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Prologue

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PROLOGUE

Henry P. Gassner*

The 2003-2004 Editorial Board envisions the *Law Review* of the University of the District of Columbia David A. Clarke School of Law (*UDC/DCSL Law Review*) as a vehicle for serving the community by raising awareness of important legal issues of social concern, with particular emphasis on public interest issues facing the District of Columbia. Prior issues of this *Law Review*, by focusing attention on important social issues, such as weaknesses in District of Columbia's juvenile justice and legal services delivery systems, have led to the adoption of measures that have helped to improve these systems. Our aspiration is to build a *Law Review* consistent with the ideals which inspired David A. Clarke and the founders and supporters of our law school, the ideals of using our legal talents and training to help produce progressive social change.

In keeping with this aspiration, this issue publishes articles and presentations originating in two public interest-oriented programs at the U.D.C. School of Law in 2003-2004, one a colloquium sponsored by the Law School and the other a symposium sponsored by the *Law Review*. In addition, this issue has the honor of publishing the first part of the Honorable Inez Smith Reid's biography of the Honorable Julia Cooper Mack, one of the heroes of D.C. legal history. Judge Reid, in her article *infra*, describes Judge Mack as "the first African-American woman to be nominated by a President of the United States and confirmed by the Senate to sit on a state-equivalent court of last resort," the District of Columbia Court of Appeals.

The colloquium on *Zealous Advocacy in a Time of Uncertainty: Understanding Lawyers' Ethics*, April 25, 2003, sponsored by the School of Law, was inspired by the publication of the third edition of *Understanding Lawyers' Ethics* by Professors Monroe Freedman and Abbe Smith.¹ Dean Katherine S. "Shelley" Broderick, in her *Introduction, infra*, provides an overview for the articles from this colloquium, which explore important issues in legal ethics in the post-Enron, post-9/11 world.

The *Law Review* sponsored the symposium *In the Aftermath of September 11: Defending Civil Liberties in the Nation's Capital*, on November 21, 2003. The main purpose of the symposium was to alert the wider community to issues that we believe should be of serious concern to all of us, and to encourage dialogue on these issues. Panels of experts discussed (a) the treatment of and restrictions on demonstrators; (b) the treatment of immigrants; (c) job security and bargaining

* Editor-in-Chief of the UDC-DCSL Law Review for the 2003-2004 academic year.

1 MONROE H. FREEDMAN & ABBE SMITH, *UNDERSTANDING LAWYERS' ETHICS* (3d ed. 2004).

rights of government employees; (d) the relationship between the federal and D.C. governments in times of crisis; and (e) the use of surveillance cameras.

The featured luncheon speaker, David Cole, Professor of Law at Georgetown University Law Center, reminded us of the issues which he had explored in his book *Enemy Aliens, Double Standards and Constitutional Freedoms in the War on Terrorism*.² He argued that measures taken after 9/11 in the name of national security had undermined the fundamental civil liberties of foreign nationals and minority communities in our country, and that these measures were ineffective and counter-productive, weakening world respect for American democratic institutions. Nadine Strossen, President of the American Civil Liberties Union and Professor at the New York Law School, ended the day with a presentation urging our participation in the Safe and Free campaign to convince the American public and our legislators that we can maintain our safety without giving up our civil liberties. Excerpts from her presentation are included in this volume.

The panel discussion on demonstrators' rights led to two full articles and one published presentation. In *The Policing of Demonstrations in the Nation's Capital*, Ralph Temple, who served as legal director of the American Civil Liberties Union of the National Capital Area from 1966 to 1980, reviews the experience of demonstrations in Washington from the Vietnam War period to today. He then analyzes the January 24, 2005 Consent Order in *Abbate v. Ramsey*³ and the First Amendment Rights and Police Standards Act of 2004,⁴ enacted by the D.C. Council on January 27, 2005.⁵ Both the Consent Order and the Act provide important safeguards protecting the rights of demonstrators in the nation's capital. The Act, attached as an appendix to the article, could usefully serve as a model for other jurisdictions throughout our nation concerned with the issue of safeguards for demonstrators' rights.

Mary Cheh, Professor of Law at the George Washington University Law School, in *Demonstrations, Security Zones, and First Amendment Protection of Special Places*, examines the distinctions made between restrictions based on the content of speech versus regulating the time, place, and manner of speech. She argues for more nuanced distinctions which would establish "intermediate scrutiny" for restrictions impeding the right to demonstrate at a time and place and in

2 DAVID COLE, *ENEMY ALIENS: DOUBLE STANDARDS AND CONSTITUTIONAL FREEDOMS IN THE WAR ON TERRORISM* (2003).

3 Consent Order, *Abbate v. Ramsey*, 03-CV-767 (Jan. 24, 2005), available at www.dcd.uscourts.gov/03-767a.pdf.

4 The legislative history and the original and final text of Bill 15-968 are available at www.dccouncil.washington.dc.us/lims/BillRecord.asp?billid=checked.

5 Under the District of Columbia's limited home rule, this Act will become law if it survives a thirty-day congressional review period.

a manner permitting the demonstration to be seen and heard by the object of the protest. Professor Cheh examines, as an example, how such a standard could be applied to Lafayette Park, across the street from the White House.

The presentation by the Honorable Kathy Patterson, at that time Chair of the D.C. Council Committee on the Judiciary, provides insight on the issues of demonstrators' rights and the use of surveillance cameras from the point of view of a legislator. Subsequent to the Symposium, Councilmember Patterson's Committee on the Judiciary held public hearings in December 2003 on the issue of First Amendment rights of demonstrators. All the other participants on the symposium panel on demonstrators' rights testified at these hearings. Thereafter, in July 2004 Councilmember Patterson and seven other members of the D.C. Council introduced the First Amendment Rights and Police Standards Act of 2004. Councilmember Patterson provided the leadership which guided the bill through further public hearings to its approval by a 12-1 vote. The Act incorporates many of the recommendations of the other participants on this panel.

The panel discussion of treatment of immigrants led to one full article and two shorter presentations. In *The Chimera and the Cop*, Michael Hethmon, Staff Attorney at the Federation for American Immigration Reform, argues for a greater role for local and state law enforcement officers in the enforcement of federal immigration law. Katherine Culliton, an immigration rights attorney for the Mexican American Legal Defense and Education Fund, has allowed us to publish her November 18, 2003 testimony before the Senate Judiciary Committee hearing on *America After 9/11: Freedom Preserved or Freedom Lost?* In this testimony, which she summarized for us at the symposium, Ms. Culliton argued that racial profiling and other unnecessary post-9/11 measures have exacerbated discrimination against Latino citizens and immigrants, and she recommended measures for alleviating these problems. Finally, Denyse Sabagh, former national President of the American Immigration Lawyers Association and current General Counsel for the Association, provided her perspective as a practicing immigration lawyer after 9/11.

The article by Mark Roth, General Counsel of the American Federation of Government Employees (AFGE), Gony Frieder, Staff Counsel for Local 1, AFGE, and Anne Wagner, Assistant General Counsel of AFGE, examines the effects of 9/11 on *Job Security and Bargaining Rights of Federal Government Employees*. The authors argue that "the federal government has used September 11 as a pretext for dismantling labor rights." They point to the irony of the justifications claimed for the need to reduce labor rights, since the union membership of "the hundreds of firefighters and police officers who died" on September 11 in no way interfered with the "heroic performance of their duties." The article focuses

particularly on the labor rights issues affecting the employees of the Department of Homeland Security and the Transportation Security Administration.

In the last article to emerge from the symposium, the DC Appleseed Center for Law and Justice examines the issues of *Managing Federal Security-Related Street Closures and Traffic Regulations in the District of Columbia*. The authors, Appleseed staff members and attorneys from the law firm of Arnold & Porter LLC, argue for greater involvement of the District of Columbia government in making such decisions in a collaborative manner, and that such collaboration would “maximize safety, minimize disruption” and lead to more appropriate responses to future security threats.

Professor David Cole noted in his luncheon presentation that most conferences he has attended on the symposium topic consisted of government spokesmen speaking to law enforcement officers, or of the ACLU and kindred spirits speaking to themselves. He saluted this symposium and our law school for bringing in so many people with diverse perspectives, and the willingness of people from various sides of the issue to attend and speak together. While many of these participants could not take the time to put their ideas into written form, we are very grateful for their contributions to the panel discussions, which enriched the dialogue and the variety of viewpoints presented. We would like to express our appreciation to: Johnny Barnes, ACLU of the National Capital Area; Cedric Laurant, Electronic Privacy Information Center; Robert Toone, Senator Kennedy’s legal counsel on the Senate Judiciary Committee; Clifford Fishman, Columbus School of Law, Catholic University; Doug Hartnett, Government Accountability Project; Don Wasserman, former Chair, Federal Labor Relations Authority; Arthur Lerner, Labor Relations Officer, Federal Emergency Management Agency; Chris Voss, D.C. Emergency Management Authority; James Austrich, D.C. Department of Transportation; Marshall Fitz, American Immigration Lawyers Association; Elliot Mincberg, People for the American Way; Michael Rolince, FBI; Sarah Kendall, Department of Homeland Security; and Mara Verheyden-Hillard, Partnership for Civil Justice. Their presentations contributed to our understanding of the issues and to the quality of the debate. (It should be emphasized that, at least in most cases, people were speaking for themselves rather than their organizations.)

Finally, I would like to thank Dean Shelley Broderick, for all her help with and support of both programs featured in this issue, Professor William McLain for his assistance in formulating the concepts for the civil liberties symposium, all the faculty members who helped with various aspects of the programs, and, most of all, Professor Joseph B. Tulman and Law Librarian Helen Frazer, our Law Review Advisors.

DAVID A. CLARKE SCHOOL OF LAW
University of the District of Columbia

SYMPOSIUM

**In the Aftermath of September 11:
Defending Civil Liberties in the Nation's Capital**

November 21, 2003

