

The Bothwell Letter

NEWS FROM THE LAW OFFICES OF ANTHONY P. X. BOTHWELL

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[1] Justice Sandra Day O'Connor urges lawyers to 'educate' politicians on the role of the courts

Justice **Sandra Day O'Connor** has spoken out forcefully about the importance of having "an independent judiciary," as the nation's founders intended, free from undue influence by the political branches of government. She and her husband hosted an American Bar Association reception on Apr. 13, Rule of Law Day, at the Supreme Court in Washington. Justice O'Connor told the lawyers that we "need to educate" certain "political leaders" about the fact that it's entirely proper for the Supreme Court to consider legal trends in the rest of the world when making decisions in U.S. cases. O'Connor told the lawyers that they should talk to everyone they know on Capitol Hill to ensure they are well informed about this.

Let's remind House Republican Leader Tom Delay and like-minded congressional know-nothings that they took an oath to uphold the U.S. Constitution which has served the Republic well since 1789. The Constitution, Art. I, sect. 8(8), recognizes the customary "law of nations." The supremacy clause (Const. Art. VI, sect. 2) provides: "This Constitution, and the Laws of the United States which shall be made in Pursuance

thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Chief Justice John Marshall wrote in an 1815 case, *The Nereide*, that the Supreme Court itself "is bound by the law of nations which is a part of the law of the land." The Supreme Court consistently has reaffirmed the binding force of customary international law, from *The Paquete Habana* in 1900 to *Sosa v. Alvarez-Machain* in 2004.

[2] **Wartime torture of prisoners violates obligations under international conventions**

The U.S. Army Intelligence School trained soldiers during the Vietnam war to torture and kill POWs and assassinate suspected insurgent sympathizers, Atty. **Tony Bothwell**, former military intelligence (MI) officer, recalled in a lecture at Notre Dame de Namurs University, Mar. 8 in Belmont. MI personnel were trained to assure "plausible deniability" for U.S. government officials who would claim they were unaware of the practices, he added. In the Afghanistan and Iraq wars, White House Counsel **Alberto Gonzalez**, Defense Secretary **Donald Rumsfeld** and CIA Director **George Tenet** have encouraged deadly mistreatment of suspects, then denied doing so, while lower ranking soldiers are prosecuted. Under the Bush Administration, U.S. personnel have tortured detainees in Iraq, Afghanistan and Guantanamo Bay, Cuba, and undisclosed sites – some fatally – and sent others to be tortured in Egypt and Syria.

In his Notre Dame lecture, Bothwell reviewed the *1949 Geneva Convention Relative to the Treatment of Prisoners of War* (Art. 3: "cruel treatment and torture" are "prohibited at any time and in any place whatsoever"); and the *1984 Convention Against Torure and Other Cruel, Inhuman or Degrading Treatment Or Punishment* (Art. 1: "'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted...." Art. 2: "No exceptional circumstances whatsoever, whether in a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for torture." Art. 3: " No State Party shall expel, return...or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.")

[3] **Pentagon plans remind us of Joseph Goebels**

The Pentagon under **Donald Rumsfeld** repeatedly proposed to start giving false information to world news media in hopes of influencing public opinion in favor of Bush Administration war and foreign policies. The contemplated program of deception – called Strategic Influence, Information Operations, or Support for Public Diplomacy – would invade the political realm, beyond the bounds of battlefield psychological warfare. It is reminiscent of Nazi Germany's "Big Lie" technique, in which Joseph Goebbels' Reich Ministry of Enlightenment and Propaganda published falsehoods until they gained popular acceptance. The idea offends law and conscience.

The *1948 Universal Declaration of Human Rights* (Arts. 18, 19): "Everyone has the right to freedom of thought...freedom of opinion and expression; this right includes freedom to hold opinions without interference...."

The *1967 International Covenant on Civil and Political Rights* (Art. 20): "Any propaganda for war shall be prohibited by law."

Justice Hugo Black's concurring opinion in the Pentagon Papers case, *New York Times v. United States* (1971): "In the First Amendment the Founding Fathers gave the free press the protection it must have to fulfill its essential role in our democracy. The press was to serve the governed, not the governors. The Government's power to censor the press was abolished so that the press would remain forever free to censure the Government. The press was protected so that it could bare the secrets of government and inform the people. Only a free and unrestrained press can effectively expose deception in government. And paramount among the responsibilities of a free press is the duty to prevent any part of the government from deceiving the people and sending them off to distant lands to die of foreign fevers and foreign shot and shell."

[4] **Will intel reforms prevent another 9/11?**

Two leaders of the intelligence reform debate had lunch with American Bar Association leaders Apr. 14 in Washington. **Jamie Gorelick**, ex-Pentagon general counsel, the only member of the 9/11 Commission allowed to read four years of intel on Afghanistan and Pakistan, was "shocked" at what she learned. What's worse, she said, is that the failure of U.S. agencies to cooperate with each other still is "the same" as before the 9/11 attacks. Adm. **Stansfield Turner**, ex-CIA director, said intel reform won't work unless **John Negroponte**, Director of National Intelligence, overcomes a challenge to his authority by Defense Secretary **Donald Rumsfeld**. President **George W. Bush** must "consistently back Negroponte," Admiral Turner said.

[5] **UC may lose Livermore, Los Alamos contracts**

The University of California is in danger of losing its contracts to manage the government's nuclear weapons labs in Livermore, Calif. and Los Alamos, N.M. And yet employees who have acted in good faith to report safety, security and other problems continue to face retaliation. Racial minority and female employees also continue to be treated as if they were inferior.

Atty. **Tony Bothwell** has served as lead counsel, cocounsel or consultant on cases of more than a dozen Lawrence Livermore National Laboratory employees in retaliation and discrimination cases in the past six years. Five of them have won settlements or judgments ranging from \$10,000 to \$2 million, and the rest are pending.

UC has made a tokenistic settlement offer in a class-action discrimination case brought on behalf of Asian Pacific employees at Livermore. It reportedly planned to exclude all Asian Pacific women from the settlement on grounds that female employees received a (tokenistic) settlement in a separate gender discrimination case. That distinction ignores the fact that the lab's Asian Pacific women employees have been doubly discriminated against. Bothwell evaluated individual claims for five named plaintiffs who have decided to reject UC's settlement offer.

[6] **Russian oil output fell after Yukos CEO's arrest**

The takeover of Russia's largest oil company by the government of President **Vladimir Putin** was the subject of an ABA International Law Section meeting Apr. 15 in Washington. **Sarah Carey**, ex-Yukos board member, said the firm's executives were charged with "overproduction," though the country needed increased oil revenues. **Marshall Goldman**, Harvard's Russian Studies director, said Russian oil output fell after Yukos CEO **Mikhail Khordokofsky** was jailed in Moscow. Khordokofsky was held on trumped-up tax charges, Carey said, noting that the supposed tax assessments exceeded the firm's gross revenues. Khordokofsky's Washington lawyer, **Sandy Saunders**, repeated what he told a Rotary briefing for Russian lawyers hosted by Atty. **Tony Bothwell** last Nov. 22 at the Presidio – that the charges were brought to stop Khordokofsky's support of democratic political movements in Russia.

[7] **Political opposition to FAA's age rule builds, though Supreme Court didn't hear pilots' case**

The U.S. Supreme Court did not hear an appeal by 12 airline pilots who wanted to keep flying beyond age 59, but their case sparked new interest in efforts to reform the FAA's age policy. Southwest Airlines, the nation's fourth largest airline, and Samuel D. Woolsey, an expert on the issue, offered briefs supporting the pilots' cause, and the case won favorable coverage in national media.

Time magazine's **Sally Donnelly** reported: "If rigid enforcement of the age 60 rule ever served any valid purpose – a doubtful proposition at best – it certainly outlived its usefulness long ago," says **Tony Bothwell**, the attorney representing the pilots' challenge" (www.time.com). **Bert Yetman**, president of the Professional Pilots Federation, an organization of thousands of airline pilots, which sponsored the case, was a guest on PBS' *Wall Street Week*. NBC News interviewed **Paul Turner III**, 58, of Charlotte, N.C., one of the 12 pilots named in the case. Fox News also interviewed one of the 12, **Mickey Oksner**, 61, of Nassau Bay, Tex., and Yetman. *CQ Weekly* reported on the litigation and a related development – mounting congressional opposition to the FAA's rigid age policy. "The FAA hasn't identified a single accident attributable to a pilot's age," Bothwell commented during a lively KCBS talk show.

New evidence emerged after the FAA denied the 12 pilots' request for exemptions. An Aerospace Medical Association study confirms there is no scientific basis for the age 60 rule. The Air Line Pilots Association has started to consider resuming its opposition to the rule. And the UN International Civil Aviation Organization reports a worldwide trend against the age 60 standard.

[8] **Lawyers for Mexican American legal workers depose defendants in Fresno civil rights case**

Attorneys representing Mexican American legal workers subpoenaed the managing partner and the office manager of the **Adelson Testan Brundo & Popalardo** law firm's Fresno office and questioned them and a third defendant under oath during the week of Mar. 21. **Tony Bothwell** and **Rey Hassan** of San Francisco, along with **Tom**

Sharpe of Fresno, are cocounsel for the plaintiffs, **Elizabeth Murillo Hook** and her daughter, **Angelica Mendiola**, and, in a related case, **Gabriel Olivares**. Their lawsuits charge they were subjected to discrimination, harassment and assault in the Adelson Testan firm's offices. An attorney for the defendants deposed Ms. Hook, whose husband, a highly decorated combat veteran, recently returned from a tour of duty in Afghanistan.

[9] **Children's claim that tax lawyers' misconduct caused father's suicide is heard in L.A. courtroom**

The late Dr. **John Bussell** of Beverly Hills, in serious trouble with the government after following advice of tax lawyers **Robert Beaudry** of Danville and **Jeffrey Adam Sherman** of Century City, took his own life. Beaudry and Sherman pled guilty to false tax counseling and related felonies. On May 5, Atty. **Tony Bothwell** of San Francisco testified as an expert witness in the trial of a legal malpractice suit brought by Dr. Bussell's children. Bothwell was certified by the Los Angeles Superior Court as an expert on the duty lawyers owe their clients. He testified that lawyers are held to high standards under California's Code of Civil Procedure, State Bar Rules of Professional Conduct, and American Bar Association Model Rules of Professional Responsibility. He cited FBI reports revealing the defendants mismanaged client funds in tax havens around the world. Bothwell, a former IRS revenue officer and union steward, taught Taxpayers' Rights at Kennedy School of Law. He advises clients on federal tax collection and other matters and serves as an expert consultant to law firms in high-visibility cases.

ANTHONY P. X. (TONY) BOTHWELL, Esq. – Member, the Bar of the U.S. Supreme Court, the Bar of the U.S. Court of Appeals for the District of Columbia Circuit, the Bar of the U.S. District Court for the Northern District of California, The State Bar of California, American Bar Assn. (2003 delegate to the International Court of Justice, The Hague), National Lawyers Guild (Native American Indian Affairs chair), International Bar Association (Human Rights Institute), Southern Poverty Law Center (Leadership Council). Qualified expert, lawyers' standard of care (Los Angeles County Superior Court). U.S. Holocaust Museum (Circle of Life); Rotary Club of Fisherman's Wharf (International Projects chair). Georgetown Univ. School of Foreign Service, B.S.F.S., International Affairs; Boston Univ. School of Public Communication, M.S., Journalism; John F. Kennedy Univ. School of Law, J.D.; Golden Gate Univ. School of Law, LL.M. *summa cum laude*, International Legal Studies. Professor of law, John F. Kennedy Univ. School of Law. *Who's Who in the Law; Who's Who in America; Who's Who in the World.*