

Ward Churchill becomes lightning rod for 911 grief

by Paul Wolf, 3 Feb 2005

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Subject: Ward Churchill becomes lightning rod for 911 grief

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Introduction

A media frenzy has developed surrounding a 2001 Ward Churchill article entitled "Some People Push Back: On the Justice Of Roosting Chickens," in which Dr. Churchill compares the World Trade Center victims to nazis, and suggests that if there was any better way to punish them for their complicity in the 1991 gulf war, he'd like to hear about it. This was indeed a foolish and unscholarly theme for an essay, dismissing the distinction between civilians and combatants set out in the Geneva Conventions half a century ago. By Churchill's logic, his own death in such an attack would be justified.

But that's beside the point. Churchill's article was obviously intended to be offensive. What's amazing is the ability of Bill O'Reilly to pull this scandal out of the dustbin. It must have been a slow news day at *Fox* for Mr O'Reilly to have seized on this three year old article. O'Reilly is an expert character assassin, and should be held accountable in a court of law for the death threats and other harms Churchill has suffered. He's been doing this a long time and is well aware of the repercussions of his work. While the media has seized on Churchill's "hate speech", how else can we classify a show like "The O'Reilly Factor"?

I had some dealings with Dr Churchill a few years ago when we agreed I'd promote his book, *The COINTELPRO Papers*, on my website. I soon learned of the bizarre and conspiratorial world of the largely-defunct American Indian Movement. On its website, AIM's leaders accuse Ward Churchill of working as a counterintelligence agent in the

Vietnam war, of recruiting mercenaries for the contras in the 80's, of working for *Soldier of Fortune Magazine* (a CIA-connected publication, back issues of which have been purged from all libraries near Washington DC), and of sabotaging AIM's negotiations with Saddam Hussein. (see <http://www.aimovement.org/csi/>, and BBrown_Rmeans memo for AIM-Baath Party negotiations). AIM is also upset about Churchill's AIM splinter group in Colorado. In return, Colorado Autonomous AIM accuses the AIM leadership of espionage, drug dealing, and complicity in the murder of Anna Mae Aquash. (<http://www.coloradoaim.org/history.htm>) Arlo Looking Cloud was recently convicted of complicity in the Aquash murder, but Leonard Peltier insists he was framed. John Graham may soon be extradicted from Canada to face charges for the same murder, on the barest of evidence, much like Peltier was. AIM's politics are incomprehensible to me, except to conclude that the fight is to the death.

Those unimpressed by media frenzies and ultra-radical death politics make skip immediately to article #7 below. Ed Lazarus has the unique ability to see what is happening and put it into historical, if somewhat lawyerly, perspective. Here he explains the 911 paradigm shift and wonders where our legal system is heading.

- Paul

Churchill a lightning rod

CU prof at center of 9/11 dispute has been there before

By Charlie Brennan, *Rocky Mountain News*, January 28, 2005

So, people are mad at Ward Churchill. What else is new?

For a man who has weathered anonymous death threats telephoned to his home, the latest turmoil is comparatively tame.

Churchill, chairman of the Ethnic Studies Department at the University of Colorado, is at the center of controversy -- again. This time it's students at Hamilton College in Clinton, N.Y., upset about his scheduled appearance there next week.

They are disturbed by an essay Churchill wrote in the wake of the Sept. 11, 2001, terrorist attacks suggesting they were justified.

In an essay written the day after the attacks, *Some People Push Back: On the Justice Of Roosting Chickens*, he said America was merely reaping what it had sown through a long history of violent domination and assault upon indigenous people.

"There is simply no argument to be made that the Pentagon personnel killed on September 11 fill that bill" as innocent victims, Churchill wrote.

"The building and those inside comprised military targets, pure and simple. As to those in the World Trade Center . . . Well, really.

"Let's get a grip here, shall we? True enough, they were civilians, of a sort. But innocent? Gimme a break."

Among those spitting mad is Debra Burlingame of Westchester, N.Y., sister of a pilot who died on Sept. 11. She said the CU professor's remarks are "beyond the pale."

To find himself outside the mainstream is not a novel experience for Churchill; this is the same man who, in an interview last year, said "it may be that more 9/11s are necessary."

U.S. Rep. Bob Beauprez, R-Colo., has called for Churchill's resignation because of his 3-year-old Sept. 11 essay. And U.S. Rep. Mark Udall, an Eldorado Springs Democrat whose district includes Boulder, said Churchill's essay "grossly defames those who were murdered in the attack on the World Trade Center. Mr. Churchill owes the 9/11 families an apology."

Churchill, 57, was one of eight defendants acquitted in Denver on Jan. 20 for blocking the Oct. 9 Columbus Day parade, which he and his co-defendants consider an act of hate speech and ethnic intimidation.

He also was arrested in a 1991 Columbus Day parade protest, but the charges in that case were dismissed a few months later.

This semester, Churchill is teaching three classes at CU: Topical Issues in Native North America, American Indians in Film, and Indian/ Government Conflicts.

He is currently out of state on a speaking tour. But his wife, fellow CU ethnic studies professor Natsu Saito -- also one of those acquitted in the Columbus Day parade trial -- spoke highly of her husband as an academic.

"Students love him. His classes are always filled to overflowing, and he sets a standard for teaching and scholarship that is inspiring for all of us," she said.

"He has written more books than most academics even think about writing. I think he inspires the students with respect to how to put one's teachings into practice, and applies it to the world."

This is not the first time Churchill has come under fire for his alternative viewpoint on Sept. 11.

He stirred a hornet's nest of opposition during a visit on Dec. 1, 2001 -- less than three months after nearly 3,000 were killed in the attacks -- to the University of Vermont.

Situated in the liberal enclave of Burlington, Vt., the university lost 13 alumni in the attacks.

"The stuff was so outrageous and the timing was so bad because it (the Sept. 11 trauma) was so fresh," said Sam Hemingway, a columnist for the Burlington Free Press who wrote about Churchill's visit. "Everybody was so worked up."

Many still are.

Debra Burlingame is the sister of Charles "Chick" Burlingame III, the captain of American Airlines Flight 77, which crashed into the Pentagon the day before his 52nd birthday.

Using the same argument Churchill has used against the Columbus Day parade, she said of his writings: "I consider it hate speech, which isn't protected at all by the First Amendment.

"What (Hamilton College) is doing is paying him money, sponsoring him, an individual who is calling for the murder of innocent people. That is hate speech."

Saito said those who have read her husband's writings -- which include at least 15 books -- should have a good sense of who he is.

"I think the part that a lot of people miss -- because he says things in a way that makes people uncomfortable, because he forces people to confront truths they don't want to deal with, that they would rather ignore -- is why he does it," said Saito.

On Thursday, interim CU Chancellor Phil DiStefano issued a statement emphasizing that Churchill's views are his own and not representative of the university.

"While I may personally find his views offensive, I also must support his right (guaranteed by the First Amendment) as an American citizen to hold and express his views, no matter how repugnant," he said.

Professor at the center of controversy

- Name: Ward Churchill (which he terms his "colonial" name; Keezjunnahbeh, meaning "kind-hearted man." is his given Native American name)
- Age: 57
- Education: Bachelor's degree (1974) and master's degree (1975) from Sangamon State University, which is now the University of Illinois-Springfield
- Employment: Chairman of the Ethnic Studies Department, University of Colorado
- Personal: Married, with one stepdaughter; lives in unincorporated Boulder County

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Professor Is Assailed by Legislature and Vandals

By Michelle York, *The New York Times*, February 3, 2005

Colorado lawmakers yesterday denounced an embattled professor whose scheduled appearance at an upstate New York college was canceled amid protests over his writings on the Sept. 11 attacks, in which he compared the victims to Nazis.

The professor, Ward Churchill, meanwhile, rebuffed calls to resign and said yesterday that his truck had been painted with swastikas overnight as it sat in his driveway. The Boulder

County Sheriff's Department said it was investigating.

Calling his written remarks an "evil and inflammatory blow to the healing process," the Colorado House of Representatives unanimously approved a resolution condemning Professor Churchill. "The victims of the World Trade Center were innocent in every sense of the word and should always be remembered as innocent," the resolution states.

The uproar concerns a three-year-old essay by Professor Churchill, who teaches ethnic studies at the University of Colorado at Boulder. In it, he called the workers killed in the World Trade Center on Sept. 11 "little Eichmanns," technocrats who had a role in their country's economic power and its foreign policy, which included the 1991 gulf war.

The Colorado governor, Bill Owens, has called for the university to fire Professor Churchill, but yesterday, Michael Carrigan, a newly elected member of the University of Colorado Board of Regents, said it was unlikely that any action would be taken when the board holds an emergency meeting today. "He can be fired, but not tomorrow," Mr. Carrigan said yesterday.

Professor Churchill said in an interview yesterday that he would sue if fired. "I am on firm legal ground," he said, adding that several lawyers who specialize in free speech have already contacted him. He said he had received more than 100 death threats.

The essay surfaced only after Professor Churchill accepted an invitation to speak at Hamilton College, near Utica, N.Y., about his area of expertise, American Indian activism.

After the essay was brought to light, Hamilton College said it had to honor its invitation in the interests of free speech, though the college president, Joan Hinde Stewart, said she found the remarks personally repugnant.

The college received thousands of e-mail messages and telephone calls protesting the planned panel discussion. On Tuesday, it abruptly canceled the discussion, which had been scheduled for tonight, after a caller threatened to bring a gun to the event and the local police said they could not guarantee Professor Churchill's safety.

At the University of Colorado, Professor Churchill resigned as chairman of the ethnic studies department on Monday but remains a teacher. Some students have protested his remarks, though he said more support him.

In his essay, Professor Churchill wrote of what he saw as the tie between the trade center victims and the deaths of Iraqis in the 1991 war, and after. "They were too busy braying, incessantly and self-importantly, into their cellphones, arranging power lunches and stock transactions, each of which translated, conveniently out of sight, mind and smelling distance, into the starved and rotting flesh of infants," he wrote.

"If there was a better, more effective, or in fact any other way of visiting some penalty befitting their participation upon the little Eichmanns inhabiting the sterile sanctuary of the twin towers, I'd really be interested in hearing about it," he added.

Some Colorado lawmakers called on the Legislature yesterday to cut financing for the ethnic studies department at the university, saying that Professor Churchill has a right to free speech but that taxpayers do not have to subsidize his views.

The conservative news commentator Bill O'Reilly, who repeatedly urged viewers to send e-mail protests to Hamilton College, was running a poll on his Web site yesterday asking viewers if Professor Churchill should be fired. On his program last night, Mr. O'Reilly called the vandalism and death threats an "unfortunate plight."

At Hamilton, students scheduled a meeting called "Academic Freedom" for next Wednesday to discuss all the issues that swirled around campus, said a spokeswoman, Vige Barrie.

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Ward Churchill was scheduled to speak at Hamilton College in Clinton, New York on February 3, 2005. His appearance was canceled by the college after he caused a public furor over his loathsome remarks about the 9-11 tragedy in New York. AIM's Grand Governing Council has been dealing with Churchill's hateful attitude and rip-off of Indian people for years.

The American Indian Movement Grand Governing Council representing the National and International leadership of the American Indian Movement once again is vehemently and emphatically repudiating and condemning the outrageous statements made by academic literary and Indian fraud, Ward Churchill in relationship to the 9-11 tragedy in New York City that claimed thousands of innocent people's lives.

Churchill's statement that these people deserved what happened to them, and calling them little Eichmanns, comparing them to Nazi war criminal Adolf Eichmann, who implemented Adolf Hitler's plan to exterminate European Jews and others, should be condemned by all.

The sorry part of this is Ward Churchill has fraudulently represented himself as an Indian, and a member of the American Indian Movement, a situation that has lifted him into the position of a lecturer on Indian activism. He has used the American Indian Movement's chapter in Denver to attack the leadership of the official American Indian Movement with his misinformation and propaganda campaigns.

Ward Churchill has been masquerading as an Indian for years behind his dark glasses and beaded headband. He waves around an honorary membership card that at one time was issued to anyone by the Keetoowah Tribe of Oklahoma. Former President Bill Clinton and many others received these cards, but these cards do not qualify the holder a member of any tribe. He has deceitfully and treacherously fooled innocent and naïve Indian community members in Denver, Colorado, as well as many other people worldwide. Churchill does not represent, nor does he speak on behalf of the American Indian Movement.

New York's Hamilton College Kirklands Project should be aware that in their search for truth and justice, the idea that they have hired a fraud to speak on Indian activism is in itself a betrayal of their goals.

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See the following:

Us vs AIM
Us vs AIM Background
Indian Country Today: Editors' Report
Keetoowah Tribe Response
The Public's Response
Churchill Cartoon

For more information regarding Churchill's fraudulent enrollment:

United Keetoowah Band of Cherokee Indians of Oklahoma
Enrollment officer: 918-431-0385 or 918-456-8698

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CU prof affirms Indian heritage

Tribe says he's not full member

By Howard Pankratz, *Denver Post*, Feb 3, 2005

The Keetoowah Band of Cherokee Indians said Wednesday that University of Colorado professor Ward Churchill is an associate member of the tribe but not a full member, which requires a person to have at least one-fourth Cherokee blood.

"He was trying to get recognized as an Indian. He could not prove he was an Indian (Cherokee) at all," said Ernestine Berry, who was on the tribe's enrollment committee and served on the tribal council for four years.

Churchill, who resigned as chairman of CU's ethnic studies department on Monday, has been condemned for comparing victims of the 2001 terrorist attacks to Nazis.

He has described himself as an Indian and has said that shaped many of his opinions. But over the last week, as Churchill's comments made news, his critics have claimed he is a fraud.

On Wednesday, Churchill steadfastly maintained that he is an Indian, claiming he is three-sixteenths Cherokee. But he acknowledged that he is an associate member, not a full member, of the Keetoowah.

"I don't vote, I don't hold office, I don't collect benefits," Churchill said. He said he was enrolled as an associate member of the Keetoowah after a genealogical investigation showed his Cherokee lineage.

Click [here](#) to see Ward Churchill's essay, "Some People Push Back: On the Justice of Roosting Chickens," as posted on a third-party website. Todd Gleeson, dean of the University of Colorado's College of Arts and Sciences, which oversees Churchill's department, has indicated to *The Denver Post* that this posting is an authentic copy of Churchill's essay. He said he could have become a full member of the larger, 240,000-member Cherokee Nation because it has no "blood quantum threshold." But he chose the Keetoowah because they are a more "hard-line" group.

Berry, of the Keetoowah Band, said Churchill was given an associate membership in the 10,000-member tribe, based in Tahlequah, Okla., in the early 1990s.

"Mr. Churchill started coming around in 1992 or 1993, said he wrote some books and was a big-time author, and convinced us he could help our people," Berry said.

On that basis, he was given an associate membership, said Berry, who was on the tribe's enrollment committee and has served on the tribal council.

Berry said Churchill never fulfilled his promise to help the tribe, which she said is an extremely poor offshoot of the Cherokee Nation.

"After he received his associate card, we never heard from him again," Berry said.

The tribe no longer offers associate memberships, although it didn't revoke any existing memberships, Berry said.

In addition to questioning Churchill's Indian heritage, some people have raised questions about his duties in Vietnam, where he said he fought in that country's highlands and then moved to coastal regions, where he was assigned to "gun trucks" similar to today's Humvees.

One of the skeptics is Vernon Bellecourt, director of the Council on Foreign Relations for the American Indian Movement.

Bellecourt says he believes Churchill worked counter-intelligence in Vietnam while also claiming to be an "information specialist" there.

"According to research by one of our people, he has had two military records. There is something very strange which we have not been able to get into," Bellecourt said.

In 1995, News From Indian Country, an Indian-owned, reservation-based Wisconsin newspaper for Native Americans, said it had "observed many interesting things about (Churchill) including contrary military records. ... "

Churchill's service record was not available from the Pentagon. But one private group that tracks Vietnam veterans has obtained some data.

Mary Schantag, a researcher for the POW Network, said Department of Defense records that she has show Churchill was a "heavy-vehicle driver."

But she acknowledged that those records indicate only his last assignment.

The POW Network is dedicated to compiling the biographies of prisoners of war and those missing in action from the Vietnam conflict. In recent years, it has also exposed people making phony claims about Vietnam service.

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Mr. Frank's Fatwah

New Republic Calls for Death and Torture of Arundhati Roy and Stan Goff

By Dave Zirin, *CounterPunch*, Jan 31, 2005

The words "libelous" and "the New Republic" have a proud history of walking arm-in-arm. Now, in the esteemed tradition of [former TNR writer who passed fiction as fact] Stephen Glass, The New Republic has stooped to a new low, publishing a piece that calls for violence, torture, and even death for leading leftists who dare oppose Bush's war on terror and the slaughter in Iraq.

Author Tom Frank -- clearly from the Glass School of Journalism the New Republic has made famous -- described sitting in on an anti-war panel sponsored by the International Socialist Organization, the Washington Peace Center, the DC Anti-War Network and other groups.

After having heard the 100 plus attendees cheer sentiments like "Money for Jobs and Education Not For War and Occupation," Frank became so riled up, he unloaded a deranged harangue about the suffering he would like to rain upon people daring to organize against this war. After Stan Goff, a former Delta Forces soldier and current organizer for Military Families Speak Out, expressed sentiments like "We ain't never resolved nothing through an election," Frank's jag began. Clearly too doughy to do it himself, Frank started to fantasize about a Teutonic strongman who could shut Goff up.

Frank writes, "What I needed was a Republican like Arnold [Schwarzenegger] who would walk up to [Goff] and punch him in the face."

As the panel continued, every cheer and standing ovation seemed to set Frank deeper down a path of psychosis. After International Socialist Review editorial board member Sherry Wolf asserted that Iraqis had a "right" to rebel against occupation, Frank upped the ante in his efforts to intimidate anyone considering entry into the anti-war movement.

He wrote, "these weren't harmless lefties. I didn't want Nancy Pelosi talking sense to them; I wanted John Ashcroft to come busting through the wall with a submachine gun to round everyone up for an immediate trip to Gitmo, with Charles Graner on hand for interrogation."

Later, when Wolf quoted Booker Prize winning author Arundhati Roy's defense of the right to resist, Frank was sent into such a state of panic, he once again dreamed of the mighty hand of state repression, writing, "Maybe sometimes you just want to be on the side of whoever is more likely to take a bunker buster to Arundhati Roy."

Interestingly, Frank didn't have the guts to slander another one of the panel speakers, exonerated death row inmate Shujaa Graham. Graham, who has been moved to speak out against the torture of Iraqi prisoners by intimately connecting their pain with his own experience of torture in California's death row, escaped Frank's pen. I guess it's hard to pose fantasy threats of torture and death toward someone who has actually looked it in the face.

We can write this piece off as just another one of the smarmy New Republic 20-something writers getting his jollies slamming the left. We can say that Frank -- his entire piece an exercise in poorly executed humor, ill-written grammar, and awkward phrasing -- just forgot to break his Prozac in half that morning. But there is something far more insidious at work here.

This piece is yet another effort to intimidate and silence people who aren't willing to toe the "party line" espoused by Democrats and Republicans alike that the death of 1,400 US troops and 100,000 Iraqi civilians is somehow justified. Frank's piece is an exercise in hate and intimidation. To be quiet in its face is to give ground in a period when we have precious little to give.

Therefore, this is a call for people to e-mail The New Republic and let them know what you think about humorous musings on killing Arundhati Roy or torturing Stan Goff. Let them know that a disgraced magazine will not intimidate us, especially one with the credibility of The National Enquirer. Let them know that we will publicly debate Tom Frank or any of their 20 something post-graduate hacks on the merits of this war anytime and any place. This is the only way to deal with darkness: shine as bright a light as possible -- right in it's face.

E-mail letters@tnr.com to let them know what you think. We are also considering a picket of the New Republic Offices, for those interested.

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Graham Defense Update, Feb. 2, 2005

By Matthew Lien, John Graham Defense Committee, info@grahamdefense.org,
www.grahamdefense.org
Update Wednesday, February 2, 2005

Dear friends and supporters,

John's defence attorneys submitted their final arguments today, and Supreme Court Justice Elizabeth Bennett announced she would deliver her final decision on Monday, February 21.

In closing, John's attorney Terry LaLiberte discussed two points: one, that the certified evidence has been shown to be unreliable, and two, that the U.S. has not established the identification of John Graham as the perpetrator of the murder of Anna Mae Aquash.

Mr. LaLiberte said the certified evidence of identification is "full of holes" in describing the person the U.S. is looking for, and does not match the booking sheet from John's arrest in Vancouver. The U.S. information as certified by U.S. Attorney Robert Mandel, states that they are looking for a Caucasian, 188cm tall, weighing 87 kg.

"They cannot get around the fundamental fact," said LaLiberte, "that the guy they want is six inches taller than Mr. Graham," said LaLiberte, "and there is a problem with the weight and the racial description."

The U.S. claims John was also known as John Boy Patton. "Also known by whom?" asked LaLiberte. "We have requested that they clarify these points, and they have not proffered that evidence."

Mr. LaLiberte stated that "there is no link" between the witnesses' identification of a "John Boy Patton" and the photos of John Graham. "This is totally inadequate," said Mr. LaLiberte. "Witness John Trudell claims a John Boy Patton shot Aquash, but identifies Mr. Graham's photo as John Graham. There is nothing to link our citizen in Canada to this person in South Dakota."

"They have not proven the identity," said LaLiberte, "and that should be the end of it."

John's co-counsel Gregory DelBigio, also spoke to the issue of the photographs. He pointed out that the certified summary of evidence attributes testimony to witnesses "by saying, for example, the witness 'is able' to identify a photo. They do not say that the witness actually identified the photo." Mr. DelBigio pointed out that this is significant, because it appears the U.S. Attorney is speaking on behalf of witnesses by claiming they are able to provide evidence that they have not actually provided. "It is not a concrete assertion," said Mr. DelBigio. "They do not even say the witness made the testimony to the investigators, they only say the witness is able to make the identification."

Mr. DelBigio argued that on the critical point of identifying a suspect, "There should be evidence that witnesses have positively identified the photo."

Mr. LaLiberte pointed out again that U.S. Attorney Mandel certified evidence that does not exist. He argued that the body of evidence is inadequate, since one alleged witness, Al Gates, was dead for nine months when he was certified as being "available to testify;" another witness, Frank Dillon, has said he did not make the statements attributed to him; and the only alleged eyewitness, Arlo Looking Cloud, has stated he will not testify against Graham, as the U.S. claims.

"We have provided cogent evidence that he will not testify against Graham," said LaLiberte. "His lawyer says he will not testify. And the proof is in the pudding. In a recent Grand Jury investigation, Mr. Looking Cloud did not testify against Mr. Graham, and even refused immunity."

Mr. LaLiberte also stated that evidence submitted is not attributed to anyone. "Some of this appears to be speculation by Mr. Mandel," said Mr. LaLiberte, referring to the U.S. Attorney who certified the evidence.

"We want to believe our neighbour," said LaLiberte, referring to the U.S., "but there is some threshold at which so many holes have been punched in the certified evidence, that we can no longer presume it is reliable."

Gregory DelBigio addressed the impact of the erosion of evidence, the dead witness, recanted testimony, and the failure to identify John Graham. He pointed out that whenever John's attorneys demonstrated that evidence was not available as originally claimed by the U.S., they respond that they "did not rely on that piece of evidence." Regarding witness Al Gates, who is dead, Mr. DelBigio said, "They now say they don't rely on the Gates testimony." But he said the court must consider the entire body of evidence together. "The certification refers to the entire package of evidence," said Mr. DelBigio. "The Court can no longer be sure the evidence is sufficient for committal."

Mr. DelBigio said the Court has a duty to impose some minimum requirements on the quality of evidence from the U.S. "This is not a rubber stamp or meaningless ritual," he told Justice Bennett. "There is some bare minimum of protection for a Canadian citizen."

Mr. LaLiberte agreed. "There is no due process here," he said. "We've shown big holes in

the evidence. They say 'trust me, I'm an Attorney General.' The certified evidence is totally inadequate. They are hiding behind the law, making bold assertions that are not true. The process is flawed. Who are these people -- the Ecoffeys and Alonzos and Graff -- these people who are claiming witnesses are able to testify to these things?"

"Whenever we show their evidence is wrong," said Mr. LaLiberte, "they say it doesn't matter. Well, it does matter."

Crown Attorney Deborah Strachan, representing the U.S. said, "The extradition judge is not to be concerned about reliability of evidence." She insisted the Extradition Act requires the court to presume the evidence supplied is accurate and presented in good faith. "Fairness of the process is irrelevant," she told the court. Justice Bennett recessed the hearing, announcing that her final decision will be read at 9:00 a.m. on Monday, February 21. If she does commit John Graham for extradition, he will appeal.

John's case is very similar to the 2003 case of U.K. vs. Tarantino, in which the Court stayed the proceedings due to the unreliability of the evidence supplied by the U.K. As in John's case, a witness was shown to have died, another witness had absconded, and a third witness was shown to be unreliable. The Judge in that case ruled that although our Extradition Act requires courts to trust the foreign state, there is some minimum threshold of reliability that the Canadian courts must uphold.

"The court has the power to control its own process," the judge ruled. "It is for the court to guard its own integrity." This certainly would sound like the Court of a sovereign nation.

If the order to extradite is issued, John's final appeal will be to the Minister of Justice, Irwin Cotler, which will commence promptly.

We thank you once again from deep within our hearts, for your interest and support of John Graham in this struggle for truth and justice. We will keep you informed as we prepare ourselves for the coming developments.

Most sincerely,

Matthew Lien
John Graham Defense Committee

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Did September 11 Cause a Constitutional Paradigm Shift?

Why Conservatives Argue that It Did, and Why Their Views Are Likely to Have Some Lasting Effect

By Edward Lazarus, *Findlaw.com*, February 3, 2005

Recently, a former member of Alberto Gonzales's White House staff described to the press the incredible "sense of mission" he and others felt post-9/11. They believed they were serving their country, to the best of their abilities, as they strained to find legalistic justifications for using extreme interrogation techniques against Guantanamo detainees.

Now, the Administration is backing away from the so-called "torture memos." A new memo has been publicly revealed, which expressly supersedes the old. And in his confirmation hearings, incoming Attorney General Alberto Gonzales bobbed and weaved before the Senate Judiciary Committee to avoid taking responsibility for the memos. But it was not always so.

At the time the memos were written, talented young, conservative lawyers felt they were merely responding to the necessities of a post-9/11 world by trying to liberate the Executive branch from the legal constraints of anti-torture laws and international human rights conventions.

Their zeal feels completely foreign to me -- enthusiasm for enabling torture is a hard emotion to imagine. But in some sense, in their view, that was the point: It was *supposed* to feel foreign: The world had changed -- their memos made that very explicit -- and the law needed to change with it. They would now be the agents of that necessary change, using their talents to protect the nation by stripping away the legal constraints on what it could do to, and with, enemies of the state.

In their eyes, the terrorist attacks had created a "paradigm shift" -- one that rendered obsolete a host of accepted wisdom regarding the scope of Executive Power, and the balance between liberty and national security. Certain legal constraints on governmental conduct, they thought, had been rendered, at best, quaint and, at worst, counterproductive given the new exigencies facing the government.

Whatever the merits view, there can be no doubt that it is sincerely felt by many people inside and outside the government. Nor can there be doubt that the "9/11 effect," as it might be called, will exercise a grip on the law -- in particular, on constitutional law -- for some time to come.

With 9/11 and its aftermath, a new generational perspective may well be taking hold. And it would be foolhardy for any of us -- even those who wish it were not so -- to ignore this development.

How Generations Reshape Constitutional Law: The "Greatest Generation"

Every generation of judges, scholars, and lawyers tries to bequeath to the next generation in line its own understanding of legal traditions and necessities. But, inevitably, they are only

partially successful. The next generation inevitably revises the traditions it receives, and constructs new ones, in light of the experiences that have formed the new generation's world view. And so it goes.

Consider the generation of lawyers that counted among its leaders Alexander Bickel, who championed a modest and pragmatic approach to judging. As Yale Law professor Robert Burt has explained in a tribute to Bickel, Bickel's views of the legal world were constantly informed by two experiences -- both arising from the history that shaped the generation to which he belonged.

In 1939, a fourteen-year-old Bickel emigrated to the United States from Romania. Within five years, the Nazis had killed 60% of the Romanian Jews. The whole world Bickel, who was Jewish, had grown up in, had been destroyed by the repellent ideology of *Mein Kampf*.

The 1930s had also seen the epochal clash between FDR and the Supreme Court over New Deal Legislation. The Court's old guard had tried to squelch President Roosevelt's economic reforms in the name of freedom of contract; for a time, they were successful, but eventually, Roosevelt prevailed. But in the eyes of Bickel, and many others, "freedom of contract" ideology had delayed recovery from the Great Depression, causing terrible human suffering along the way.

As Burt describes it, Bickel, like many judges, scholars, and lawyers of his generation, derived a single overarching lesson from the disparate phenomena of World War II and the New Deal Court: They came to despise sweeping abstractions and ideologies as the engines of policy-making, whether legal or political.

To them, high principles were potential tools of oppression, the stuff that drove courts to rule by fiat or, even more important, gave a moral force to totalitarianism. For the Bickelian generation, the proper purpose of law and of courts was not to definitively adjudicate right from wrong, or to otherwise impose their will. It was much more modest -- and more specific -- than that.

Instead, Bickel urged courts to simply do their jobs of mediating between contesting litigants to solve particular disputes. Through legal diplomacy and pragmatic thinking, Bickel believed, courts could promote the ability of society to find political accommodations to solve large legal problems -- but in many cases, to do this, court had to step aside to let legislatures and executives do their work.

Based on these ideas, Bickel would craft one of the most important constitutional law books ever written, *The Least Dangerous Branch*. There, he explained the virtues of a "passive" judiciary. Such a judiciary, as he described it, would decide even great issues -- such as the issue of race discrimination encountered in *Brown v. Board of Education* -- in small steps.

Another Generation Reshapes the Law: The Civil Rights Era

No wonder, then, that the 1960s generation -- which sought the very kind of sweeping, ideological change that frightened Bickel -- dissented strongly from Bickel's approach.

For them, *Brown v. Board of Education* changed everything. Bickel's generation may have crafted the decision as an incremental blow against the ideology of racism -- one that did not force the executive to act in any special hurry. But the next generation of lawyers received *Brown* as a triumphant statement of legal morality -- focusing on its broad right, and not its problematic remedies.

If the courts were the least dangerous branch, this generation thought, then they ought to get a lot more dangerous, fast. How else could they counter pernicious foes like racism?

These lawyers optimistically placed their faith in the power of courts and of law to right old wrongs and impose a new moral order on the nation. And in a host of Warren Court era decisions, they were not disappointed.

Ultimately, though, their optimism was challenged -- even eclipsed -- by Vietnam and Watergate. In a way, the skepticism that these scandals spawned has been with many of us who grew up during that time -- and with lawyers, especially -- ever since.

The Next Generation: Shaped by a Blizzard of Political Scandals

Just this week, I happened to catch "All the President's Men" on cable. Lots of things about the movie felt dated: the clothes, the cars, the ridiculous sideburns and, oh yes, the idea of two obscure metro reporters breaking a government scandal of unprecedented proportion without computers or cellphones.

But to someone of my vintage, lots about the movie still feels deeply important and relevant. I came of political age in an era marked by dirty tricks and campaign slush funds, a secret war in Cambodia and Laos, COINTELPRO and other illegal domestic spying, enemies lists, shredded documents, widespread obstructions of justice, and a slew of Executive branch denials -- all of which turned out to be false.

In my house, as in millions of others, the world was divided into the heroes (Sam Ervin, Sam Dash, Liz Holtzman, Judge Sirica, the Supreme Court) and the villains (Richard Nixon, H.R. Haldeman, John Mitchell, Chuck Colson, G. Gordon Liddy). Bred into my bones was the idea that governments, even democratic ones, are capable of enormous wrongs and enormous lies -- and that subverting democratic governance requires neither an army nor particular genius, but simply the concentration of power into the hands of too many true believers of one stripe or another.

My memories of the Watergate era and the impressions indelibly etched then inevitably shaped my view of politics and of the law. They have bequeathed to me a presumptive skepticism towards claims of executive power and privilege; they have made me wary of government's increasing power to surveil its own citizens; and they have led me to a belief in the possibility (and necessity) of an activist, principled, non-partisan judiciary -- to reign in executive excesses, among other things.

Naturally, other historical events -- the fall of the Berlin Wall, *Bush v. Gore*, September 11 -- have influenced my world view, sometimes considerably. But these events stick to a template of perspective-shaping experience where Watergate and the end of the Vietnam

War reside at the first and deepest level.

The New Generation's World View: How Much Will It Reshape Constitutional Law?

For the current generation of young lawyers, Vietnam and Watergate are intellectual abstractions, not lived experience -- just as Brown was for me, and just as the New Deal fights were for the generation that grew up in Brown's glow.

This generation saw scandal, but it was sexual, not political, scandal (though it had high political stakes). Remember, those attorneys who are in their early thirties today probably have no personal memories relating to Vietnam or Watergate to look back on. But they were in high school or college when Justice Clarence Thomas's confirmation hearings, with Anita Hill's accusations, occurred. And they were in their twenties when the Paula Jones/Lewinsky scandal broke, leading to President Clinton's impeachment and ultimate acquittal.

This generation didn't learn *from lived experience* to fear excessive, and abusive presidential power. Instead, it learned, perhaps, to worry a bit about sexual harassment claims, and to distrust special prosecutors. But special prosecutors are now a thing of the past, and we are increasingly more comfortable with, and less alarmist about, the law of sexual harassment.

So what did this generation distrust and fear? The answer may be: Nothing, until September 11. They grew up in peace and prosperity. September 11 shattered it. How could they view it as anything but profoundly transformative? How could they not be tempted to use the law to protect themselves, and their country, by any means necessary? Their experience testified to the damage terrorists can do to America -- but not to the damage America, and its Presidents, can do to people in and outside our country.

It is too soon to know whether the events of September 11 will have the power deeply and broadly to shape the next generation's view of the law. But as the torture memo incident brought starkly home, there is a new world view in the making.

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