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Civil Rights in the Post 9/11 World: Critical Race Praxis, Coalition Building, and the War on Terrorism

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Civil Rights in the Post 911 World: Critical Race Praxis, Coalition Building, and the War on Terrorism

Adrien Katherine Wing*

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I. INTRODUCTION

As we await the decisions in the University of Michigan affirmative action cases,¹ this symposium raises a timely and important query: is civil rights law dead? This article answers that query by asserting that there is a need for a thorough reconceptualization in the 21st century. Historically, civil rights in the United States has been synonymous with the struggle of African Americans to attain racial equality with white Americans.² The battles of other ethnic minorities, such as Latinos, Asians and Native Americans, not to mention the struggles of other victims of discrimination such as women, gays, the disabled or the aged, have often received secondary attention.³ Some scholars and activists would assert that, given the unique history of Blacks as slaves

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1. *Grutter v. Bollinger*, 123 S. Ct. 2325 (2003).

2. Leslie Espinoza & Angela P. Harris, *Afterword: Embracing The Tar Baby – LatCrit Theory and the Sticky Mess of Race*, 85 Cal. L. Rev. 1585, 1599–1600 (1997).

3. *Id.*

in this country, the continuation of the so-called black-white binary or emphasis is still justified.⁴

In my view, we must expand our civil rights efforts beyond all the above mentioned groups to include those that do not easily fit into historic racial categories: specifically Arabs and Muslims, who have faced especially increased discrimination since September 11, 2001.⁵ That day clearly changed the United States, if not the world, in very profound ways.⁶ Since then, the War on Terrorism has taken precedence in both U.S. foreign and domestic policy. In late 2001, the foreign policy aspect manifested itself as a literal war in Afghanistan that overthrew the globally despised Taliban regime.⁷ Shortly after the symposium for which this paper was composed took place, the U.S. launched a war against Iraq to overthrow its long term leader Saddam Hussein and destroy any weapons of mass destruction.⁸ On the domestic front, these wars have had profound effects on the civil liberties of both noncitizens and citizens, particularly Arabs, Muslims, and those who resemble them.⁹

Part II of this article details how the civil rights of Arabs and Muslims have been restricted both before and after September 11, 2001.¹⁰ Using a Critical Race Theory (CRT)¹¹ analysis, we shall see how these groups have been socially constructed as “Black,” with the negative legal connotations historically attributed to that designation. For example, racial profiling, which originated as a term synonymous with Blacks and police traffic stops,¹² now equally applies to both Arabs and Muslims in many contexts.

4. See *supra* note 2. See also discussion of the black-white binary in Richard Delgado, *Justice at War: Civil Liberties and Civil Rights in a Time of Crisis* 162–183 (2003) [hereinafter “Justice at War”]. Some scholars deny the binary exists. See discussion in Athena Mutua, *Mapping Intellectual/Political Foundations and Future Self Critical Directions*, 53 U. Miami L. Rev. 1177, 1187–91 (1999).

5. See *ADC Fact Sheet: The Condition of Arab Americans Post 9/11*, at <http://www.adc.org/index.php?id=282> (last visited Nov. 9, 2003).

6. Kathleen Parker, *Let's Roll The Sept. 11 Tapes Again and Again*, Sept. 12, 2003, at http://bigjweb.com/artman/publish/article_953.html (last visited Nov. 9, 2003).

7. Kathleen Parker, *Sept. 11 Americans Know We Have to Stay the Course*, Milwaukee Journal Sentinel, Sept. 14, 2003, at J4.

8. *Id.*

9. *supra* note 5.

10. See *infra* notes 16–152 and accompanying text.

11. For books on CRT, see *Critical Race Theory: Key Works that Formed the Movement* (Kimberle Crenshaw et al eds., 1995); *Critical Race Theory: The Cutting Edge* (Richard Delgado & Jean Stefancic eds., 2d ed. 2000).

12. See The President's Initiative on Race, The Advisory Board's Report to the President—One America in the 21st Century: Forging a New Future 78 (1998) (discussing racial profiling in law enforcement as a criminal justice problem); Samuel R. Gross & Deborah Livingston, *Racial Profiling under Attack*, 102 Colum. L. Rev. 1413 (2002).

Part III draws upon CRT for answers for how to solidify a new, more inclusive civil rights movement.¹³ Critical Race Praxis, combining theory and practice, will be detailed as a means to create solutions to the civil rights dilemmas facing all groups, including Arabs and Muslims. Part IV suggests a specific form of praxis, coalition building, as a problematic but appropriate means for the new and old components of the civil rights movement to intersect and perhaps join forces from time to time.¹⁴ Part V concludes with specific proposals for coalitions that may help alleviate the bleak situation currently facing Arabs and Muslims.¹⁵

II. CIVIL RIGHTS IN THE POST 9–11 WORLD: THE WAR ON ARABS AND MUSLIMS

This article addresses civil rights and the war on terrorism from the perspective of CRT, a jurisprudential genre that derives in part from Critical Legal Studies (CLS).¹⁶ Beginning in the 1970s, CLS scholarship was initiated by a predominantly white male “collection of neo-Marxist intellectuals, former New Left activists, ex-counterculturalists, and other varieties of oppositionists,”¹⁷ who became professors in elite law schools. Known as “Critters,” they endorsed a politically progressive perspective on a wide variety of legal issues, challenging both conservatism and legal liberalism. Inspired by European postmodernist philosophers like Jacques Derrida¹⁸ and Michel Foucault,¹⁹ the Critters used a deconstruction methodology to attack traditional notions still taught in most law school classes today that assert that the law is neutral, objective, and determinate.²⁰

As path breaking scholars of color such as Derrick Bell, Richard Delgado and others joined the legal academy in the ‘70s and ‘80s, CLS analysis intrigued them, especially as it considered class issues

13. See *infra* notes 153–168 and accompanying text.

14. See *infra* notes 169–258 and accompanying text.

15. See *infra* notes 259–260 and accompanying text.

16. For books on CLS, see e.g. *Critical Legal Studies* (James Boyle ed., 1992); *Critical Legal Studies* (Peter Fitzpatrick & Alan Hunt eds., 1987); *Critical Legal Studies* (Alan C. Hutchinson ed., 1989); Mark Kelman, *A Guide to Critical Legal Studies* (1987); Matthew Kramer, *Critical Legal Theory and the Challenge of Feminism: A Philosophical Reconception* (1995).

17. Kimberle Crenshaw, *Introduction to Critical Race Theory*, *supra* note 11, at xvii.

18. See, e.g., *Deconstruction and Philosophy: The text of Jacques Derrida* (John Sallis ed., 1989).

19. See, e.g., *The Foucault Reader* (Paul Rabinow ed., 1984).

20. Adrien Katherine Wing, *Introduction to Global Critical Race Feminism: An International Reader 4* (Adrien Wing ed., 2000) [hereinafter “GCRF”].

that disproportionately affect people of color. Unfortunately, CLS did not sufficiently take race and ethnicity into account.²¹ For example, class analysis would presume that wealthy Americans would have certain privileges, regardless of color. My personal experience, and that of my African American professional peers, is that Blacks, even if well-to-do, do not share in these privileges to the same degree as their white counterparts. I wince in pain as my upper middle class African American sons are still regarded as potential criminals on the street, are racially profiled by the police, and are perceived as unqualified beneficiaries of affirmative action²² on their campuses. Likewise, the Black underclass has not been treated similarly to the white poor and working class.²³ It is difficult to think of one example where a white man received the beating that speeding Black motorist Rodney King did from the Los Angeles police.²⁴ If King had been a doctor or other professional, would that have stopped the beating? CRT thus arose in part as a race intervention in the leftist CLS discourse, placing considerations of race and ethnicity at the center of the analysis.²⁵

Simultaneously, the founders of CRT were also frustrated with the cyclic nature of racial progress,²⁶ which was very evident as one looked at the 1950s and 1960s civil rights movement judicial, legislative, and executive branch policy gains, and compared them with the *de jure* and *de facto* retrenchment that had occurred by the 1980s Reagan-Bush administrations.²⁷ CRT thus also evolved as a leftist intervention in traditional civil rights discourse,²⁸ attempting to construct progressive legal approaches. "In illuminating the racist nature of the American legal system, CRT adherents are particularly interested in legal manifestations of white supremacy and the perpetuation of the subordination of people of color."²⁹

21. For critiques of CLS, see, e.g., Cornell West, *CLS and a Liberal Critic*, 97 Yale L.J. 757 (1988); Richard Delgado, *The Ethereal Scholar: Does Critical Legal Studies Have What Minorities Want?*, 22 Harv. C.R.-C.L. L. Rev. 301 (1987); Robert Williams, *Taking Rights Aggressively The Perils and Promise of Critical Legal Theory for People of Color*, 5 Law & Ineq. 103 (1987).

22. Personal experiences relayed by my sons Willie Bamey, Brooks Bamey, Charles Johnson, Che Melson, and Nolan Melson.

23. Robert Westley, *Many Billions Gone: Is it Time to Reconsider the Case for Black Reparations?*, 40 B.C. L. Rev. 429, 438 (1998).

24. See, e.g., Abraham L. Davis, *The Rodney King Incident: Isolated Occurrence or a Continuation of a Brutal Past?*, 10 Harv. BlackLetter L.J. 67 (1993).

25. See *supra* note 11, at xix.

26. See Derrick Bell, *Race, Racism and American Law* 133-34 (4th ed. 2000) (discussing cyclic theory of racial progress) [hereinafter "Race, Racism"].

27. *Id.*

28. Crenshaw, *supra* note 11, at xix.

29. Wing, *supra* note 20, at 4.

While a full discussion of all the various CRT tenets that have evolved in the literature is well beyond the scope of this article,³⁰ one aspect that is relevant is the proposition that race is not biologically determined.³¹ Scientists have demonstrated that there can be more genetic similarity across the so-called races, than within them.³² "Racial categories are fundamentally social in nature and rest on shifting sands of biological heterogeneity. The biological aspects of 'race' are conscripted into projects of cultural, political and social construction."³³ In the nineteenth and early twentieth century in the United States, for example, European immigrants such as Jews, Italians, and Irish were originally socially constructed as nonwhite, even Black, with all the connotations of inferiority such a construction implied.³⁴

To illustrate how race can be socially constructed, I will use myself as an example. In the United States, I am considered African American or Black American, with the *de facto* second class status that designation still implies. My parents and grandparents were all considered Black, even though some of them had very light skin. The most recent white person whom we can determine is an ancestor is my great-great grandfather, Confederate General Pierre Gustave Toutant Beauregard.³⁵ We even have members of the African American group who look white, yet are still considered part of the Black group.³⁶ In South Africa, where I have taught many times, I was considered part of the historically mixed race group known as Coloured, due to my light skin, wavy hair and other characteristics.³⁷ During the apartheid era, this group had a buffer status between the *de jure* most privileged whites and the least privileged black Africans.³⁸ In Brazil, I learned that my same

30. See Crenshaw, *supra* note 11; see Wing, *supra* note 20.

31. See Ian Haney Lopez, *White By Law: The Legal Construction of Race* (1997).

32. See Joe R. Feagin & Clairece Booher Feagin, *Racial and Ethnic Relations* (1996), reprinted in Juan Perea et al., *Race and Races: Cases and Resources for a Multicultural America* 57 (2000) [hereinafter "Race and Races"].

33. Lucius Outlaw, *Toward a Critical Theory of "Race,"* in *Anatomy of Racism* 58, 68 (David Theo Goldberg ed., 1990).

34. Perea, *Race and Races*, *supra* note 32, at 445–53.

35. See T. Harry Williams, *Napoleon in Gray* (1995) (life of Beauregard).

36. See Gregory Howard Williams, *Life on the Color Line: The True Story of a White Boy who Discovered He was Black*. Williams, who was a colleague of mine at Iowa for many years, is currently the President of City College in New York. Some of my own relatives are totally white in appearance, and face disbelief when they assert they are Black.

37. I taught for six summers at the University of Western Cape Law School in Capetown.

38. For more on the apartheid system, see, e.g., Adrien Katherine Wing, *Communitarianism v. Individualism: Constitutionalism in Namibia & South Africa*,

features would classify me as White, with all the *de facto* privileges that the designation still brings in that society.³⁹

The pan-ethnicity term "Arab" and the religious signifier "Muslim" have been socially constructed as a synonymous "race" in the United States.⁴⁰ While there are over 1.2 billion Muslims worldwide, only 15% are Arab.⁴¹ In the U.S., it is unclear, but there may be between 4–8 million Muslims, of whom 22.4% are U.S. born and 23.8% are African American.⁴² There may be 3 million Arabs in the U.S., originating from 22 countries,⁴³ and the Arab American Institute has revealed the little known fact that nearly three quarters of Arab Americans are Christians.⁴⁴ In an important case, *St. Francis College v. Al-Khazraji*, the Supreme Court acknowledged that Arabs can be discriminated against on account of their race.⁴⁵

Interestingly, those who merely look like Arabs or Muslims may be racially profiled on that basis as well. The double group can thus be considered larger than the number of actual members. According to one commentator, there may be, in this country, 7 million Arabs, 8 million Muslims, and 1.6 million South Asians, Latinos, and African Americans who could look "Arab," probably at least 10 million people,⁴⁶ which I think even that is a vast underestimate of the numbers of the Blacks and Latinos in America who could pass as Arab. One African American radio personality stated that French citizen Zacharias Moussaoui, native of Morocco, who may have been the twentieth September 11 hijacker, looks like "a brother from around the way."⁴⁷

When my sons and I travel abroad, we are often mistaken for Arabs or Muslims. My partner James, who is a dark brown skinned

11 Wis. Int'l L.J. 295 (1993).

39. I have made two trips to Brazil – to Sao Paulo and Rio de Janeiro.

40. Carnegie Endowment for International Peace, Symposium, *Conference on Immigrants and Race*, at <http://www.ceip.org/programs/migrat/Old/race.htm> (last visited Nov. 9, 2003).

41. See PBS Frontline, *Muslims: Frequently Asked Questions*, at <http://www.pbs.org/wgbh/pages/frontline/shows/muslims/etc/faqs.html> (last visited Dec. 3, 2002).

42. See U.S. State Dept., *Fact Sheet: Islam in the United States*, <http://usinfo.state.gov/usa/islam/fact2.htm> (last visited Mar. 11, 2003).

43. See Arab American Institute, *Demographics*, at: <http://www.aaiusa.org/demographics.htm> (last visited Mar. 11, 2003).

44. See Charles Austin, *Arab Culture Advances*, Record (Bergen County, NJ), July 3, 2002 at L1.

45. 481 U.S. 604, 107 S. Ct. 2022 (1987) (U.S. citizen born in Iraq could bring a claim).

46. Jerry Kang, *Thinking Through Internment*, 9 Asian L.J. 195, 197–98 (2002).

47. Leonard Pitts, Jr., *Hassles of Airport Security Worth the Inconvenience*, Houston Chron., July 5, 2002, at 2.

Christian African American, often wears a kufi or skull cap to express his cultural affinity for Africa. He is always taken for a Muslim, although not an Arab. Sadly, I have told my NYU student son, who can phenotypically pass for Arab, that he has to be careful when flying so that he will not be mistaken for an Arab. Dressing in the popular ghetto styled baggy pants coupled with corn rowing his hair, and the use of an Ebonics dialect,⁴⁸ helps ensure that he is not racially profiled as an Arab. Of course, when he lands in New York, his failure to be able to hail a cab indicates he is clearly seen as a Black — too risky to pick up.⁴⁹

These two overlapping and socially constructed-as-synonymous groups, Arabs and Muslims, have come to be regarded in some of the negative ways that have historically characterized African Americans. While Arabs and Muslims are often stereotyped as dangerous, evil, sneaky, primitive, and untrustworthy, much as Blacks are, the criminality has a twist—they are considered potential or actual terrorists.⁵⁰ They are forever “foreign, disloyal and imminently threatening,”⁵¹ whether they are citizens or not.

Arabs and Muslims were racially profiled, victimized, and demonized as terrorists well before September 11.⁵² These activities have included: physical attacks by individuals and pro-Israel groups such as the Jewish Defense League; political attacks by pro-Israel lobby AIPAC and the Anti-Defamation League of B’nai Bith, as well as many other Democratic and Republican Party affiliated entities; blacklisting of prominent Arab American intellectuals such as Columbia professor Edward Said and Harvard professor Walid Khalidi; as well as vicious stereotypes in films and television that would not be tolerated if used to characterize other groups.⁵³ For

48. See Center for Applied Linguistics, *Ebonics Information Page*, at <http://www.cal.org/ebonics/> (last visited Oct. 24, 2003).

49. Sheryl McCarthy, *City Record Spotty on Cabs Snubbing Blacks*, *Newsday*, Oct. 30, 2003, at A34.

50. Natsu Taylor Saito, *Symbolism under Siege: Japanese American Redress and the “Racing” of Arab Americans as “Terrorists,”* 8 *Asian L.J.* 1, 12 (2001) (analyzing treatment of Arabs as distinctive “race” and stereotyping them as terrorists with negative immigration consequences).

51. *Id.*

52. See Susan M. Akram, *Scheherezade Meets Kafka: Two Dozen Sordid Tales of Ideological Exclusion*, 14 *Geo. Immigr. L.J.* 51 (1999) (analyzing U.S. government use of secret evidence in seeking to remove two dozen Arab and Muslim foreigners from the U.S.) [hereinafter “Scheherezade”]; Saito, *Symbolism*, *supra* note 51, at 1; Michael J. Whidden, Note, *Unequal Justice: Arabs in America and United States Antiterrorism Legislation*, 69 *Fordham L. Rev.* 2825 (2001) (illustrating how 1996 immigration reform legislation has led to discrimination against Arabs).

53. Susan M. Akram & Kevin R. Johnson, *Race, Civil Rights, and Immigration Law after September 11, 2001: The Targeting of Arabs and Muslims*, 58 *N.Y.U.*

example, Jack Shaheen surveyed a number of movies and found the following characterizations of Arabs and Muslims: “assholes,” “bastards,” “camel-dicks,” “pigs,” “devil-worshippers,” “jackels,” “rats,” “rag-heads,” “towel-heads,” “scum-buckets,” “sons-of-dogs,” “buzzards of the jungle,” “sons-of-whores,” “sons-of-unnamed goats,” and “sons-of-she-camels.”⁵⁴ It is difficult to imagine the movie industry applying those sorts of labels to Blacks or Jews today. Arab American campaign contributions have been returned, as if Arab citizens have no right to participate in American politics.⁵⁵ Anti-Arab and anti-Muslim activities have intensified during periods of high tensions in the Middle East, such as the 1980 Iran Hostage situation, 1980–88 Iran-Iraq war, 1986 war against Libya, and the 1991 Gulf war.⁵⁶

“The Supreme Court has upheld immigration laws discriminating against noncitizens on the basis of race, national origin and political affiliation that would patently violate the constitution if the rights of citizens were at stake.”⁵⁷ The cases include *Harisiades v. Shaughnessy*,⁵⁸ *Nguyen v. U.S.*,⁵⁹ *Reno v. American-Arab Anti-Discrimination Committee*,⁶⁰ *Sale v. Haitian Centers Council, Incorporated*,⁶¹ and The Chinese Exclusion cases.⁶² The plenary power doctrine has historically provided immunity from judicial scrutiny of immigration judgments, whether by Congress or the Executive branch.⁶³ Many Americans assumed the Oklahoma City bombing of the Murrah federal building had to be done by Arabs or Muslims, rather than by white Christian militia member Timothy McVeigh.⁶⁴ After that incident, even though Arabs and Muslims were not involved, draconian immigration laws were passed in 1996 which singled out those groups.⁶⁵

Annual Survey Am. L. 295, 303–11 (2002).

54. Jack G. Shaheen, *Reel Bad Arabs: How Hollywood Villifies a People* 11 (2001).

55. Akram & Johnson, *supra* note 53, at 311.

56. Akram & Johnson, *supra* note 53, at 313.

57. Akram & Johnson, *supra* note 53, at 330.

58. 342 U.S. 580, 72 S. Ct. 512 (1952) (deportation based on political views is upheld).

59. 533 U.S. 53, 121 S. Ct. 2053 (2001) (gender discrimination upheld).

60. 525 U.S. 471, 119 S. Ct. 2053 (1999) (court lacks authority to review claims of selective enforce against Arabs/Muslims).

61. 509 U.S. 155, 113 S. Ct. 2549 (1993) (returning Haitians caught on high seas without asylum hearings did not violate U.S. or international law).

62. *Chae Chan Ping v. U.S.*, 130 U.S. 581, 9 S. Ct. 623 (1889) (race discrimination against Chinese upheld).

63. Akram & Johnson, *supra* note 53, at 330.

64. *Muslims Living in America come under Fire; Terror War on US: Backlash Terrorism USA*, Evening Standard (London), Sept. 13, 2001, at 10.

65. See Stephen H. Legomsky, *Immigration and Refugee Law and Policy* 735

Unfortunately, what happened to Arabs and Muslims under these 1996 laws was not unique. According to Kevin Johnson, these laws are part of a history of attempts to stifle dissent that includes the Alien and Sedition Acts of the 1790s and the Palmer Raids after World War I.⁶⁶ In that period after the war, the U.S. imprisoned people for years for speaking out against the war effort.⁶⁷ During the cold war Red Scare, many people lost jobs and were subject to investigation, or were even imprisoned, because of rumored association with the Communist party.⁶⁸ According to Jerry Kang, “wartime coupled with racism and intolerance creates particular types of mistakes. Specifically we overestimate the threat posed by racial ‘others,’ in WWII, Japanese Americans; today, Arab Americans, Muslims, Middle Easterners, immigrants and anyone who looks like ‘them.’”⁶⁹

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA)⁷⁰ made it a crime to contribute to foreign groups deemed as terrorist, and created special deportation procedures, including the

(2d ed. 1997) (summarizing 1996 immigration law changes creating special alien terrorist removal proceedings based on secret evidence). See *Reno v. Am.-Arab Anti-Discrimination Comm.* 525 U.S. 471, 119 S. Ct. 936 (1999) (declining review of first amendment challenge to deportation of members of Palestinian group PFLP); Berta Esperanza Hernandez-Truyol, *Nativism, Terrorism, and Human Rights—The Global Wrongs of Reno v. American-Arab Anti-Discrimination Committee*, 31 Colum. Hum. Rts. L. Rev. 521(2000) (criticizing Reno decision on human rights grounds prohibiting discrimination on basis of race, nationality, and ethnicity); Adrien Katherine Wing, *Reno v. American-Arab Anti-Discrimination Committee: A Critical Race Perspective*, 31 Colum. Hum. Rts. L. Rev. 561 (2000); William C. Banks, *The “LA Eight” and Investigation of Terrorist Threats in the United States*, 31 Colum. Hum. Rts. L. Rev. 479 (2000); Hiroshi Motomura, *Judicial Review in Immigration Cases after AADC: Lessons from Civil Procedure*, 14 Geo. Immigr. L.J. 385 (2000); Gerald L. Neuman, *Terrorism, Selective Deportation and the First Amendment after Reno v. AADC*, 14 Geo. Immigr. L.J. 313 (2000).

66. See Kevin R. Johnson, *The Antiterrorism Act, the Immigration Reform Act, and the Ideological Regulation in the Immigration Laws: Important Lessons for Citizens and Noncitizens*, 28 St. Mary’s L.J. 833, 841–69 (1997) [hereinafter “Antiterrorism”]; James Morton Smith, *Freedom’s Fetters: The Alien and Sedition Laws and American Civil Liberties* (1956).

67. See *Abrams v. United States*, 250 U.S. 616, 40 S. Ct. 17 (1919); *Debs v. United States*, 249 U.S. 211, 39 S. Ct. 252 (1919); *Frohwerk v. United States*, 249 U.S. 204, 39 S. Ct. 249 (1919); *Schenk v. United States*, 249 U.S. 47, 39 S. Ct. 249 (1919).

68. See, e.g., *Dennis v. United States*, 341 U.S. 494, 71 S. Ct. 857 (1951); Michael Belknap, *Cold War Political Justice: The Smith Act, the Communist Party and American Civil Liberties* (1977); Victor S. Navasky, *Naming Names* (1983); Arthur J. Sabin, *In Calmer Times: The Supreme Court and Red Monday* (1999).

69. Kang, *supra* note 46, at 197.

70. Pub. L. No. 104–132, 110 Stat. 1214 (1996).

formation of special courts to evaluate secret evidence.⁷¹ The Illegal Immigration and Immigrant Responsibility Act of 1996 (IIRIRA)⁷² supplemented AEDPA. That act prevents federal courts from reviewing a variety of immigration cases, with very limited exceptions.⁷³

These two laws “either explicitly—or according to INS interpretation, impliedly—authorize the use of classified evidence to exclude an ‘alien terrorist’ under special removal proceedings,⁷⁴ to summarily remove an alien who is a ‘national security’ risk,⁷⁵ and to deny bond to aliens in removal proceedings.”⁷⁶ Pursuant to these statutes, the Immigration and Naturalization Service (INS) deported or attempted to deport more than two dozen people on the basis of secret evidence—almost all were Muslim, mainly Arabs.⁷⁷ Ironically, in 2000, Republican Presidential candidate George W. Bush accused the Clinton administration of racial profiling when it used secret evidence.⁷⁸

71. For discussions of AEDPA, see Ella Dlin, *The Antiterrorism and Effective Death Penalty Act of 1996: An Attempt to Quench Anti-Immigration Sentiments?*, 38 Cath. Law. 49 (1998); Jacqueline Bensen, *Send Me Your Money: Controlling International Terrorism by Restricting Fundraising in the United States*, 21 Hous. J. Int'l L. 321 (1999); Andy Pearson, *The Antiterrorism and Effective Death Penalty Act of 1996: A Return to Guilt by Association*, 24 Wm. Mitchell L. Rev. 1185 (1998); David Cole, *Hanging with the Wrong Crowd: Of Gangs, Terrorists and the Right of Association*, 1999 Sup. Ct. Rev. 203 (1999); Jennifer A. Beall, *Are We Only Burning Witches? The Antiterrorism and Effective Death Penalty Act of 1996's Answer to Terrorism*, 73 Ind. L.J. 693 (1998).

72. Pub. L. No 104-208, 110 Stat. 3009-546 (1996). See Johnson, *Antiterrorism*, *supra* note 66, at 833.

73. For an overview of jurisdiction stripping, see Erwin Chemerinsky, *A Framework for Analyzing the Constitutionality of Restrictions on Federal Court Jurisdiction in Immigration Cases*, 29 U. Mem. L. Rev. 295 (1999).

74. See 8 U.S.C. § 1534(e)(3)(A) (1996).

75. See 8 U.S.C. § 1225(c)(2)(b) (1996).

76. See 8 U.S.C. § 1536(a)(2)(B) (1996). The quote is from Akram, *Scheherezade*, *supra* note 52, at 72.

77. See Akram, *Scheherezade*, *supra* note 52. See *Kiarelddeen v. Reno*, 71 F. Supp.2d 402 (D.N.J. 1999) (after a year and a half in custody defendant ordered released when no evidence ever shown and only allegations were from exwife that he was a suspected member of a terrorist organization and a threat to national security). Precursors to the current secret evidence cases are *Rafeedie v. I.N.S.*, 880 F.2d 506 (D.C. Cir. 1989), *remanded to* 795 F. Supp. 13 (D.D.C. 1992) (Palestinian who attended conference in Syria sponsored by PFLP fought deportation); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 119 S. Ct. 936 (1999) (In *Reno*, also known as LA 8, a case against 7 Palestinians and 1 Kenyan, government tried to deport for membership in an organization that advocates world communism, but never alleged they engaged in any terrorist activity, Court interpreted IIRIRA to dramatically limit judicial review). For articles on the LA 8 case, see Akram & Johnson, *supra* note 53 at 317-21.

78. Discussed in Akram & Johnson, *supra* note 53, at 350.

After September 11, the situation affecting Arabs and Muslims dramatically worsened,⁷⁹ and there have been profound effects on their civil rights.⁸⁰ Before that fateful date, 80% of Americans considered racial profiling wrong.⁸¹ After September 11, the polls reversed and 60% said profiling was fine, especially if directed against Arabs and Muslims.⁸² U.S. Congressman John Cooksey of Louisiana likely expressed the sentiments of many when he stated on the radio, "If I see someone come in and he's got a diaper on his head and a fan belt around that diaper on his head, that guy needs to be pulled over and checked."⁸³ A survey done soon after September 11 said that nearly half would be in favor of having Arabs, including citizens, carry a special identification card.⁸⁴

There were early reports that some Blacks and Latinos welcomed the law enforcement targeting of Arabs and Muslims.⁸⁵ When I heard that comment, it reminded me that I preferred that my sons not be mistaken for Arabs when flying. On the other hand, I also realized that increased racial profiling of Arabs and Muslims has not meant that the long term racial profiling of African Americans has stopped. It merely means that my sons may be doubly profiled depending on the context. At the airport, they may be regarded as Arab terrorists, while at the taxi stand or ATM machine, they may be regarded as Black criminals.⁸⁶

79. Akram & Johnson, *supra* note 53, at 295–98.

80. See David Cole, *Enemy Aliens*, 54 Stan. L. Rev. 953 (2002); Bill Ong Hing, *Vigilante Racism: The De-Americanization and Subordination of Immigrant America*, 7 Mich. J. Race & L. 441 (2002) [hereinafter "Vigilante Racism"]; Thomas W. Joo, *Presumed Disloyal: Executive Power, Judicial Deference, and the Construction of Race before and after September 11*, 34 Colum. Hum. Rts. L. Rev. 1 (2002); Victor C. Romero, *Proxies for Loyalty in Constitutional Immigration Law: Citizenship and Race after September 11*, 52 DePaul L. Rev. 871 (2002); Leti Volpp, *The Citizen and the Terrorist*, 49 UCLA L. Rev. 1575 (2002) [hereinafter "Citizen"].

81. Gallup Poll, *Do You Approve or Disapprove of the Use of 'Racial Profiling' by Police?* Dec. 9, 1999, available at WL, USGALLUP.120999R6 009.

82. Sam Howe Verhovek, *A Nation Challenged: Civil Liberties; Americans Give in to Race Profiling*, N.Y. Times, Sept. 23, 2001, at A1. A Detroit News poll said that authorities should take extra precautions in screening Arabs while flying. Gregg Krupa, *Most in State Support Screening of Arabs*, Detroit News, Feb. 28, 2002, at 1.

83. See Steve Ritea, *Republicans Say Cooksey Used Poor Choice of Words*, Times-Picayune (New Orleans), Sept. 21, 2001, at 3.

84. *91% Approve of Bush Handling of Events Surrounding Terror Attacks*, The White House Bulletin, Sept. 17, 2001, LEXIS, News Group File.

85. See e.g., Sam Howe Verhovek, *A Nation Challenged: Civil Liberties; Americans Give in to Racial Profiling*, N.Y. Times, Sept. 23, 2001, at 1A.

86. See CNN TalkBack Live, *Is There Racial Discrimination in New York Cab* (Nov. 12, 1999), available at: <http://www.foodfirst.org/media/interviews/1999/glover-11-12-99b.html> (last visited

After September 11, Muslims and Arabs and people who look like them have been under siege.⁸⁷ Over 1000 incidents of hate crimes were reported by February 2002.⁸⁸ Even President Bush's Arab secret service agent was removed from an American Airlines plane.⁸⁹ Of five people who were killed, including a Sikh Indian, a Pakistani Muslim, an Egyptian Coptic Christian, and an Indian Hindu,⁹⁰ none of them was a Muslim Arab, but all were socially constructed as such.

The U.S. Justice Department opened up more than 380 investigations into violence or threats, which have taken the form of "telephone, internet, mail and face-to-face threats; minor assaults, assaults with dangerous weapons, and assaults resulting in serious injury or death; and vandalism, shootings, and bombings directed at homes, businesses, and places of worship."⁹¹ About 70 state and local criminal prosecutions were instigated against 80 defendants.⁹²

According to Bill Hing, Arabs and Muslims, whether citizens or not, are literally and figuratively being de-Americanized, which is "a twisted brand of xenophobia that is not simply hatred of foreigners, but also hatred of those who may not be foreigners but whom the vigilantes would prefer being removed from the country anyway."⁹³ A member of the U.S. Civil Rights Commission has even said that in the event of another terrorist attack, the American government might consider interning Arab Americans,⁹⁴ reminiscent of the treatment of 120,000 Japanese and Japanese Americans in World War II.⁹⁵

The legal position of Arabs and Muslims has especially declined since the exceptionally speedy passage of the Uniting and Strengthening America by Providing Appropriate Tools Required to

Mar. 12, 2003) (remarking how even Black celebrities like Danny Glover and Harry Belafonte have been unable to hail cabs).

87. Bill Ong Hing, *Vigilante Racism*, *supra* note 80; See Laurie Goodstein & Tamar Lewin, *Victims of Mistaken Identity, Sikhs Pay a Price for Turbans*, N.Y. Times, Sept 19, 2001, at A1 (events included killing of Sikh gas owner in Arizona).

88. See Council on American Islamic Relations, <http://www.cair-net.org> (last updated Feb. 8, 2002), in Volpp, *Citizen*, *supra* note 80.

89. See Daryl Fears, *Turbulence on Flight 363: Prudence, or Profiling? Secret Service Agent Rebuts Airline Account of Boarding Clash*, The Washington Post, Jan. 13, 2002, at A3; *Guard for Bush Isn't Allowed Aboard Flight*, N.Y. Times, Dec. 27, 2001, at 5B.

90. See Volpp, *Citizen*, *supra* note 80.

91. Lawyers Committee for Human Rights, *A Year of Loss: Reexamining Civil Liberties since September 11*, at 24 (2002) [hereinafter "LCHR"].

92. *Id.*

93. Hing, *Vigilante Racism*, *supra* note 80, at 444.

94. Niraj Warikoo, *Civil Rights Unit Member Foresees Arab Detainment in the U.S.*, Detroit Free Press, July 20, 2002, at 24.

95. Kim Barker, *Federal Tactics Criticized in Round Up of 1100 FBI Defends Detention Policy but Some Courts Aren't Convinced*, Chi. Tribune, Sept. 11, 2002, at 16.

Intercept and Obstruct Terrorism (USA Patriot Act),⁹⁶ which subjects noncitizens to guilt by association, ideological exclusion, unilateral executive detention, and racial profiling.⁹⁷ Aliens are deportable for innocent association, without any proof that they supported terrorist activity.⁹⁸ Noncitizens are now subject to the resurrection of ideological exclusion, that is that they will be denied a visa on the basis of pure speech if they are seen as endorsing or espousing terroristic activity or persuading others to support activity or a group.⁹⁹ Aliens can be detained without any hearing or showing that they pose a threat to national security or are a flight risk. The defendant in a normal criminal proceeding can be held without bail only if he is a danger to the community or a flight risk.¹⁰⁰ Aliens can now be held not only during the proceeding which can take years, but also afterwards, indefinitely, even if the proceeding says they should not be removed from the country!!¹⁰¹ Rules that effect citizens and noncitizens alike include the authorization of secret searches and wiretaps without any probable cause as would normally be required by the Fourth Amendment.¹⁰²

Under the USA Patriot Act, over 1000 people were held for weeks or months with no charges in mass preventive detention.¹⁰³ They did not have access to lawyers and, in many cases, their families were not told where they were.¹⁰⁴ Some people were held as material witnesses, i.e. they might have information. Even they have been treated harshly.¹⁰⁵ Some have challenged that detention in court. While federal judges have found that the use of material witness warrants to detain individuals for potential testimony before a grand jury is unlawful,¹⁰⁶ other judges have held the opposite.¹⁰⁷ According to Jerry Kang,

[we] should not be surprised if courts determine that national security in the face of terrorism is—in the lingo of constitutional law—a ‘compelling interest’ and that rude forms of racial profiling, notwithstanding its over and under-

96. Pub. L. No. 107–56, 115 Stat. 272 (2001).

97. Cole, *supra* note 80, at 957.

98. Cole, *supra* note 80, at 966.

99. Cole, *supra* note 80, at 969.

100. Cole, *supra* note 80, at 970–71.

101. Cole, *supra* note 80, at 972.

102. Cole, *supra* note 80, at 973.

103. Cole, *supra* note 80, at 960.

104. *supra* note 95.

105. *supra* note 95.

106. *United States v. Osama Awaddallah*, discussed in LCHR, *supra* note 91, at 16.

107. *In Re Application of the United States for a Material Witness Warrant*, discussed in LCHR, *supra* note 91, at 16.

inclusiveness, are 'narrowly tailored' to furthering that interest. It would be foolish to think that the courts will necessarily save us from the excesses of the more political branches.¹⁰⁸

Little research has been done as to how all this has affected women in the Arab and Muslim communities, as many of the men detained were the sole or major breadwinners for their families as well as respected business owners, religious leaders, and community activists.¹⁰⁹ These women are usually stereotyped as voiceless and passive, needing to be liberated from the all encompassing Afghanistan burqa or even the more modest varieties of head scarves many wear in the United States.¹¹⁰ Some of them may not speak English, may not have been working, or even had a visa to work, if foreign born.¹¹¹

In November 2001, the Bush Justice Department said it would interview some 5000 young men, solely based on age, date of arrival, and country of origin. Virtually all were Arabs or Muslims.¹¹² Some police departments refused to assist the federal government as they believed the policy constituted racial profiling.¹¹³ They knew that law enforcement works best if it positively involves the community rather than terrorizes it.¹¹⁴ Needless to say, the affected groups have been outraged by the targeting.¹¹⁵ Some months later, the Justice Department announced it would interview 3000 additional men from countries with an Al Qaeda presence.¹¹⁶

When the Justice Department announced the Absconder Apprehension Initiative in February 2002, they decided to prioritize

108. Kang, *supra* note 46, at 200.

109. Interviews with individuals in Ann Arbor & Detroit, MI (Sept-Dec. 2002).

110. Ratna Kapur, *Gender and Commentary: Unveiling Women's Rights in the "War on Terrorism,"* 9 Duke J. Gender L & Pol'y 211 (2002). For the effect on other women, see Adrien Katherine Wing, *Palestinian Women and Human Rights in the Post 9-1-1 World*, Mich. J. Int'l L. (2002); Adrien Katherine Wing, *Global Critical Race Feminism: The Plight of Afghan Women*, 6 Wash. U. J.L. & Pol'y 19 (2002).

111. *supra* note 109.

112. Cole, *supra* note 80, at 974.

113. Fox Butterfield, *A Nation Challenged: The Interview; Police are Split on the Questioning of Mideast Men*, NY Times, Nov. 21, 2001, at A1; See Jim Adams, *Twin Cities Police Undecided on Helping FBI: They Fear Interviewing Mideast Men would be Profiling*, Star Tribune (Minneapolis-St. Paul), Nov. 22, 2001, at 7B; Patrick J McDonnell, *INS Hunt Not Seen as Issue for LAPD*, Los Angeles Times, Dec. 8, 2001, at B4.

114. Cole, *supra* note 80, at 958.

115. Cole, *supra* note 80, at 988.

116. See New Round of Interview Planned with Foreigners, Wall St. Journal, Mar. 21, 2002, at A8; Jonathan Peterson, *US will Interview More Foreigners in Fight on Terrorism*, Los Angeles Times, Mar. 21, 2002, at A20.

the deportation of 6000 aliens out of the 300,000 foreigners who remained in the country after being ordered deported. Needless to say, these men were from Arab countries.¹¹⁷

In April 2002, the Justice Department announced that it would put into effect a provision from IIRIRA, which gives the police the authority to enforce immigration laws.¹¹⁸ This was controversial not only in immigrant communities, but with police concerned about racial profiling. “‘We’ve spent decades establishing trust . . . with our very diverse communities,’ says a San Diego spokesman. ‘If there is an immigration emergency tied to criminal activity, of course we’ll assist. But if it is simply an immigration violation . . . we will not be involved.’”¹¹⁹

In June 2002, the Entry-Exit Registration System was established which now requires men from age 16 up, from 25 countries including nationals of Iraq, Iran, Libya, Sudan and Syria, to register and be photographed, fingerprinted, interviewed, or else be deported.¹²⁰ Over 1200 men have been detained under this program.¹²¹ For example, in December 2002, 400 men from Iraq, Iran, Sudan, and Syria were detained in Los Angeles under this program, and Amnesty International reported their harsh treatment included being shackled, hosed down with cold water, forced to sleep standing up, and kept from contacting family or legal counsel.¹²² The Lawyers Committee for Human Rights has called for a dismantling of this registration system since it is “discriminatory in nature, ineffective and inefficient as a law enforcement strategy, and creates widespread ill-will in Arab American and Muslim communities across the country.”¹²³

Of course, the inadequacy of all such profiling is shown by the fact that the airplane “shoe bomber” Richard Reid is a citizen of Great Britain;¹²⁴ the “American Taliban” John Walker Lindh is a

117. . See discussion in LCHR, *supra* note 91, at 23; Dan Eggen & Cheryl W. Thompson, *US Seeks Thousands of Fugitive Deportees; Middle Eastern Men are Focus of Search*, The Washington Post, Jan 8, 2002, at A1.

118. *Police Can Now be Drafted to Enforce Immigration Law*, Christian Science Monitor, Aug. 19, 2002, at <http://www.csmonitor.com/2002/0819/po2502-usju.html>.

119. *Id.*

120. Lawyers Committee for Human Rights, *Imbalance of Powers: How Changes to US Law and Policy since 9/11 Erode Human Rights and Civil Liberties September 2002 to March 2003*, at 52 (2003) [hereinafter “LCHR II”].

121. *US Detains Nearly 1200 during Registry*, The Washington Post, Jan. 17, 2003, at A14.

122. Letter from Amnesty International to Attorney General John Ashcroft, dated Jan. 10, 2003, available at: <http://www.amnestyusa.org/news/2003/usa01102003-3.tml> (accessed Mar. 5, 2003).

123. LCHR II, *supra* note 120, at 55.

124. Warren Hoge, *A Nation Challenged: The Convert; Shoe Bomb Suspect Fell*

Muslim convert, white upper middle class native of Marin County, California,¹²⁵ potential “dirty bomber” Jose Padilla is a Puerto Rican, former Chicago gangbanger,¹²⁶ and alleged twentieth hijacker Zacharias Moussaoui, who was captured before September 11, is a citizen of France.¹²⁷ None of them would have been identified through profiling on the basis of nationality.

It is interesting to look at the disparate legal treatment of these men. Lindh, captured in Afghanistan, got a public trial, whereas hundreds of foreign born Arabs and Muslims, also captured there, are being held in incommunicado detention in Guantanamo Bay, Cuba.¹²⁸ The President issued a military order that Al Qaeda members and other noncitizens could be tried in military tribunals or commissions without appeal to civilian courts, an action which has been heavily criticized by various scholars,¹²⁹ as well as our allies.¹³⁰ At least two federal courts have denied habeas petitions filed by lawyers representing some of the detainees, refusing to assert jurisdiction over the cases.¹³¹

in with Extremists, N.Y. Times, Dec 27, 2001, at B6.

125. Josh Tyrangiel, *The Taliban Next Door*, Time Online, Dec. 9, 2001, available at <http://www.time.com/nation/article/0.85.99.187564.00.html>.

126. *Lawyer: Dirty Bomb Suspect's Rights Violated*, June 11, 2002, available at <http://www.cnn.com/2002/US/06/11/dirty.bomb.suspect> (last visited Mar. 12, 2003).

127. A captured senior leader of Al Qaeda, Ramzi bn al-Shibh, has allegedly told the CIA that “no one trusted the unhinged Moussaoui for such an important mission [as the September 11 attacks] and that Moussaoui was never made part of the 9/11 conspiracy.” Jonathan Turley, *Sanity and Justice Slipping Away*, Los Angeles Times, Feb. 10, 2003, at B11.

128. *U.S. Charges Walker with Conspiring to Kill American Citizens*, PBS Online NewsHour Update, Jan. 15, 2002, at: http://www.pbs.org/newshour/updates/January02/walker_1-15.html.

129. Cole, *supra* note 80, at 954. For arguments opposing commissions and tribunals, see Harold Hongju Koh, *The Case Against Military Commissions*, 96 Am. J. Int'l L. 337 (2002); Lawrence Tribe & Neal Katyal, *Waging War, Deciding Guilt: Trying the Military Tribunals*, 11 Yale L.J. 1259 (2002); Laura A. Dickinson, *Using Legal Process to Fight Terrorism: Detentions, Military Commissions, International Tribunals, and the Rule of Law*, 75 S. Cal. L. Rev. 1407 (2002) (U.S. constitutional law and international law arguments); Jordan J. Paust, *Antiterrorism Military Commissions: Courting Illegality*, 23 Mich. J. Int'l L. 1 (2001). For an assessment of legality of tribunals, see Kenneth Anderson, *What to do with Bin Laden and Al Qaeda Terrorists? A Qualified Defense of Military Commissions and United States Policy on Detainees at Guantanamo Bay Naval Base*, 25 Harv. J.L. & Pub. Pol'y 591 (2002); Curtis A. Bradley & Jack L. Goldsmith, *The Constitutional Validity of Military Commissions*, 5 Green Bag 2d 249 (2002); Mark A. Drumbl, *Judging the 11 Sept Terrorist Attack*, 24 Hum. Rts. Q. 323 (2002); George P. Fletcher, *On Justice and War: Contradictions in the Proposed Military Tribunals*, 25 Harv J.L. & Pub. Pol'y 635 (2002).

130. Cole, *supra* note 80, at 958.

131. Neil A. Lewis, *Judge Rebuffs Detainees at Guantanamo*, N.Y. Times, Aug.

There may be approximately 650 suspects from 43 countries in Cuba, and officials are preparing accommodations for up to 2000 inmates.¹³² Some scholars and government officials have suggested that detention and prosecution of captured suspects should not even be governed by international law.¹³³ Harvard law professor Alan Dershowitz and others have argued that such persons could be tortured without violating any laws binding the U.S.¹³⁴

Padilla, also known as Abdullah al-Muhajir, is a former Chicago Latin Kings gang member who converted to Islam.¹³⁵ He was picked up by authorities as he returned from Pakistan and was allegedly planning to set off a dirty bomb containing radioactive materials.¹³⁶ He is now being held in incommunicado detention in a U.S. military prison as an “enemy combatant,” without access to counsel or any court—military or civilian, and may never be tried.¹³⁷ In December 2002, U.S. District Court for the Southern District of New York judge Michael Mukasey issued a 102 page opinion affirming Padilla’s right to consult counsel, but the government continues to resist the court’s order.¹³⁸

Another U.S. citizen, Yaser Hamdi, born in Louisiana of Saudi descent, who was captured by Northern Alliance in Afghanistan, is also being held as an enemy combatant, after being discovered among the Guantanamo prisoners.¹³⁹ The U.S. government in both the Padilla and Hamdi cases is resisting petitions for habeas corpus and saying that courts should just accept the President’s determinations as to their status.¹⁴⁰ Ironically, putting U.S. citizens under military jurisdiction without access to legal counsel places them in a legal limbo where they have less rights than foreigners Reid or Moussaoui.¹⁴¹ In October 2002, Reid ultimately pleaded

1, 2002, at A20.

132. Steve Vogel, *Afghan Prisoners Going to Gray Area*, The Washington Post, Jan. 9, 2002, at A1; Katherine Q. Seelye, *Guantanamo Bay Faces Sentence of Life as Permanent U.S. Prison*, N.Y. Times, Sept. 16, 2002, at A1. By February 2003, the number had risen to 650. Paisley Dodds, *New Suspects Arrive at Guantanamo Bay*, Associated Press, Feb. 7, 2003.

133. See people discussed in Dickinson, *supra* note 129.

134. See Alan Dershowitz, *Want to Torture? Get a Warrant*, San Francisco Chronicle, Jan. 22, 2002, at A19; Alan Dershowitz, *Shouting Fire: Civil Liberties in a Turbulent Age* (2002).

135. See *Lawyer: Dirty bomb suspect’s rights violated*, *supra* note 126.

136. *Ashcroft statement on ‘dirty bomb’ suspect*, June 10, 2002 at: <http://www.cnn.com/2002/US/06110/ashcroft.announcement/index.html>.

137. See *Lawyer: Dirty Bomb Suspect’s rights violated*, *supra* note 126.

138. LCHR II, *supra* note 120, at 59.

139. LCHR, *supra* note 91, at 36.

140. LCHR, *supra* note 91, at 37.

141. Editorial, *The Dirty Bomb Plot*, St. Louis Post Dispatch, June 11, 2002, B6.

guilty and was sentenced to life imprisonment by Judge William G. Young of the U.S. District Court in Boston.¹⁴²

In Seattle last August, an African American thirty-six year old, Earnest James Thompson, now known as James Ujaama, was accused of lending assistance to Al Qaeda by founding a training camp in Bly, Oregon in 1999.¹⁴³ He was also alleged to have run a militant Islamic web site in Great Britain, and was allegedly linked to Abou Hamza Masri, a London Muslim and alleged recruiter for Bin Laden.¹⁴⁴ Investigators hope to “squeeze some information out of him,” and he is being tried in a civilian court.¹⁴⁵

In March 2003, the INS was dissolved and folded into the new Department of Homeland Security along with 21 other federal agencies. The implications are ominous, as one commentator has stated. “Placing all of the INS’s functions into a department focused primarily on national security suggests that the United States no longer views immigrants as welcome contributors, but as potential threats viewed through a terrorist lens.”¹⁴⁶

At the time of this writing, it is alleged that the U.S. government has drafted in secret Patriot II, the Domestic Security Enhancement Act of 2003.¹⁴⁷ The proposed law would authorize secret arrests, overturning the federal court decision requiring the government to release the names of all those detained since September 11.¹⁴⁸ Additionally, the law would permit the U.S. to extradite even American citizens for trial to countries with which we do not have extradition treaties, such as Saudi Arabia, Syria and Libya, which are well known for torture.¹⁴⁹ International and current U.S. law prohibit sending a person to a country where there is likelihood of torture.¹⁵⁰

142. See Juliette Kayyam, *The Sentencing of “Shoe Bomber” Richard Reid: Its Larger Significance for Terrorism Cases and the “War on Terrorism” in General*, Findlaw.com, available at:

http://writ.news.findlaw.com/commentary/20030203_kayyem.html (accessed Feb. 12, 2003).

143. Kelli Arena, *Seattle man indicted on terror charges*, Sept. 13, 2002, at <http://www.cnn.com/2002/LAW/08128/ujaama.indictment.index.html>.

144. *Id.*

145. Patrick Anidjar, *Recent Arrests Reveal Shady Islamist Network in US Territory*, Agence France Presse, Aug. 29, 2002, in Nexis, News Group File; *American Muslim Activist Arrested and Held as a Material Witness in the 9/11 Investigation*, CBS Evening News, July 23, 2002, in Nexis, News Group File; Mike Soraghan, *Detainee to Again Seek Release*, Denver Post, Aug. 20, 2002.

146. LCHR II, *supra* note 120, at 47.

147. LCHR II, *supra* note 120, at 6.

148. LCHR II, *supra* note 120, at 6.

149. LCHR II, *supra* note 120, at 6–7.

150. See United Nations Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment, G.A. Res. 39/46, 39 U.N. GAOR Supp. No. 51, p. 197, U.N. Doc. /RES/39/708 (1984); Foreign Affairs Reform and

Constituting a new level of invasion of privacy, a proposed Terrorist Identification database would authorize the collection of DNA of any suspect and of all noncitizens suspected of having an association with a "terrorist organization."¹⁵¹ The most extraordinary proposal would possibly strip Americans of citizenship as a form of punishment for giving material support to terrorist groups.¹⁵²

This part of the article has illustrated how Arabs and Muslims have been socially constructed as Black, racially profiled, and treated in a discriminatory fashion as that status has historically implied. The specific stereotype of "terrorist" has enhanced their sense of "otherness" and permanent de-Americanization, whether they are citizens or not. Their personal, political, and legal plight was bleak before September 11, but has become much worse since then. The next part will show how CRT can offer some solutions.

III. CRITICAL RACE PRAXIS

Another tenet that Critical Race Theorists espouse involves the necessity to engage in praxis, the combining of theory and practice.¹⁵³ According to Eric Yamamoto, "critical race praxis focuses on developing and then translating critical theoretical insights about race, culture, and law into operational ideas and language for antistatist practice and, in turn, rethinking theory in light of new practice experience."¹⁵⁴ Sumi Cho and Robert Westley have

Restructuring Act, Pub. L. No. 105-277, Div. G, October 21, 1998, Sec. 2242 (a).

151. LCHR II, *supra* note 120, at 33.

152. LCHR II, *supra* note 120, at 7.

153. Adrien Katherine Wing, *Brief Reflections toward a Theory and Praxis of Being*, 6 Berkeley Women's L.J. 181 (1990-91).

154. Eric K. Yamamoto, *Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America*, 95 Mich. L. Rev. 821, 867 (1997) [hereinafter "Critical Race Praxis"]. An entire symposium responded to this important article. See Keith Aoki & Margaret Chon, *Critical Race Praxis and Legal Scholarship*, 5 Mich. J. Race & L. 35 (1999); Paulette Caldwell, *The Content of our Characterization*, 5 Mich. J. Race & L. 53 (1999); Robert Chang, *Facing History, Facing Ourselves: Eric Yamamoto and the Quest for Justice*, 5 Mich. J. Race & L. 111 (1999); Ibrahim J. Gassama, *Transnational Critical Race Scholarship: Transcending Ethnic and National Chauvinism in the Era of Globalization*, 5 Mich. J. Race & L. 133 (1999); Darren Lenard Hutchinson, *Beyond the Rhetoric of "Dirty Laundry": Examining the Value of Internal Criticism within Progressive Social Movements and Oppressed Communities*, 5 Mich. J. Race & L. 185 (1999); Kevin R. Johnson, *Lawyering for Social Change: What's A Lawyer to Do?*, 5 Mich. J. Race & L. 201 (1999). For an earlier article on the need for praxis, see Raneta J. Lawson, *Critical Race Theory as Praxis: A View From Outside the Outside*, 38 How. L.J. 353 (1995). For a critique of the value of praxis, see Reginald Leamon Robinson, *Mind, Agency, Race Consciousness, and Structural Determinism: An Analysis of Critical Race Praxis* (2003) (unpublished manuscript on file with the author).

called for synergism, an “interaction of agents or conditions that produces a combined effect that is greater than the sum of the individual effects. We envision a mode of synergistic movement theorizing that contains both substantive and methodological commitments . . . Such a project is necessarily collaborative, requiring information and insights gleaned from movements in order to formulate discursive strategies that must ultimately be tested in the context of actual struggle.”¹⁵⁵

My own explanation for the need for praxis is based upon the historical realities of many minorities. “Since many of us come from disenfranchised communities of color, we feel compelled to ‘look to the bottom,’¹⁵⁶ to involve ourselves in the development of solutions to our people’s problems. We can not afford to adopt the classic, detached, ivory tower model of scholarship when so many are suffering, sometimes in our own extended families. We do not believe in praxis instead of theory, but that both are essential to our people’s literal and figurative future.”¹⁵⁷

Praxis can take many forms ranging from counseling a client, filing a brief, making a speech, doing op-ed pieces, writing popular press books, appearing on talk shows, serving on boards, testifying before Congress, supporting/attacking federal judicial nominees, or working officially or pro bono with various public interest, governmental, or international organizations.

Some CRT adherents do engage in praxis. For example, Robert Williams represents Indian tribes around the world.¹⁵⁸ Gerald Lopez calls for community centered rebellious lawyering,¹⁵⁹ and Luke Cole places legal tactics within a broader political strategy.¹⁶⁰ Acknowledging the difficulties academics naturally face into linking theory with practice, John Calmore states that CRT’s primary impact on practice is seed planting among students.¹⁶¹

Yamamoto has developed four guideposts for critical race praxis inquiry: conceptual, performative, material, and reflexive.¹⁶² After

155. Sumi Cho & Robert Westley, *Critical Race Coalitions: Key Movements that Performed the Theory*, 33 U.C. Davis L. Rev. 1377, 1410 (2000).

156. See Mari Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 Harv. C.R.-C.L. L. Rev. 323 (1987).

157. Wing, *supra* note 20, at 6.

158. Robert Williams, *Vampires Anonymous and Critical Race Praxis*, 95 Mich. L. Rev. 741 (1997).

159. See Gerald Lopez, *Rebellious Lawyering* (1993).

160. Luke Cole, *Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law*, 19 Ecology L.Q. 619 (1992).

161. See John O. Calmore, *Airing Dirty Laundry: Disputes among Privileged Blacks—From Clarence Thomas to “The Law School Five,”* 46 How. L.J. 175, 218 (2003).

162. Yamamoto, *Critical Race Praxis*, *supra* note 154, at 877–78.

framing and exploring the conceptual issues involved, he asserts that one can design or perform appropriate actions. You can then assess if there was any material change, and then reintegrate that experience back into the theory of practice.¹⁶³ In my own career, I have unknowingly used Yamamoto's framework. Because I am the mother of five African American sons, I am critically interested in the treatment of Black men in the criminal justice system. In the early 90s, my interest manifested itself in exploring issues related to gangs. I studied conceptual issues related to gang theory, particularly as affecting ethnic minority males. I determined that I needed to get beyond theories developed predominantly by white male social science academics in ivory towers to understand the reality of Black gang life, and then design culturally appropriate strategies.

My research led me to Los Angeles former gang members, who were dealing directly with preventive and rehabilitative solutions to the gang problem. Through them, I discovered Amer-I-Can, a self-esteem curriculum started by Hall of Fame former football player, actor, and activist Jim Brown. After studying the program's effectiveness, I became involved as a national consultant. I went through facilitator training to teach the curriculum; brought former gang members to interact with law students in Iowa; took law students from Iowa to Los Angeles to meet with gang members there; arranged for Jim Brown to visit Iowa and other states; sold the curriculum for use and supervised programs in Des Moines, Iowa and New Orleans; wrote Congressional testimony on preventive and rehabilitative approaches to the gang problem; drafted a former gang member's autobiography; made numerous speeches; and served on the Iowa gubernatorial commission on African Americans in the prison population. I ended up engaging with various other actors on the gang issue, including scholars, gang members, ex-convicts, Congresspersons, state representatives and staffers, executive branch policy makers, cultural and religious community activists, federal and state law enforcement, including then Attorney General Janet Reno and then FBI director Louis Freeh, not-for-profit service providers like the YMCA, potential corporate contributors, professional athletes, entertainers, etc. Assessing my several years of experiences, I realized that I had not sufficiently explored the roles of women with respect to gangs, whereas my other scholarly interests were examined culturally relevant feminisms.¹⁶⁴ So I did additional research into gang theories related to women, presented some speeches and panel

163. Yamamoto, *Critical Race Praxis*, *supra* note 154, at 878–80.

164. I am editor of the only two anthologies that specifically focus on the legal rights of women of color under the law. See *Critical Race Feminism: A Reader* (Adrien Katherine Wing ed., 2d ed., 2003); GCRF, *supra* note 20.

presentations, and wrote a scholarly article.¹⁶⁵ Needless to say, these activities were highly educational for my students, personally and professionally transformative for me and even my entire family, but also very time consuming, and with relatively little scholarly output to show for it. My plans to publish an entire book on gangs have been sidetracked by other matters, including the passe nature of the gang subject in the national spotlight. I remain interested, but not as actively involved personally or on a scholarly level in the area.

In my view, unfortunately, praxis remains an aspirational element for many CRT theorists, who may limit their discussions about solutions to racism to ivory tower academic conferences and highly footnoted law review articles that are not even physically or pedagogically accessible to other social science academics, much less the adult college educated public. Many if not most tenure track professors are hired for their potential scholarly abilities and must devote several intense years to demonstrating those abilities sufficiently to get tenure through the writing of law review articles. It would not be surprising that most of them would not be suited to engage in praxis, especially pre-tenure. Many scholars may have never had any interest in praxis, pre- or post tenure, and openly welcomed the retreat from practice that professing represented. Some teachers who initially had an interest in praxis, may have lost that interest in the grueling process to get tenure. Some realize that post tenure raises are based on scholarly productivity, i.e. more articles and books, and not on other activities. Many lawyers primarily interested in practice would not want to deflect their focus by "wasting" many years writing theoretical articles, so they would not even be attracted to teaching. My comments here do not relate to clinical faculty who may be more likely to engage in praxis as they remain practitioners, training students to handle real world lawyering, and even social justice issues.

Ironically, it is evident that too many progressive theoreticians of all colors have remained unconnected to praxis, while the political right has been able to marry its neoconservative race theory with its political lawyering.¹⁶⁶ Groups like the Federalist Society in law

165. See Adrien Katherine Wing & Christine Willis, *Critical Race Feminism: Black Women and Gangs*, 1 Iowa J. Gender, Race & Justice 141 (1997). This article was anthologized in a number of sources. See *Sisters in the Hood: Beyond Bloods and Crips*, in *Critical Race Feminism*, *supra* note 164, at 243; *Black Women and Gangs*, in *Unfinished Liberation: Policing, Detention & Prisons 94* (Joy James ed., St. Martin's Press, 2000); *Critical Race Feminism: Black Women in Gangs*, in *Understanding Gangs in America* (Rebecca Peterson ed., Prentice Hall, 2003); *Black Women and Gangs*, in *States of Confinement: Policing, Detention and Prisons 94* (Joy James ed., Palgrave, 2002).

166. Yamamoto, *Critical Race Praxis*, *supra* note 154, at 831.

schools are integrally linked with conservative professors, lawyers, judges, think tanks, and ascendant Republican party policy. Most critical race theorists have not been able to effectively connect to similarly embattled progressive groups. As one commentator stated, "it's nice to know racism is socially constructed, but it doesn't help hail a cab at night."¹⁶⁷

The war on terrorism can provide the opportunity to engage in critical race praxis. All of the praxis activities mentioned above can be engaged in by progressive scholars and practitioners to confront the assault on the civil rights of Arabs, Muslims, and immigrants, along with the traditional minority ethnic groups, and the civil liberties of all Americans. In addition to the production of scholarly articles, clients need to be represented, briefs must be filed, op-eds can be done, speeches should be presented, appearances on talk shows could be solicited, sound bite media interviews must be sought, legislators need to be contacted, groups like the ACLU, Lawyers Committee for Human Rights and others should be supported financially and with pro bono counsel, etc.

In the pro-war climate that currently exists, these tasks will not be easy. Progressive voices will be branded as pro-terrorist and anti-American, as has happened historically.¹⁶⁸ While this part of the article has described the many forms that praxis may take, Part IV will focus on a particular kind of praxis—coalition building.

IV. COALITION BUILDING

Legal and political coalition building is a very difficult project, in any circumstances,¹⁶⁹ including potentially rallying around the civil rights and civil liberties deprivations imposed in the war on terrorism. It may be a method of praxis particularly suited for some lawyers and law professors of color, who grew up attending predominantly white schools and universities where "we were talented at the dangerous work of coalition building, at finding common ground, common cause, and friendship with schoolmates and teammates from homes very different from our own."¹⁷⁰

167. Yamamoto, *Critical Race Praxis*, *supra* note 154.

168. *See supra* note 67 and accompanying text.

169. Kevin R. Johnson, *The Case for African American and Latina/ Cooperation in Challenging Racial Profiling in Law Enforcement*, 55 U. Fla. L. Rev. 341, 361 (2003) [hereinafter "The Case"]; Mutua, *supra* note 4, at 1178; Mary Romero, *Historicizing and Symbolizing a Racial Ethnic Identity: Lessons for Coalition Building with a Social Justice Agenda*, 33 U.C. Davis L. Rev. 1599 (2000).

170. Charles R. Lawrence III, *Race, Multiculturalism, and the Jurisprudence of Transformation*, 47 Stan. L. Rev. 819, 840 (1995).

We have discovered that multiracial coalitions, in which whites are present, can create certain types of problems. My own experiences over thirty years with progressive civil rights, anti-war, anti-apartheid, pro-choice, affirmative action, and Middle East peace coalitions illustrate how difficult the task is. The whites, whether students or professional, tended to dominate or want to control the coalition, whether they were the numerical majority or not.¹⁷¹ For example, agendas would be set and decisions made in informal discussions without participation of the people of color, who would then be asked to do a designated task. If the person of color questioned the task or the decision making process itself, inevitably it would be too late to change things without seeming to be a trouble maker or to cause the group to incur great expense. The people of color deeply resented the situation as it replicated the worst features of the U.S. racial dynamics in the outside world. The whites involved, however well meaning, seemed oblivious to the power dynamic that had been replicated, and quite hurt at any insinuations from the people of color that the impact of white actions might be racist. Coalitions often broke apart or became dysfunctional as the people of color preferred to address the subject matter from the safe space of their own groups in which they could control the process and outcomes. The disparities were worsened by the gender issues as well. White males were the ones who often silenced all the people of color and white women.

Efforts at multiracial coalitions can also be doomed from the start as members of the group of color may feel those who want to join a coalition are insufficiently committed to the original group. In other words, an African American member of the National Conference of Black Lawyers may be accused of not being "black enough," if she wants to coordinate with the predominantly white progressive National Lawyers Guild. On the other hand, when the people of color stay within their own groups, whites, even progressive ones, may attack them as exclusionary, segregative, and reverse racists.¹⁷²

The white dominance dynamic happens in multiracial groups that are not coalitions as well. The control by white males in CLS helped lead to the creation of CRT, a formation predominantly, but not exclusively, of people of color.¹⁷³ The creation of the Minority Section of the American Association of Law Schools (AALS) was supposed to be a safe space for the small numbers of people of color in law teaching. The fact that the Section is open to all professors

171. For a discussion of this phenomenon in the context of native Hawaiian and white (*haole*) attempts at coalition, see Haunani-Kay Trask, *Coalition Building between Native and Non-Natives*, 43 *Stan. L. Rev.* 1197 (1991).

172. Lawrence, *supra* note 170, at 841.

173. Westley, *supra* note 155, at 1377-79.

and its actions have to be approved by the white controlled AALS helped lead to the creation of Regional Legal Scholarship conferences for faculty of color, which remain controlled by faculty of color. I have also observed some of the white dominance dynamics in the Society of American Law Teachers (SALT), a multiracial group of progressive law professors, which does a much better job than most legal groups of being fully inclusive and respectful of diverse voices.¹⁷⁴

Coalition building problems still occur even in formations of people of color. Each of the traditional minority groups, Blacks, Latinos, Asians and Native Americans, have absorbed many stereotypes about the others. For example, Hollywood and media images of African Americans as criminals, gang members, pimps, etc., help foster racism and misunderstanding in other groups of color, whether in the U.S. or abroad.¹⁷⁵ Immigrants are already well familiar with these stereotypes when they arrive in the U.S..

Relations between Blacks and Latinos have not been stress free. There are strains over perceived economic and political competition¹⁷⁶ that manifest as battles over education, jobs, housing and politics.¹⁷⁷ There is racism toward Blacks from some Latinos, many of whom have constructed themselves as white.¹⁷⁸ Some Latinos may even regard themselves as Black, but may or may not want to be identified with African Americans, a group about whom negative stereotypes abound.¹⁷⁹ Some Latinos would be regarded in the U.S. as Black, but firmly reject that designation.¹⁸⁰ An example of a political clash of interests between Latinos and Blacks occurred during the 2001 Los Angeles mayoral election. 80% of the African Americans supported the victorious white candidate and 82% Latinos supported the Hispanic candidate in the failing bid to elect the first Latino mayor.¹⁸¹

174. For information about SALT, see <http://www.saltlaw.org/history.htm>.

175. Lawrence, *supra* note 170, at 831.

176. Johnson, *The Case*, *supra* note 169, at 358; Bill Ong Hing, *Beyond the Rhetoric of Assimilation and Cultural Pluralism: Addressing the Tension of Separatism and Conflict in an Immigration Driven Multiracial Society*, 81 Cal. L. Rev. 863 (1993); Deborah Ramirez, *Multicultural Empowerment: It's not Just Black and White Anymore*, 47 Stan. L. Rev. 957 (1995); Yamamoto, *Critical Race Praxis*, *supra* note 154.

177. Mutua, *supra* note 4, at 1186.

178. See Kevin R. Johnson, "Melting Pot" or "Ring of Fire"? *Assimilation and the Mexican-American Experience*, 85 Cal. L. Rev. 1259 (1997); George A. Martinez, *The Legal Construction of Race: Mexican Americans and Whiteness*, 2 Harv. Latino L. Rev. 321 (1997).

179. See, e.g., Ian F. Haney Lopez, *The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice*, 29 Harv. C.R.-C.L. L. Rev. 1, 44 (1994).

180. *Id.* at 46.

181. See Ellis Cose, *A Brownout in Los Angeles*, Newsweek, June 18, 2001, at 32.

According to Athena Mutua, "some Latina/o Latina intellectuals seem to blame African Americans for the distortion of the 'White over Black' paradigm that appears to contemplate only two races, thereby making invisible the histories, struggles, and experiences of Latino/as,"¹⁸² as well as Asians and Native Americans. The persistence of the black/white binary has been critiqued by many Latino and Asian legal scholars.¹⁸³ Binary thinking can lead groups not to understand one another, to look askance and to be disrespectful of others, and to think the other minority group is not as important, only the relationship with whites.¹⁸⁴

There are many African Americans who resent immigrants, whether white or nonwhite.¹⁸⁵ Many Blacks may be less concerned with immigration issues than Latinos or Asians, unless it involves Haitians¹⁸⁶ or perhaps Africans. 40% of Blacks in California voted in favor of the Proposition 187, an anti-immigration initiative.¹⁸⁷

Chuck Lawrence warns that,

white skin privilege, Caucasian feature privilege, straight hair privilege, citizenship privilege, standard English privilege, male privilege, class privilege, heterosexual privilege, and

182. Mutua, *supra* note 4, at 1186 critiquing Juan Perea, *The Black/White Binary Paradigm of Race: The "Normal Science" of American Racial Thought*, 85 Cal. L. Rev. 1213 (1997) [hereinafter "*Black/White Binary*"].

183. See Perea, *Black/White Binary*, *supra* note 182; Richard Delgado, *Rodrigo's Fifteenth Chronicle: Racial Mixture, Latino Critical Scholarship, and the Black-white Binary?*, 75 Tex. L. Rev. 1181 (1997); Yamamoto, *Critical Race Praxis*, *supra* note 154; Ramirez, *supra* note 176; Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post Structuralism, and Narrative Space*, 1 Asian L.J. 1 (1994); Chris K. Iijima, *The Era of We Construction: Reclaiming the Politics of Asian Pacific American Identity and Reflections in the Critique of the Black/White Paradigm*, 29 Colum. Hum. Rts. L. Rev. 47 (1997); Elizabeth Martinez, *Beyond Black/White: The Racisms of Our Time*, 20 Soc. Just. 22 (1994); Rachel F. Moran, *Neither Black Nor White*, 2 Harv. Latino L. Rev. 61 (1997); William R. Tamayo, *When the "Coloreds" are Neither Black nor Citizens: The United States Civil Rights Movement and Global Migration*, 2 Asian L.J. 1 (1995); Frank Wu, *Neither Black Nor White: Asian Americans and Affirmative Action*, 15 B.C. Third World L.J. 225 (1995). African Americans who have addressed the topic include Adrienne D. Davis, *Identity Notes, Part One: Playing in the Light*, 45 Am. U. L. Rev. 695 (1996); John O. Calmore, *Exploring Michael Omi's Messy Real World of Race: An Essay for Naked People Longing to Swim Free*, 1 Law & Ineq. J. 25 (1997); Angela Harris, *Foreword: The Jurisprudence of Reconstruction*, 82 Cal. L. Rev. 741 (1994).

184. Delgado, *Justice at War*, *supra* note 4, at 170-71, 173.

185. Taunya Lovell Banks, *Both Edges of the Margin: Blacks and Asians in Mississippi Masala Barriers to Coalition Building*, 5 Asian L.J. 7 (1998).

186. Johnson, *The Case*, *supra* note 169, at 360. See Joyce Hughes and Linda R. Crane, *Haitians: Seeking Refuge in the United States*, 7 Geo. Immigr. L.J. 747 (1993).

187. *Heading North: After Proposition 187*, *Economist*, Nov. 19, 1994, at A29.

traitor-to-your-race privilege intersect in intricate and ever-changing ways to create racial hierarchies. Thus native-born blacks may look down on nonblack Mexican immigrants even as black West Indian immigrants are looking down on native-born blacks.¹⁸⁸

Some Blacks resent the “model minority”¹⁸⁹ status of Asians and see them “as a buffer between whites and blacks, as the ‘racial bourgeoisie’ or ‘middleman minority’ who, with their partially elevated position in the racial hierarchy, undermine black charges of white supremacy, while nevertheless preserving white privilege and slowing black advancement.”¹⁹⁰ In this sense, Asians may resemble the role played by Coloureds in South Africa’s apartheid era.¹⁹¹ Some Blacks may object that Japanese survivors got \$20,000 reparations for being incarcerated for several years in U.S. concentration camps during World War II, while it remains unlikely that African Americans will be given reparations for centuries of slavery.¹⁹²

Asian and Black groups have clashed over race based affirmative action.¹⁹³ In *Ho v. San Francisco Unified District*, Chinese Americans protested a 40% cap imposed by a consent decree that prevented them from attaining more places in selective magnet Lowell HS, even though they had better test scores than Black or Latino students. The case pitted the plaintiffs against the NAACP and other groups, and created significant interracial tension between Blacks and Asians.¹⁹⁴

Blacks have had clashes with outsider owners of small businesses in Black communities, whether those owners be Asians, Arabs, Jews

188. Lawrence, *supra* note 170, at 832–33.

189. *supra* note 2, at 1637; Leslie Espinoza & Angela P. Harris, *Afterword: Embracing the Tar-Baby-LatCrit Theory and the Sticky Mess of Race*, 10 *La Raza* L.J. 489, 551 (1998); Paula C. Johnson, *The Social Construction of Identity in Criminal Cases: Cinema Verite and the Pedagogy of Vincent Chin*, 1 *Mich. J. Race & L.* 347, 391 (1996).

190. Yamamoto, *Critical Race Praxis*, *supra* note 154, at 858.

191. Natsu Taylor Saito, *Citizenship and its Discontents: Centering the Immigrant in the International Imagination (Part I)*, 76 *Or. L. Rev.* 261, 345 (1997).

192. For an account of how Blacks feel about this, see Eric K. Yamamoto, *Racial Reparations: Japanese American Redress and African American Claims*, 40 *B.C. L. Rev.* 477 (1998).

193. Richard Delgado, *1998 Hugo Black Lecture: Ten Arguments Against Affirmative Action—How valid?*, 50 *Ala. L. Rev.* 135, 145 (1998).

194. See discussion in Yamamoto, *Critical Race Praxis*, *supra* note 154; Gitanjali Gutierrez, *Taking Account of Another Race: Reframing Asian American Challenges to Race Conscious Admissions in Public Schools*, 86 *Cornell L. Rev.* 1283 (2001).

or other whites.¹⁹⁵ For example, in 1992 everyone recalls the image of angry and terrified Korean shopkeepers defending their Watts, Los Angeles black ghetto stores from enraged Blacks, who were protesting the acquittal of four white policemen who beat African American motorist Rodney King.¹⁹⁶ In the aftermath of reconstruction, issues came out about the mistreating of Black customers, failure to hire Black workers, and a Korean shopkeeper's murder of Latasha Harlins, a 15 year old Black female teenager customer—a killing caught on camera.¹⁹⁷ In New Orleans in 1996, relations deteriorated so badly between the Vietnamese Nguyen family shopkeepers and Black residents that the shopkeeper filed a federal lawsuit accusing the organizers of a boycott of the store of economic terrorism.¹⁹⁸ The issue was not resolved until a Palestinian bought the shop and was welcomed by the Black community since "Palestinians in other communities treated Blacks well."¹⁹⁹

Arabs and Muslims have generally not been included to a great degree in the inter-minority clashes, except those involving shopkeeper incidents with Black customers.²⁰⁰ Most members of the Congressional Black Caucus have supported Arabs and Muslims on

195. Robert E. Suggs, *Bringing Small Business Development to Urban Neighborhoods*, 30 Harv. C.R.-C.L. L. Rev. 487, 495 (1995); see William R. O'Shields, *The Exodus of Minorities' Fourth Amendment Rights into Oblivion: Florida v. Bostick and the Merits of Adopting a Per Se Rule Against Random, Suspicionless Bus Searches in the Minority Community*, 77 Iowa L. Rev. 1875, 1912 (1992); see Anita L. Allen & Michael R. Seidl, *Cross-Cultural Commerce in Shakespeare's The Merchant of Venice*, 10 Am. J. Int'l L. & Pol'y 837, 859 (1995); see Dianne Molvig, *Das Take to the Streets, Stationed in two-inner-city neighborhoods, Milwaukee's community prosecutors fight crime—and build hope*, 74 Wis. Law. 18, 21 (2001).

196. See Lisa C. Ikemoto, *Traces of the Master Narrative in the Story of African Americans/Korean American Conflict: How we Constructed "Los Angeles,"* 6 S. Cal. L. Rev. 1581 (1993).

197. See Latasha Harlins 1975–1991, available at: <http://www.geocities.com/dgavre04/harlins.html> (last visited March 12, 2003) (Latasha's murderer Soon Ja Du received a suspended sentence for voluntary manslaughter in 1991 after shooting Latasha in the back of the head as she walked away after punching Soon in the face).

198. See Eric K. Yamamoto, *Interracial Justice: Conflict and Reconciliation in Post Civil Rights America 1–6* (1999) [hereinafter "*Interracial*"]. This book is based upon several previously published articles, including Yamamoto, *Critical Race Praxis*, *supra* note 154; Eric Yamamoto, *Race Apologies*, 1 J. Gender Race & Just. 47 (1997); Eric K. Yamamoto, *Conflict and Complicity: Justice Among Communities of Color*, 2 Harv. Latino L. Rev. 495 (1997); Eric K. Yamamoto, *Rethinking Alliances: Agency, Responsibility and Interracial Justice*, 3 UCLA Asian Pac. Am. L.J. 33 (1995).

199. Eric Yamamoto, *Facing History, Facing Ourselves: Eric Yamamoto and the Quest for Justice*, 5 Mich. J. Race & L. 111, 121 (1996).

200. Yamamoto, *Interracial*, *supra* note 198, at 5.

issues of Middle East peace.²⁰¹ In the 2002 election primaries, pro-Israel coalitions rallied forces across the nation to defeat African American Congressional Representatives Cynthia McKinney and Asa Hilliard, two of the most vocal pro-Palestinian voices in Congress, replacing them with Black candidates seen as more amenable to pro-Israel positions.²⁰² Needless to say, this result increased the preexisting tensions between Black and Jewish groups, an interesting topic beyond the scope of this article.²⁰³

Because of the various problems with coalition building, several scholars do not endorse it. For example, Delgado advocates laboring within your own group for the social justice goals you support. "For some projects, justice turns out to be a solitary though heroic quest, and the road to justice is one that must be traveled alone, or with our deepest, most trusted companions."²⁰⁴ Haunani-Kay Trask states that real organizing of native Hawaiians takes place outside of coalitions.²⁰⁵ She supports Malcolm X's claims that whites need to tackle racism within their own communities, rather than in coalition.²⁰⁶ "Work in conjunction with us—each working among our own kind."²⁰⁷

Despite the frictions and problems between various traditional and nontraditional groups, coalition building can be a useful tool of critical race praxis in the current period. African Americans have been used to being the dominant minority in the United States, able to keep their concerns at the center of the civil rights movement. Latinos are now surpassing Blacks numerically,²⁰⁸ and are the majority in California already.²⁰⁹ They will be 25% of the U.S. population by 2050.²¹⁰

201. See Salim Muwakkil, *The Middle East's political spillover*, Chi. Tribune, Aug. 5, 2002, at 13; see *New Member Profile: Artur Davis*, National Journal, Nov. 9, 2002, available at 2002 WL 26794416.

202. Note, *The Future of Majority-Minority Districts in Light of Declining Racially Polarized Voting*, 116 Harv. L. Rev. 2208, 2229 (2003); Alan Cooperman, *India, Israel Interests Team Up; Common Needs Lead to a Growing Lobbying Alliance*, Wash. Post., July 19, 2003, at A5; Melanie Eversley, *Georgia Lawmakers set to visit Israel*, Atl. J.-Const., Aug. 1, 2003, at A7.

203. Salim Muwakkil, *The Middle East's political spillover*, Chi. Trib., Aug. 5, 2002, at 13.

204. Richard Delgado, *Book Review: Linking Arms: Recent Books on Interracial Coalition as an Avenue of Social Reform*, 88 Cornell L. Rev. 855, 884 (2003) [hereinafter "Book Review"].

205. Trask, *supra* note 171, at 1209.

206. Malcolm X, *The Autobiography of Malcolm X* 382 (1965).

207. Malcolm X, *supra* note 206, at 383.

208. Brief of Puerto Rican Legal Defense and Education Fund, Et. Al. As Amici Curiae, *Amicus Briefs in Grutter v. Bollinger & Gratz v. Bollinger*, *In Support of the University of Michigan*, 14 La Raza L.J. 25, 32 (2003).

209. Michael C. McClintock, *Sunrise Mexico; Sunset NAFTA-Centric FTAA—What Next and Why?*, 7 Sw.L.J. Trade Am. 1, 90 (2000).

210. See US Bureau of the Census, US Dept of Commerce, Current Population

Blacks will have to learn to work in coalition with Latinos to ensure that Black concerns are not lost in a new dispensation of "favored minority." While the Latinos are becoming the majority minority, they are not as politically organized as the Blacks yet, with many being recent immigrants or noncitizens, who may not speak English.²¹¹ Thus in some instances, Latinos will need to learn from African Americans, and with them, to achieve various goals.

Coalition is good for Asians because although they score higher on standardized tests and have a higher income level than the other minority groups, history has already shown that they remain regarded as perpetual foreigners,²¹² once subject to internment.²¹³ Native Americans constitute only two million people,²¹⁴ and can benefit from linking with the larger groups, some of whom may resent those tribes, who now profit from gambling casino wealth.²¹⁵ Arabs and Muslims need to join in coalition with the other groups because they are too small and too recent as immigrants in comparison to the other groups to go it alone. As the current personification of evil of the moment, they need to draw upon the resources of other groups for support.

Coalition building does not happen in a vacuum. It must coalesce around particular projects where there is commonality of interest. For instance, Frank Valdes has noted that Latinos and Asians share a common interest in legal issues that involve "immigration, family, citizenship, nationhood, language, expression, culture, and global economic restructuring."²¹⁶

Reports—Population Projections of the United States by Age, Sex, Race, and Hispanic Origin: 1995 to 2050, at 13 tbl. J. (1996).

211. Jordan Rau, *The Vote to Watch/Latinos hold potential to swing statewide and local elections*, *Newsday*, Aug. 25, 2002, at A5.

212. See Robert S. Chang, *Disoriented: Asian Americans, Law, and the Nation-State* (1999); Keith Aoki, "Foreign-ness" and Asian American Identities: *Yellowface, World War II Propaganda, and Bifurcated Racial Stereotypes*, 4 *UCLA Asian Pac. Am. L.J.* 1 (1996); Natsu Taylor Saito, *Alien and Non-Alien Alike: Citizenship, "Foreignness," and Racial Hierarchy in American Law*, 76 *Or. L. Rev.* 261 (1997).

213. See *Korematsu v. United States*, 323 U.S. 214, 65 S. Ct. 193 (1944). See generally Symposium, *The Long Shadow of Korematsu*, 40 *B.C. L. Rev.* 1 (1998) (analyzing implications of *Korematsu* decision).

214. Kevin J. Worthen, *The Grand Experiment: Evaluating Indian Law in the "New World"*, 5 *Tulsa J. Comp. & Int'l L.* 299, 333, 334 (1998); John O. Calmore, *Exploring Michael Omi's "Messy" Real World of Race: An Essay for "Naked People Longing to Swim Free"*, 15 *Law & Ineq.* 25, 56; 22 *Cap. U. L. Rev.* 711, 747 (1993).

215. Joe R. Feagin, *White Supremacy and Mexican Americans: Rethinking the "Black-White Paradigm"*, 54 *Rutgers L. Rev.* 959, 984 (2002); see Scarlet Wootton, Recent Development, *Tribal Leaders Attend Historical National Repatriation Summit, Oklahoma City, June 8–9, 2000*, 25 *Am. Indian L. Rev.* 153, 155–56 (2001).

216. Francisco Valdes, *Under Construction: LatCrit Consciousness*,

Racial profiling is a potential issue for cooperation as it affects all the major minority groups. I will use it for illustrative purposes in the remainder of this section, even though it is only one of various issues that could be the basis for coalition building. Asian scholars have noted how both the recent mistreatment of Chinese American scientist Dr. Wen Ho Lee²¹⁷ and the interning of 120,000 Japanese and Japanese Americans in World War II could both be regarded as cases of racial profiling.²¹⁸ Kevin Johnson has called for Asians and Latinos to form political coalitions to challenge arbitrary INS conduct.²¹⁹ He also wants Blacks and Latinos to form coalitions to work on issues of racial profiling, as well.²²⁰

In the war against terrorism, racial profiling is particularly affecting Blacks, Latinos and South Asians who look Arab, creating an ideal intersectional issue for coalition building.²²¹ Coalescing around profiling in these times will not be easy. In his timely book, *Justice at War: Civil Liberties and Civil Rights in a Time of Crisis*, Richard Delgado, a founder of CRT, queries, "Will the establishment insist on Americanism and toeing the line in the war on terrorism, and demand that minorities demonstrate loyalty, in return for a symbolic concession or two?...Will it choose one minority group for favored

Community, and Theory, 85 Cal. L. Rev. 1087, 1140 (1997).

217. See Neil Gotunda, *Comparative Racialization: Racial Profiling and the Case of Wen Ho Lee*, 47 UCLA L. Rev. 1689 (2000) (Wen Ho Lee, an Asian American scientist, was profiled since Asians are regarded as "foreigners" and enemies of the U.S.); Eric K. Yamamoto et. al, *Race, Rights, and Reparations: Law and the Japanese American Internment* 464-74 (2001) [hereinafter "*Race, Rights*"]; Hing, *Vigilante Racism*, *supra* note 80, at 449; Frank Wu, *The Profiling of Threat versus the Threat of Profiling*, 7 Mich. J. Race & L. 135 (2001); Joo, *supra* note 80, at 7.

218. For discussion of internment, see Saito, *supra* note 51; Yamamoto, *Race, Rights*, *supra* note 198; Mari J. Matsuda, *Foreword: McCarthyism, The Internment and the Contradiction of Power*, 40 B.C. L. Rev. 9 (1998); Natsu Taylor Saito, *Justice Held Hostage: US Disregard for International Law in the World War II Internment of Japanese Peruvians: A Case Study*, 40 B.C. L. Rev. 275 (1998).

219. Kevin R. Johnson, *Racial Hierarchy, Asian Americans and Latinos as "Foreigners," and Social Change: Is Law the Way to Go?*, 76 Or. L. Rev. 347 (1997). But see Rachel Moran, *What if Latinos Really Mattered in the Public Policy Debate?*, 85 Cal. L. Rev. 1315 (1997) (questioning whether Asian American and Latina/o experiences are analogous).

220. Johnson, *The Case*, *supra* note 169; See also John Garcia, *Coalition Formation: The Mexican-Origin Community and Latinos and African Americans, in Immigration and Race: New Challenges for American Democracy* 255, 265-74 (Gerald D. Jaynes ed., 2000) (analyzing potential for African American and Latina/o political coalitions); Lawrence, *supra* note 170, at 839-47 (discussing importance of multiracial coalitions in seeking to build movement for social change).

221. See *supra* notes 218, 219, 220 and accompanying text.

treatment, in hope of keeping the others in line.”²²² There are several foreseeable scenarios in this regard. For example, the Bush administration could reconfigure rather than terminate various federal affirmative action programs after an expected hostile Supreme Court decision in the upcoming Michigan cases,²²³ to attempt to ensure Black support for the war efforts. The administration’s rejection of the pro-affirmative action position of the University of Michigan may have attracted some Asian support.²²⁴ The perpetuation of the forty year old blockade against Cuba despite U.S. business opposition ensures Cuban American loyalty,²²⁵ and the rumored appointment of a Hispanic for the next U.S. Supreme Court vacancy may attract other Latinos.²²⁶ Delgado wonders whether people of color will “be able to work together toward mutual goals—or [will] the current factionalism and distrust continue into the future, with various minority groups competing for crumbs while majoritarian rule continue[s] unabated?”²²⁷

In order to ensure that issues like racial profiling do become an effective rallying point for multiethnic coalition building in the war against terrorism era, it is necessary to develop a more complete theorization of the process. Critical race scholars have provided some insights that could be useful. According to Mari Matsuda, “when we work in coalition . . . we compare our struggles and challenge one another’s assumptions. We learn of the gaps and absence in our knowledge. We learn a few tentative, starting truths, the building blocks of a theory of subordination.”²²⁸ If traditional minority civil rights groups joined together with Arabs and Muslims, they would learn how little they truly understood about the other. I am one of the few African Americans that I know who deals with Arab and Muslim organizations as well as African American ones. I am astounded at how little accurate information each has about the other, even though some Blacks are Muslim, and there may be some degree of overlap between groups. In dealing with Latino-based entities, for example, I find they have very little basis for understanding Arabs and Muslims. I have tried to translate Catholic or Christian principles

222. Delgado, *Justice at War*, *supra* note 4, at 160–61.

223. *Grutter v. Bollinger*, 123 S. Ct. 2325 (2003).

224. David G. Savage, *Bush’s Opposition to Racial Preferences Get Big Support*, L.A. Times, Feb. 6, 2003, at A16.

225. World Markets Research Centre Limited, *US President Re-Affirms Opposition to Easing Cuba Trade Embargo*, Oct. 3, 2003, available at 2003 WL 63612126.

226. Juan Andrade, *There are masters of deception and there are masters of distraction*, Chi. Sun-Times, Mar. 14, 2003, at 33.

227. Delgado, *Rodrigo’s Fifteenth Chronicle*, *supra* note 183, at 1200.

228. Mari J. Matsuda, *Beside my Sister, Facing the Enemy: Legal Theory out of Coalition*, 43 Stan. L. Rev. 1183, 1188 (1991) [hereinafter “*Beside my Sister*”].

into Muslim ones and vice versa, but my own knowledge of Christian theology is inadequate to the task. Since I teach Islamic law, I actually know more about that faith than the Christianity in which I was socialized. Attempting to fill in the gaps in knowledge between Muslim and Arab groups and various organizations of color might reveal the similarities and differences in racial profiling and perhaps other issues as well. These issues might become the focus for joint action.

Chuck Lawrence has a more elaborate position on coalition building, which requires:

- (1) understanding the complex interrelatedness of our racial subjugation;
- (2) confronting our own internalized racist beliefs and the ways in which we participate in the maintenance of white supremacy;
- (3) resisting constructions of race that divide and demean us;
- (4) learning to talk and listen to one another, to share experience, to empathize with and understand one another; and
- (5) finding ways to sustain ourselves as we do the difficult, and often thankless work of coalition building.²²⁹

It is very difficult to imagine various groups agreeing on the interrelatedness of racial subjugation. Some minorities still socially construct themselves as white, and would not want to characterize their position as "Black." They might view their problems through the prism of religion or culture or ideology, rather than be forced to fit into America's racial categorizations.

With respect to Lawrence's second point, I have found many groups of color are unable to recognize that they too could be participants in maintaining white supremacy, not merely victims. Demonizing another group of color may be a vain attempt to be better or more "American" than others, failing to recognize that all will be seen as perpetual permanent outsiders in a hierarchy where white is still at the top. Addressing the third issue, seeking white status may be more important than alliances with groups of color.

I have participated in coalitions where it would have been better for groups not to talk too much with each other, because more points of dissimilarity may come out. For example, a Black civil rights group may be able to march against racial profiling with an Asian group. Engaging in dialogue may reveal the Asian group is anti-affirmative action. Thus Lawrence's fourth point about talking together and developing empathy may not occur. As a matter of fact,

229. Lawrence, *supra* note 170, at 828.

coalition building can create strange bedfellows, according to Delgado. Skinheads, survivalists, and anti-gun control elements all concerned with government surveillance may not be otherwise compatible with Asian and Latino groups concerned with the government treatment of immigrants after September 11.²³⁰

Sustaining ourselves as we build coalitions, Lawrence's fifth point, is critical. I have seen too many legal activists burn out in frustration or depression from the lack of positive results from both ends of coalition building. Some will merely drop out of the coalition aspect, while others will drop out of organizational work altogether, preferring to focus on individual personal, professional or family pursuits.

Lawrence also emphasizes trust. "Coalition work requires time and space to build trust. It requires creating methods and models for conversation, collaboration, and sharing. Engaging in collective action and careful reflection means starting small and building on the trust that we create in the process of doing this difficult work together."²³¹ My attitude toward trust is the opposite of Lawrence's. Using a personal hypothetical example, I would trust my husband, until I catch him cheating, and then might forgive him and stay with him, but would not trust him again. If I would not always trust a husband to whom I have made a life commitment in such circumstances, I see no reason why trust is necessary in coalition. We may work together within my group, and I may not trust other group members to do all the work as promised. I am usually prepared with a back up plan that requires that I may have to fill in to do the work of a colleague who is inefficient, incompetent, lazy, overworked or who has a personal or medical issue or a family matter. If I do not readily trust those in my own group, especially based on long term experiences with them, I would not extend trust to others operating perhaps on even fewer points of commonality. This lack of trust does not mean being hostile to the other group, it just means being aware of the pitfalls, and that their other priorities may not make them worthy of trust on any but the most superficial level.

In *The Miner's Canary: Enlisting Race, Resisting Power, Transforming Democracy*,²³² Lani Guinier and Gerald Torres see those raced as Blacks as having the potential to lead or be at the center of coalitions of outgroups, who exemplify the notion of "political race,"²³³ which might include various nonblack groups.

230. Delgado, *Book Review*, *supra* note 204, at 873-74.

231. Lawrence, *supra* note 170, at 841.

232. Lani Guinier and Gerald Torres, *The Miner's Canary: Enlisting Race, Resisting Power, Transforming Democracy* (2002).

233. Guinier & Torres, *supra* note 232, at 11-31.

According to the authors, all U.S. society would benefit if it would notice when Blacks are hurting; they serve in the role of the miner's canary signaling problems that will ultimately affect everyone in the mine.²³⁴ Their framework involves reconceptualizing meta-narratives, working from the bottom up, and tackling hierarchy.²³⁵ Unfortunately, I do not think it is likely that various outgroups would accept the leadership or centrality of Black groups in the current atmosphere. An issue like racial profiling, for example, does not affect poor whites or many white-looking women to the same degree it affects Blacks, Arabs and Muslims, and those who look like them. Derrick Bell's theory of white self-interest indicates that poor whites have not historically rallied together with people of color.²³⁶ Outgroups who are used to being dominant due to white privilege²³⁷ or relative privilege vis-a-vis Blacks, are unlikely to take a back seat to Blacks in the war against terrorism, an issue on which they would feel Blacks have no special expertise in any event. Delgado postulates that various outgroups of color would abandon their coalition with each other if they can get concessions from white power elites.²³⁸

Critical Latina/o Theory (LATCRIT), a more recent CRT offshoot, has generated an analysis of coalition across minority ethnic groups.²³⁹ LATCRIT founder Frank Valdes calls for "'critical coalitions' . . . 'alliances based on a thoughtful and reciprocal interest in the goal(s) or purpose(s)' of a collaborative and collective project."²⁴⁰ This definition would not require embracing of trust, but would be pragmatic, i.e., we will cooperate in publicizing these egregious cases in our respective communities.

234. Guinier & Torres, *supra* note 232, at 11–12.

235. Guinier & Torres, *supra* note 232, at 137–38.

236. Bell, *Race, Racism, supra* note 26, at 107–09.

237. See Cheryl Harris, *Whiteness as Property*, 106 Harv. L. Rev. 1709 (1993).

238. Delgado, *Book Review, supra* note 204, at 869.

239. Elizabeth M. Iglesias, *Foreword: Identity, Democracy, Communicative Power, Inter/National Labor Rights and the Evolution of LatCrit Theory and Community*, 53 U. Miami L. Rev. 575 (1999); Athena D. Mutua, *Shifting Bottoms and Rotating Centers: Reflections on LatCrit III and the Black/White Paradigm*, 53 U. Miami L. Rev. 1177 (1999); Francisco Valdes, *Piercing Webs of Power: Identity, Resistance and Hope in LatCrit Theory and Praxis*, 33 U.C. Davis L. Rev. 897 (2000); Francisco Valdes, *Foreword: Under Construction—LatCrit Consciousness, Community and Theory*, 85 Cal. L. Rev. 1087 (1997). See also Matsuda, *Beside my Sister, supra* note 228 (analyzing importance of multiracial coalitions because of interrelationships between all subordination).

240. Francisco Valdes, *Outsider Scholars, Legal Theory & Outcrit Perspectivity: Postsubordination Vision as Jurisprudential Method*, 49 DePaul L. Rev. 831, 832 (2000), citing Francisco Valdes, *Afterword: Theorizing "Outcrit" Theories, Coalitional Method and Comparative Jurisprudential Experience—RaceCrits, QueerCrits and LatCrits*, 53 U. Miami L. Rev. 1265, 1269–70 n.17 (1999).

Mary Romero posits that “the ways in which race based movements and racialized communities construct their identities has enormous implications for setting social justice agendas and for coalition building.”²⁴¹ Returning to an example we have mentioned before,²⁴² some groups may construct themselves as white and think perhaps that they are above being in coalition with a group of color. They may unconsciously feel entitled to dominate the coalition.

Lisa Iglesias has stated, “we need to learn how to articulate our intergroup comparisons in ways that energize new solidarities and promote more fluid and inclusive political identities by revealing new interconnections and commonalities among the oppressed, despite and perhaps because of our differences.”²⁴³ Her plea is an optimistic one, and perhaps could help with the problem of finding out too much information about a coalition partner, leading to less desire to work together. For example, the previously mentioned Black pro-affirmative action and Asian anti-affirmative action group might be able to become closer while mutually addressing the racial profiling issue. Blacks and Asians who look like “Arabs” will both be subject to profiling as terrorists. A good working relationship on this issue might enable some members of each group to hear each other from time to time on the divisive and potentially explosive affirmative action question.

At the annual LATCRIT conferences, one issue is chosen that is designed to appeal to nonLatino attendees, as a means of rotating centers of emphasis.²⁴⁴ In this regard, Athena Mutua has called for what she terms “shifting bottoms and rotating centers” to acknowledge the fact that Blacks and Latinos can both be at the bottom of the white power hierarchy in different ways, and there is the need for a shifting emphasis on the various groups. Whereas Blacks are at the bottom of a color hierarchy, many Latinos can be at the bottom of the language hierarchy.²⁴⁵ Unfortunately, it may be difficult to rally around this theme, as the number of nonLatinos at the conferences does not constitute a big enough cohesive faction to offset the dominance of the Latinos. The dynamic manifests as one center of the universe, i.e. Latino issues, with a shooting star flashing past, i.e. other minority issues. The environment can be particularly uncomfortable for some African Americans who are used to their concerns taking center stage. While some Latinos may be at the

241. Romero, *supra* note 169, at 1601.

242. See *supra* note 178 and accompanying text.

243. Iglesias, *supra* note 239, at 583.

244. Margaret E. Montoya, *Class in Latcrit: Theory and Praxis in a World of Economic Inequality*, 78 Denver U. L. Rev. 467, 468–69 (2001).

245. Athena Mutua, *Shifting Bottoms and Rotating Centers: Reflections on LatCrit III and the Black/white Paradigm*, 53 U. Miami L. Rev. 1117, 1183 (1999).

bottom in terms of language hierarchy in the U.S., Blacks remain there as well for their failure to master standard English despite having no other first language.²⁴⁶ At the LATCRIT conferences, nonspanish speakers may feel isolated as there is frequent lapsing in and out of Spanish, with accompanying joking or shaking of heads, that others who do not speak Spanish can not follow.

Cho and Westley provide an insight that is critically important. They call for a "structure of political organizing that unites contingent, transitory, and relationally defined individuals on the basis of interests rather than putative fixed group identities."²⁴⁷ In other words, we can not essentialize the interests of various minority groups, and assume that all the Asians will have the same position, for example.²⁴⁸ There are Asian groups which are against affirmative action, and groups that are for it.²⁴⁹ Conservative Cuban groups may not have much in common with the Puerto Rican Legal Defense Fund. The NAACP rarely agrees with the positions taken by Justice Clarence Thomas or African American University of California regent, Ward Connerly, who led the call to dismantle affirmative action in the UC system.²⁵⁰

Some groups of color may resent racial profiling of their own ethnic group members, but welcome its use against Arabs and Muslims as potential terrorists.²⁵¹ Catching young Black juveniles who rob convenience stores or poor Mexicans crossing the Texas border looking for work may be regarded as qualitatively different by Blacks and Latinos than catching Muslim supporters of Al Qaeda, who destroyed the World Trade Centers, damaged the Pentagon, and killed thousands in one day. They are people who have declared war on America, literally and figuratively.

246. Athena Mutua, *Shifting Bottoms and Rotating Centers: Reflections on LatCrit III and the Black/White Paradigm*, 53 U. Miami L. Rev. 1117, 1183, 1215 (1993).

247. Cho & Westley, *supra* note 155, at 1418.

248. Sylvia R. Lazos Vargas, *Deconstructing Homo[Geneous] Americanus: The White Ethnic Immigrant Narrative and Its Exclusionary Effect*, 72 Tul. L. Rev. 1493, 1596 (1998).

249. Deborah Kong, *Asian Americans divided over affirmative action*, The Phil. Inquirer, Mar. 17, 2003, at A2; Brief of Amici Curiae National Asian Pacific American Legal Consortium, Asian Law Caucus, Asian Pacific American Legal Center, et al., In Support of Respondents, 2002 U.S. Briefs 242; Brief of the Asian American Legal Foundation as Amicus Curiae In Support of Petitioners.

250. Gabriel J. Chin, *The Plessy Myth: Justice Harlan and the Chinese Cases*, 82 Iowa L. Rev. 182, 221 (1996); *Doubts About Thomas. (William Gibson of the NAACP Announces Decision to Oppose Clarence Thomas's Nomination for the Supreme Court)*, Time, Aug. 12, 1991, at 32.

251. Sameer M. Ashar, *Immigration Enforcement and Subordination: The Consequences of Racial Profiling After September 11*, 34 Conn. L. Rev. 1185, 1196 (2002).

Yamamoto posits four understandings about situated group power when we move beyond the black-white binary: simultaneity, positionality, differentiation, and dominance transformation.²⁵² Interpreting the points, a group could simultaneously be both oppressed and an oppressor, depending on its position to other groups, which relates to how that group has been treated differently historically. If the group is dominating others, it requires the desire to transform that dynamic in a positive manner so the groups can work together in healthy coalition.²⁵³ Applying Yamamoto's concepts to Black legal groups, it is necessary for some of these organizations to realize that they have been filling up a disproportionate amount of space in many coalitions of color, "acting white," so to speak. Working together effectively in the war on terror era will require an acknowledgment of this reality. Given how longstanding the dominance of Black groups has been, it will not be easy for them to transform, particularly as their numerical dominance fades as well.

In terms of working with Arab and Muslim groups on racial profiling, for example, Yamamoto's understandings would require an acknowledgment of the overlap between the Muslim group and various Black groups. It must be realized that the ability of some Arab and Muslim groups and individuals, especially Christian Arabs, historically to "pass" as whites, could have led them to be in a position of dominance over Blacks. How many people realize that actors Danny and Marlo Thomas or politician George Mitchell are Arab Americans? A healthy coalition can result only if the preexisting dynamics are transformed in a productive manner.

In his book, *Interracial Justice: Conflict and Reconciliation in Post-Civil Rights America*,²⁵⁴ Yamamoto analyzed several scenarios in which interminority conflicts were involved, and developed a four step framework: recognition, responsibility, reconstruction, and reparation.²⁵⁵ The first step involves each group recognizing each other's history, and then taking responsibility for their own parts in oppressing their coalition partner's group. Third, the groups must reconstruct and heal the relationship through atonement and apologies, and lastly, there should be reparations for past harms. Thus coalitions in the war on terrorism's denial of civil liberties would need to acknowledge their distinct histories, particularly as they intersect with the Arab and Muslim groups.

In my view, it is likely that some groups would feel Yamamoto's four steps are unnecessary to work together on the specific racial

252. Yamamoto, *Critical Race Praxis*, *supra* note 154, at 890.

253. Yamamoto, *Critical Race Praxis*, *supra* note 154, at 891-95.

254. Yamamoto, *Interracial*, *supra* note 198.

255. Yamamoto, *Interracial*, *supra* note 198, at 10-11.

profiling issues. I can envision a breakdown of the potential coalition building exercise as various groups would fail to even complete Yamamoto's first step of recognition. Important internal energy would be taken up as a group debates the relevance of recognition of another group's history. Darren Hutchinson warns that internal critics within progressive movements do not like airing dirty laundry in the public eye,²⁵⁶ which might be necessary in the recognition stage. He feels, however, that the disadvantages are outweighed by advantages that enhance the possibilities for strengthening coalition building.²⁵⁷

If groups do perform Yamamoto's first step, moving to the second step of accepting any responsibility is sure to be divisive within a group. For example, a newly formed Asian antiwar group will not find itself responsible for preexisting tensions between Asians and Blacks dating back to even something as recent as the 1992 Los Angeles riots. Even a longstanding civil rights group such as the NAACP is highly unlikely to accept the concept that it, or Blacks as a group, could have been oppressing or marginalizing Arabs or Muslims. Likewise, an Arab or Muslim group which may have had some ability to experience white privilege in the past would not consider itself to have been racist to Blacks in the past, despite profound class differences between Arabs/Muslims as a group and African Americans as a group. Many Arabs have frequently mentioned to me how proud they are of the fact that former world champion boxer Muhammad Ali is a Muslim, and that they relate to the oppression of Black Americans.

If most groups would not acknowledge Yamamoto's first and second steps, they certainly would not reach the last two steps involving healing and reparations. They could easily feel that repayment for past wrongs to the ethnic groups of various coalition group members should be the role of the U.S. government or corporations, not relatively small, meagerly funded not-for-profits. Since coalitions may involve numerous groups, it would be very time consuming and unwieldy for each group to even attempt to go through Yamamoto's four steps with respect to their relationship to other groups in the coalition.

My own thoughts on personal, political, and legal praxis of coalition building involve incorporating a multiplicity of ideas, in addition to those discussed above. I will contribute to the discourse in this article by briefly exploring the role of a legal actor I will call the "ambassador." It is a role I have played my entire career. Coalition building is done by individual people within each group,

256. See generally Hutchinson, *supra* note 154 (discussing critics from feminists, gays etc.).

257. Hutchinson, *supra* note 154, at 197.

not an entire group. It may be the officers or individual members who propose coordinating with another organization. Someone will make the case for collaboration and get others to go along, and someone or ones will have to physically interact with the other group to craft a plan of action or agree to endorse an already drafted one. The plan must then be sold to each group. A leader or ambassador who does not have the support of the rank and file, or only thinks she does, may find the coalition and even the original group collapsing when tough issues, media scrutiny, or political or financial pressures are brought to bear.²⁵⁸

This “ambassador” plays a delicate role, perhaps unknown if things go well, but certainly blamed if the collaboration goes badly. The effective ambassador must become conversant if not bilingual in the ethnic and organizational culture of the other group, which most of her group’s members will never do, want to do, or be suited to do. The deeper she gets into the other culture, the more she will realize that she understands less and less about it. She must never question the motivations or integrity of her own group in front of the coalition, unless she wants to hear her words used against her on a most inconvenient occasion.

She may find her loyalties shifting and want to push a position that is best for the coalition, even though she knows it will not seem best for her group. The ambassador may lose the “trust” of her own colleagues, while never gaining the trust of the other group. She even may have to fall on her sword and resign or take the blame for the faults of others for the good of the coalition or the original group. The ambassador must have sixth sense to know when to step out of the role and out of coalition, and even out of the original group, for her own sanity. She may find she is now a hybrid, not fitting in anywhere, wishing she never got so involved.

In this era of high tension, it will be important to increase the numbers of lawyers, students, and professors willing to be ambassadors to various groups in a coalition building process. If volunteering for such a task is not personally appropriate, identifying peers who would be suitable is necessary as well. The risks for failure are great, and the rewards are few. Coalition building will remain theoretical, however, unless committed, suitable individuals step into the breach.

This section of the article has fleshed out some considerations in the critical race praxis of coalition building, a problematic, delicate, and perhaps thankless process. The conclusion will mention a few specific recommendations that could serve as points of cooperation relating to the war on terrorism.

258. See Delgado, *Book Review*, *supra* note 204, at 872.

V. CONCLUSION

This article has called for critical race praxis coalition building as a means to tackle the war on terrorism's current assault on the civil rights and liberties of Arabs and Muslims, and those who look like them, as well as all Americans. Racial profiling has been suggested as one of the areas ripe for collaboration as it affects all the major ethnic groups who have been socially constructed as "Black."

The Lawyers Committee for Human Rights has developed a number of concrete suggestions particularly suited to coalitions of lawyers. It is clearly a wish list with specific aspects that may be ripe for joint efforts of cooperation between groups. For example, we need to call upon the Department of Justice to release the names of all persons held under the USA Patriot Act, and provide them access to lawyers. The Act itself should finally get a full blown review, with amendments made to reinstate the legal protections that this country should be about, whether in war or peace time. There should be independent human rights monitoring of the condition of prisoners in the U.S. and Guantanamo Bay by the Red Cross or groups like Amnesty International. There should be open immigration hearings concerning any prisoner's status. Full judicial review should be restored in all cases. The detainees in Cuba should get full prisoner of war status and all international protections that it entails. All U.S. citizens should be subject to U.S. criminal procedural protections, and not held indefinitely under enemy combatant status without access to legal counsel.²⁵⁹

This list is a beginning. Effective coalitions will need to develop many more points of common action in the days ahead. Darkness may be at noon.²⁶⁰

259. LCHR, *supra* note 91, at 52–53. This publication has recommendations in a number of areas, concerning open government, right to privacy, American and international human right protections, treatment of immigrants, refugees and minorities and security detainees. *Id.* at 51–54. LCHR II also contains suggestions in these areas. See LCHR II, *supra* note 120, at 92–95.

260. See Arthur Koestler, *Darkness at Noon* (1987) (classic fictional portrayal of agonies during Russian totalitarian dictatorship).

