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T.B. Davie Academic Freedom Lecture, University of Cape Town

Nadine Strossen

[Introduction]

Drs. Nash and Price, many thanks for your kind introductions.

And many thanks to everyone who contributed to this event –

– especially Andrew Nash,

– who has been unstintingly helpful throughout the long planning process.

I have very much enjoyed meeting many students and staff members during my visit to your beautiful campus. I have found our exchanges to be interesting and impressive, and I am grateful for your gracious hospitality. I am so enthusiastic about UCT that, as you can see, I am even dressed in your school colors!

I'm so honored to deliver this lecture –

– dedicated to such important values

– and following in the footsteps of many impressive predecessors.

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Before I say anything more about my assigned topic, I want to honor the convention – at least in America -- of luncheon talks with a joke.

However, my extensive research revealed that jokes about academic freedom are rare!

And that FUNNY ones are VERY rare!

So, with that disclaimer, let me briefly share two short samples with you.

Each one is semi-amusing,

– so maybe they will add up to one good laugh!

For assistant professors, academic freedom means being free to choose ANY 100 hours per week to work!

And, to give equal time to full professors:

How many full professors does it take to screw in a light bulb?

Just one – The professor holds the bulb up to the socket and waits for the world to revolve around him or her!

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In preparing for this Lecture, I have avidly researched and read all available information about Dr. Davie, this lecture series, and the history of academic freedom on your campus.

I learned a lot of impressive facts about Dr. Davie-

– including that he only began his illustrious academic career in medical science in 1933, when he was 38 years old.

He began his medical studies unusually late --

– only after he had worked as a school teacher,

– to save enough money to pursue his passion for medicine.

So Dr. Davie personally empathized with other people who had to overcome obstacles to pursue their educational goals.

No wonder he so powerfully championed academic freedom and opportunity for all --

– at a crucial time --

– when those values were especially under siege on your campus and in your country, due to apartheid –

¹ Prof. Strossen gratefully acknowledges the following NYLS students who assisted with the research for this lecture: Vikram Arneja, Jennifer Baek, Megan Davis, Laura Jones, and Alex Kovacs.

– and also in my country –
– which had its own apartheid policies on too many campuses –
– and where professors were also being persecuted at that time for their ideas and associations as part of the Cold War anti-Communist witch hunt.

A biographical book chapter about Dr. Davie captured his courageous commitment in an episode shortly before he died of the painful rheumatoid arthritis from which he had long suffered.

Let me quote from this chapter by Leo Marquard (and I saw that he is the namesake of one of UCT’s residence halls). Leo Marquard wrote:

“A few days before his death [in] 1955 [Dr. Davie] was talking to Dr De Kiewiet, himself [also] a distinguished South African academic...., about the university situation in South Africa. Crippled with pain as he was, he [Dr. Davie] told Dr. Kiewiet: `As long as I can get to my feet I shall fight.’”¹

Indeed, based on Dr. Davie’s outspoken championship of liberty and equality, I would like to claim him as a posthumous member of the American Civil Liberties Union (ACLU)!

Consider, for example, an important 1955 lecture he delivered --

– which has been published in book form and is available worldwide to this day --

–as evidenced by the fact that I obtained it in New York City!

Back in 1955, public schools in many parts of the U.S. – including our nation’s capital – were still racially segregated by law.

(The U.S. Supreme Court had struck down racial segregation only the year before, but it hadn’t yet issued its separate ruling governing the process for dismantling segregated school systems.)

In contrast, Dr. Davie’s 1955 lecture strongly championed fully integrated education, regardless of race or ethnicity.²

More broadly, he declared that government is responsible to “all its people [to] ensur[e] the rights and liberties of each of its individuals.”³

– That is exactly the core credo of the ACLU!

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As someone who has long been both an academic and an activist, I feel a close bond to T.B. Davie and the broad concept of academic freedom to which he and his university – YOUR university – have been dedicated.

The 2004 Davie Lecture by Professor Jonathan Jansen hailed Dr. Davie’s “character as a scholar and his credentials as an activist.”

Yet in his 2002 Davie Lecture, then-Minister of Education – the late Kader Asmal -- added to that praise a further challenge for all of us.

As he said:

¹ From *Better than they Knew, Volume II*, edited by R.M. de Villiers (Purnell 1974), Chapter on “University Education: Thomas Benjamin Davie,” by Leo Marquard, starting on p. 121, at 143.

² *The Eleventh Hoernle Memorial Lecture, Education and Race Relations in South Africa*, by T.B. Davie, South African Institute of Race Relations 1955, Johannesburg, at p. 29.

³ *Id.* at p. 6.

“We salute [TB Davie] and the others of his generation who with great courage and conviction, sought to prevent apartheid being extended to academies of learning. Their failure. . . arose from their isolation from the main forces of resistance to apartheid.”

Accordingly, Minister Asmal urged us to more closely link academic freedom to other rights and freedoms in the broader public domain.

The University of Cape Town has endorsed this robust concept of academic freedom.

Let me quote the pertinent language from your University’s policy on Academic Freedom:

“This University recognises...our duty to defend and to seek to extend academic freedom and, in particular, freedom of speech and freedom of assembly ... in society generally...”

In Andrew Nash’s cordial Email inviting me to deliver this lecture, he encouraged me to discuss a topic within this “broadly conceived” concept of academic freedom.

[Introduction to specific topic]

Accordingly, I have decided to focus on the single most important overarching challenge to human rights that we have been facing in the U.S. in the past decade –

– and which will continue to haunt all of us, moving forward –

– including specifically those of us in the academic community:

– namely, the government’s expansion of power, -- and constriction of individual rights –

– in the name of the so-called “War on Terror.”

As I have discussed with Andrew, my focus will be on the U.S. because that is where my experience and expertise lies –

– and he has assured me that my government’s policies are of interest and influence here

–

– for better or worse!

That point was unforgettably etched in my memory by one of your great countrymen, Arthur Chaskalson, who spoke at the ACLU’s 2008 Membership Conference, in Washington, D.C.

(He was also so gracious as to participate in the luncheon in my honor at that conference – which took place near the end of my ACLU Presidency.

I was deeply honored that Justice Chaskalson joined three U.S. Supreme Court Justices at that event.)

At the ACLU conference, Justice Chaskalson talked so movingly about the years during apartheid –

– when, he said, he and others who struggled for human rights here were inspired not only by the ACLU–

– but also by the pro-human-rights government policies that we and our allies were able to secure.

In contrast, he spoke with great sadness about how dispiriting it has been for him and South African colleagues to see the U.S. forfeit its moral authority and leadership on the human rights front in the wake of the 911 terrorist attacks.

Indeed, Amnesty International and other international human rights groups have deplored the post-911 cutbacks on rights in my country not only for their own sake –

– but also because of the adverse ripple effect they have had around the world –

– emboldening many other governments to follow suit.

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Throughout the ACLU's long history (we are now 92 years old), we have always been staunchly non-partisan –

– never supporting or opposing any political party, official, or candidate.

One of the reasons is that support for and violations of civil liberties cross all party and ideological lines.

That general pattern certainly holds true in the specific context I'm now addressing.

Last year the ACLU issued a report that explained how the Obama Administration has perpetuated too many Bush anti-terror policies that had been considered extreme and unlawful when they were implemented --

-- thus transforming them into – as our report was entitled – “a new normal.”

In other words, the shift from a President of one major political party – the Republicans – to a President of the other major party – the Democrats – has not made a material difference on these crucial human rights issues.

This dangerous tendency -- to normalize extreme measures that are allegedly justified only by a short-term emergency -- was recognized by none other than Dr. T.B. Davie himself –

– specifically in the academic freedom context.

In Dr. Davie's 1948 Inaugural Address, upon being installed as UCT's Principal and Vice-Chancellor, he noted that “[r]ecent history has...shown ...how easily and almost imperceptibly Universities can be deprived of their freedom.”

In words that are chillingly apt today – more than 6 decades later – he warned:

“Controls and restrictions [that are] imposed and accepted under conditions of war are only too meekly submitted to, even when the conditions necessitating their imposition have disappeared.”⁴

This general concern is particularly worrying in the context of the so-called “War on Terror,” which seems on course to continue in perpetuity.

Consistent with the T.B. Davie Lecture theme, I will focus specifically on the “new normal” post-911 policies that endanger academic and intellectual freedom.

I want to alert all of my academic colleagues here to the enormous inroads that are not nearly as well-known as they should be, even in the U.S. itself.

Most importantly, I hope to inspire you to maintain active vigilance against any parallel developments in your country.

Again, I want to stress the theme I noted from the late Minister Asmal's Davie Lecture –

– and from UCT's academic freedom policy:

– that we academics have a special responsibility to champion freedom in society more broadly –

– and to collaborate with others, including human rights activists, in doing so.

Andrew helpfully sent me a recent essay by a South African professor who criticized the academic community here for not fulfilling this role specifically concerning the issue I am addressing:

– government policies in the name of national security that unjustifiably undermine academic freedom and associated freedoms in society at large.

⁴ University of Cape Town, Inaugural Address by Dr. Thomas Benjamin Davie, B.A., M.D., F.R.C.P. on the occasion of his installation as Principal and Vice-Chancellor of the University of Cape Town on 1st March 1948, at pp. 3 & 4.

The essay was written by Professor Jane Duncan, who teaches at Rhodes University. She describes the “Protection of Information Bill,” which the ANC has proposed, and which she called “the single biggest threat to academic freedom” in South Africa “since 1994.”

Andrew has also told me that the bill has been amended since Prof. Duncan wrote this piece, but the press accounts I have read this week indicate that the amended bill is still strongly criticized as unduly restrictive.

I have no independent expertise about this bill, but Professor Duncan’s critique of it rang all-too-familiar in terms of US government policy:

- vesting undue power in the executive branch of government
- to enforce an overbroad concept of national security and state secrets
- that stifles the acquisition and dissemination of vital information and ideas.

Even more disturbing than the government suppression that Professor Duncan describes, is her conclusion that some universities here aren’t resisting it with sufficient vigor –

- in other words, failing to follow in the footsteps of T.B. Davie.

Again, given my lack of expertise about the situation here, I don’t know whether Professor Duncan’s assessment is fair,

– but it at least serves as a rallying cry for any member of the academic community who has not actively defended academic freedom against the current threat –

- and it also serves as a thank-you to those of you who have done so.

She wrote:

“The bottom line is that the Protection of Information Bill will make the government the arbiter of what can and cannot be researched. [It can] block research that may reveal inconvenient truths. . . Progressive, socially engaged scholars will be the biggest losers, and these are the very scholars who are in short supply in an increasingly timid and inward-focussing South African academy. . . . While the media and civil society have mobilised admirably against the bill, universities have been largely missing in action.”

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Consistent with Professor Duncan’s exhortation, in my account of the parallel situation in the U.S. --

– the government’s invoking of national security concerns to stifle academic and related freedoms –

– I will cite examples of the ACLU’s work in collaboration with members of the academic community in the U.S. and beyond.

[Habib case/Ideological exclusion]

Indeed, one of our post-911 clients –

- in an important and ultimately successful campaign –
- is a prominent professor from right here in South Africa:
- Adam Habib, Deputy Vice Chancellor at the University of Johannesburg.

So let me start with that case and the general issue it exemplifies –

– which we call “ideological exclusion” –

– enforcing certain immigration laws to exclude individuals NOT on the basis of some actual threat they pose to national security –

- but rather just because they have expressed certain ideas that the government dislikes –
- notably, criticism of U.S. policy.

The government’s asserted authority for this practice derives from one of the hundreds of provisions in the polemically named USA-PATRIOT Act –

– a massive law that was rushed through Congress right after the 9/11 attacks with almost no hearings or debates.

One of the many under-publicized, rights-reducing provisions that laced this dangerous law gives the Secretary of State the power to bar any non-citizen from the U.S. if the Secretary determines that that person’s advocacy undermines U.S. anti-terrorism efforts.

Indeed, the U.S. State Department has authorized consular officials to bar from the U.S. anyone who has engaged in – QUOTE – “irresponsible expression of opinion.”

“Irresponsible expression of opinion”!

Fortunately for me, this provision doesn’t apply to U.S. citizens!

I say that because George W. Bush’s first Attorney General – John Ashcroft – expressly accused me and other civil libertarian critics of post-9/11 abuses of exactly such “irresponsibility”–

– he actually told a Congressional committee that our criticism was akin to treason!

That comment prompted an amusing headline in my favorite satirical publication – *The Onion*. As it proclaimed: “Bush Asks Congress for \$30 Billion to Help Fight War on Criticism”!

Well, in the real, non-satiric world, Congress DID give the Bush Administration a major resource to fight against criticism –

– through this sweeping ideological exclusion provision in the Patriot Act.

Since 2001, the U.S. government has invoked this provision to exclude dozens of foreign academics, in many different fields, from all over the world.

Sadly, these policies remind me of the banning orders under apartheid in your country --

– including bans on members of the UCT community --

– as I read about in your Website’s timeline about “UCT’s struggle for an open university.”

As to the U.S.’s current analogue to banning orders -- ideological exclusion – the ACLU has spearheaded opposition through lawsuits, negotiations with the State Department , and public pressure.

Let me illustrate this work through the case of South Africa’s own Adam Habib --

– who is world-renowned as a scholar, researcher, and political commentator.

Of particular pertinence to Dr. Habib’s exclusion from the US, he has been an outspoken critic of U.S. post-9/11 policies.

Dr. Habib had lived in the U.S. for 3 years while earning his Ph.D.

– and he had traveled to the US a half dozen times since the 9/11 attacks.

But in 2006, when Dr. Habib arrived at Kennedy Airport in New York to attend a series of meetings that had been scheduled with scholars and universities, U.S. officials detained him at the airport and interrogated him for 7 hours, about his political views and associations.

As Dr. Habib commented, “The first time something like this happened to me, was [in South Africa] during apartheid in the struggle days.”

Following that extended interrogation, armed guards marched Dr. Habib back to the airplane and deported him to South Africa with no explanation.

Dr. Habib applied for another U.S. visa in 2007 –

– in response to speaking invitations from several U.S. academic groups, including the American Sociological Association.

But the U.S. government did not issue the visa,

– and again it didn't even deign to cite any reason for its continued exclusion of Dr. Habib.

In response, the ACLU filed a lawsuit on behalf of the American Sociological Association and also the American Association of University Professors.

We argued that the ideological exclusion policy, which the government was enforcing in the Habib case and many others, violates the rights of everyone in the U.S.:

– our rights to access ideas and information through face-to-face dialogue and debate with visitors from other countries.

At least our lawsuit prompted the government for the first time to give an explanation for its refusal to admit Dr. Habib.

But the government's so-called "explanation" was just a conclusory allegation that Dr. Habib had – QUOTE – "engaged in terrorist activities"!

The court ultimately ruled in our favor--

– holding that the U.S. Constitution's free speech guarantee bars the government from excluding a scholar who has been invited to address US audiences

– unless it has a valid, substantiated reason for exclusion.

This was an important holding, because the US Supreme Court had upheld a doctrine of "consular non-reviewability" --

– which required courts to defer to consular officials concerning exclusion decisions –

– thus denying any meaningful judicial review.

The Supreme Court had indicated that it MIGHT make an exception to this non-reviewability doctrine in a case involving free speech rights –

– but it had never in fact done so.

Therefore, the silver lining to the cloud of the government's violation of First Amendment rights in the Habib case was that it allowed us to create an important precedent that should bar such government action in the future.

Important as the judge's legal ruling was, it didn't end the litigation, because the U.S. government contended that it COULD substantiate its claims that Dr. Habib had engaged in terrorism.

So the lawsuit was still ongoing when Barack Obama became President.

And the Obama Administration continued to resist both that lawsuit and another one that the ACLU had brought on behalf of another world-renowned scholar who had been ideologically excluded from the U.S.:

– Tariq Ramadan,

– an expert on Islam who had been teaching at Oxford,

– and who had accepted a tenured professorship at a major U.S. university: Notre Dame.

After the ACLU had won several favorable rulings in both these lawsuits, Secretary of State Hillary Clinton finally ended the exclusions of Professors Habib and Ramadan last year.

Even then, though, the Obama Administration continued to ideologically exclude other prominent scholars and writers.

Therefore, the ACLU and our academic coalition partners persisted with our advocacy efforts --

– which finally bore positive fruit at the end of last year.

We received a letter from the State Department's Legal Adviser, Harold Koh. Notably, Koh had previously been a law professor and Dean of Yale Law School.

Koh's letter expressly renounced the practice of ideological exclusion and gave special support to academic and intellectual freedom.

He pledged that, in making decisions about admitting non-citizens to the U.S., State Department officials "will give significant and sympathetic weight to the fact that the primary purpose of the ... travel will be to assume a university teaching post, to fulfill speaking engagements, to attend academic conferences, or for similar expressive or educational activities."

That was of course a major victory for intellectual freedom.

[Introduction to secrecy/surveillance]

Unfortunately, though, the Obama Administration has pursued too many other policies that are claimed to be essential to the "War on Terror" --

– but that actually function as a war on academic and intellectual freedom.

In my remaining time, I will note three major examples:

1st) Excessive government secrecy

2nd) Unwarranted government surveillance; and

3rd) An overbroad concept of "material support" for terrorism.

The first two problematic policies – secrecy and surveillance – are two sides of the same coin.

An essential foundation for intellectual freedom is full and free access to information unimpeded by the government –

– and in a democratic society, no information is MORE important than information about our government,

– and the policies it is carrying out in the name of "We the People" --

– to quote the opening phrase of both the South African and U.S. Constitutions.

Conversely, for all of us academic folks to freely and fully engage in intellectual and educational pursuits, an essential precondition is protection from intrusive government surveillance.

If we fear that the government is spying on our research and communications, that could well deter us from these pursuits.

Likewise, if individuals who would otherwise be sources of information and insight for us fear that the government is spying on their communications with us, that could well deter them from engaging in such communications.

All of this adversely impacts not only those of us who are engaged in scholarly endeavors,

– but also everyone who might seek access to our work.

Unfortunately, since 911, both the Bush and Obama Administrations have reversed the appropriate relationship between individuals and the government in terms of information flow.

On the one hand, it has been too hard for individuals to obtain information about government ACTIONS.

On the other hand, it has been too easy for the government to obtain information about individuals' IDEAS.

Let me spell out these problems just a bit more --

[Secrecy]

– starting with secrecy.

I realize that you have been facing some parallel issues here in South Africa, in light of the pending Protection of Information Bill.

Also, in the same vein, I read a piece in this morning's *Cape Times* – by Carmel Rickard² – that noted government resistance to complying with your Promotion of Access to Information Act –

--another parallel to the U.S. situation.

Just one week ago today, the ACLU issued a comprehensive report that scathingly indicts the excessive government secrecy in the U.S., which has increased exponentially since 2001.

The report documents in detail the many harms of such undue secrecy –

--including harm to national security itself.

In fact, this critique ties into academic freedom concerns.

The report quotes the co-author of the blue ribbon commission on the 9/11 attacks, who noted that unwarranted withholding of government information undermines national security by precluding “constructive input” into policy-making from various key societal sectors, including “academia.”

The recent ACLU report advocates many specific “radical” reforms to cure the “cancer” of secrecy that is eating away at our democratic body politic. The title of this ACLU report says it all: *Drastic Measures Required: Congress Needs to Overhaul U.S. Secrecy Laws and Increase Oversight of the Secret Security Establishment.*”

Because South Africa is considering its own new measure on point, I urge you to take into account the substantial, specific evidence in the ACLU report, which demonstrates the many harms of undue government secrecy.

For now, let me just list the major categories of such harms, which our report documents in detail:

- 1) Secrecy undermines democracy;
- 2) Secrecy undermines constitutional checks and balances;
- 3) Secrecy undermines security;
- 4) Secrecy lets the executive branch mislead and manipulate Congress and the American people, often to achieve political rather than security objectives;
- 5) Secrecy enables and encourages incompetence, waste, fraud, and abuse; and
- 6) Secrecy puts the government behind the times in the era of open information.

Notably, the ACLU report cites many leading, respected military, intelligence, and law enforcement officials, who attest -- based on their extensive experience – that undue secrecy does far more harm than good, including to national security.

You can easily find the report on the ACLU's Website: 222.aclu.org.

Many of the Bush Administration's most controversial post-911 policies --

– including torture --

– were implemented completely in secret.

Rather than the government voluntarily sharing information about these policies, they only came to light through lawsuits by the ACLU and other public interest organizations --

– or through government whistleblowers and investigative journalists.

To add insult to injury, the government has been persecuting these very whistleblowers and journalists.

Early in his Administration, President Obama did make some positive moves toward more transparency.

Unfortunately, though, with the passage of time, the Obama Administration has engaged in even more excessive secrecy than the Bush Administration.

² Carmel Rickard, “It's Our Duty to Demand Accountability,” *Cape Times*, Aug. 4, 2011, p. 9.

Let me cite just two examples.

First, the Obama Administration has released less information about its prisoners at Bagram Air Base in Afghanistan --

– than the Bush Administration released about its prisoners at Guantanamo.

Second, the Obama Administration has more aggressively pursued criminal prosecutions of whistleblowers who reported waste, fraud and abuse in national security programs.

In fact, the Obama Administration has pursued such whistleblowers more aggressively than any prior administration.

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[Surveillance]

When we turn from secrecy to surveillance, we also see an enormous chilling impact on free speech and academic freedom.

Let me cite just a couple examples.

Early in his Presidential campaign, candidate Obama decried President Bush's suspicionless, warrantless surveillance of Americans' international telephone and email communications.

However, Senator Obama later supported a statute that actually expanded this unprecedented surveillance power.

Likewise, President Obama pushed Congress to extend the most problematic surveillance provisions of the Patriot Act –

– including the so-called “Library Provision” --

– which allows the government to secretly obtain records of the books you borrow and the Web searches you make –

– merely by asserting that this information is relevant to an investigation –

– without any suspicion that you are engaging in any illegal conduct --

– without any notice to you –

– and without any judicial review.

Let me cite just a couple examples of the lawsuits that the ACLU has filed against some of these sweeping new surveillance powers that most directly affect academic freedom.

One of our clients in this litigation is New York University Prof. Barnett Rubin, who is a renowned scholar of conflict prevention, specializing in Afghanistan.

His research entails countless phone and Email communications with people in Afghanistan, Pakistan, and other foreign countries.

Let me read you one excerpt from an affidavit Prof. Rubin filed in our lawsuit:

“I am currently ...research[ing] the political position of . . . the insurgency in Afghanistan....I regard such research as potentially contributing to the effort to bring peace and stability to Afghanistan. My ability to carry out such research [will] be seriously hindered because of the perception, held both by me and by Afghan insurgents and their supporters, that our electronic communications [are] monitored by the [U.S. government]. [Therefore,] I will ...have to conduct in person interviews...and will be unable to conduct follow-up ...by e-mail and telephone. ... I will have to travel more internationally to complete the research or I will complete fewer research interviews or less comprehensive interviews.”

Now let me cite a second example of the academic clients on whose behalf we are challenging the government's unwarranted surveillance of international electronic communications.

This second example is Dr. Larry Diamond, of Stanford University –

– an expert on democracy and development.

I'll quote one of his affidavits, which explains how this surveillance undermines his students' academic freedom, as well as his own:

"I ...supervise...students who travel to the Middle East, Asia, and Africa to conduct research on sensitive political questions. These students and I need to communicate by email so ...I can help guide their research while they are in the field....

[However, because of the government's surveillance program,] I will [have to]direct students...not to communicate by email about sensitive subjects....

For example, if a student were to report to me . . . on a meeting he had with a member of the Muslim Brotherhood...solely as part of his academic research, the report could be intercepted by the [US government], the information shared with the local government, and the person contacted by the student could be retaliated against by local government authorities.

Such retaliation would inevitably be noted among the local population, which would jeopardize not only future research but [also] the safety of the student...and other students who later went to the same country."

As one final example, I'll cite a new lawsuit the ACLU brought just a couple weeks ago [7/13/11] --

- on behalf of a professor at the University of Michigan –
- who has reportedly been subject to illegal surveillance –
- as part of a Bush Administration campaign to "smear" him --
- in retaliation for his criticism of the Iraq War.

In June, the *New York Times* quoted a former official of the CIA – the Central Intelligence Agency – who said that in 2005 his superiors asked him to obtain information that could discredit Prof. Juan Cole, a prominent Middle East expert.

The ACLU lawsuit seeks to determine whether the government in fact subjected this American citizen to surveillance merely because of his critical views.

Given the profound threat that such a policy would pose for intellectual freedom and democracy, we have asked the court to expedite the lawsuit.

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[Distorted concept of "material support"]

Now let me touch on one last example of the post-911 cutback on academic freedom that, again, has been supported by both the Bush and Obama Administrations –

- as well as Congress and the Supreme Court.

That is a distorted, exaggerated concept of "material support" for terrorism –

--which criminalizes too much speaking, writing, and teaching.

This overbroad concept reflects the very same fundamental flaw as the "ideological exclusion" policy that barred Adam Habib and other scholars from the U.S.:

- namely, the notion that ideas or expression may constitute punishable "terrorism."

This is yet another assault on academic and related freedoms that traces back to the Patriot Act.

The Act expanded even further the already expansive definition of outlawed "material support" to terrorism, so that it now includes "expert advice and assistance."

I should note that the Secretary of State has enormous discretion to label any group as a "foreign terrorist organization" or "FTO" --

- and that this label had for too long been applied to none other than the African National Congress –

– from 1960 until shockingly recently: 2008.

In short, you add the overbroad concept of material support to the overbroad concept of an FTO – foreign terrorist organization – and you get a sweeping government power to stifle advocacy and ideas.

The Patriot Act’s inflated concept of “material support” to FTO’s was immediately challenged by academic and activist groups in the U.S. that sought to work with organizations that the State Department had designated as “FTO”’s –

– but these US groups were specifically promoting peaceful, non-violent conflict resolution

– and other humanitarian aims.

For example, in the ACLU’s Supreme Court brief opposing this provision, our co-signers included three university-based organizations with strictly peaceful, positive purposes:

- the Institute for Conflict Analysis and Resolution at George Mason University;
- the Kroc Institute for International Peace Studies at Notre Dame University; and
- the Carter Center for Human Rights at Emory University –
 - which was founded by former U.S. President Jimmy Carter –
 - who won the Nobel Peace Prize in 2002 .

These university-based centers study and teach peace-building skills –

– but the Patriot Act’s broad language turns these constructive academic undertakings into terrorist crimes.

Worse yet, last year the U.S. Supreme Court specifically upheld the Act’s application to these kinds of academic activities.

By a 5-4 vote, the Court rejected our argument that such an application violated constitutional guarantees of free speech and academic freedom.

As the *New York Times* noted, this decision means that “[a]cademic researchers doing field work in conflict zones could be arrested for meeting with terror groups and discussing their research.”

Likewise, the powerful dissenting opinion in the Supreme Court case stressed that the Court’s majority had allowed the government to criminalize even “the peaceful teaching of international human rights law.”

Notably, that opinion was written by Justice Stephen Breyer, who had been a professor at Harvard Law School before joining the Court.

It was also joined by another Justice who had been a law professor, Ruth Bader Ginsburg.

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[Conclusion]

In concluding my lecture that is named after a distinguished South African professor,

– I’d like to quote another distinguished South African professor, who ties together the themes I have addressed.

I’m referring to Dr. Adam Habib –

- who was not only the victim of some of the repressive policies I have discussed –
- but also the VICTOR in a successful challenge to those policies –
- working with both academic and human rights groups –
- for the benefit of not only academics, but also society generally,
- and not only in my country, but also in yours, and worldwide.

Back in 2007, while he was still being ideologically excluded from the U.S., Adam Habib wrote an essay explaining why he was fighting to overturn this U.S. policy.

I'd like to quote an excerpt from this powerful statement, which harkens back to Dr. T.B. Davie –

- with its reference to apartheid –
- and which also points toward the future –
- toward the ongoing efforts we must all make,
- as the most significant tribute to Dr. Davie and other past defenders of academic freedom and freedom generally.

So here are Dr. Habib's pertinent words:

“If our governments get in the habit of excluding academics [from] other countries for ideological reasons, then we are on a slippery slope to the abrogation of all ...freedoms. Having lived in apartheid South Africa, I know what this means....

[T]his case...was filed on my behalf, a South African, by the ACLU and other U.S. organizations. The lawyers are American, the plaintiffs are Americans. The cause is the right of these Americans to hear and speak with a South African. We are not all of one ideological persuasion. Many of those who have stood up on my behalf, I don't even know. What unites us is that we stand for principle.

And this is the fight of the future. The coming struggles for freedom will be played on the global plane and...require [us] to build bridges...across national, religious and ideological boundaries. Assisting in this struggle is what we can bequeath to our children. [Professor Habib then refers to his wife and children, saying:] Fatima and I can leave Irfan and Zidaan assets, but these can always disappear. Principles will always be with them. ...[W]hen they think back in years to come, they can say that their old man and old lady stood up instead of folding, built bridges instead of dividing, stuck to principle instead of capitulating. They can say we were on the right side of their struggle for freedom.”

So, I'll end where I started –

- by thanking all of you for being part of these positive efforts through the T.B. Davie Lecture series-

- and through your other ongoing contributions to academic freedom at UCT and beyond.

Thank you very much.