

The Tea Party's Next Mission
by Attorney David Grossack

The emergence of the various Tea Party movements throughout the United States has brought a welcome surge of demands for tax relief, curbs on regulation and reductions of government spending.

But conspicuously absent from the Tea Party's platforms are any calls for serious examination of the flaws rampant in the American legal system. This is a serious omission because the Tea Party's goals cannot be achieved without a drastic overhaul of how courts function, how lawyers practice, how legislators legislate and how the public polices the courts and lawyers. Without legal reform, true capitalism cannot flourish. The Tea Party, aside from becoming a controlled and choreographed funding conduit for politicians on the make, has another mission. That mission is to strengthen the remnants of American capitalism and build a foundation whereby private enterprise can best serve investors, entrepreneurs and consumers.

But when federal judges refuse to curb the maze of rules and restrictions governing everything from sliced bread to mahogany, flower arranging and beachcombing, capitalism is weakened.

When a ten-thousand-plus page Internal Revenue Code becomes a pre-text for capricious redistribution of wealth to government coffers, when onerous securities regulations, like Sarbanes-Oxley, are harassing entrepreneurs from capital formation, and courts uphold these laws, capitalism itself is facing a crisis, whether it is acknowledged or not.

Legal reformers are the first to spot the issues, very often beginning with the character of the lawyers and judges who are entrusted as guardians of justice. Legal reformers are usually ignored, but at the peril of the republic.

Let's examine some of the judicial stars who have made news in recent years. Mind you, these are only the tip of the iceberg, because *most* are never caught.

In 2008, a scandal was uncovered in Wilkes Barre, Pennsylvania, when judges were sentencing children to juvenile detention facilities and receiving kickbacks for each inmate. The judges were eventually convicted of racketeering and sentenced to federal prison.

In Brooklyn, New York, widespread fixing of divorce cases was uncovered. In 2003, divorce lawyers, a judge, intermediaries, a court clerk and even a rabbi were caught up in a bribing scheme and criminally charged. A hidden camera was placed by prosecutors in the judge's office and the pay-offs were on video!

These scandals are not new. In Cook County, Illinois, the FBI and Postal Inspectors had their hands full with a 3 ½ years undercover investigation in the 1980s. There was a listening device planted in a judge's chamber and ultimately, 17 judges, 48 lawyers, 10

deputy sheriffs, 8 policemen, 8 court officials and state legislators, actually a total of 93 people, were indicted for case fixing, bribery and extortion.

I am convinced this is more widespread than reported and those who try to be whistleblowers are ignored, ridiculed, or persecuted. Political activists refuse to get involved in calling for investigations when smoking guns are present.

Similarly egregious is the rampant intellectual dishonesty in what one may call the “Land of Qualified Immunity,” the federal court system. Lawyers who pursue Constitutional issues and civil rights cases now strenuously try to avoid federal court because they know it is a land of no hope.

Earlier in this essay, I wrote of the 10,000+ page Internal Revenue Code, which some legal observers view as Constitutionally void for vagueness. There is a well-settled principle in law: if reasonable people cannot understand a law, it is invalid.

If one needs to hire a CPA to interpret the law, and if it would take a lifetime to read, it is arguably not frivolous to argue that it should be considered void for vagueness. Year after year, *Money Magazine* would hire CPAs to prepare returns (based on the same data) in different cities to see if they would come up with the taxpayer owing the same amount of money. The CPAs always arrived at different figures. Others asked the IRS at different offices to prepare returns, based on the same data. Even the IRS officials would come up with different figures.

This isn't surprising, given a ten thousand page Internal Revenue Code. But if you argue in federal court that the tax law is “void for vagueness,” you will be fined. This is not the last word about the IRS getting a pass in federal court. If you want a sickening example of how federal judges drop the ball when a citizen's civil rights are violated, the case of Lindsey K. Springer is instructive. Springer alleged in federal court that IRS agents, while raiding his home, stole \$2000 and thus violated his Fourth Amendment right to be free from unreasonable search and seizure. The case languished in court for five years when on August 5, 2010, the Tenth Circuit of Appeals concluded that because “there was no clearly established law holding that a theft following a lawful seizure violated the Fourth Amendment,” the IRS agents deserved qualified immunity.

Qualified immunity is used over and over again to exculpate municipal, state and federal officials from all sorts of wrongdoing. It is one of those things that has made many lawyers stop handling civil rights suits.

But it is symptomatic of the kind of disregard of boundaries between people's rights and government officials that weakens both democracy and private enterprise. When people see legal abuse and government abuse, they are skeptical about the merits of capital investment because then it becomes questionable whether contracts are going to be honored in court.

If you look at a pretty employee and she can sue you for it, who wants to hire anyone? If the laws become ridiculous, unenforceable and selectively adjudicated, who will have faith in the economy?

There are consequences to a bad legal environment and it directly affects the issues Tea Party activists care about. Other issues about how law is practiced, how law is written, and how courts treat unrepresented parties should also merit the Tea Party's attention.

If lawyers charge \$300 hourly and most people earn under \$20 an hour, doesn't justice become unaffordable to most? Shouldn't the law be made user-friendly and the courts as well, to diminish the necessity of lawyers? Ah, one of the questions it seems futile to ask.

And what of the issue of jury nullification? The right of jurors to be told that they have the right to nullify bad laws is an issue that many in the Tea Party are very aware of, but the issue seems to escape meaningful attention.

In the seventeenth century, Dutch jurist Hugo Grotius studied the significance of Biblical commandments and introduced readers to a "universal moral code," based on what religious scholars know as the "Noahidic Covenant." Grotius made the point that having functioning courts is an absolute prerequisite of having a civilized society.

In the United States, we are witnessing a decline of civilization, just as we are witnessing a decline of the courts, proving Grotius right.

Over a century after Hugo Grotius, the French economist Frederic Bastiat, authored a famous essay, "The Law," warning of the dangers of law and courts run amok, enabling omnipotent government, and the resultant tax and bureaucratic nightmare. Bastiat recognized this in 1850!

The Tea Party has many "high information voters" who understand that a constitutional revival and an empowered, less chained capitalist system can make America a better place for us to live in. But without sweeping legal reform included in the Tea Party's set of issues, this nation will simply deteriorate further into a corrupt, totalitarian bureaucratic nightmare.

The author is founder of the Citizens Justice Association, which pioneers in helping unrepresented litigants challenge legal and government abuse. His website is at www.citizensjustice.com. His book "How to Win a Lawsuit Without Hiring a Lawyer" is available at amazon.com.