

1999

## Remarks [comments]

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### Recommended Citation

Strossen, Nadine, "Remarks [comments]" (1999). *Articles & Chapters*. 1168.  
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## REMARKS

NADINE STROSSEN

Good morning. I am Nadine Strossen, a professor here at New York Law School.

Our Dean, Harry Wellington, very much regrets not being able to join us this morning. He has an unusually exotic excuse: he is participating in the dedication of a new law school at the University of Sharjah in the United Arab Emirates! Before he left, though, Dean Wellington asked me to convey his greetings, thanks, and congratulations to everyone who has contributed, and will contribute, to today's exciting symposium.

Since there are so many lawyers and law students in the audience this morning, I wanted to take a moment to acknowledge yesterday's passing of a major figure in the legal world, former Supreme Court Justice Harry Blackmun. Of all the special, inspiring personal and professional qualities he embodied, the one that I'd like to single out is his open-mindedness and his capacity for change. Even at a mature age, toward the end of his long career on the bench, he re-examined and changed his position on the death penalty, concluding that it was -- contrary to his previous rulings -- inherently cruel and unusual, in violation of the Eighth Amendment.<sup>1</sup> As a law professor who strives to instill in her students the habit of constantly examining and re-examining their own ideas, I hope they will be able to emulate Justice Blackmun in that respect, continuing the process of questioning and learning throughout their careers.

Now let me turn back to introducing today's exciting program. The contributors are so numerous that I will not take the time to acknowledge them orally. Their names are set out in your program. Now I will only take the time to thank the two individuals who have done the most to bring us today's event: its creator and director, who is also my colleague and friend, Professor Richard K. Sherwin; and its producer, the *Law Review's* Supervising Editor, who is also my Academic Assistant, Amy L. Tenney.

As many of you know, I lead a double life, as not only a law profes-

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1. *Collins v. Collins*, 510 U.S. 1141, 1145 (1994) (dissenting opinion).

sor, but also the President of the American Civil Liberties Union. Given my dual roles, I am especially intrigued by today's topic: "Law/Media/Culture." We in the ACLU realize that our mission critically depends on not only laws, but also the media and popular culture. No matter how many battles we win in the courts of law, we will still lose the war -- or, perhaps I should say, the crusade -- for human rights unless we also prevail in the court of public opinion. So, along with other lawyers, we have increasingly been advocating our causes through the mass media.

And that is true for me personally, too. Yes, I continue to toil over law review articles and court briefs, trying to influence law professors and judges. But -- at least as important -- I am also trying to influence a much broader audience, including high school and college students. Therefore, I also make it a point to appear in such non-lawyerly venues as ABC-TV's "Politically Incorrect," "Lifetime TV," and even MTV! So, from my own work, I can attest to the enormous importance of this Symposium.

While much more needs to be done in this area, I am constantly amazed by the extent to which awareness of civil liberties and the ACLU has already penetrated the media and popular culture. I cite that to illustrate the general interpenetration that we will be exploring in greater depth today. On TV shows and in movies, I regularly hear casual, passing, matter-of-fact references to the ACLU by people who probably have no idea what those letters actually stand for, and who may not even know what the Bill of Rights is. Indeed, surveys regularly show that most members of the public do not know what the Bill of Rights is.<sup>2</sup> Yet, nonetheless, the general public has absorbed the general knowledge that everyone has some basic rights, and that the ACLU will stand up for those. And this general knowledge both comes from, and is in turn reflected in, our mass media and culture.

For example, I was recently on an airplane that showed a fairly new Eddie Murphy movie, called "Holy Man." One of its characters is a stereotypical, greedy, grasping capitalist, who -- interestingly -- owns a Miami TV station. The movie shows him making his grouchy entrance into the station one morning, grumbling about all the men who were standing along the freeway as he drove to the office, holding signs asking for jobs or handouts. But he shrugs his shoulders, sighs, and says, "I

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2. See e.g., Fred Strasser, *Poll: Americans are Fuzzy on Rights*, NAT'L L.J., Dec. 23, 1991, at 6.

know I can't do anything about them, because the ACLU says they have a right to be there." Not, "The *law* says they have a right to be there," or "The Constitution" says so, or "The courts" -- but, rather, the ACLU!

And let me give you one more concrete, current example of popular culture purveying this perception that our legal rights -- and their defenders -- have an independent reality and existence, apart from legal decisions and institutions. I'm talking about the famous -- or, in some quarters, infamous -- *Miranda* warnings.<sup>3</sup> Every schoolchild can rattle them off -- not because they've read the Supreme Court case that generalized these warnings, and not, usually, because of their own real-life experience with the police. Rather, this familiarity comes from the countless times they have seen an on-screen officer making an arrest, and routinely reeling off those magic words. So, the *Miranda* warnings have taken on a life of their own, securely embedded in our popular culture, at the very moment that their ongoing legal status seems quite insecure.

As most of you know, the Fourth Circuit recently ruled that the *Miranda* warnings are not constitutionally required.<sup>4</sup> That ruling set off shock waves, not just among criminal defense lawyers and civil libertarians, but also throughout the media and the general public. Even if the Fourth Circuit's anti-*Miranda* ruling isn't overturned, *Miranda* will still live on in popular culture, even within the Fourth Circuit. This was put very well by the ACLU's Media Relations Director, Emily Whitfield, in a recent interview hot on the heels of the Fourth Circuit decision. In Emily's words: "*Miranda* warnings will still be given on every TV show except reality-based cop shows!"

By the way, it's a telling indication of the importance of today's proceedings both that the ACLU has a Media Relations Director and that she very much wanted to be here. Although she can't, I promised to be her eyes and ears. So, let's get on with the show!

To do that, I'll turn the podium over to its guiding spirit, whose many impressive contributions to this field include his forthcoming book, *When Law Goes POP: The Vanishing Line Between Law and Popular Culture* -- Professor Richard Sherwin.

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3. *Miranda v. Arizona*, 384 U.S. 436 (1966).

4. *United States v. Dickerson*, 166 F.3d 667 (1999).