

January 2003

Maintaining Human Rights in a Time of Terrorism: A Case Study in the Value of Legal Scholarship in Shaping Law and Public Policy

Nadine Strossen
Professor of Law, New York Law School

Follow this and additional works at: https://digitalcommons.nyls.edu/nyls_law_review



Part of the [Judges Commons](#), [Law and Society Commons](#), and the [Legal History Commons](#)

Recommended Citation

Nadine Strossen, *Maintaining Human Rights in a Time of Terrorism: A Case Study in the Value of Legal Scholarship in Shaping Law and Public Policy*, 46 N.Y.L. SCH. L. REV. (2002-2003).

This Article is brought to you for free and open access by DigitalCommons@NYLS. It has been accepted for inclusion in NYLS Law Review by an authorized editor of DigitalCommons@NYLS.

MAINTAINING HUMAN RIGHTS IN A TIME OF TERRORISM:
A CASE STUDY IN THE VALUE OF LEGAL SCHOLARSHIP
IN SHAPING LAW AND PUBLIC POLICY

NADINE STROSSEN*

I am so glad to be able to participate in this historic event, New York Law School's first Faculty Presentation Day. I want to thank Dean Stephen Ellmann and others in the New York Law School Administration for making it possible.

I. DIVERSE ALLIES IN EFFORTS TO PROTECT BOTH CIVIL LIBERTIES AND
NATIONAL SECURITY: FROM LAW PROFESSORS TO LAW
ENFORCEMENT OFFICIALS

I cannot speak at any of the later sessions during this exciting day, because I must catch a plane for Atlanta right after this breakfast gathering, to address a special forum¹ in memory of a Judge on the U.S. Court of Appeals for the Eleventh Circuit, Robert S. Vance,² a pioneering civil rights leader in Alabama who was tragically killed by a letter bomb.

* Professor of Law, New York Law School; President, American Civil Liberties Union. This essay is based on the talk that Professor Strossen delivered at a breakfast session to kick-off Faculty Presentation Day, April 3, 2002. This essay has been updated to reflect pertinent developments between the oral presentation and the essay's submission, in July, 2002. For invaluable research and administrative work in preparing this essay, Professor Strossen thanks the following NYLS students: Jennifer Meyer, Robert Georges, Stephanie Trager, Lori Adams and Diane Mullin. She also thanks the following individuals for having provided pertinent information or documents that were not available through public sources: Edwin Grimsley, Paralegal, ACLU Immigrants' Rights Project; Deborah Jacobs, Executive Director, ACLU of New Jersey; Gigi Pandian, Field/Communication Program Assistant, ACLU of Northern California; and Ben Wizner, Staff Attorney, ACLU of Southern California. Last, but far from least, she gratefully acknowledges the key contributions to this publication by the student members and officers of the NYLS journals, and by the NYLS Office of Information Technology.

1. The Annual Robert S. Vance Forum on Civil Rights, presented by the Federal Bar Association in Atlanta, Georgia. The topic for the 2002 Vance Forum, which took place on April 3, 2002, was *Civil Rights and the Nation's Response to Terrorism*.

2. See John H. Pearson, et al., *Footprints of a Just Man: The Case Law of Judge Robert S. Vance*, 42 ALA. L. REV. 987 (1991).

One of my co-panelists in Atlanta will be Georgia Congressman Bob Barr, a member of the House Judiciary Committee who has been a key ACLU ally on some privacy and other civil liberties issues, both before and after the September 11, 2001, terrorist attacks. Barr is a prominent conservative Republican who gained national attention for his leading role in the effort to impeach President Bill Clinton. Moreover, he has an impeccable “tough-on-crime” record, having served as both a U.S. Attorney and a CIA official. Therefore, many people are surprised that Bob Barr and the ACLU have collaborated so closely to oppose anti-terrorism measures that unduly infringe on civil liberties.³ We both get teased for being each other’s “strange bedfellows”!

For example, just a few weeks after the terrorist attacks, Bob Barr and I happened to make back-to-back appearances on Fox News TV’s “Hannity & Colmes” show. We were both voicing similar criticisms about the so-called “USA-PATRIOT” anti-terrorism law that Attorney General John Ashcroft was then trying to push through Congress, with almost no deliberation or debate. I was on air first, and when Barr subsequently came on camera, the liberal co-host, Alan Colmes, kiddingly said to him: “Nadine Strossen, on the way out said she’d be happy to give you a card so you could be a card-carrying member of the ACLU.” Barr responded: “Well, I tell you, they have done tremendous work over the last several years. We don’t agree on everything, but they are a very powerful ally.”⁴ I echo the very same sentiments about him!

This anecdote illustrates one of the key points I would like to stress about one of the two interrelated topics Dean Ellmann asked me to discuss this morning, reconciling national security and civil liberties concerns: that this is not a zero-sum game. Our government can and should protect both human life and human rights. Accordingly, civil libertarians have been working closely with many diverse allies, inside and outside government, to pursue our shared overarching goal of maximizing national security with minimal intrusion on personal liberty.

Our closest allies in this effort include not only leading liberal Democrats, such as the Congressman who represents our own district here at New York Law School, Jerrold Nadler, but also prominent conservative Republicans, such as Bob Barr and House Majority leader

3. See *In Bed with Bob Barr; How Conservatives Became the ACLU’s Best Friends*, THE AMERICAN PROSPECT, Nov. 5, 2001, at 19.

4. *Hannity & Colmes* (FOX News television broadcast, Oct. 5, 2000).

Dick Arme y from Texas. Along with other conservative Republicans, Congressmen Barr and Arme y repeatedly have collaborated with the ACLU on issues of common concern, including curbing government intrusions on personal privacy, before and after September 11. For example, in July 2001, the ACLU and Majority Leader Arme y held a joint press conference to request that the General Accounting Office study the pervasive hi-tech surveillance devices that local governments are increasingly deploying against all of us when we drive or walk in public places.⁵ Similarly, a year later, Majority Leader Arme y echoed the ACLU's criticism of two Administration counter-terrorism proposals that would likewise violate privacy without countervailing security justifications: any national ID card, including a de facto national ID, such as a nationally standardized driver's license; and Operation "TIPS" (Terrorist Information and Prevention System), which would deploy millions of workers with access to homes, such as cable or telephone company employees, to spy on their fellow citizens.⁶

In the effort to maintain both national security and civil liberties, the ACLU's allies also have included many national security and law enforcement experts. Among these allies are some prominent present and past officials of the FBI and the CIA, who have criticized a number of post-9/11 measures in terms of national security concerns, as well as civil liberties concerns.⁷ One such critic is especially noteworthy, since he was the Director of both the FBI and the CIA under Presidents Reagan and Bush Senior. I am referring to William Webster, who was also a judge on the U.S. Court of Appeals for the Eighth Circuit and the U.S. District Court for the Eastern District of Missouri, a very distinguished member of our legal profession. In November 2001, referring to his experience while serving as FBI Director (1978-1987), Judge Webster said:

From 1981 to 2000, the FBI prevented more than 130 terrorist attacks. We used good investigative techniques and lawful techniques. We did it without all the suggestions

5. See *Proliferation of Surveillance Devices Threatens Privacy* (Joint Statement of House Majority Leader Dick Arme y, R-TX, and the American Civil Liberties Union) (July 11, 2001), available at <http://www.aclu.org/news/.2001/n070601a.html>.

6. See Ellen Sorokin, *Security Bill Loses ID Card, Domestic Spies; Arme y Seeks 'Privacy Officer'*, WASH. TIMES, July 19, 2002, at A1; Andy Newman Editorial, *Citizen Snoops Wanted*, N.Y. TIMES, July 21, 2002, § 4, at 1.

7. See Jim McGee, *Ex-FBI Officials Criticize Tactics on Terrorism; Detention of Suspects Not Effective, They Say*, WASH. POST, Nov. 28, 2001, at A1.

that we are going to jump all over . . . people's private lives. . . . I don't think we need to go in that direction.⁸

Judge Webster and I recently shared a platform at the University of California at Santa Barbara, for what was billed as "A Dialogue about National Security and Personal Liberty."⁹ It was appropriately called a "dialogue" rather than a "debate," since we agreed with each other more than we disagreed.

II. JUDGES' AND OTHER OFFICIALS' RELIANCE ON LEGAL SCHOLARSHIP IN MAINTAINING BOTH SAFETY AND FREEDOM

For my joint appearance with Congressman Barr this afternoon, I have been told that many federal and state judges within the Eleventh Circuit are expected to attend, and the organizers of that forum have asked us to discuss the very same issue that I am addressing this morning, at Dean Ellmann's request: maintaining civil liberties or human rights during the current national security crisis.¹⁰ That overlap is not surprising, because almost all of the many speeches and other presentations I have made since September 11th have focused on this important question. Significantly, I have received an unusually high number of requests to address this topic before judges' groups and conferences; judges all over this country apparently are seeking information and ideas about how to preserve both individual freedom and national security.

This observation, about the judiciary's interest in reconciling national security and civil liberties concerns, is germane to both of the seemingly disparate topics that Dean Ellmann asked me to address this morning: not only the substantive topic about preserving both liberty and security, but also the more process-oriented question about the valuable role that legal scholarship plays in shaping law and public policy. In fact, those topics are so closely interrelated in general that all of my remarks about them will also be interrelated and overlapping, not separate.

The reason that judges in particular are so eager to hear discussions about the burgeoning legal issues in our current national security crisis is that so many of these issues are unresolved. Either there has

8. *Id.*

9. The Arthur N. Rupe Distinguished Dialogue Series, Interdisciplinary Humanity Center, University of California at Santa Barbara, Mar. 3, 2002.

10. See Joe Geshwiler, *Panel Faults Restrictions Imposed Since Sept. 11*, ATLANTA J. & CONST., Apr. 4, 2002, at 4B.

been little or no case law, or the case law is old and of questionable ongoing validity, or it is at least arguably distinguishable for reasons other than the passage of time.

Along with judges, members of Congress and the Bush Administration also have been actively seeking guidance from law professors, as they frame laws and policies to address the heightened terrorist threats. Since September 11th, I have had the privilege of testifying before the Judiciary Committees of both the Senate¹¹ and the House¹² concerning constitutional issues presented by legislation and Executive Orders aimed at countering terrorism. If you look at the lists of the witnesses who have testified before Congress about post-9/11 laws and policies, you will find that a significant percentage of us are law professors.¹³

Likewise, although the Administration has been implementing many counter-terrorism policies unilaterally, without even consulting Congress,¹⁴ it has consulted law professors about these policies. One important case in point is President Bush's controversial November 13, 2001, Military Order, under which any non-citizen the President deems a suspected terrorist could be tried by a secret military tribunal.¹⁵ Although members of Congress on both sides of the aisle have complained about the Administration's failure to seek Congressional

11. Nadine Strossen, *The Massive, Secretive Detention and Dragnet Questioning of People based on National Origin in the Wake of September 11* (Testimony before the United States Senate Committee on the Judiciary) (Dec. 4, 2001), at <http://www.aclu.org/congress/120401a.html>.

12. Nadine Strossen, *Protecting Dr. King's Legacy: Justice and Liberty in the Wake of September 11th* (Testimony before Congressman John Conyers' Forum on National Security and the Constitution, United States House of Representatives Committee on the Judicial Testimony), at <http://www.aclu.org/congress/1012402a.html>.

13. Tom Brune & Deborah Barfield Berry, *Tribunals Gain Support; But Experts Urge Limits to Their Scope*, NEWSDAY, Dec. 5, 2001, at A6 (referring to testimony of Harvard Law Professor Laurence Tribe and University of Chicago Law Professor Cass Sunstein); Stephen Franklin & Ken Armstrong, *Secret Evidence Bill Raises Concerns; Often Abused, Laws Called Poisonous*, CHI. TRIB., Sept. 30, 2001, at 1C (referring to testimony of Georgetown Law Professor David Cole); Katharine Q. Seelye, *The Prisoners; Rumsfeld Lists Outcomes For Detainees Held in Cuba*, N.Y. TIMES, Feb. 27, 2002, at A10 (referring to testimony of Yale Law Professor Ruth Wedgwood).

14. Robin Toner, *A Nation Challenged: Civil Liberties; White House Push on Security Steps Bypasses Congress*, N.Y. TIMES, Nov. 15, 2001, at A1; Editorial, *Justice Deformed; War and Constitution*, N.Y. TIMES, Dec. 2, 2001, at 14; Neil Lewis, *A Nation Challenged: The Senate Hearing; Ashcroft Defends Antiterror Plan; Says Criticism May Aid U.S. Foes*, N.Y. TIMES Dec. 7, 2001, at A1.

15. Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism, 66 Fed. Reg. 57833 (Nov. 16, 2001).

advice about the procedures governing these proposed tribunals,¹⁶ the Administration at least has consulted on that matter with some outside experts, including law professors.¹⁷ In short, officials in all branches of our government clearly value, and are guided by, legal scholars and scholarship as they wrestle with the many important, challenging issues at stake post-9/11.

This significant role and responsibility of legal scholarship was stressed in the very first public remarks by any Supreme Court Justice after the terrorist attacks. These remarks were made by Justice Sandra Day O'Connor, speaking at N.Y.U. Law School on September 28, 2001. She said: "Academics will help define how to maintain a fair and a just society with a strong rule of law at a time when many are more concerned with safety and . . . vengeance."¹⁸

III. THE ESSENTIAL ROLE OF LEGAL SCHOLARSHIP IN THE ACLU'S "SAFE AND FREE" CAMPAIGN, INCLUDING LITIGATION TO OBTAIN ESSENTIAL INFORMATION ABOUT THE DISAPPEARED CIVILIAN "DETAINEES"

Since September 11th, the ACLU has worked closely with many legal scholars in shaping our own efforts to maintain "a fair and just society with a strong rule of law,"¹⁹ and some of these efforts already have borne fruit. Just last week, for example, we won a pathbreaking ruling in our persistent efforts to get some basic information about the hundreds of so-called "detainees" whom our government has arrested and imprisoned in secret since September 11th,²⁰ even though appar-

16. Steven Lee Myers & Neil A. Lewis, *A Nation Challenged: The Tribunals*, N.Y. TIMES, Nov. 16, 2001, at B10.

17. See William Safire, *Military Tribunals Modified*, N.Y. TIMES, Mar. 21, 2002, at A37 (referring to Secretary of State Donald Rumsfeld's consultation with several law professors in crafting regulations to govern the military tribunals, including Northwestern University Law Professor Newt Minow, University of Chicago Law Professor Bernard Meltzer, and Yale Law Professor Ruth Wedgewood).

18. Linda Greenhouse, *A Nation Challenged: The Supreme Court; In New York Visit, O'Connor Foresees Limits on Freedom*, N.Y. TIMES, Sept. 29, 2001, at B5.

19. *Id.*

20. *Am. Civil Liberties Union v. County of Hudson*, No. HUD-L-463-02 (N.J. Super. Ct. App. Law Div. Apr. 12, 2002). Subsequent to the oral presentation on which this essay is based — and, significantly, subsequent to the foregoing state court ruling — the Commissioner of Immigration and Naturalization ("INS") issued a new interim rule purporting to prohibit state officials from releasing information regarding INS detainees in their custody, and the U.S. Government argued that this interim rule preempted the New Jersey statutory and case law that the New Jersey Superior Court had

ently almost none of them have any information about terrorism, let alone any involvement with terrorism.²¹ I refer to these individuals as “so-called detainees” to underscore the euphemistic nature of the term “detainees,” which is how the Administration describes these individuals, and how they are regularly described in the media as well. Contrary to the connotations of the term “detainees,” these incarcerated individuals not only are prisoners who are subject to complete, and apparently indefinite, deprivations of their physical liberty; worse yet, at least some of them apparently are being held in solitary confinement and under other conditions that are unusually harsh.²² Just as the relatively bland term “detainees” obscures the actual nature of the confinement at issue, so too do the government’s overall secrecy policies obscure the alleged justification for such confinement.

The ACLU’s historic victory in seeking some basic information about these individuals critically depended on legal scholarship. Before I explain this vital role played by legal scholarship, though, let me first describe the underlying human rights violations. Since September 11th, not only the ACLU, but also many others — including journalists, members of Congress, and immigration lawyers — have tried many strategies to get some essential information about the secret prisoners.²³ I say that with a shudder. Secret prisoners are what we would expect in Afghanistan under the Taliban, not in our great land of liberty and justice for all. Indeed, when I discussed these issues on a panel with former U.S. Secretary of State Warren Christopher, he compared the plight of the post-9/11 detainees to that of the “disappeared” during Argentina’s notorious “Dirty War.” He recounted traveling to Buenos Aires on behalf of President Carter and seeing women

enforced in this case. On that preemption ground, the New Jersey intermediate appellate court reversed the lower court’s ruling. *Am. Civil Liberties Union of N.J. v. County of Hudson*, 2002 WL 1285110 (N.J. Super. Ct. App. Div. June 12, 2002).

21. See Dan Eggen, *Officials Winnow Suspect List*, WASH. POST, Dec. 14, 2001, at A15 (officials conceded that only a handful of the hundreds of “detainees” were still suspected of terrorism, and only one — Zacarias Moussaoui — had actually been charged with conduct relating to the September 11 attack).

22. See Amnesty International, *Amnesty International’s Concerns Regarding Post September 11 Detentions in the USA* (Mar. 2002), at <http://web.amnesty.org/ai.nsf/Index/AMR510442002?OpenDocument&of=COUNTRIESUSA>. See also Stuart Taylor, Jr., *Stop Locking Up the Muslims*, THE LEGAL TIMES, June 3, 2002, at 52 (calling on Congress to investigate the Administration’s secret, unjustified incarcerations).

23. See Ronald Weich, *Insatiable Appetite: The Government’s Demand for New and Unnecessary Powers after September 11* (Apr. 2002) (ACLU Report), available at <http://www.aclu.org/congress/InsatiableAppetite.pdf>.

protesting in the streets, demanding the names of their sons and husbands who had disappeared suddenly, and who they believed had been arrested unjustly as suspected leftist terrorists. In his moving words:

We must be careful in this country never to court that kind of situation of holding people without releasing their names. It leads us down the road of the disappeared. The names of people should be revealed so that relatives will know what has become of their loved ones.²⁴

Speaking of Afghanistan, I want to stress that the prisoners to whom I now refer are not the ones who are in Afghanistan and Guantánamo Bay, armed combatants captured on the battlefield by U.S. military forces. Rather, I am now referring to civilians who were living peacefully in our midst here in the U.S. but who have been swept up in the post-9/11 investigation, in most cases apparently only or largely because of their national origin or religion.

I am glad that there has been so much attention to the conditions in which the 300 captives from the U.S. military operations in Afghanistan are being held at Guantánamo Bay. Under international law, anyone captured in combat is at least entitled to fair and humane treatment,²⁵ as the Bush Administration ultimately recognized, in response to domestic and international pressure.²⁶ In the present context, I should stress that much of that pressure was exerted by legal scholars and legal scholarship.²⁷

Many outside observers, including members of Congress and delegates from the International Committee of the Red Cross, have inspected the conditions of confinement at Guantánamo to assure themselves and the public at large that these fair and humane stan-

24. Marisa Taylor, *Judges Hear Passionate Debate: At Issue is Balancing Liberty and Security*, SAN DIEGO UNION TRIB., July 17, 2002, at B1. Significantly, this panel took place before an audience of judges, at the Ninth Circuit Judicial Conference in San Diego, California (July 16, 2002).

25. *Memorandum from Amnesty International to the US Government on the Rights of People in US Custody in Afghanistan and Guantánamo Bay* (Apr. 2002), available at <http://web.amnesty.org/ai.nsf/recent/AMR510532002> (discussing the Third Geneva Convention, Article 17).

26. Thom Shanker & Katharine Q. Seelye, *Word for Word/The Geneva Conventions; Who Is a Prisoner of War? You Could Look It Up. Maybe*. N.Y. TIMES, Mar. 10, 2002, § 4, at 9.

27. Dan Christensen, *Miami Suit Made Guantánamo a Choice Spot for Detainees*, MIAMI DAILY BUS. REV., Jan. 31, 2002, at A1; Mark Bixler, *Detainees' Legal Status Still Unclear; Military: Prisoners at Base in Cuba Probably Arabs*, ATLANTA J. & CONST., Jan. 13, 2002, at 3A; *All Things Considered: American Yasser Esam Hamdi Held in Cuba for Aiding Taliban Forces* (NPR radio broadcast, Apr. 9, 2002).

dards are actually being honored.²⁸ I wish, though, that there were even a fraction of this amount of attention to, or information about, the far larger number of individuals who have been secretly imprisoned all over the United States as part of the post-9/11 round-up.

According to the Bush Administration, approximately 1200 such people had been imprisoned as of November 2001, which was the last time it gave out numbers.²⁹ From all the information gleaned from various sources, there is reason to believe that the total number of individuals who have been imprisoned since September 11th may be much higher.³⁰ Surely these individuals too are entitled at least to fair and humane treatment. And surely all of us — all members of the public — are entitled at least to basic information about them so that we can assure their fair and humane treatment. Yet the Bush Administration has stonewalled repeated requests for the most basic information about these secret prisoners.

All we get from the Justice Department are conclusory assurances that it is respecting the legal rights of the “detainees.” Alas, though, the actual information that has come to light has been far from reassuring. Some individuals have been held for weeks, or even months, without being charged.³¹ Systematic obstacles have thwarted their access to counsel, and some have even been held incommunicado from family members. Moreover, there are credible allegations of physical mistreatment at the hands of guards and other inmates.³²

Significantly, the Administration’s secret detention policy has been criticized by one of the most arch-conservative newspapers in this country, the *Washington Times*, even though it enthusiastically has sup-

28. Ian James, *Red Cross Checks Up on Prison Conditions; Cuban Camp Greets Team*, 30 *Detainees*, CHI. TRIB., Jan. 18, 2002, at 3N; Philip Shenon, *The Prisoners; Britain Defends U.S. Treatment of Detainees at Guantánamo*, N.Y. TIMES, Jan. 22, 2002, at A12; *Sunshine on Guantánamo*, L.A. TIMES, Jan. 23, 2002, at 2-12.

29. For the most recent numbers, as this essay was submitted for publication, see Tamara Audi, *U.S. Held 600 for Secret Rulings*, DETROIT FREE PRESS, July 18, 2002 (noting discrepancies and delays in numbers that Justice Department had reported).

30. See Stuart Taylor, Jr., *Stop Locking Up Muslims: Justice Is on Shaky Ground When Immigrants Are Being Punished Without Due Cause*, LEGAL TIMES, June 3, 2002, at 52 (noting that “these detentions . . . have swept up between 1,100 and 2,000 Muslim foreigners (if not more”).).

31. Dan Eggen, *Delays Cited in Charging Detainees*, WASH. POST, Jan. 15, 2002, at A1.

32. See *supra* note 23; see also Somini Sengupta, *Pakistani Man Dies in I.N.S. Custody*, N.Y. TIMES, Oct. 25, 2001, at B10 (discussing the death of detainee Mohammed Rafiq Butt while in custody at Hudson County Jail in Kearny, N.J.); Press Release, American Civil Liberties Union, Rights Groups Seek to Question Govt. Official on “Incomplete and Inaccurate” Records of Detainees (Jan. 23, 2002) (at <http://www.aclu.org/news/2002/n012302a.html>) (discussing obstacles that the government has placed in the way for detainees seeking to contact legal counsel).

ported other aspects of the Administration's current counter-terrorism program.³³ We also have heard strong criticism of these mass secret detentions from another respected commentator who has supported other current counter-terrorism measures, Stuart Taylor. For example, he has supported ethnic and religious profiling in airports.³⁴ But even he has strongly criticized the Administration's secret incarcerations, which are apparently also based on profiling. In the *Legal Times*, he wrote:

Not since the World War II internment of Japanese-Americans have we locked up so many people for so long with so little explanation. [We must] ensure that these people are treated with consideration and respect, that they have every opportunity to establish their innocence and win release, and that they do not disappear for weeks or months into our vast prison-jail complex without explanation.³⁵

These critiques by Stuart Taylor and the *Washington Times* were issued back in November 2001. Yet now, many months later, we still know almost nothing about these secret prisoners, many of whom are apparently still in prison. In February 2002, *The Independent* newspaper in London featured an article about the plight of the so-called "detainees," which had a shocking but all-too-accurate title, *The Disappeared*.³⁶ Despite such widespread criticism, the Administration persists in its refusal to disclose information. In June 2002, Stuart Taylor renewed his condemnation of this stubborn secrecy and called upon Congress to hold hearings into the legal and human rights of the Administration's secret "detainees." He wrote:

33. *Victory Abroad . . . Constitutional Concerns at Home*, WASH. TIMES, Dec. 7., 2001, at A22 ("[I]n response to questions about the administration's unwillingness to make public the names of . . . non-citizens jailed on immigration violations and other criminal charges, Mr. Ashcroft did little to clarify the confusing and seemingly contradictory explanations coming from the administration. . . . [T]he administration has failed. . . to make the case for . . . keeping detainees' names secret.").

34. Stuart Taylor Jr., *Politically Incorrect Profiling: A Matter of Life or Death*, 33 NAT'L J. 44 (Nov. 2001) (arguing national-origin profiling may be more effective than racial profiling of "Arab-looking" people in airports); Stuart Taylor Jr., *The Case for Using Racial Profiling at Airports*, 33 NAT'L J. 38 (Sept. 2001) (suggesting that racial profiling in airports may be an essential component of the effort to ensure no more mass-murder-suicide hijackings).

35. Stuart Taylor Jr., *Bad Answer, Mr. Ashcroft*, THE LEGAL TIMES, Nov. 19, 2001, at 60.

36. Andrew Gumbel, *The Disappeared*, THE INDEPENDENT (LONDON), Feb. 26, 2002, at 1, 7.

Despite the unprecedented secrecy imposed by Attorney General John Ashcroft, evidence has mounted that [since September 11th] his Justice Department has put hundreds of harmless Muslim men from abroad behind bars for far too long, treated many of them worse than convicted criminals, and arguably violated their constitutional rights — all without finding enough evidence to charge a single one . . . with a terrorist crime.³⁷

The Bush Administration's stubborn refusal to reveal basic information about the "detainees" is one strand in a larger shroud of secrecy that it is pulling over an increasing range of government policies and actions post-9/11, all contrary to core principles of free speech and democratic governance. For example, the Attorney General issued a directive to all government agencies reversing the previous Executive Branch stance regarding requests under the Freedom of Information Act ("FOIA").³⁸ The previous stance had been a presumption of openness, leading to disclosure of any requested information unless there were some specific legal obstacle or resulting harm. Under the new directive, however, the presumption is exactly the opposite: against disclosure and in favor of secrecy.³⁹

Post-9/11, the government has also imposed a new policy of automatically closing immigration hearings to the press, the public, and even family members, whenever the Justice Department so directs. The government does not even offer an explanation of the alleged justification for the closure in a particular case, let alone any evidence substantiating any such alleged justification.⁴⁰ In response to repeated inquiries, including from Congress, the government disclosed that as of July 2002, it had subjected 611 immigrants to such secret hearings,

37. Stuart Taylor, Jr., *Stop Locking Up the Muslims*, THE LEGAL TIMES, June 3, 2002, at 52.

38. 5 U.S.C. § 522(b) (2000).

39. Memorandum from John Ashcroft, Attorney General, United States Department of Justice, to Heads of all Federal Departments and Agencies (Oct. 12, 2001), available at <http://www.usdoj.gov/foiapost/2001foiapost19.htm>; Memorandum from Janet Reno, Attorney General, United States Department of Justice, to Heads of all Federal Departments and Agencies (Sept. 1, 1999), available at http://www.usdoj.gov/oip/foia_updates/Vol_XIX_4/page3.htm; see also Associated Press, *Ashcroft Urges Caution With FOIA Requests*, WASH. POST, Oct. 17, 2001, at A15.

40. Memorandum from Michael Creppy, Chief Immigration Judge, to All Immigration Judges (Sept. 21, 2001), available at http://www.aclu.org/court/creppy_memo.pdf.

arousing even greater concerns about whether it was respecting the due process rights of this large group of immigrants.⁴¹

These policies, and others like them, fly in the face of longstanding precedents about the essential right of “We the People” to information about the actions that our government is taking in our name. The ACLU has initiated a number of lawsuits to challenge the government’s unprecedented new secrecy policies. These suits are grounded on common law principles, constitutional guarantees of free speech and due process, and federal and state freedom of information statutes.⁴² Last week, we received the first decision in any of these suits.⁴³ It was a complete victory for the ACLU and for fundamental free speech and due process rights.

Significantly, in terms of the scholarly aspect of this morning’s topic, the ACLU’s lead litigator in this breakthrough case is a law professor — indeed, a law school dean — who had done scholarly work about the right of access to government information, which was critically influential in this positive outcome. I am speaking of Professor Ronald Chen, who is the Associate Dean of Rutgers Law School — in other words, he is the Steve Ellmann or the Jethro Lieberman of Rutgers! The ACLU’s legal victory was based on some obscure nineteenth-century statutes and some arcane legislative history in New Jersey, the state where most of these prisoners are located, and a state that happens to have relatively extensive, explicit law concerning government’s duty to disclose information about prisoners. Professor Chen was aware of this positive state law, thanks to his scholarly work. Moreover, his important interrelated scholarly and litigative endeavors were assisted by the efforts of law students, working through the Constitutional Litigation Clinic at Rutgers Law School. In his powerful rul-

41. Tamara Audi, *U.S. Held 600 for Secret Rulings*, DETROIT FREE PRESS, July 18, 2002, at A1 (quoting ACLU attorney Lee Gelernt as noting, “It is difficult to overstate the importance of public scrutiny in the INS process, where detainees are facing a trained prosecutor, often without counsel, and the outcome of the hearing will literally determine whether they are locked up for months and then deported.”).

42. See *Ctr. for Nat’l Sec. Studies v. DOJ*, No. 01-2500GK, 2002 U.S. Dist. LEXIS 2983, (D.C. Feb. 20, 2002); see also Press Release, American Civil Liberties Union, In First Lawsuit Filed Regarding Mass Detentions, Civil Liberties Groups Demand Release of Essential Information Under FOIA (Dec. 5 2001), available at <http://www.aclu.org/news/2001/n120501b.html> (last visited Dec. 5, 2001).

43. *Am. Civil Liberties Union v. County of Hudson*, No. HUD-L-463-02 (N.J. Super. Ct., Mar. 27, 2002). For subsequent developments in this litigation, see *supra* note 21. See also Jim Edwards et al., *Inadmissible - Fine Tuning*, N.J.L.J., Apr. 15, 2002 (explaining that Judge Arthur D’Italia amended his initial ruling, which he had issued on Mar. 27, 2002, to add *New Jersey’s Right To Know Law*, N.J.S.A. 47:1A-1, as another rationale for requiring the U.S. Justice Department to give the ACLU of New Jersey a list of the “detainees”).

ing on March 27, 2002, New Jersey Superior Court Judge Arthur D'Italia strongly condemned the Administration's "secret arrest" policy as "odious to a democracy."⁴⁴

IV. THE ESSENTIAL ROLE OF LEGAL SCHOLARSHIP IN PROTECTING LEGAL RIGHTS IN GENERAL

I could cite countless other examples of how legal scholarship is playing a vital role in informing advocacy on behalf of human rights, and hence in shaping government actions concerning human rights. Indeed, I cannot think of any aspect of the ACLU's work where this is not the case. Effective advocacy of civil liberties and constitutional rights — whether in courtrooms, in legislatures, or in other public forums — always depends crucially upon ideas, evidence, and analysis. Therefore, scholarly writings that marshal ideas, evidence, and analysis in support of constitutional rights make an invaluable contribution to the actual protection of those rights.

Let me cite one important example, which is especially timely today in light of a breaking news story I heard on the radio early this morning. It was about the settlement of an historic lawsuit that the ACLU brought against the City of Cincinnati⁴⁵ on behalf of community members and organizations, to challenge the systemic racial profiling and discrimination that have long pervaded the criminal justice system in that city, triggering violent demonstrations last year in the wake of a police shooting of an unarmed black youth.⁴⁶ About four years ago, when the ACLU was in the process of launching our Campaign Against Racial Profiling,⁴⁷ one of the first steps we took was to convene a major national conference among leading scholars, as well as activists, in the areas of racial and criminal justice. Participants ranged from Harvard Law School Professor Lani Guinier to criminal

44. *Id.* Subsequent to the oral presentation on which this essay is based, a number of other courts, ruling on other ACLU cases, have invalidated other post-9/11 government secrecy policies. See *N. Jersey Group v. Ashcroft*, 2002 WL 1163637 (D. N. J. May 28, 2002), *gov't mot. for stay pending appeal denied sub nom N. Jersey Media Group v. Attorney General*, No. 02-2524 (3d Cir. June 17, 2002); *Detroit Free Press v. Ashcroft*, 195 F. Supp. 2d 937 (E.D. Mich. 2002), *gov't mot. for stay denied*, No. 02-1437 (6th Cir. Apr. 18, 2002).

45. See Francis X. Clines, *Deal Reached on Policing in Cincinnati*, N.Y. TIMES, Apr. 4, 2002, at A16; Frank Hinchey, *Ashcroft Praises Seal to Review Cincinnati Police; ACLU Profiling Lawsuit Also Settled*, COLUMBUS DISPATCH, Apr. 13, 2002, at 5D.

46. Francis X. Clines, *Cincinnati Mayor Imposes Curfew to Quell Violence*, N.Y. TIMES, Apr. 13, 2001, at A12.

47. See <http://www.aclu.org/profiling/index.html> (last visited Oct. 14, 2001).

defense lawyer Johnnie Cochran. The ideas that were exchanged in that conference both reflected and generated both scholarship and activism.⁴⁸

The ACLU also specifically commissioned a detailed study of racial profiling by University of Toledo Law Professor David Harris.⁴⁹ His ground-breaking study documented both the pervasiveness of the practice and its ineffectiveness from a law enforcement perspective. That widely-cited study was influential in many reform efforts, at all levels of government, all over the country.⁵⁰ In turn, the ensuing reform efforts spurred more scholarship, including David Harris' own new book,⁵¹ which he recently discussed at a forum here at NYLS, as part of a nationwide book tour.

Speaking from my own personal experience, as both a professor and an activist, it has been especially satisfying to have both facets of my work reinforce each other in such positive ways. My work as an advocate is constantly giving me ideas about breaking new issues where scholarly research and analysis are sorely needed. And it is inspiring to know that my legal scholarship can actually influence law and policy.

This interconnection also provides an outstanding opportunity for the many NYLS students who have worked in my office either full-time or part-time. For example, since 9/11, my staff and I have contended with a flood of requests for media interviews, speeches, and articles on a host of constitutional and civil liberties issues arising from the terrorist attacks. I could not possibly prepare for these presentations without the constant research efforts of the NYLS students who work with me. Therefore, both my work, and the cause of constitutional rights, benefit substantially from the assistance of NYLS students. This work is mutually beneficial, since the students' research skills are being honed in the only way such skills can be honed — in the crucible of actual use. My student assistants regularly tell me that it is especially exciting and fulfilling for them to be able to do research that has such a direct impact on such timely and prominent issues.

48. *An ACLU Northern Cal. Roundtable; Racism And The Criminal Justice System*, ACLU NEWS, July-Aug., 1998, at 4 (ACLU-Northern California, San Francisco, CA).

49. David A. Harris, *Driving While Black, Arrest the Racism - Racial Profiling in America*, (June 1999), available at www.aclu.org/profiling/report/index.html.

50. Nan Sumner-Mack, *Does Racial Profiling Work? Law Professor Says No*, PROVIDENCE JOURNAL-BULLETIN, Feb. 24, 2002, at I9; Frank H. Wu, *A Practice That Tears At The Civic Fabric*, THE CHRISTIAN SCIENCE MONITOR, Feb. 21, 2002.

51. DAVID A. HARRIS, *PROFILES IN INJUSTICE, WHY RACIAL PROFILING CANNOT WORK*, THE NEW PRESS (2002).

My remarks today necessarily reflect my own experience in the fields of constitutional law and human rights. The general points I am making, though, apply fully to whatever field of scholarship or activism might be of special interest to you. When I say “you,” I am addressing every member of this audience, including those of you who are law students. No matter what the field, the understanding and resolution of pressing public policy issues is invaluablely enriched by scholarship, and vice-versa.

By way of example, let me cite a matter of urgent concern to the ACLU — and to everyone here and throughout this country — in light of the historic campaign finance legislation that President Bush signed last week.⁵² The ACLU has been working intensely on the equally historic litigation challenging this law,⁵³ which promises to yield another landmark Supreme Court case, along with the 1976 landmark in this area, *Buckley v. Valeo*,⁵⁴ in which the ACLU and NYCLU represented some of the many challengers to the previous campaign finance law. In the current situation, as in the past, the ACLU has been working closely with law professors who are the leading scholars in this area. The *Buckley* challenge was argued (in part) by someone who was then a law professor at Yale, Ralph Winter. Likewise, one of our lead lawyers this time around is not only a law professor, but indeed a law school dean: Kathleen Sullivan, Dean of Stanford Law School. In other words, she is the Rick Matasar of Stanford!

Since President Bush signed the law, I also have been in regular communication with Yale Law School Professor Bruce Ackerman, whose new book about campaign finance reform, which was coauthored by Yale Law School Professor Ian Ayres, just has been published by Yale University Press⁵⁵ — fortuitously, a very timely publication. Although there are certain differences between the ACLU position on this issue and the Ackerman/Ayres position, we are joined in our support for an alternative route to reform, other than the imposition of limits on campaign contributions and/or expenditures, which

52. Bipartisan Campaign Reform Act, H.R. REP. 2356, 107th Cong. (2002).

53. *McConnell v. FEC*, No. 02-582 (D. D.C. filed May 5, 2002). See Deirdre Davidson, *Enter the Lawyers: A Field Guide to the Campaign Finance Litigation*, LEGAL TIMES, May 13, 2002, at 14 (discussing latest developments in *McConnell v. FEC*); Alison Mitchell, *Trying to Keep Money, Politics and Free Speech Honest*, N.Y. TIMES, Mar. 24, 2002, at 4-3 (discussing ACLU's role in this litigation).

54. *Buckley v. Valeo*, 424 U.S. 1 (1976).

55. BRUCE ACKERMAN & IAN AYRES, *VOTING WITH DOLLARS, A NEW PARADIGM FOR CAMPAIGN FINANCE* (2002).

is the approach of the new law and its predecessors. For those of us who believe that the limits-based approach is both unprincipled and ineffective, the alternative that the new book endorses is a welcome change. Therefore, I have been happy to strategize with these distinguished law professors about using their impressive scholarly efforts to build momentum for a new reform strategy among citizens' groups and government officials.

V. THE IMPORTANCE TO JUDGES OF "PRACTICAL" LEGAL SCHOLARSHIP,
INCLUDING THAT OF LAW STUDENTS

Six years ago, I had the honor of delivering the keynote address for a special event, which is directly relevant to the present forum, and particularly pertinent for the student participants in this forum given your interest in legal scholarship. This event was the First Annual Academic Convocation for Law Students, which was hosted by Suffolk University Law School in Boston, and involved law students from all over the country who were seriously committed to legal scholarship.⁵⁶ The organizers had invited me to give the keynote address because they thought I could draw upon my experience with the ACLU to help the student participants appreciate how legal scholarship can influence public policy. In short, they asked me to address the same general theme about the inter-relationship between legal scholarship and public policy as Dean Ellmann asked me to address in the present forum. In particular, the organizers of this earlier event asked me to focus upon the kind of legal scholarship that is relatively easy for students to conduct, as novice members of the legal profession: scholarship about specific legal doctrines and issues, rather than the kind of grand theory that has been fashionable among many law professors.

Mind you, I am not "dissing" theoretical writings; I am not anti-intellectual! What I am doing, though, is affirmatively championing a more applied kind of research that directly addresses the more immediate concerns of members of the bench and bar, as well as other policymakers. In the last decade or so, there have been many pleas for greater scholarship of this kind, including from those who can use it the most: judges. One of the most influential of these pleas came from Judge Harry Edwards, then Chief Judge of the U.S. Court of Ap-

56. See Nadine Strossen, Keynote Address on "Law in a Changing Society," First Annual Academic Convocation For Law Students (Mar. 10, 1996) (Suffolk University Law School, Boston, MA, on "Legal Scholarship as a Vehicle for Social Change") (on file with author).

peals for the D.C. Circuit. Significantly, Judge Edwards is himself a former law professor, having taught at the University of Michigan Law School and Harvard Law School. In 1992, the *Michigan Law Review* published an article by Judge Edwards in which he urged law professors and students to correct a trend he noted toward de-emphasizing and devaluing what he called “practical legal scholarship,” which described as follows:

It is prescriptive. It analyzes the law and the legal system with an aim to instruct attorneys in their consideration of legal problems; to guide judges and other decision makers in their resolution of legal disputes; and to advise legislators and other policymakers on law reform. It is also doctrinal: it attends to the various sources of law . . . that constrain or otherwise guide the practitioner, decisionmaker, and policymaker.⁵⁷

Judge Edwards’ observations rang such a strong chord within the legal community that he, as well as the editors of the *Michigan Law Review*, were deluged by responsive comments, most of which strongly seconded his conclusions and recommendations. As Judge Edwards wrote:

The response to the article has been nothing short of extraordinary. . . . In the article, I noted that I had heard many others express similar concerns in recent years. . . . I was unaware, however, that these concerns are as deep and widespread in the legal community as the response to the article suggests.⁵⁸

Coincidentally, just a few days before I gave my keynote talk at the Suffolk Law School convocation for student legal scholars, I had the opportunity to discuss these issues with a Justice on the U.S. Supreme Court, who strongly supported Judge Edwards’ views, and who also endorsed my own plans to encourage law students to pursue “applied” or “practical” legal scholarship. In the Justice’s words, “You’re preaching to the choir.” He lamented that much that he reads in law journals

57. Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 39-52 (1992).

58. *Id.* at 2195. This issue of the *Michigan Law Review* included a symposium consisting of comments on Judge Edwards’ original article, to which the author of the instant piece was invited to contribute. See Nadine Strossen, *Pro Bono Legal Work: For the Good of Not Only the Public, But Also the Lawyer and the Legal Profession*, 91 MICH. L. REV. 2122 (1993) in Symposium, *Legal Education*, 91 MICH. L. REV. 1921 (1993).

has absolutely no bearing on his Supreme Court work. As he put it, “When I’m trying to decide a tough case, Habermas isn’t much help.” Conversely, though, this Supreme Court Justice mentioned a law review article that he had found very helpful in formulating and writing a recent opinion, and it was an article that exemplified the “practical legal scholarship” that Judge Edwards had championed.

By quoting a U.S. Court of Appeals Judge and a U.S. Supreme Court Justice, I now have come full circle to the point where I started when I told you about the judges’ conference I am going to address this afternoon. Along with other lawmakers, judges regularly seek and value guidance from legal scholars about all the pressing issues they must resolve. That general fact is specifically true regarding the particular set of issues that courts and the rest of us are now facing, in the wake of the September 11th terrorist attacks, about preserving both liberty and security.

VI. LEGAL SCHOLARS AND JUDGES CAN COLLABORATE TO KEEP OUR COUNTRY BOTH SAFE AND FREE

I do not underestimate the enormous challenges we face in keeping our beloved country both safe and free. For details about specific issues in that massive effort, I commend you to the eponymous section of the ACLU’s award-winning Website — “safeandfree” — at www.aclu.org. For any of you who might be interested in doing your own research and writing on any of these important issues, that Website is a treasure trove, which has earned many compliments from scholars, journalists, activists and government officials of widely differing perspectives.

Among other materials that are particularly relevant to the present forum, the ACLU Website contains detailed reports on key issues, which have been written in part by legal scholars, and which cite other valuable legal scholarship. For example, a major report the ACLU issued in November 2001 about recent rollbacks of judicial review power in the most recent anti-terrorism laws,⁵⁹ was co-authored by a law pro-

59. Ronald Weich, *Upsetting Checks and Balances: Congressional Hostility Towards the Courts in Times of Crisis* (Oct. 2001), available at www.aclu.org/congress/courtstripping.pdf (last visited July 10, 2002).

fessor⁶⁰ and cites a number of law review articles, including one by New York Law School's own Professor Lenni Benson.⁶¹

The "safeandfree" section of the ACLU's Website also contains many legal documents from the ACLU's many pending lawsuits arising from anti-terrorism measures — not only the judicial opinions, but also the pleadings, briefs, and affidavits. These documents, too, reflect substantial research and analysis by legal scholars. Law professors not only have authored articles that are cited in these litigation documents, but law professors are also serving as counsel on a number of the ACLU's lawsuits enforcing constitutional rights in the counterterrorism campaign.⁶²

In addition to the ACLU's lawsuits challenging various post-9/11 government secrecy policies, to which I already have referred, it has also brought a number of lawsuits challenging other civil liberties violations in the wake of the terrorist attacks: from suppression of dissent,⁶³ to discrimination against law-abiding non-citizens,⁶⁴ to airport strip searches without individualized suspicion,⁶⁵ and other civil rights violations in the context of air travel.⁶⁶

In sum, as I have stressed, the challenges are enormous. I am coming to the end of my allotted time, now, though, and I would like to end with something positive. That sage philosopher, Woody Allen, once said, "I really want to end with something positive, but I can't think of anything positive to say. Would you settle for two negatives?"!

In contrast to Woody Allen, I really can say something positive. I am optimistic that we can count on our nation's judges to fulfill their

60. See *id.* at 28 (Larry Yackle, Professor at Boston University Law School, contributed to the section about habeas corpus).

61. Lenni Benson, *Back to the Future: Congress Attacks the Right to Judicial Review of Immigration Proceedings*, 29 CONN. L. REV. 1411, 1441 n.154 (1997) (cited on p. 31 of the ACLU report).

62. See *supra* text accompanying note 44 (referring to Rutgers Law School Associate Dean, Ron Chen); see also *infra* note 64 (referring to University of Southern California Law Professor Erwin Chemerinsky).

63. See, e.g., *infra* text accompanying notes 70-72.

64. Nancy Cleeland, *Screening Rule Challenged; Courts: Requirement that Airport Screeners be U.S. Citizens is Unconstitutional, ACLU Suit Contends*, L.A. TIMES, Jan. 18, 2002, § 3, at 2. The case is *Gibens v. Mineta*, No. CV 02-00493 RMT (Ex) (S.D.C.A. filed Jan. 17, 2002) (one of the counsel working with the ACLU staff attorneys on this case is University of Southern California Law Professor Erwin Chemerinsky).

65. Curtis Lawrence, *Muslim was "Humiliated" by Search*, CHI. SUN-TIMES, Jan. 17, 2002, at 5. The case is *Kaukab v. Harris*, No. 02-CV371 (N.D. IL. filed Jan. 16, 2002).

66. See Susan Sachs, *5 Passengers Say Airlines Discriminated By Looks*, N.Y. TIMES, June 5, 2002, at B4.

intended constitutional role as the ultimate safety net for individual and minority group rights, when other government officials do not sufficiently respect these rights. To be sure, there are shameful episodes in American history when the courts did not fulfill their intended role and simply rubber-stamped rights violations that other government officials asserted to be justified in the name of national security. One egregious example is the *Korematsu* decision,⁶⁷ in which the Supreme Court sanctioned the internment of approximately 120,000 Japanese-Americans during World War II, based on the Executive Branch's unsubstantiated assertions that these individuals posed threats of espionage or sabotage. However, this decision and others in the same vein have been resoundingly repudiated, so I am hopeful that current judges will have learned from their predecessors' mistakes.

So far, the ACLU's post-9/11 court record bears out this optimism. As I have already indicated, a number of lower court rulings have sustained the ACLU's challenges to the government's new secrecy policies.⁶⁸ To date, only one of the ACLU's pending post-9/11 lawsuits has come to a conclusion, with a final judicial ruling, and in that one too, we won a resounding victory.

The ACLU represented a group called "School of the Americas Watch," which monitors the "School of the Americas" ("SOA") at Fort Benning in Columbus, Georgia.⁶⁹ The school — which in January 2001 was renamed the "Western Hemisphere Institute for Security Cooperation" — trains military personnel from Latin America, and SOA Watch maintains that many SOA graduates have committed egregious human rights abuses throughout Latin America. Since its founding in 1990, SOA Watch has held an annual demonstration at the School. It always has been peaceful, with no damage to any person or property. In November 2001, though, the government sought a court order to prevent the planned demonstration, invoking generalized national security concerns. The government stressed that Fort Benning has been on a state of "high alert" since September 11th, and it relied on a purported "war" exception to the First Amendment.

U.S. Magistrate Judge Mallon Faircloth issued an excellent oral opinion from the bench, strongly upholding free speech rights and rejecting the government's asserted "war exception." Even more im-

67. *Korematsu v. United States*, 323 U.S. 214 (1944).

68. *See supra* note 44; *see also* text accompanying notes 42-44.

69. *See* School of the Americas Watch, *What is the SOA?* (July 10, 2002), available at www.soaw.org.

portant, the Judge's rationale applies to all cherished freedoms. First, Judge Faircloth noted an important general point that is too often overlooked, given the wartime rhetoric we are constantly hearing: we are not actually at war. In his words, "Only Congress has the constitutional power to declare war. That has not happened."⁷⁰ In any event, Judge Faircloth further noted:

War does not, in and of itself, add anything to the constitutional powers. At the same time, it does not remove any constitutional limitations safeguarding basic liberties of the people. Wartime or not, we learned through the Japanese experience in World War II, when we made some awful mistakes, [a national emergency] is not a time to blanketly abridge constitutionally guaranteed rights.⁷¹

I am hopeful that Judge Faircloth's wise words foreshadow other judicial rulings, as well as other decisions by other government officials, in our ongoing fight to keep our country both safe free. In that vital effort, I look forward to continuing to collaborate with many diverse allies, including the various key allies I have mentioned in this presentation: government officials from all across the political spectrum, national security and law enforcement experts, and last, but far from least, law school Deans and Associate Deans, and legal scholars of every sort, including law students as well as faculty members. I hope that many of you law students and professors in this audience will lend your own scholarly and other talents to these particular efforts. Even more important though, especially for the students in this audience, I wish you all the best in lending your scholarly talents to whatever issues and causes might be of burning concern to you. I promise you, you will make a difference!

70. Consolidated Government of Columbus, Georgia v. Roy Bourgeois and Jeff Winder (M.D. Ga., Nov. 16, 2001) (Unpublished opinion of Magistrate Judge Mallon Faircloth).

71. *Id.*

