

INITIAL THOUGHTS

Beginning the Geneva Project – email 2001.09.12 - 2001.12.01

by CHARLES B. GITTINGS JR.

PROJECT TO ENFORCE THE GENEVA CONVENTIONS (PEGC) began as a personal resolution to actively oppose the Bush “Military Order” of November 13, 2001, *Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism*, 66 F.R. 57833 (2001). The full story behind that commitment is long and complex, but the following emails sent to various people from September 12 to December 1, 2001 record the immediate concerns that prompted me to make the effort...

To: Jon Carroll
Subject: <sigh>

Hi Jon,

Man is this depressing. Your column was pretty good under the circumstances. The Washington Post op/ed page was just awful. George Will, as usual, was especially awful.

Everybody wants a war. Cheney and Powell ran the last one and managed to snatch festering stalemate from the jaws of total victory. Show of hands: how many think that we'd be having this conversation today if instead of stopping the attack they'd gone ahead and taken Baghdad and occupied Iraq? Second question: how many still think that missile defense is really, really important?

I'm sorry for repeating myself but I have to note en passant that I am on record as not recognizing the American people as being competent to elect anyone to anything. If there was ever an illustration of why, this is it.

"This is a new enemy" babbles W, who really, really should just shut the f— up and fire his speech writers while he's at it. Maybe Queen Elizabeth could loan him a privy councilor or something. So here's a few quick thoughts for you.

- Isn't it just dandy that the Republicans got a nice WAR to pull their collective ass out of the sling? Shouldn't have any trouble passing a budget now. And no, that isn't a conspiracy scenario.
- Most have figured out that the people who did this were very, very smart. But few seem to realize that it is entirely possible that the way the US is reacting to all this might be just EXACTLY what they were aiming to accomplish in the first place.
- The real lessons here are very simple:
 - a) there is no defense against a human mind filled with hate-- human ingenuity is the most deadly weapon of all.

- b) the only cure for hate is LOVE, and we'd better take that very old message to heart soon, because the day is coming when a single individual acting alone could wipe out the entire human race-- and it's theoretically possible right now.

At any rate, here's to better daze...

Charly

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To: Jon Carroll
Subject: Sad Fact

Unfortunately, we don't have an FDR or Lincoln ; we have George W. Bush, Dick Cheney, and Colin Powell. God help us.

What we are going to get is Corporate Security with a vengeance-- and it ain't about savvy, it's about obedience. These people have no concept of what you are talking about in the column today. For years I've heard liberals say that the United States can't be the world's policeman-- and now that is precisely the goal of our national policy.

How that will play out is anyone's guess at this point, but I can tell you this much: what we need to do now is to stop and think, look and listen. It ain't about what happened before and it ain't about our real needs for the remote future. This a tactical situation. The decision has been made to go to war, and with public support running as is, we're going whole hog. The military and political dangers are obviously immense, and they are out of our hands in the control of people who don't care what anyone else thinks and don't have any doubts about what they think.

The only real question at this point is: What exactly do they propose to DO? Not much we can do but wait and see-- and be ready to cope with whatever ugly mess they make of this. I've been trying to think what I would do, and I'm immediately faced with a problem: I don't know enough to make a good short term estimate. The key facts are not available: those being the precise estimates of where and how these networks are situated.

From what I can see it looks very much like Afghanistan is going to be a target. I can see two ways to do that: one would be to take Khandahar, and with Pakistani cooperation that is entirely feasible. The initial aim would be to establish a solid base in the South. That would take about a month to carry out. At the end of that month we'd have two or three divisions on the ground and a least two or three air bases operating. The next obvious target would be Kabul and the Taliban. That will be quick, a week maybe. Then we'd be looking at pacifying the entire country hill by hill, valley by valley. That will not be quick, but it is doable. Afghanistan ain't Vietnam, and we ain't the Russians.

Beyond all that lies Iraq, Iran, Palestine, and Arabia. Taking out Iraq would be step one. After that it's all just an imponderable mess.

Charly

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To: Jon Carroll
Subject: Ninth Edition, Revised, Published 1993

Good column. Some thoughts:

Gas at \$10 would be great because it would force us to use energy a lot more efficiently than we do. Anything that helps to pry the monkey off a junkies back almost cannot be bad. On the other hand, war can absolutely not be good. The best we can hope for is that the good may outweigh the bad, but I wouldn't make any bets on it.

"What if the military requisitions all the oil in order to chase a will o' the wisp around the Hindu Kush, all the while bombing civilians in a country already on the brink of mass starvation?"

Well: a) Pakistan and Iran are going to have a big refugee problem short term. The long term will depend on what we do about replacing the Taliban. b) As for Bin Ladin, if he stays in Afghanistan, they'll get him fairly quick, but more likely he'll bolt. I'd bet that if he wanted to get out he's gone already. But it makes no matter: they want his people and his real estate too. One way or another, the US is going in.

"Three years from now, when memories of the World Trade Center have dimmed and Americans have come home in body bags and the enemy is still elusive, will we continue?"

Three years from now this will have stabilized. What that will mean is anyone's guess.

The overwhelming need then as now will be to work for PEACE long term. We have to work to equalize the quality of life across the world. We have to work to eliminate violence and the causes of violence. We have to abandon nationalism. And above all else we have to somehow mitigate the oppression of capitalism, because that is what fuels violence.

We cannot go on this way. 100 years ago this could not have happened. 100 years from now technology will have advanced more than it has at present. The dominant ethical paradigms are toxic and obsolete. Worse, they act to prevent us from doing what is actually right and good.

And we better start swimmin' or we'll sink like a stone . . .

Regards,
Charly

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To: Jon Carroll
Subject: well...

...that was a great column Jon-- and I don't even remotely share your affection for the US Constitution.

In truth, the case is far worse: the hijackers have won a tremendous victory. This was an operation that was by any measure brilliantly planned and executed. These people knew what they were doing. Since the attack there's been a lot of brave rhetoric about how they picked the wrong people to mess with, this will not stand, blah blah blah.

I think that these folks were insane, but I don't think they were stupid: quite the opposite. That being the case, what was the probable aim of the attack? Are we to suppose that the people who planned and organized this did not have clear goals in mind? It seems to me that the most likely scenario is that they knew exactly what they were doing and that the US is reacting in exactly the way that anyone familiar with US history would predict.

There are some really big items manifest here:

1) War doesn't work. It's just a perpetual nightmare that will never end until it ends for good, one way or the other. We will either CHOOSE to live in peace or sooner or later we will exterminate ourselves.

2) The essence of government is war: to exercise "sovereignty" is to declare war against the entire human race. The folks running this government had more than a little to do with creating this current mess during the wars in Afghanistan and Iraq. Now they propose to fight this "war" on a global scale by the same methods that got us here. This is the "war" on drugs all over again, times 1000. The only silver lining is the thought that sooner or later the inherent incompetence of the people running the show will catch up to them. It always does. God help us in the mean time.

3) All these measures that they are trying to ram through congress are stupid and unnecessary. All the laws in the world aren't going to make Bush, Powell, Rumsfeld, Cheney, or Ashcroft competent leaders. They have all the power they need right now, not that they have much clue how to use it productively. True to their type, having helped to create this situation by their own folly, greed, and the negligent misuse of power, they propose to redress the situation by vastly more of the same. Fascism, American Style.

My country is the world, my people are the whole human race. I wish I knew what to do about it other than to pray. Few are inclined to think or listen right now.

Regards,
Charly

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To: Heather Hunter
Subject: Reply to Kelly DRAFT

Reply to Michael Kelly [DRAFT]
by Charles Gittings

In his last two columns Michael Kelly launched an angry, disingenuous assault on Pacifists and Liberals. His rhetoric was simply vicious; his arguments largely ad hominem and fallacies. His themes were a familiar litany of Conservative prejudice and superstition.

This is my reply. Let's just take this point by point-- Mr. Kelly's words are quotes, each followed by my reply.

"Pacifists are not serious people, although they devoutly believe they are, and their arguments are not being taken seriously at the moment. Yet it is worth taking seriously, and in advance of need, the pacifists and their appeal."

Serious people huh? Is this a serious statement? How serious do you have to be in order to recognize that making jaundiced assumptions about the contents of other peoples minds is the act of a bigot? The ad hominem and dishonest arguments that Mr. Kelly employs so freely are hardly tokens of seriousness; rather, they suggest malice and unthinking prejudice.

"It is worth it, first of all, because the idea of peace is inherently attractive; and the more war there is, the more attractive the idea becomes."

Curious word there, "attractive". I'd like to think that ideas are more than just advertising copy. I'd like to think that ideas are subject to reason, and that they have value to the extent that rational people can put them to work productively to make sound decisions. And I would like to think that the idea of peace is more than just an attractive notion-- in fact, it is a fundamental task of government according to US law.

"Second, it is worth it because the reactionary left-liberal crowd in America and in Europe has already staked out its ground here: What happened to America is America's fault, the fruits of foolish arrogance and greedy imperialism, racism, colonialism, etc., etc."

Ah yes, the 'Blame America First Club' rhetoric so beloved of real reactionaries these days. And it's pure BS. It isn't a matter of blame: it's a matter of understanding causes and effects; of planning and policy; of efficient, effective action; of accurate, objective accounting.

I think we can all agree that if you don't understand what you're doing, you aren't likely to do it very well. Further, it's obvious that we are constantly engaged in a whole galaxy of activities which are based on the notion that directed actions in the here and now will reliably bring about desired results in the future.

Now think about it: we all know very well that the current situation in the world is the result of past actions and events. Do you suppose that bad results come from good actions or vice versa? Surely not. Look at all we've done in the world: we know how to get results, and we know how to learn from our mistakes. We're damned good at it even.

This is the most powerful country that ever existed, and we've been a superpower since the end of WW2. The conditions in the world are not entirely our own doing, but would you seriously question that the US has had by far the most influence on events over the last 60 years? The problems we have today exist because we haven't figured out how to solve them, but that's no reason not to try.

Personally, I don't believe in blame. What's the point of it? You solve problems by analyzing their causes and finding rational solutions. We make mistakes all the time, and our great genius is learn from them. America has made LOTS of mistakes, and trying to pretend otherwise is among the worst. Pride goeth before a fall, you know?

Or is responsibility just another attractive word that's mostly rhetoric? So often it seems that politicians and pundits are lost in blame. They use it to smear opponents, rationalize irrational policies, convince the clueless, and maintain the power and privileges of the status quo.

And conservatives are quite shameless about it, always on the make for an excuse to punish, control, or exploit. After all, conservatism is all about keeping things just the way they are, a belief system of the smug and secure. Yet we all know that we've gotten where we are today because we've continuously adapted and improved our methods for thousands of years. Which was more effective? The Treaty of Versailles that ended the First World War, or the Marshall Plan that followed the Second? We live in a country with a political system based on 17th century political ideas. Would you go do a Doctor who based his practice on 17th century medical ideas?

"From this rises an argument that the resulting war is also an exercise in arrogance and imperialism, etc., and not deserving of support. This argument will be made with greater fearlessness as the first memories of the 7,000 murdered recede."

Wrong: this argument arises as a strawman in Kelley's rhetoric, though I suppose that a few might hold this view. But I doubt that anyone who does would agree with Kelly's misrepresentation of their reasoning. If this war does turn out to be an exercise in arrogance and imperialism, it won't be because of anything done in the past-- it will be because there is no shortage of arrogance or imperialism in the here and now.

"Third, it is worth it because the American foreign policy establishment has all the heart for war of a titmouse, and not one of your braver titmice. The first faint, let-us-be-reasonable bleats can even now be heard: Yes, we must do something, but is an escalation of aggression really the right thing? Mightn't it just make matters ever so much worse?"

Actually it might. It's worth remembering that Cheney and Powell had more than a little to do with the absurd decision to snatch festering stalemate from the jaws of total victory in the Gulf War.

"Pacifists see themselves as obviously on the side of a higher morality, and there is a surface appeal to this notion, even for those who dismiss pacifism as hopelessly naive."

As if conservatives don't see themselves the same way? Or making decisions of life and death is not a matter of the highest moral import? The uses and misuses of violence are precisely moral issues. Understanding that is precisely a matter of sound reason and judgement.

"The pacifists' argument is rooted entirely in this appeal: Two wrongs don't make a right; violence only begets more violence."

Wrong; there are others. Consider: 1) the ever accelerating rate of scientific development; 2) how full of violence and hatred human 'civilization' remains. With regard to science, I believe that the day is coming when a single individual acting alone with relatively modest resources could destroy the entire human race. Theoretically, it is possible right now. How do you propose to win that war Mr. Kelly? Preemptive self-extinction would work. So would universal peace and brotherhood. Got any better ideas?

Make no mistake about it, Sherman was right: WAR IS HELL. And make no mistake about this either: we choose to use violence, nothing compels us. What good is freedom if we enslave ourselves to fear and conflict? The only defense against hate is love.

The most compelling argument against war and violence is simply this: they are preposterously dangerous and irresponsible, and an absolute waste of resources and effort.

"Last week I argued that those Americans who preached pacifism in response to the attacks of Sept. 11 were (borrowing from George Orwell) objectively pro-terrorist, objectively in favor of letting the masters of this attack escape to live and to commit more mass murders of Americans."

Actually, Mr. Kelly went a lot farther than that by stating the flat assertion that pacifists are evil. This assertion applies equally to Buddha, Jesus, St. Francis, William Lloyd Garrison, Leo Tolstoy, Mahatma Gandhi, and Martin Luther King, among others.

Regardless of that, the assertion is fallacious. It amounts to a claim that anyone who disagrees with Kelly's political views is evil.

And while I am on the subject, let me add that a precise explanation of 'evil' would be very useful here. One of the most disturbing things about the reaction of this country to the events of 9/11 has been the frequent use of the word 'evil' in the absence of any meaningful concept as to its meaning. As a practical matter, it's just a pretentious way of saying 'I hate you very much' or 'boogey man'.

"This upset some people."

Gee, some ranting neo-fascist fanatic spouts off like Osama Bin-Laden on crack and people find it offensive? That's like taking offense at a dog for having fleas. One might more credibly be upset about the Washington Post paying good money for such stuff, but then again, the best way to discredit a fool is to let them speak.

"One Pennsylvania man issued what in pacifist circles must constitute a violent threat: "You may expect a series of letters from me and other folks in this regard, until such time as you deem it appropriate to issue a complete retraction of, and unqualified apology for, your comments." Please, not the dread Series of Letters."

OK. I'd rather discredit him in public anyway.

"Let me see if I may cause further upset."

Really, Mr. Kelly I'm not upset. As a pragmatist, I like it when reactionary jerks make their bigotry and intellectual bankruptcy obvious. On the other hand, it's truly sad to see a human being manifesting such degradation, hatred, and contempt for basic humanity. The only rational response to that is pity.

"Two propositions: The first is that much of what is passing for pacifism in this instance is not pacifism at all but only the latest tedious manifestation of a well-known pre-existing condition: the largely reactionary, largely incoherent, largely silly muddle of anti-American, anti-corporatist, anti-globalist sentiments that passes for the politics of the left these days. The second is that, again in this instance, the antiwar sentiment (to employ a

term that encompasses both genuine pacifism and an opposition to war rooted in America-hatred) is intellectually dishonest, elitist and hypocritical."

Those aren't propositions. They are merely two more examples of Mr. Kelly's dreary hyperbole, deployed for the lack of anything that might approximate a rational basis for his views.

"That the antiwar sentiment is in general only a manifestation of the larger anomie of the reactionary left is clear."

Translation: it's based on the principles that the left has espoused for centuries. Am I to understand that Mr. Kelly is asserting that one should not base one's views on one's own understanding and belief? Surely not.

"When the terrorists murdered more than 6,000 people and the president said that America was going to do something commensurate about this, the organizers of the Washington protest realized they had found a fresh complaint and a fresh cause... [etc]"

Michael Kelly reads minds? I have to believe they merely reacted to a sudden and immensely frightening development in accordance with their basic beliefs and instincts, about the same way everyone else did, Mr. Kelly included. And if Mr. Kelly can indeed read minds, he should be working with the CIA, not wasting his time on hot air.

"As to the second proposition. Osama bin Laden has told us by word and action that he sees himself and his cohort as engaged in a total war against the United States and that this war is one not just of nations but of cultures: Holy Islam versus a corrupt, imperialist America. He has promised further attacks like Sept. 11 unless the United States sues for peace under impossible terms, the abandonment of Israel being only one. In short, Osama bin Laden wishes to defeat the United States. So do others; for instance, Saddam Hussein."

That's all just a rehash of the obvious to set the stage for a series of rhetorical questions that have absolutely no bearing on the accuracy of the alleged "assertion". But since he asked, I'm going to humor him and answer the questions.

"Do the pacifists wish to live in a United States that has been defeated by Osama bin Laden or Saddam Hussein? Do they wish to live in a United States that has been defeated by any foreign force?"

Surely not; my guess is that they would prefer not to see anyone defeated by anyone--they're pacifists, remember?

"Do they wish to live under an occupying power?"

No-- I imagine that most of them would prefer to see the Bush administration out of office. I also imagine that most prefer being occupied by the Republican Party to being occupied by Al Qaeda, and that given their druthers they'd rather not be occupied by anyone at all.

"Do they wish to live under, say, the laws of the Taliban or the Ba'ath Party of Iraq?"

Huh? If they don't like Republicans, why would they want to import extremists and reactionaries from overseas?

"These questions, you may say, rest on an absurd premise: Osama bin Laden and Saddam Hussein cannot ever hope to defeat and occupy the United States."

Nah. Those questions don't rest on anything but hot air.

"Yes, but that is true only because the United States maintains and employs an armed force sufficient to defeat those who would defeat it. If the United States did as the pacifists wish -- if it eschewed war even when attacked -- it would, at some point, be conquered by a foreign regime. What stops this from happening is that the government and generally the people of the United States do not heed the wishes of the pacifists."

Ah, now that is a proposition, but it commits the fallacy of assuming a causal relationship not in evidence. An examination of history will show that the vast majority of conquered nations defended themselves and were conquered anyway. It will also show that the entire civilized world has been an armed camp in a continuous state of armed conflict for over 4,000 years, and that every great power has eventually fallen for one reason or another-- the most common being that it decays and collapses of its own dead weight, or some new kid on the block takes it over. Finally, the record shows that no great power has ever adopted a peaceful mode of existence for any great length of time. The only one that comes to mind as a possible candidate is China (and that's a stretch), which is one that endured longer than most. The truth is that real peace has never been tried: nations are based on violence by definition.

"The anti-warriors must know that their position is a luxury made affordable only by the sure bet that no one in authority will ever accede to their position."

BS. More likely they have a sufficient understanding of history and technology to realize that if the violence of our supposed 'civilization' continues much longer it may very well result in our extinction. One might further suppose that they are weary of living like animals and aspire to live as truly sapient beings. As for Mr. Kelly's 'argument', I have to believe that if he had any rational basis for his own beliefs he would supply it in preference to misrepresenting the beliefs of others.

"The marchers and shouters and flag-burners in Washington pretended to the argument that war should not be waged. What they really mean is that war should not be waged by them. It should be waged by other mothers' sons and daughters."

And that is uncomplicated slander.

"How many pacifists would be willing to accept the logical outcome of their creed of nonviolence even in face of attack -- life as a conquered people?"

There's nothing logical there to accept. Mr. Kelley hasn't shown any such causal relationship; all he's done is spew a lot of fallacious invective. He's also assuming that we are not already a conquered people, ignoring the obvious fact that this nation's existence, like every other, is the direct result of military conquest in the past.

"Not many, I would think."

No indeed: no thinking person would buy Mr. Kelly's disingenuous bile for one second.

"How many want the (mostly lower-class) men and women of the United States armed forces to continue to fight so that they may enjoy the luxury of preaching against fighting? Nearly all, I would think."

More likely most of us want to take whatever prudent steps are necessary to bring an end to the violence.

"Liars. Frauds. Hypocrites."

More bile. It smells a lot like recycled McCarthyism to me, probably because that's exactly what it is. It almost seems that conservatives feel the need to poison the well and trash their most vocal opposition while they have the opportunity and the Bush administration coasts along on it's knee jerk approval ratings, temporarily immune from all logic and reason-- if not entirely safe from cautious criticism.

Oakland, California, 7 Oct 2001

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To: Jon Carroll
Subject: what really worries me

Hi Jon,

Excellent column Friday. Thursday's was good also, but I remain flatly unimpressed with Bush even granting he has been at his very best. Any major US politician in the office would have done as well or better: show me a PR staff that could get somebody elected president but would fail to have their man looking good in immediate aftermath of something like this. Acting tough is Bush's political bread and butter: this is the guy who signed more death warrants than any elected official in US history, passed the right to carry concealed law, etc.

He's not running the show any more than the owner of a baseball team is during a game.

So here's what really worries me:

I have this nagging feeling that the other side is playing us like a violin, and that our government just isn't up to this. These are some of the same guys who snatched a festering stalemate from the jaws of total victory in Iraq. They are just entirely too *cute*, and their sophistication, finesse, and elaborate games represent a species of strategic policy closely akin to the idiotic delusions that keep the war on drugs grinding along.

The enemy is very smart and very well organized. I have to assume that they anticipated us reacting more less the way we have. Even if they miscalculated, they had to have foreseen that the current scenario was at least a possibility.

There's nothing in Afghanistan that they don't regard as expendable, and they're calculating that whatever they do loose there will act in some way to advance them towards their ultimate objectives.

From our perspective, there's nothing in Afghanistan that we want right away except information. The Taliban are finished one way or another. I think the noises coming from the Pentagon about how we may not be able to find Bin Laden are because it dawned on somebody that if we do locate him, our best play is to simply keep him under close observation; if we remove him, the enemy command structure will morph, which will likely set us back.

It's still right to go in on the ground, but it looks a lot like they are dithering as usual. They should take Khandahar and establish it as a base-- now. That will free up our naval assets, give us a solid base under absolute US military control, and allow intelligence to vacuum the place at will all winter long. It would also send a clear message that we are serious and provide a much needed morale boost here at home. Tactically, the winter is at least partially in our favor: the nights are longer, we're better equipped for the climate, and we are far more mobile-- which is not to say that we should attempt very much in the mountains before spring.

On the other hand, things are getting more complex day by day. There's been a shooting incident in Kashmir. The Israelis are getting ready to squash the Palestinians. Then there's the anthrax operation, and the question of where they got the stuff; if it turns out to be Iraq... But we don't know everything that the government knows, nor everything that they're doing-- and the specifics matter.

It's a fluid situation, and since we're actually waging a strategic defensive, that's not good at all. So far, these people are kicking our butt.

Asymmetric warfare indeed: compare the damage each side has inflicted against the resources and effort required to deliver the blows. Our economy is an awful mess, and for all we know they are just getting warmed up. And note: I assume our domestic and international countermeasures have taken a heavy toll on them; the problem is that they appear to be quite capable of taking the losses in stride.

Charly

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To: Jon Carroll
Subject: Words Matter

Hi Jon,

So I liked those two columns. You covered a lot of ground and raised some very interesting points.

"It's what happens when a bureaucratic culture meets a religious one -- in bureaucracies, words are designed to conceal and shift blame; in religion, words are designed to illuminate and define. Both designs are illusions; words are more powerful than their makers."

Yes indeed, but one might go a step further and say that all bureaucracies have religious tendencies, and all religions have bureaucratic ones.

Bureaucracies rest squarely on some set of underlying assumptions which are ultimately metaphysical. The US Constitution is grounded in Locke; but Locke, an apologist for the Protestant coup which ousted a Catholic monarch, is grounded squarely in Christian concepts of the Divine Will. If you read the 2nd Treatise of Government closely, you'll find that the legitimacy of a state rests ultimately on "an appeal to heaven", which is nothing but a euphemism for violence. Locke's thesis is elegant and seductive in its elaboration, but in the end it rests on nothing more enlightened than trial by combat: whichever combatant wins has the sanction of heaven, by definition. It's entirely tautological, and if we really believed it, we'd not bother with Presidential elections. Why waste all that time and effort? Just have the candidates play Russian roulette and let God decide the matter. Better yet, just toss a coin and omit the bloodshed.

Religions inevitably have hierarchies which preserve and propagate the faith. In Christianity, that tends to be centralized, dogmatic, and bureaucratic. In Islam and Judaism, it tends to be decentralized, yet no less dogmatic and bureaucratic; in all cases we see intellectual elites with vested interests in particular doctrines and eye on enforcement.

And it's all so utterly hypocritical: they all claim to believe in an infinitely powerful and benevolent God, yet so often they overlook the obvious fact that such a being has no need for a police force-- least of all a human police force.

Side note-- Here's a curious fact: last year I converted to Catholicism. Here's another: I consider myself an adherent of every religion, Judaism and Islam included. This may seem less curious if you consider that one cannot be a true heretic without first being a true believer. On the other hand, that begs the question of just what it means to believe in something, and just how precisely a finite human being can believe in something which is infinite. Then again, numbers are infinite, yet we understand and believe in math without much controversy... and numbers are just a *subset* of language, which is also infinite. Curious to think that one infinity is bigger than some other infinity, no? But there it is.

And we kill each other over such things. <SIGH>

George Bush claims that Jesus is his favorite philosopher, yet I haven't seen any evidence that suggests he has any real grasp of that philosophy: the impression I get is that it's just for show, what's expected of his class and all that, shades of the Borgias even. Osama Bin Ladin appears to be an intelligent and sincerely devout man who has been blinded and led astray by hate. Another old story there.

Then there's freedom, which is the last thing that any of this is about. Power and privilege are the issues of greatest concern to the principals here, not freedom. The great stoic philosopher Epictetus was born a slave and observed that there is absolutely nothing that anyone can do to compromise your freedom except perhaps to kill you. Rousseau began THE SOCIAL CONTRACT with the famous assertion: "Man was born free, yet he is everywhere in chains." George Bernard Shaw replied to that assertion by saying that man was born enslaved to the necessity of providing for his own day to day existence. This country is no more free than any other (which is to say: not at all): we are merely very rich and very powerful-- and very much enslaved to wealth and violence, in exactly the way a junkie is enslaved to heroin.

I would go so far as to assert that we have become progressively less "free" as we have become more "civilized" and technologically advanced. The United States is the most powerful and efficient police state in the history of the world, which is not to say the most

ruthless or focused (not yet anyway; now that we have our very own KGB setting up house, that may shortly change). One could probably quantify that: consider the percent of GNP devoted to law enforcement, penal detention, and the military. I suspect that you would find that percentage was at it's minimum in prehistoric times and at it's ever expanding maximum right now. And the bodies just keep piling up.

[Aside-- It's an obvious fact: government does not work. Propose a pragmatic standard of measurement; the Preamble of the Constitution for example. Are we feeling safe and secure yet? Prosperous? We are the richest nation that ever existed. How rich do we have to be for everyone to have a home, enough to eat. health care, education, etc? Can you imagine what another Great Depression would be like now? Back then we had feet of clay. A lot of us still lived on family farms. A single wage earner without an advanced education could earn enough to buy a house and support a family. Now the clay reaches up to our neck at least, and the lower classes are on the way to being socially obsolete.]

Yet I am caught in a terrible dilemma here, just as I was 10 years ago during the Gulf War: I am committed to peace in a situation where there is absolutely no chance for a peaceful settlement, and I know enough about war to know that if you are going to fight one at all you damn well better fight it well. What that leaves me is trying to find the path of least resistance and minimum harm. The house is on fire, and the first necessity is to put the fire out. But we need to be thinking ahead to prevention as well, because one of these days we are going to have one fire too many. That day is coming, and when it does, it will be too late.

And we are in deep trouble. Last week I said they were dithering. From what I've seen this week, floundering would be more accurate-- and what's worse, the only really coherent impulse of this administration seems to be capitalizing on the crisis to advance their craven political and economic agenda, which is absolutely no surprise at all.

Regards,

Charly

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To: Jon Carroll
Subject: Right On

Hi Jon,

I've been sick all week with mock-anthrax (nasty cold ha ha). Glad to see that you are not confused about the onset of open dictatorship and that you've sharpened your trusty old skewer. You might want to get the harpoon ready too.

It happens that I thought B. Clinton fully deserved to be convicted in the Senate for perjury.

By signing that order, Bush committed a direct violation of his oath of office far worse than perjury: indeed, it borders on treason. The US Government is now openly conspiring to

commit crimes against humanity. The order is a direct violation of the Constitution on too many points to count off the top of my head (I plan to do that during the weekend).

I tend to doubt that burying the Constitution in a hermetically sealed lead box was what the framers meant by the phrase "preserve, protect, and defend the Constitution".

The Declaration of Independence and the Geneva Convention come into play here as well.

Are we still wondering why so many people hate us? Could it be the utter hypocrisy and moral bankruptcy of our government?

Somebody needs to take action in federal court, and I do mean NOW. I have to believe it's a slam dunk legally-- the Federal judiciary doesn't usually take kindly to direct usurpations of it's authority, and because there is an immediate threat to the lives and property of 6 or 7 billion people, one would think it could get expedited in a heart beat. How does *H. Sapiens v Bush* grab you?

It's clear beyond any doubt: these jerks are pure fascists. New age corporate style fascists. God help us.

Regards,
Charly

* * *

To: Jon Carroll
Subject: a theory

Hi Jon,

So I am about to dig into the case against military tribunals, but I had a little flash in my head this morning about the anthrax thing, and it's something that might be of interest to you or somebody you know professionally.

Up until now I have been reserving judgement, since the best evidence is the forensics and I only know what I read in the papers. But you have to consider the possibilities. Being a) a programmer, b) an old chess player, and c) a student of history, I have this reflex to always begin with the worst case.

So I began with the assumption that it was phase 2 of the attack. Two things bothered me about that assumption:

1) Bin Laden & Co. don't appear to go for serial combinations. They seem to work very carefully to deliver heavy blows all at once in unexpected places and times, then fade out until the heat cools. That fits because the more complex and diversified an operation is, the more likely it is that something will go wrong. It's smart to keep your cells well isolated from each other and minimize the variables.

2) The anthrax attack was not nearly as effective as it could have been. The way to get the most bang for your buck isn't to mail the stuff to a few high profile targets. The smart

way is to send like 100 letters to randomly selected addresses in every major city across the country. Maximize the stress.

But you don't know until you do know, and it could also be somebody else just seizing the moment for their own reasons... which is what the FBI says they think is the case: another Unabomber type.

So now we find out that Sen. Leahy was sent a letter too... <light bulb>. They didn't send one to the White House or the Speaker. They sent one to Tom Brokaw, The New York Post, and two prominent Democratic Senators.

So why those targets? Do a Google Advanced Search for "Brokaw + Leahy + Daschle" and excluding the word "anthrax". You'll see a pattern right away. Domestic right wingers do not like these guys, and the US Senate is a galling thorn in their side since the Democrats took over. Leahy is a key opponent of drilling in the Alaska wilderness. That sure feels like it adds up. Why was the New York Post targeted? And what about Florida? I'm not that much of a media maven, but you are-- and you know plenty of others.

Surely the FBI is considering all this, right?? I mean it's pretty obvious, right?? <shudder>

And then there's this really nasty little slimy thing crawling around somewhere deep in my cerebellum asking "What's the worst case . . . ?" Fortunately there's a much bigger cold pragmatic thing that flicks Occam's Razor and sez: "This ain't the X-files or an Oliver Stone movie, dude".

But anyway, there it is.

*

So I'm going to start in on H. Sapiens v Bush. You wouldn't happen to know a good constitutional lawyer who's willing to work cheap and risk everything in the service of humanity would you? I could probably argue it myself, but I am going to at least need help with procedure, research, etc.

I did some browsing last night, hoping maybe the ACLU or Amnesty or somebody would be gearing up to act. I get the vibe that everybody is too intimidated and overwhelmed by the tide of public opinion.

I have no illusions myself certainly-- all I really want to do is continue healing from all the hell I've been through the last 15 years and save up enough to maybe retire someday... and I've been making such nice progress lately. But this is one of those moments in history where the stakes are so high that nothing else matters, like 1939.

I've seen all of this coming for 30 years, and I've been consciously working on it as a philosophical problem for 15. The only people who have any chance of solving a problem are those who can see it, and there comes a point when you have to just make up your mind to do what you can the best you can and put your fears aside. This war is over 4,000 years old, and time is running short now. I know I'm not alone-- there's people like you and me thinking similar thoughts all over the world right now. I don't know how I will be able to look at myself in a mirror if I just sit and watch passively, so screw it all:

The Resistance starts here, feeble as it is.

The task is to link up, mobilize, and ACT. The tyranny and violence has got to end. Every national border is an act of war against the entire human race. Our country is the WORLD; our compatriots are the whole of humanity. We are all one ---a unity of infinite diversity--- and the only cure for hate is love.

Peace,
Charly

* * *

To: letters@nytimes.com

Subject: Some History for Mr. Ashcroft

A Times article by David Johnston and Todd S. Purdum (From Election Loss, Ashcroft Goes to Top in Antiterror Campaign, Nov. 17) quotes John Ashcroft as stating:

"I don't know when 19 individuals have killed more people at any time in history..."

I'm unsure if Mr. Ashcroft's ignorance is the result of his memory being as defective as his policies , or if it's just another example of the Bush Administration's genius for only seeing what they want to see, but permit me to enlighten him.

The Boeing B-29 Superfortress normally carried a crew of 10, and was used to drop the atomic bombs on Hiroshima and Nagasaki during World War 2. The estimated casualties in those attacks (most of them civilians) were:

Hiroshima: 66,000 Dead 69,000 Injured

Nagasaki: 39,000 Dead 25,000 Injured

* * *

To: Jon Carroll
Subject: Preliminary Analysis

Just in case you had any doubts about it:

When I say "Resistance" and "ACT", the ideals I have in mind are those of Gandhi, Thurgood Marshall, and Martin Luther King.

I assume you caught the Sunday press shows. I don't know what to make of Condoleeza Rice. Seduced by power? I thought she looked very uncomfortable answering the Safire column.

The results of my preliminary analysis of the relevant law is as follows:

There is absolutely no support for their position in the Constitution as written.

1) As commander in chief, the president may direct the operations of the armed forces. That in no way exempts him from obeying the law. He is expressly granted the power to pardon or commute an offense, which strongly implies that if they wanted him to have the power of life and death in the manner of a roman consul they would have said so..

2) There is absolutely no provision for amending the Constitution by executive or legislative fiat. This is the kiss of death because the fact is that in every case where they have ever set aside a constitutional right for any reason they were usurping the power of the congress to enact an amendment, and/or ignoring the expressly stated procedure by which congress may enact an amendment, and/or the expressly stated requirements of ratification and the expressly stated provision that amendments take effect AFTER ratification has been certified by the Congress.

3) The constitution expressly states that all crimes are subject to judicial jurisdiction except in cases of impeachment. That includes crimes committed outside US territory by non-citizens.

4) The constitution expressly authorizes military tribunals to operate WITHIN the armed forces with respect to crimes committed by our own forces, not enemy forces or civilians.

5) Then there are all the various rights of PERSONS (not citizens) throughout.

The UN Universal Declaration of Rights expressly excludes a number of the specific provisions in the Bush order.

Ditto the Nuremberg charter and indictments. These documents are BIG, so I have lots more digging to do here, but I actually think that the indictments may contain language that applies directly to Bush's order. If I am right, that would 1) void the Constitutional exemption of the President from prosecution, and 2) allow the United States to be declared a criminal state. Finding another power to enforce it might be tough, but it ain't a pretty picture.

Their number one argument, namely the precedent of the German Saboteurs et al, is absolutely without merit. All the cases they cite are instances where agents of an enemy state were caught out of uniform on US soil or within US military precincts during the progress of a declared war between states. It's apples and oranges, and rotten ones at that.

The fact that a crime went unpunished in the past doesn't make it legal in the future, and citing an executive action in excess of legitimate powers as if it were a legal precedent is pure bullshit. And a bad legal precedent doesn't mean squat either. Was the Dred Scott decision valid? In fact, it was a crime against humanity, as was the institution of slavery itself. Are we up for another forced removal of the Cherokee's, say to Somoa or Guam, just because Andy Jackson did it? Come to think of it, Andy told the Supreme Court to go suck eggs on that one too. Anybody up for giving the President an option to nullify Supreme Court decisions if he thinks it will help. (Hmm... Bush might be able to score some Oklahoma Oil Wells that way. Better not give him any ideas.)

But beyond that, you cannot be an illegal belligerent if there aren't any legal ones. That's just basic logic, because you cannot ground a distinction on a tautology. Further, you can't

be a legal belligerent unless you are a state and you have declared war on another state, which is prohibited by the UN charter. For their argument to be valid, you would have to hold that the entire world is perpetually at war, each state against all others, and regardless of states declaring war on each other. That would make every state a criminal state (which happens to be the truth if you want to get really really real about it). The other side of that coin is that if you hold that the terrorists are illegal belligerents, then a Frenchman who robs somebody in Central Park is also an illegal belligerent, and any good old fashioned NY mugger is also guilty of treason. Finally, as a matter of law, it is fundamental that laws must be written, rational and knowable, and specify the exact circumstances in which they apply, and the exact procedures for applying them. That does not include giving the enforcers the option of when they are in effect and when they aren't, which is exactly what this amounts to.

They say they want the OPTION, but laws and rights are not optional in anything but a dictatorship.

Regards,
Charly

* * *

To: Roger Hanes, Bob Hopper, Nick Pichignau, Jon Carroll
Subject: Comments??

Hi All,

It's coming right along: feel free to tell me where I am wrong.

Regards,

Charly

[DRAFT]

THE BUSH MILITARY TRIBUNAL ORDER IS UNCONSTITUTIONAL AND ILLEGAL
by Charles B. Gittings Jr.

There are absolutely no valid legal grounds for the Bush presidential order concerning military tribunals; neither in the Constitution, nor law, nor precedent, nor any rational concept of moral philosophy; and far from being necessary for the protection of public safety, as is claimed by the Bush administration, the order is fraught with vast dangers to the safety and well- being of the entire human race.

The order is manifestly illegal under established international laws and conventions, and clearly unconstitutional.

To wit:

1) As Commander in Chief, the president may direct the military operations of the armed forces. That does not exempt him from obeying the law. Further, he is expressly granted the

power to pardon or commute an offense, which carries with it the manifest implication that had it been intended he should have the power of life and death in the manner of a roman consul it would have been explicitly so stated.

2) The Congress has the sole power to define the rules of the military, including the Universal Military Code (UMC).

[Article I. Section 9.

To make Rules for the Government and Regulation of the land and naval Forces;]

3) There is absolutely no provision in the Constitution for amending the Constitution by executive or legislative fiat, nor is there any provision for suspending Constitution. Further, the Congress has no power to authorize the President to suspend the operation of the Constitution except by the amendment process.

4) The Constitution expressly states that all crimes are subject to judicial jurisdiction except cases of impeachment. That includes both crimes committed outside US territory and crimes committed by non-citizens.

[Section. 1. The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. (...)

Section. 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State;--between Citizens of different States;--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects. In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.]

We note en passant that conservatives like Mr. Ashcroft or Mr. DeLay, et al, have long maintained that international law should not take precedence over the Constitution.

4) Amendment V protects all PERSONS (and NOT just citizens) "...except in cases IN the land or naval forces, or IN the militia, WHEN IN ACTUAL SERVICE. The UMC applies to our forces, not to enemies or civilians in the power of our forces, and in any case the power to define or modify the UMC rests with the Congress, not the President.

[Amendment V No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself,

nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.]

5) The executive branch has the discretion to not prosecute a crime under US law. The executive branch also has the discretion to prosecute a crime under International Law, in which case the relevant authority resides in the United Nations Charter, the Geneva and Hague Conventions, and all other existing international agreements to which the United States is a party.

In each case, the relevant legal corpus constitutes a WHOLE which applies to the ensuing judicial process IN TOTO. The notion that an executive or prosecuting official may pick and choose which parts of the legal corpus shall apply or not apply in any particular case at law is absolutely inimical to rational concepts of justice, and exhibits an absolute contempt for legitimate judicial authority: such are exclusively the methods of TYRANTS.

When the Bush administration claims that this order is "absolutely necessary" to afford them an urgently required procedural option, they ignore the plain fact that they already have two obvious and valid procedural options, namely to proceed under either US or International Law.

In actual fact, the claims set forth in the order are a web of false assertions and fallacious argument, which, whether by intent or delusion or some combination, are aimed at concealing or falsely justifying the various elements of an agenda which entails:

- a) Legitimizing the selective application of fragments of both US law and International Law to individual cases in an egregiously prejudicial manner for the purpose of predetermining and/or manipulating the verdicts.
- b) Asserting the necessity of assuming tyrannical powers which are expressly and absolutely excluded under both US and International Law.
- c) Acting to usurp the legitimate authority of both the Congress and the Supreme Court in a manner that has the character of a coup.
- d) Openly conspiring to commit crimes against humanity under the broadly accepted definitions of International Law.

This being the case, the President is guilty of a flagrant violation of his oath of office which warrants impeachment on grounds of dereliction of duty in the face of the enemy, and the usurpation and frustration of the lawful powers of Congress and the Supreme Court.

All this might well rise to the further charge of treason.

6) The precedents which the Bush administration cites are wholly without merit.

In the first place, all of the precedents they cite date to 1942 or earlier. Since that date is prior to the ratification of the UN Charter (1945), the Geneva Convention (1947), and the vast majority of relevant International Law, all are presumptively superseded by those treaties, which were negotiated and agreed by Presidential authority and ratified by Congress, pursuant to the Treaty provisions of the Constitution.

One of them took place prior to 1787, and may be presumed to have been superceded by the Constitution itself. Further, in that instance, Washington was acting not as president, but as Generalissimo of a force engaged in an insurrection.

In the second place, all of them involve cases where agents of an enemy state entered the territory or military precincts of the United States in civilian clothing in the course of a declared war between states.

Finally, all these precedents speak to the Law of War, which is customary rather than statutory or based on effective international agreements, this being much the same manner that the common law is customary rather than statutory. But where the common law is based on hundreds of years of judicial precedent and custom in the course jurisprudence based on the concepts of reason and reasonable conduct, the law of war is based on the basest of all human institutions, war, which is expressly outlawed by the UN charter. That being the case, the law of war is a dead letter.

Another consideration of merely incidental interest with respect to the merits is that the law of war is largely grounded in the customs of European nations, having grown up mainly during the 500 or so years in which they were about the business of global aggression and colonial exploitation which was the primary source of the geopolitical nightmares we are facing today. And note: the customs of Islam are by no means identical.

One must wonder: how far back into our gruesome past would the Bush administration have us go? To the French and Indian War which Col. Washington started with his blundering on behalf of the British Empire? To the sack of Carthage perhaps? The fact that the Bush administration has advanced such arguments as they have is a very telling reflection of its true character: the most charitable inferences being sheer panic and intellectual impotence.

The precedents advanced by the administration are an insult to the intelligence of anyone who has not been blinded, terrorized, or misled by selfish agendas, fear, rage, or opinion polls. Be not deceived: the policies of this administration are woefully misguided.

Why do they need to kill Osama? Why fear him communicating with anyone? I could see giving him a comfortable cell in a secure location, complete with a phone. In war it is often better to listen and LEARN than it is to charge blindly with guns blazing. Perhaps if that had been better understood by our leaders over the past 20 years we wouldn't be in this mess now.

Yet another option that administration is ignoring (and likely has not given the slightest thought) is to simply recognize the enemy as a legitimate belligerent and simply proceed with level headed resolve. That worked fairly well in WW2.

The truth of the matter is that the enemy has legitimate grievances and delivered a brilliantly effective attack. How much conventional war making would have been required to inflict similar damage? The advantage of recognizing them is that we would then have the OPTION of negotiations. We have 4,000 years of history showing how ineffective revenge and retribution are. That's not to say we should be timid or weak, but flexible, objective, and above all else smart.

During the Second World War both side sent thousand of aircrews on bombing missions that killed civilians far in excess of the 6,000 or so who lost their lives on September 11. Many of those aviators shot down and captured, but relatively few were executed and most were simply interned as POW's.

[ENDS]

* * *

To: Rogers Hanes
Subject: Re: Comments??

Hi Roger,

No apologies are necessary. Time is even shorter for me actually, and I sent it for no other reason than I value your thoughts, and in a matter of such immense gravity I'll take all the second opinions I can get. Yours is of extra value because you are probably more sympathetic to Bush than anyone else I sent this to and because of the deep respect I have for you that goes over and above whatever political views either of us might hold.

So to reply to your points:

There is actually specific mention of habeas in the Constitution. I still believe what Lincoln did was wrong and unnecessary, but it was still plausible. Regardless, Lincoln was not prefect and made many mistakes: witness McClellan; witness his reluctance to see slavery in its true light.

But also, to imprison someone unjustly is a lesser offence than to kill them unjustly. Citizenship is irrelevant: US law guarantees due process and basic rights to all persons, and US law is fully subordinate to the UN Charter, Declaration of Universal Human Rights, and the Geneva Convention, all of which are signed and ratified by the US.

And this is 2001, not 1861.

Ruing their attack? The day the attack was made several things were obvious: 1) that we would respond much as we have; 2) that anyone smart enough to plan that operation was smart enough to understand that; 3) that therefore there was likely nothing in Afghanistan that they did not regard as expendable and worth the cost; 4) that the true objective of the attack might very well have been to provoke exactly this response. These guys are playing a very deep game, which is another reason I wouldn't mind our side having the opportunity to interrogate Osama at leisure.

As for the rest, well, I have very a different view of US Foreign policy and the relative merits of this administration.

I will not rest from this point forward until every last member of the Bush junta is removed from any position of public trust and brought to justice. If they wish to reform and ask me for my help, they will have it.

My country is the WORLD, and my countrymen are all mankind. My only weapon is reason. My only resources are my life, my fortune, and my sacred honor-- and as of 13 Nov, there is no turning back for me. I will pursue every legal avenue and every mode of lawful political action and non-violent resistance available until such time as they either mend their ways, are removed from power, or they kill me.

I am aiming to have a finished document in the hands of my Representative (Barbara Lee as it happens) by 2 Dec. I have already sent the draft to Bob Woodward of the Washington Post. My indictment of them is only half complete: I still need to address International Law and the Declaration of Independence. But at any rate, right now I got to get in gear: I'll see you Friday around noon give or take.

Benjy

* * *

To: Roger Hanes
Subject: Re: Comments??

Hi Roger,

I had a couple of further thoughts about your response:

At 05:12 AM 11/21/01, you wrote:

“I believe in a not too distant past the Supreme Court who has jurisdiction as you point out has ruled that the executive order process IS constitutional.”

I actually address this in the draft: you are referring to the decision handed down in 1942 regards the German saboteurs, and as I say in the draft, that decision was rendered moot as of the ratification of the UN charter, even if you assume that the Supreme Court's decision was valid, which it was not.

If the Supreme Court were to rule that the moon is made of green cheese and that it was a felony to express a contrary opinion would that make it right or true? When the Supreme Court handed down the Dred Scott decision the Chief Justice stated that a black man had no rights that a white man was bound to respect. Was that a valid ruling? In fact, the ruling was in and of itself a crime against humanity.

If what GW ordered in this recent executive order is impeachable then I am certain that someone with greater resources and acumen than you and I will in fact pursue him to the bitter end on that.

In point of fact, everyone seems pretty cowed so far, and what analysis I have read, which is plenty shows that no one's really thinking about it very deeply at all. One of the problems we have is that our principles are so muddled and our legal system is so arcane that virtually no one is capable of seeing the big picture. Few non lawyers have any real understanding of the law, and few lawyers have much understanding beyond the basics and their speciality. The problem being that outside a rational framework of understanding, a

competent analysis is impossible. A further problem is that even those who have the framework are almost always led astray by dishonesty and prejudice.

Until one can step completely outside the mass of the existing social ethos, one cannot hope to have a rational view of any part of it for the lack of a valid context. It isn't so much that it is difficult or requires genius, it's that it is very hard to even notice that it can be done: it's like looking for a needle in a haystack when you don't even know that there is a needle in the haystack. This problem is compounded by the fact that many of the commonly accepted definitions of basic terms are completely irrational--- the word "culture" is a good example. If you would ever be interested in attempting a Socratic dialog with me about the fundamentals of ethics, that would be an excellent topic to explore.

As for acumen, all I can say is that I am willing to put mine on the line against anyone-- and if anyone can give me rational grounds for thinking I am wrong they will have my sincere gratitude.

Benjy

* * *

To: Roger Hanes
Subject: Re: Comments??

Almost forgot.

"Fifty-Thousand years from now this will all be moot."

Meaning? I'm not intending to kill anyone without a fair trial, the Bush Junta is. If it's all moot anyway, perhaps it would be better to err on the side of mercy, compassion, and fairness?

The future and the past do not exist: NOW is the only thing that's REAL.

"I am aware of your passionate views but would suggest they are probably pissing in the wind if they are not channeled in a productive direction."

If working to depose a tyrannical junta that has seized control of the world's most powerful government through a combination of fraud, treachery, and criminal malfeasance for the purpose of committing murder and theft on a global scale is not productive, I have to ask:

What's your definition of "productive"?

What I aim to produce here is progress in the direction of universal peace and justice. The Junta is attempting to produce a modern Roman Empire, may God preserve us.

And in this context, one might ask further:

What exactly does conservatism aim to produce? Quite a good question methinks.

* * *

To: Al Knight
Subject: Justice and the laws of war

Hi Al,

I've been wondering when you'd get around to this topic. Correct me if I'm wrong, but I was under the impression that you believe in the Constitution and are a strict constructionist. Beyond that, you've often argued for observing the exact letter of the law in preference to loose interpretations. I've disagreed with you on many matters of policy, but this is an area where I've always respected you a great deal.

So let me just say bluntly that I think you are very mistaken about this in virtually every particular, and I really think that you of all people should know better. Safire doesn't seem confused about it, and he's just as conservative as you are.

After Bush signed this outrageous order, I spent a week writing down my thoughts about it. I'll send you a copy of that article separately, and I invite you to show me where I am in error. I've tried to get it published, but no luck so far. But I didn't write it to fit a column; I wrote it to present the facts as clearly as possible, and it's rather long.

Now let me address the specifics in your column:

I say the order is clearly unconstitutional and illegal, as my article explains in detail.

You adopt the Bush rationale:

"The fact is, military tribunals or commissions have played a role in American history for more than 200 years, but there remains great disagreement on how that history applies to the present set of circumstances."

But that's just empty rhetoric. We've done a lot of things in the past that were wrong, but that doesn't that doesn't make them right or sound in the here and now. What matters is what is right and just. You wouldn't advance the Dred Scott decision or Andrew Jackson's forced removal of the Cherokee's from their lands in flagrant contempt of a Supreme Court decision as meaningful precedents. It's also quite obvious that if we only did things the way they were done in the past we'd still be living in caves and hunting dinner with spears. The precedents the administration cites are preposterously weak. In the saboteur case the government lied to the court and railroaded the guy who exposed the plot. In the trail of the Lincoln conspirators, a couple of innocent people were convicted. In both cases there was absolutely no reason that the trials could not have been conducted under the law, except that the government was acting to prejudice the cases.

"A key issue is how to interpret a unanimous 1942 U.S. Supreme Court ruling that upheld the use of a military tribunal to try eight Germans accused of spying. Six of those defendants were executed; two received life sentences."

That's easy: it was an bad decision based on the same kind of lynch mob mentality the Bush administration is exhibiting. We have to stand together blah blah. Better they should stand with the letter of the law-- that is their job after all.

"It's clear from President Bush's order that he relies upon that decision. It's the administration's position that the nation is at war and that Congress has given the president the authority to use all appropriate force, even though there has been no formal declaration of war as there was in World War II."

So what? Willfully ignoring the Constitution and breaking the law in order to lynch somebody that is in custody is not an appropriate use of force. The President is the C in C of the armed forces, not a Roman Emperor, and the only appropriate use of military force is to defeat armed enemy forces in the field, not to usurp the authority of the judicial and legislative branches of the government.

As for Congressional authorization, that's pure BS. The only way Congress could authorize what the President is attempting with this order is by amending the Constitution. Even if that wasn't the case, Bush didn't ask for any of this when they passed the resolution, and it's absurd to suggest that anything so sweeping and illegal could possibly have been intended by the Congress when they passed it because they surely would have stated it specifically if that were true. The President is just pretending that $1 + 1 = 579$ and reading into the resolution whatever he pleases in like a dictator.

"That authorization, the administration believes, includes the power to deal with terrorists who are, in the legal lingo, unlawful belligerents." Nonsense. Show me the statute that defines an "illegal belligerent". Hint: if it's to be found anywhere, it would be in the Geneva Convention, which specifically prohibits what Bush is trying to do. And here again, it's just wrong. The OSS and the French Resistance were illegal belligerents; If you want to apply such concepts here, then Bin Laden and crowd are belligerents unless they enter US territory in civilian clothes. The Administration's argument here is fraudulent.

"This term is used to describe those who don't wear military uniforms and engage in acts designed to destroy property and to kill and injure noncombatants."

In that case we are also illegal belligerents. By the Laws of War that the Bush administration is trying to insinuate into all this as being superior to the US Constitution and International Law, it's perfectly OK to destroy property and kill noncombatants for a valid military purpose-- you just aren't supposed to massacre or pillage wantonly. Examples: Hiroshima, Dresden, etc. If this is to be construed as a war, then the enemy gets to be at war with us too-- and the reality is that they launched a brilliantly effective attack that crippled our national economy--- and national economies are legitimate targets in war. Indeed, they are usually the primary targets in a war. This is just another con job by the Bush gang, not to mention a very good example of why the so-called laws of war are properly a dead letter.

"It is notable that the Germans who were executed more than 60 years ago didn't kill anyone. They became subject to military tribunals by the simple act of entering the country with the intention of aiding the enemy war effort."

Well actually it was more because the FBI didn't want to admit that the only reason they had been caught was that one of them was a turncoat that the FBI had dismissed as a crank when he tried to turn them in the first time around. Espionage is a crime; they should have been tried in the civilian courts, and the informer should not have been tried at all. Instead, the FBI lied to the court and got him convicted, though at least he wasn't executed. Military courts properly apply only where the military has jurisdiction, namely: a) trials of US

military personnel on active service; or b) in the absence of a competent civil authority, which is clearly not the case here. Our courts are working just fine and we can easily transport anyone we capture for trial to the US.

"The court's language in the 1942 decision is quite apt. It says that courts should not lightly interfere with the rights of the president, who is acting in the "declared exercise of his powers as Commander and Chief of the Army in time of war and of grave public danger."

Baloney. There is nothing as fundamental under the US Constitution as the separation of the powers, and since the Executive has all the physical power, the courts and the legislature had damn well better defend their own authority against any and all attempts at executive usurpation or we will wind up with a dictatorship like Rome did.

"It lists a long string of powers granted the Congress and the president and says that even U.S. citizenship doesn't necessarily relieve one of "the consequences of a belligerency which is unlawful."

Irrelevant and silly. The only just consequences for a captive are to be given a fair trial, and if convicted, punished according to the law.

"Perhaps the Supreme Court will one day be asked to decide if the use of military tribunals requires a formal declaration of war. Such a finding would be quite novel, in view of the fact that they have often been used - including during the Civil War - without one."

Nonsense. Do you really think it's novel for the courts to make good rulings in preference to bad ones? The precedents are vacuous. The Administration is literally making the claim that political expedience as defined by the mind of the President is more important than both the Constitution and the Letter of the Law, and that it is proper for the Supreme Court to turn a blind eye to both on the basis of archaic decisions that were wrong at the time they were made. Think about it Al--- I know Bush and Ashcroft are that hypocritical, but I can't believe that you are. I just don't think you're being very objective or thorough in your reasoning in this instance.

"The interesting thing about the response to Bush's order is that most of the critics offer no prescription of their own for dealing with a very difficult issue. Most would simply remove the military tribunal option and force the United States to try even key foreign terrorists with the full panoply of protections due American citizens."

You are contradicting yourself here. You say they offer no prescription, yet in the next breath you thump them for offering a prescription you dislike. And underneath the contrived urgency of your rhetoric, what exactly is the prescription that you and the Bush Administration so dislike?

I will state it for you plainly. My prescription here is that the Bush Administration should:

- 1) Adhere to their oaths of office.
- 2) Obey the Constitution.
- 3) Obey the law-- including current international agreements, in particular, the UN charter, the Universal Declaration of Human Rights, and the Geneva Convention.

- 4) Perform their lawfully appointed duties faithfully and well.
- 5) Cease and desist from all attempts to usurp and/or frustrate the legitimate authority of the Congress and the Supreme Court.

That's all I'm asking of them. To put it country simple: I want them to do their jobs, and quit all this phony whining about how it's too hard unless they get more "tools".

This is the most powerful nation that has ever existed: they had all the tools they needed to deal with this the day they took office. The only tools they lack are honesty and understanding.

If they don't think they can handle their responsibilities, or if or recent events have convinced them they can no longer honor their oaths of office because they no longer believe in the laws they swore to uphold, then they should just resign so we can replace them with people more competent and loyal than they are.

"These critics seem untroubled that someone like Osama bin Laden might, under these terms, go free because he wasn't given the Miranda warning."

True: I am fully confident that if Bin Laden is captured and given a fair trial under either US or International law, he will be dealt with properly and effectively.

What troubles me is the obvious fact that George Bush is a far greater threat to the safety of this country and the world than Osama Bin Laden is.

It's not that I think that our system is perfect; it's just that I've studied enough history to understand that however imperfect our system is, it's far better than a dictatorship (even a limited dictatorship), especially if the dictator happens to be a dishonest bozo like George W. Bush.

"No wonder Ashcroft has said he won't be able to spend more than a few hours addressing Leahy's concerns come Dec. 6. Any more would be a waste of time."

No, he's just afraid that the Senators will expose him to public scrutiny and make him look like a liar and a hypocrite, because that's exactly what he is.

Regards,

Charly

* * *

POSTSCRIPT

2004.07.06

So that was how PROJECT TO ENFORCE THE GENEVA CONVENTIONS started.

As of this writing, while great progress has been made, culminating in the recent decisions of the Supreme Court, the greater part of the task remains unfinished. I have no idea how much actual effect my efforts have had, but they've definitely had some, and more than I ever hoped for starting out.

I've never worked on anything so difficult or frustrating in my life, but have no regrets at all: in times like these, I figure every ounce of constructive effort is precious. I've tried to give this project my very best, met some wonderful people, and tried to help some folks who needed help like few of us ever have... or, one hopes, ever will.

From the beginning, I've tried to remember what Tolstoy said:

"The only way to get rid of an enemy is to love him."

And from the beginning, I've tried to remember that the true measure of justice is how we treat the very least and worst among us. Now I've arrived at a crossroads, and don't know how I will go forward from here – but I'm resolved to go on however I can. This struggle is as old as civilization itself. I have no illusions it will end soon, I just know we can't afford to lose it – now or ever.

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