Act places our First Amendment rights to freedom of speech and political association in jeopardy . . ."

What about civil liberties and the First Amendment prior to 11 September (something CCR lawyers know a great deal about)? If she explored this, she could ask: whose rights to freedom of speech and political association does the usa patriot act place in jeopardy? The managers and trustees of Philip Morris Corporation? Of CitiCorp? Of ExxonMobil Corp? Of TimeWarner Corporation or Boeing Corporation? Of other corporations, including non-profit ones like the Harvard Corporation, or the Heritage Foundation corporation or the RAND Corporation or the Ford Foundation? Of the managers and trustees of the New York Times Corporation? Of writers and editors of *The Weekly Standard*? Of Donald Rumsfeld? Of Justice Sandra Day O'Connor? Of CIA and FBI agents? Of police chiefs?

The usa patriot act does nothing to jeopardize freedom of speech and freedom of association of such "persons." Why not?

What about "workers?" Before 11 Sept, they had *NO* freedom of speech or association rights at work if they worked for a corporation. And if they worked for government, these rights were already quite limited . . . despite the Bill of Rights, and because of the Bill of Rights. (nb: the Homeland Security Act stripped many thousands of federal employees of their lawful rights to join labor unions. [Added later])

What about people who do not own media corporations? What about people who cannot afford to buy full-page ads in *USA Today*? Who do not produce and staff *NPR*'s "Talk of the Nation" or "All Things Considered"? What about unemployed people, and poor people? What about union people who want to withhold their work in solidarity with other union people seeking justice by withholding their work?

There's a need to look at corporations and the Constitution . . . because as long as elected legislators and executives, and their appointed judges, bestow upon the corporate fiction at its moment of creation constitutional rights and privileges, our public officials -- backed by the 'rule of law' -- deny the majority of human persons our fundamental rights.

When corporations wield the Constitution -- triggering the armed might of the nation against people seeking to function as self-governing -- they strip humans of our ability to govern ourselves. When public officials enable corporations, these public officials deny people's right to "self-governance." They are usurpers.

This is the case in "normal" times. This was true in the "good old days" -- whenever they were.

When public officials wield the Constitution to undermine, silence and isolate people holding contrary views, values and perspectives, they deny people's alleged fundamental right to "self-governance."

It is because people's human right to self-governance has been denied for so long by judges, legislators, executives and corporate managers wielding the Constitution against the people . . . by the armed forces, police, jails -- that the USA became a global and legally racist empire . . . that the USA's propertied and then corporate class were able to create a society deriving wealth and power from poisoning, destroying and exploiting people and the Earth at home and abroad.

When this empire was attacked on 11 Sept, the leaders of empire (and the empire culture their corporate institutions -- business, educational, artsy, charitable -- had put in place) responded as programmed.

I have the greatest respect and admiration for the wonderful folks at CCR -- they defend people who need defending, people who are resource-less and alone. They relentlessly challenge illegitimate power and authority. But like dedicated people immersed in the details of any discipline (whether hydrology or forestry or radiation or toxicology or law . . .), they have little time to think and talk and reflect on big pix. Their world is the world of courts and deadlines and overwork and law schools; it's easier not to question assumptions.

For ten years, colleagues and I have been examining the corporation -- the dominant institution of our era. It wasn't long before this work brought us to diverse USA histories -- particularly of people's movements for self-governance and justice and rights (starting with the Revolution itself), to the Constitution, to the courts, to the "rule of law," to grand myths and subtle assumptions.

Several years ago, we wrote that the Constitution was the first NAFTA, the ratification process the first "fast track," and the Bill of Rights the first "side agreement." I believe this . . . and more.

I heard Chief Justice Rehnquist speak at Dickinson College a few years ago about the USA government cracking down on "dissent" in time of crisis. That was the topic of the little book he had written [*All the Laws but One: Civil Liberties in Wartime*], and of the lectures he was

reading all over the place. His conclusion: yes, it is regrettable but appropriate for government to use force against "dissent" in time of crisis. The College bestowed upon R an honorary degree in history and a standing ovation led by college officials (like R, resplendent in their academic robes) and by Dickinson law school deans.

The reality is: at *EVERY* time of "crisis" (that is, when growing numbers of people were advocating a view of the world and accompanying policies different from that advanced by the governing class), men of property used the armed might of the nation -- the wealth built up via the labors of the majority -- to crack down.

In other words, at times of "normal," the rights of people who did not think or act properly have been far from secure.

Just think of all the activities people in communities across the land have been involved in over the past 40 years for liberty, and justice for all. When was "government" on the side of the people at the beginning of these struggles -- for safe energy, to preserve farmland, to stop toxic chemicals, to stop highways, to stop giant corporate chain stores, to stop microwave towers being erected every 3 miles, to stop missile silos, to stop the transport and storage of radioactive crappola?

Hasn't "government" always been quick to use the Constitution and its monopoly on "legitimate violence" to prevent not only liberty and justice but even free and open public discussion? Why do community groups have to labor for years and years just to get one of their "issues" acknowledged as genuine?

Generation after generation, large numbers of people tried to turn the nation away from a global empire built on destruction, denial of rights and laws which enabled steadily increasing concentrations of wealth. Over and over again, such folks sought justice from all branches of government, including the Supreme Court. With hope in their hearts, they invoked the sacred Constitution. Public officials could have sided with these people.

Overwhelmingly, public officials chose otherwise.

Time after time, men of property and corporations dedicated to building a global empire turned to the august justices of the Supreme Court. They, too, invoked the Constitution. The justices could have ruled to define these men of property and their corporations as subservient to the body politic. But the justices chose otherwise.

The few times in over 200 years that federal judges sided with the rabble, wasn't it because people had been mobilizing vast movements for years and years and years . . . educating themselves and one another, confronting and challenging illegitimate power? Because people had been organizing despite being beaten and jailed and killed by police in service to the propertied?

This nation's constitutional history is overwhelmingly about denial of people's collective rights to self-governance, and denial of people's individual rights to participate in activities enabling collective self-governance. There is documentation galore.

One last thing: we can aspire to more than "dissent." We can move away from thinking, and saying, that what we must preserve (or even create) is our right to "dissent."

Why do we seek only to be permitted to speak? Why ask merely for a seat at the governing table controlled by the wealthy and their politicians?

Don't we want to be in charge of the country's institutions, defining its culture? Don't we need to make the table ours, so that we can instruct elected officials, judges, corporate managers what they must do?

We can aspire to become We the People -- the active source of all political authority . . . a self-governing people. We can aspire to shape political debate, the nation's values, to write the nation's histories past and future.

So many folks have vast experience with "single issue" after "single issue" defensive struggles. These struggles against corporate and government assaults are necessary. Little by little, they have been exposing the reality that in the USA today, We the People do not govern . . . have never governed.

The Constitution was written by propertied men representing a minority of other propertied men fearful of the decentralized power and authority unleashed by the Revolution and written into the Articles of Confederation. So they wrote a plan of governance which made it easy for future generations of the propertied to keep future masses in line using "the rule of law" -- that is, by "legally" employing state violence and other means to shape people's values, thoughts and actions. Over time, they got proficient at camouflaging their rule behind corporate fairy tales and democratic myths. This work has of course been aided by their control over the training of lawyers.

There is need for defensive actions -- as Arthur Kinoy has often said. But there is also need not to contribute to constricting and dead-end histories and conversations.

From Kinoy's *Rights on Trial* (1983):

"For me, as for others who consider themselves people's lawyers, there must be an ongoing reevaluation of our role in the struggles, the victories, and the defeats of the social movements of the people. How do we continue to fight the necessary, the inevitable battles within the judicial system, while simultaneously moving beyond the courtroom . . . More and more, my own answers to the complicated challenge of the present may be found by continuing to reexamine moments of the past . . ."

In Solidarity,

Richard Grossman

co-founder, Program on Corporations, Law & Democracy (POCLAD)

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