



UNCONSTITUTIONAL

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The USA PATRIOT Act has been highly controversial since it was passed by Congress a mere 43 days after the 9/11 attacks. “UNconstitutional,” sponsored by the American Civil Liberties Union (ACLU), is the third installment in executive producer Robert Greenwald’s UN trilogy. Greenwald who produced and directed “The ACLU Freedom Files” (2007) and “Iraq for Sale: The War Profiteers” (2006), teams with documentary writer and director Nonny de la Peña to offer a personal view of the effect of the PATRIOT Act on constitutionally protected rights.

“Unconstitutional” begins with briefly mentioning the 9/11 attacks and the bioterrorist anthrax attacks in less than 30 seconds, followed by a 5-minute description of the legislative process that resulted in the passage of the PATRIOT Act. Subsequently, the movie is organized in chapters that exemplify alleged constitutional right violations resulting from the application of the Act. In each chapter, comments by members of the ACLU, sympathizers, and members of related organizations are combined with selected examples of alleged misapplication of the PATRIOT Act and archival footage. Each segment is followed by images of the Constitution while the narrator reads the relevant passage violated by the PATRIOT Act. In this point-counterpoint format, the literal readings of the Constitution sharply contrast with the references to the PATRIOT Act or declarations from the President and public officials, which are interpretations, subjective summaries, or generalizations delivered from the ACLU’s point of view. For instance, Maj. Gen. Miller declarations that he believed the Geneva

Conventions did not apply to terrorists are reported as "[Gen. Miller] said he could violate the Geneva Conventions at Guantanamo."

Visual metaphors are heavily used throughout the film. For example, the film starts with images of the White House during daytime and ends with images of the Capitol at night, symbolizing the opposition between the Executive and the Legislative Branches. Emotional appeals abound, with several instances of women and adult men crying on camera. Modern footage about Guantanamo Bay, police brutality, or speeches by the Bush Administration and military leaders is grainy or in muted colors, comparable to grainy period footage from Japanese citizens in relocation camps during WWII, demonstrations during the Civil Rights era, or other archival documents. A montage technique is used to elicit a strong emotional response from the viewer. Barbed wire is a recurring theme throughout the film. Voice-overs are skillfully combined with imagery to draw inferences. An obvious example can be seen at the end of the movie: While the narrator says "what are we fighting against," President Bush, Vice President Cheney and Attorney General Ashcroft are on screen, and then the narrator says "what are we fighting for," while early 20th century images of immigrants arriving to New York are shown.

The instrumental soundtrack used throughout the documentary was composed by Michael Brook, who subsequently composed the soundtrack for Al Gore's "An Inconvenient Truth" (2006). Music is usually absent or in the background when ACLU members and other subjects are talking, but it is used with dramatic effect when archival footage is shown, especially when the subjects are members of the Bush Administration. Vocal music is used only in the closing scene: A version of "Amazing Grace" by Ani DiFranco in which all religious references have been removed. Stephen Rohde's poem "They came for the Muslims, and I didn't speak up..." a variation of Pastor Martin Niemöller's poem "Then they came for me" can be heard while the credits roll. In his version, Rohde, the President of the ACLU of Southern California, replaces actions related to the Nazi's rise to power

with alleged human right violations resulting from the application of the PATRIOT Act, thus comparing the Bush Administration to the Third Reich.

The ACLU delivers a one-sided Manichean film filled with half-truths and misleading information. “Unconstitutional” blames the Bush Administration for being intentionally deceptive and rushing Congress into passing the PATRIOT Act. In reality, two terrorist attacks, the first conventional and the second biological, had taken place in less than one month and Congress was pressured by these circumstances to act without delay and pass legislation to prevent further attacks. The Act was introduced in the House on October 21st, one day after it was confirmed that anthrax had killed two postal workers in Washington D.C. Dozens of Capitol workers were also infected. Three days later, when the Act was signed into law, it was confirmed that anthrax sent to the Senate Majority Leader was highly concentrated and pure, suggesting it was a well-planned bioterrorist attack with weapons-grade anthrax. Unfortunately, this background is ignored and reduced to half a minute of footage.

The viewer should be aware that the film was produced in the context of a legal battle between the ACLU and the Bush Administration (*Doe v. Ashcroft*, 317 F.Supp.2d 488), which to some extent explains the bias of the ACLU positions throughout the movie, such as:

- ACLU and other affiliations not revealed: Former Congressman Bob Barr’s employment as an ACLU consultant is omitted. Ties between the ACLU and other participants in the film are also omitted: Anne Turner, the Santa Cruz librarian, is a recipient of the ACLU’s True Patriot Award, and Major Mori is the recipient of the ACLU’s Roger N. Baldwin Medal of Liberty Award. Ryan Coonerty, identified as a “bookstore owner,” is a city councilman in Santa Cruz.
- Cities shown as representative of middle-America are actually fringe cases: Arcata’s city government is controlled by the Green Party, Santa Cruz is a prominent activist community with several ACLU members on its city council, and Eugene has been referred to as the “Anarchist Capital

of the United States.” Furthermore, the reported number of cities rejecting the PATRIOT Act in 2004 is inflated. In 2004, that number was not over 400, it was in the low 300’s.

- The Begg case: While alleging that his capture and subsequent detention were unjustified, images of a smiling Begg with his children and an interview with his weeping father are shown. Actually, Begg was captured after his name was found in documents seized in a terrorist camp, following trips to Pakistan, Bosnia, and an attempted trip to Chechnya. Prison conditions attributed to Guantanamo Bay in fact correspond to his internment at Bagram Airbase, Afghanistan.
- The Hamoui case: The detention of the Hamouis, a Syrian family, is used as an example of the indiscriminate arrests of Middle Easterners in the aftermath of 9/11. In fact, the INS arrested only the three family members who were illegally in the United States. Prior to 9/11, they were subject to a deportation order that apparently their attorney advised them to ignore, and led to their arrest under the Alien Absconder Initiative. Another two family members, who were American citizens, were never targeted by the government despite their ancestry.
- The Padilla case: Pictures from Padilla’s high school yearbook, prior to his conversion to Islam, and with friends are used to elicit sympathy from the viewer. Donna Newman, Padilla’s attorney, appears outraged when she asks “an enemy combatant? When did you make up that term? Really I have never heard of it.” Viewers are misled to believe that the term “enemy combatant” is a fabrication by the Bush Administration. In reality, the term was first used in *Ex parte Quirin*, 317 U.S. 1 (1942), the legal basis for the Military Order of November 13, 2001, which was applied to Padilla when he was detained in June 2002. One would expect that Padilla’s attorney would be aware of the legal basis for her client’s detention and legal precedents. Interestingly, although Newman appears unaware of *Ex parte Quirin*, she is able to talk in detail about *Korematsu v. United States*, 323 U.S. 214 (1944), another relevant case decided during WWII.

- References to the “Geneva Convention”: The cover of the 4th Geneva Convention (protection of civilian persons in time of war) is repeatedly shown. In fact, the main argument between the ACLU and the Bush Administration has been the applicability or not of the 3rd Geneva Convention (treatment of prisoners of war) to detainees. Showing the 4th Geneva Convention is consistent with the ACLU’s position that all detainees are civilians (even Al-Qaeda terrorists and Taliban fighters).
- Congressman Sensenbrenner: Declarations by Congressman Sensenbrenner, Chairman of the Judiciary Committee and sponsor of the PATRIOT Act, showing concern about the application of the PATRIOT Act by the administration are used out of context. Sensenbrenner images correspond to his overreaction to the Dept. of Justice’s refusal to share confidential information with him. Sensenbrenner stated two years later: “Zero. That’s the number of substantiated PATRIOT Act civil liberties violations.”
- Misattribution to the federal government: Alleged violations of the rights of protesters, law enforcement abuses, and agent provocateur tactics are attributed to the application of the PATRIOT Act when in fact were effected by local police departments.

Considering the obvious deficiencies of the original PATRIOT Act before its reauthorization in 2006, the ACLU could have seized the opportunity and presented valid criticisms instead of blatantly disregarding the actual facts and purposely deceiving and manipulating the viewers. A positive aspect of “Unconstitutional” is that it exemplifies negative reactions in some communities and the potential refusal to implement emergency measures enacted in response to bioterrorist attacks. Examples such as the refusal to apply the PATRIOT Act in Arcata, the destruction of library records in Santa Cruz to avoid compliance with federal subpoenas, or the rejection of the PATRIOT Act by several hundred municipalities, illustrate the possibility that there could be organized disobedience or refusal to obey

federal quarantine or vaccination orders, and highlight the need to have adequate contingency plans to address such situations.

In conclusion, the original USA PATRIOT Act was in many aspects poorly drafted and inadequately applied; however, in “Unconstitutional” the ACLU squanders the opportunity to constructively criticize the Act’s shortcomings and fails to raise genuine issues concerning its application. Instead, it uses half-truths, emotional manipulation, and blatant misrepresentations.