

# The State of Dissent in America: Flex Your Rights

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When we occupied Freedom Plaza in Washington, DC, during the Autumn of 2011, we often marched down Pennsylvania Avenue to Capitol Hill to express our many grievances. We were always accompanied by a large contingent of police officers and other members of the national security state, some obvious and others not so much. Along the way, we would pass the Newseum, which has the First Amendment engraved in large letters on the front of the building. We made it a habit to pause at the Newseum and read aloud in unison the words of the First Amendment. The reason for doing so was to let everyone know, including the security state, that we have the right to protest peacefully and that we were exercising that right.

We live in a time when there is much to protest. The government is dysfunctional, ruled by plutocrats who pass laws for their corporate friends that cause real harm and suffering for the people and ecological collapse of the planet. Many activists with whom we work recognize that the traditional tools used to effect change within the system – petitions, lobbying, electing supportive legislators or running for office – largely fail in the current political environment.

Our most effective option is strategic and militant, [nonviolent protest](#) in all of its many forms, from boycotts to rallies to hunger strikes. And it is our First Amendment right to use these tools. But rather than respecting and supporting our right to peaceably assemble and petition the government for a redress of our grievances, the national security state and legislators are chipping away at our rights in more extreme ways than ever before.

Even our right to know what is being done in our name is disappearing. The White House and Congress are doing more in secret and are cracking down on those who reveal their actions. Whistleblowers are being charged under the Espionage Act and journalists are being spied upon.

It is up to the people to preserve our rights to dissent and to know the truth. Otherwise, they will continue to slip away. Every day in the US, people are taking action to hold onto these rights and they are inspiring others to do the same.

## The Vague Definition of Crime

During the occupation of Freedom Plaza in 2011, we sometimes joked with law enforcement that the Rule of Law only applied to the 99%, not the 1%. The police knew this was more a truth than it was a joke. Bankers who commit fraud and those who crashed the economy are simply fined and [not prosecuted at all](#). [Health insurance and pharmaceutical corporations](#) are regularly fined for fraudulent behavior, more than any other industry. To most large corporations, these [fines are simply a cost of doing business](#) and wind up costing

much less than what the fraudulent behavior reaps in profits.

Corporate executives are not even held accountable when their business practices result in massive deaths. An example is [Warren Anderson](#), the former chair of Union Carbide during the Bhopal chemical disaster that poisoned over 500,000 people and killed thousands. He skipped bail in India and fled to the US. And he has not been returned despite warrants for his arrest issued by India.

On the flip-side, the [Obama administration has been conducting a war on dissent](#). It appears that the security state can turn almost any behavior into a crime if a person is not a member of the elite. In fact, just a few days ago on June 27, a [health care activist](#) was arrested for writing a chalk message on a sidewalk during a protest against the governor for not expanding Medicaid to more Pennsylvanians under the federal health law. The charge was disorderly conduct for writing “a derogatory remark about the governor on the sidewalk.” The remark: “Corbett has health care, we should too.”

Since the Occupy movement rose up in 2011, a number of laws have been passed that are written vaguely and increase the power of the security state. In early 2012, the National Defense Authorization Act (NDAA) passed by Congress contained a provision that loosened the definition of a “terrorist” to include anyone who has contact with Al Qaeda or an “associated organization,” and allowed indefinite detention without trial and extraordinary rendition of US citizens.

Around the same time, Occupy London was placed on the [terrorist watch list](#) by the London Police. And it was later learned, after a Freedom of Information Act (FOIA) request was granted, that the [FBI was monitoring](#) the Occupy movement in the US and in some papers referred to Occupy protests as “domestic terrorism.”

In fact, spying and infiltration were widespread in the Occupy movement. We wrote about it in a [two-part series](#). The second article focused on how infiltration has been [the norm](#) in US political movements for the last 100 years. Undercover police were exposed for their infiltration of Occupy in [Chicago](#) and [Austin](#), no doubt two instances among many. FOIA requests [documented FBI](#) surveillance and infiltration, their [entrapment strategy](#), and how [the FBI coordinated the crackdown](#) with local police, including, [we discovered](#), conference calls with [mayors and police chiefs](#). Sometimes the closing down of encampments involved [brutal police action](#). Often [journalists were targeted](#) as were even [nurses and health care volunteers](#).

The involvement of national security agencies was broad. [FOIA documents](#) released to the Partnership for Civil Justice Foundation found that in addition to the FBI, the Department of Homeland Security and [the Federal Protective Service](#) were involved in nationwide monitoring of Occupy and [central to the nationwide crackdown](#). Other documents show that the [National Park Police](#) were doing the same. ([The CIA has so far refused to search its files](#) in response to a FOIA request.) A [report by law schools](#) documented how the rights of occupiers were routinely violated. And a report covering many of these issues, “[Dissent or Terror](#),” shows how counter-terrorism tools like fusion centers also worked with corporations to attack the Occupy Movement.

Now we’re seeing the same kind of tactics used against climate justice protesters. [Ranchers who oppose the KXL pipeline](#) for tar sands are being classified as terrorists, although aggressive [targeting of environmentalists](#) is not new.

Chris Hedges and a few colleagues are [suing the Obama administration](#) because a section of the 2012 NDAA could be interpreted to incriminate journalists who speak to members of Al Qaeda or other groups determined to be terrorists. In the initial case, [Judge Katherine Forrest ruled that this NDAA section was unconstitutional](#). She placed a permanent injunction on the provision on a Friday afternoon last September, and Hedges' lawyer was immediately notified that the decision would be appealed by the Obama administration. The [emergency appeal](#) occurred first thing on the following Monday morning. The [stay was lifted](#) and the [Supreme Court refused an](#) interim appeal.

Hedges [explains](#) that the administration's appeal was sought on an emergency basis because it is already secretly using this NDAA provision and didn't want to be held in contempt of court. The case is ongoing and Hedges expects that it will ultimately be heard before the Supreme Court. He writes that if we lose this struggle, the situation will be much more serious: "Once the state seizes this unchecked power, it will inevitably create a secret, lawless world of indiscriminate violence, terror and gulags. I lived under several military dictatorships during the two decades I was a foreign correspondent. I know the beast."

Another [law](#) passed in 2012, [the anti-Occupy Law](#), made it a more serious charge to protest in an area where a person is under the protection of the Secret Service or in a National Security Special Event. Ray McGovern, former CIA officer who gave the morning intelligence briefings to multiple presidents, says it is no coincidence that these laws were passed after the Occupy movement began. Congress members were concerned that in a mass uprising, the police may not protect them.

There are other signs that the security state is taking more steps to empower itself in the case of a mass uprising. The [Pentagon](#) recently gave itself the authority to respond to civil disturbances without even coordinating with local police. The national security state is also [making arrangements](#) with other nations in the case that domestic uprisings overwhelm the police and military and outside assistance is necessary.

Kevin Gosztola, who writes the blog "[The Dissenter](#)" on FireDogLake.com, has been following the activity of the national security state, including the case of three activists who traveled to Chicago for the NATO protests in May 2012. They were infiltrated by undercover police and [arrested pre-emptively](#) the day before the NATO protest. They are the first people to be charged under the state terrorism law passed in Illinois after 9/11.

Gosztola [states](#) that the pre-emptive arrests were meant to intimidate activists from expressing their First Amendment rights, and that it is not unusual for police to use statements that are taken out of context and pieced together from multiple conversations in their affidavits. Further, Gosztola [writes](#) that the law was written vaguely to give law enforcement "incredible latitude to go after people even if they only have a minor suspicion that those people could engage in terrorism." He adds, "Coupled with the fact that law enforcement is using infiltrators or informants to push mentally unstable people, impoverished individuals or activists militant in their political beliefs to commit terrorist acts, it is easy for government to concoct terror cases that can be prosecuted." Terrorism rhetoric was recently used to [turn pacifists into terrorists](#).

Infiltration, spying and pre-emptive arrests are all tools used by the security state to squash dissent. In some cases they work to stifle First Amendment activity, but with unexpected consequences. Since 9/11, [Muslims](#) have been targeted by the FBI and other agencies. This has created a culture of fear and the knowledge that their rights don't exist. Many Muslims

are afraid to attend rallies, participate in religious activities or donate to charities.

This injustice to the Muslim community and the increasing reach of the security state affect all of us. They are affronts to our constitutional rights. Whether a person engages in activism or not, the rights to free speech and to dissent are foundations of democracy. The current political system is hurting all of us and disruption of its activities is necessary to force changes that will shift the present environmental and economic course. The real struggle for freedom is occurring right here within the United States.

### Crackdown on Whistleblowers and the Media

President Obama's administration is acting in unprecedented ways to stifle our right to know what our country is doing. Its attacks on whistleblowers and the press are creating a culture of fear to force compliance, facilitated by economic insecurity and high unemployment. At some point, this will backfire.

Throughout history, whistleblowers like [Daniel Ellsberg](#) and [Karen Silkwood](#), who died mysteriously, have taken great personal risk to let the public know about lies, corruption and threats to public health and safety by government and corporations. Whistleblowers usually act out of a moral conscience and sense of responsibility to the public. Previously, leaks by whistleblowers led to government investigations such as "Watergate" and the Enron scandal.

However, since President Obama's first inauguration, whistleblowers who act in the public interest are more likely to be intimidated, retaliated against and charged with crimes. Under Obama, the [Espionage Act](#) has been used against seven whistleblowers from Thomas Drake to Bradley Manning, and most recently, Edward Snowden. Prior to Obama, the Espionage Act had only been used three times in total.

Many recent whistleblowers tried to raise their concerns through internal channels before going public with information, e.g., [Thomas Drake and his colleagues tried for seven months to work inside](#) the NSA, Congress and courts but got nowhere. But rather than protecting the rights of whistleblowers, it is more likely that this approach will result in retaliation. The [Government Accountability Project](#), which protects the rights of government whistleblowers, states that this is especially true for those in the intelligence community.

The Obama administration has taken the culture of "see something, say something" into government agencies, but not in a way that prevents fraud and corruption. Government employees are now required to report any colleagues who behave as if they may leak information and managers can be held responsible if they do not report "suspicious activity." This is the "[Insider Threat](#)" program that treats leakers as spies who are aiding the enemy and extends all of the way down to those in the Peace Corps. There is even a course on the USDA website called "[Treason 101](#)."

In this new culture of treating whistleblowers as enemies of the state, whistleblowers either need to leave the country entirely or remain anonymous in order to protect themselves. And, much to their own detriment, the [mass media is complicit](#) in promoting the idea of whistleblowers as unpatriotic. The Snowden case served as a [prime example](#) of indicating who in the media is a mouthpiece for the state and who represents the interests of the public.

[Gosztola of the Dissenter criticizes the media](#) who simply parrot official government statements rather than standing up to the government and questioning their behavior. The mass media have become so dominated by corporate power and ambition that they no longer question authority. Gosztola reminds the media that particularly in times of public dissent, their role is to question officials about issues that the public protests.

[Glenn Greenwald, reflecting on four weeks in the middle of the NSA surveillance leak storm](#), notes how people in the corporate mass media express pride that they ask the government for permission before they publish documents; and how they are more than happy to publish leaks the government wants in the public. These acts demonstrate the media working for the government, not for the public interest.

Already, the mass media's failure to understand the relevance of attacks by the national security state on another media outlet, Wikileaks, is coming back to bite them. The mass media refused to view Wikileaks as a [legitimate media outlet](#) and "went so far as to interpret the leaks as revealing desirable traits of US foreign policy making." When Wikileaks was under attack by the US government, which blocked its bank accounts, destroyed the reputation of Julian Assange and threatened litigation, including a Grand Jury investigation of people associated with Wikileaks, the mass media went along with the attacks.

Now, the mass media in the US is starting to see that the national security state is not their friend. Recently Associated Press had its [phone logs seized](#) under the order of the Department of Justice and a top Washington reporter for Fox News, [James Rosen](#), was followed and had personal emails seized by the FBI. Media outlets that are not compliant with the state risk consequences. Just this past week it was reported that the US Army [blocked The Guardian](#) on all of its networks.

The Obama administration is going to extremes to suppress information. All of these actions against whistleblowers and the media are attempts to maintain secrecy so the government can [hide its crimes](#). At some level, though, the more the government cracks down, the more there are individuals who have the courage to push back and report the truth or blow the whistle. As [Snowden said in responding to questions](#) on The Guardian:

"Binney, Drake, Kiriakou and Manning are all examples of how overly harsh responses to public-interest whistleblowing only escalate the scale, scope and skill involved in future disclosures. Citizens with a conscience are not going to ignore wrongdoing simply because they'll be destroyed for it: the conscience forbids it. Instead, these draconian responses simply build better whistleblowers. If the Obama administration responds with an even harsher hand against me, they can be assured that they'll soon find themselves facing an equally harsh public response."

[Assange made a similar point](#) in a recent column on Wikileaks: "This isn't a phenomenon that is going away. This is inevitable. And by trying to crush these young whistleblowers with espionage charges, the US government is taking on a generation, and that is a battle it is going to lose."

## Flexing Our Rights

Rights are like muscles; they only increase when they are used. To avoid further atrophy, many people are taking steps to preserve the First Amendment.



For example, as more people see the mass media for what it is, a mouthpiece for the plutocrats, independent and citizen media are rising to take its place. Independent media outlets are also working to fund more investigative reporting. And through social media, every person can now easily blog and share photos and videos of events. Groups such as the [Electronic Frontier Foundation](#) are fighting to preserve internet rights, which are essential to an independent media.

We should also encourage members of the mass media to challenge power and support them when they do. Greenwald said he was deeply inspired by [Snowden's courage](#) and believes it will inspire others. Longtime White House correspondent Helen Thomas was a tremendous example of a reporter who asked tough questions. More reporters like her are necessary for a functioning democracy.

There are also efforts to protect whistleblowers. The [Government Accountability Project](#) has taken up many prominent cases and was successful in defending Thomas Drake. Bradley Manning, who is on trial at present, is supported by the [Bradley Manning Support Network](#), [Disclaimer: Kevin Zeese serves on the steering committee] which has raised hundreds of thousands of dollars for his defense attorneys. Many volunteers attend his hearings wearing T-shirts that have the word "Truth" printed on them so Manning can see he is not alone. And volunteers are present at the trial to transcribe the proceedings, sketch courtroom scenes and [hold rallies for Manning at the gates to Fort Meade](#), where the trial is taking place.

The reaction to the NSA leaks has built opposition to government surveillance. Already [over 500,000 people](#) have joined an effort to stop the spying at [www.StopWatching.US](#), and more than [100 organizations](#) have signed onto a letter calling for a Congressional investigation modeled on the Church Committee of the mid-70s.

And resistance is still strong in the United States. We document this everyday on [PopularResistance.org](#). People are rising up to protect their rights to jobs at a living wage, affordable education, health care, housing, a clean environment and more. These are all important because not only do they expose the problems in our country, but they also [inspire others](#) to take action.

Some groups are using the courts to protect our rights, as Chris Hedges is doing to stop indefinite detention in the NDAA. Groups like the National Lawyers Guild, EFF, American Civil Liberties Union and Partnership for Civil Justice have filed suits on these issues or on behalf of protesters who have had their rights violated.

Members of Veterans for Peace and others are [going on trial for a First Amendment event](#) [Disclaimer: Margaret Flowers is a defendant in the case]. The action last October was designed as a "Paradox Protest," which places the protesters in a win-win situation and those in power in a lose-lose position. Tarak Kauff of the Veterans for Peace Action Network [described the action](#) on our program, "Clearing the FOG Radio."

The action stemmed from the arrest of Veterans in the Vietnam Veterans' Memorial Plaza in downtown New York City on May Day, 2012. Occupy Wall Street protesters marched to the plaza and planned to hold a general assembly there. Kauff describes the assembly as exactly what one would want to see in a democracy: people engaging in peaceful direct democracy in public. However, the response of the NYPD was to enforce a 10 PM curfew and order the crowd to disperse. The Veterans Peace Team was present and decided to remain in the plaza because the curfew was being enforced selectively, and they were arrested.

The Paradox Action occurred on October 7 on the 11th anniversary of the invasion of Afghanistan. Veterans and their allies held a ceremony at the Vietnam Veterans' Memorial to make visible the human and environmental cost of war. There were speakers and musicians followed by a solemn reading of the names of New Yorkers who died in Vietnam, Iraq and Afghanistan as flowers were placed in 11 vases.

At 10 PM, the NYPD showed up en masse to shut down the peaceful protest. Kauff spoke with the officers and explained that the ceremony was peaceful and respectful, that we had the right to honor those who died in war and that for veterans, war memories don't conveniently shut down at 10 PM. Kauff was told by the police that "We don't want to set an example for the Occupy movement [by allowing you to stay past the curfew]." Twenty-five veterans and allies were arrested for standing up for the Right to Assemble.

The trial will take place in New York City on July 8 through 10. It is seen as an important precedent to set in defense of the First Amendment because the curfew in the plaza is only enforced when groups assemble there to exercise their rights. Some of the defendants will refuse a guilty plea and if found guilty will not pay a fine or accept community service as a punishment. If the case is lost, it will be appealed.

Kauff, who is on a solidarity hunger strike with the prisoners in Guantanamo Bay, [states](#), "If people do not take a stand and resist publicly, the country will continue its slide into totalitarianism. The horror of Guantanamo is an example of what the country is becoming and why we must stand up for our rights. We will not accept punishment. We will not admit wrongdoing."

### Building Democracy at Home

Not everyone has the ability to take the risks involved in resistance actions to protect our rights, but everyone can support those who do. It is important to understand that the political process is dysfunctional and the country is sliding in a direction that hurts all of us. The tools that were traditionally used to effect change from the inside are no longer sufficient. [Strategic resistance](#) is a necessary tool to build real democracy within the United States.

As we have seen, the security state will go to great lengths to suppress real dissent. It will use infiltration, intimidation, spying, the courts and even violence to stop those who stand up for our rights and for truth. Through the mass media, the security state will use distraction and personal attacks to keep the [focus off](#) of the real issues.

At a time like this, solidarity is important. There is strength in unity. It will [take a mass movement](#) in the US to stop policies that harm people and the planet, further entrench corporate power and invade every aspect of our lives. We see this currently in countries like Turkey, Brazil and Egypt. In Brazil, the protests are actually working to force concessions by the government, partly because they have a more functional democracy.

In Brazil, it was an increase in bus fares that ignited a mass movement. In Turkey, it was the development of a public park. [We cannot predict what will spark great unrest](#) in the United States or when it will happen, but the conditions are ripe for it. And when it does occur, we are all going to need to exercise our rights, and if they are abused, use that abuse to expand the movement for real democracy.

*You can listen to The First Amendment Right to Dissent with Kevin Gosztola and Tarak Kauff on [Clearing The FOG](#).*

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