

Reflections in a Time of Crisis

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In War, Is Law Silent?

Security and Freedom after September 11

ED O'BRIEN

IT WAS SEPTEMBER 29, eighteen days after the terrible attacks on the World Trade Center and the Pentagon. While standing in a long luggage-check line with my daughter at Baltimore-Washington Airport—our first trip there since September 11—we noticed that a man who looked Middle Eastern had been pulled out of the line ahead. Both of his suitcases lay open on a table while airport security guards unpacked and searched them. He did not openly object, but on his face we could read his embarrassment at being singled out and having his clothes and personal effects exposed for all to see. The process took more than thirty minutes.

The trip to the airport that day took longer and was different for everyone. I had to park my car in a different spot, arrive two hours ahead of time for a domestic flight, and forgo talking with my daughter at the gate for the hour before the flight. Small things, one might say, but they all added up to a diminution in the freedom that my daughter and I had always enjoyed as Americans. But for people like the man whose luggage was searched—who may or may not have been Middle Eastern, and may or may not have been an American citizen—restrictions on freedoms and rights are in danger of going far beyond personal inconvenience.

Many Americans will cite the overriding need for security as an explanation for such occurrences. What happened on September 11 is unparalleled by anything we have ever known. The attacks killed more than 5,000 people, injured tens of thousands more, and caused economic hardship and grief to hundreds of thousands more. From the New York attacks alone, more than 10,000 people lost a parent. Millions



A security guard checks a passenger entering Chicago's O'Hare International Airport on Friday, September 14, 2001.

more were traumatized by either watching the attacks directly or reliving them through hundreds of hours of replays or analysis. The hijackers trampled the victims' most basic human right—life—and destroyed the rights of people around the world to security. They made every person in this country afraid. Our right to feel safe has been limited in the short run, perhaps limited forever.

But how were other rights of Americans affected by this horrible event? Do all Americans now have fewer rights? Or only some Americans, people identified as "suspected terrorists" or "Arab-looking" or "Muslim"? If we agree that, because of September 11, the rights of some or all should be restricted, another vexing question arises: how much and for how long?

When we speak of "rights" in the United States, we usually refer to

constitutional or legal rights: rights enforceable by law. But there is another category of rights, human rights. This term—originally known as natural rights—evolved from the theory that all people are entitled to certain protections and freedoms simply by virtue of being born human. These include the rights to food, shelter, bodily security, education, medical care, free press, free speech, and freedom of religion, among others. Eleanor Roosevelt led the movement to encourage the nations of the world to formally agree to respect these rights. Her vision came true in 1948 when the United Nations adopted the Universal Declaration of Human Rights. Today, most nations accept, at least in theory, the concept of human rights as inalienable and agree that they should not be limited by any government or people.

Why Limit Rights?

In times of crisis, constitutional, legal, or human rights are often limited, sometimes in small ways, sometimes in great. People are often willing at such times to give up certain rights—or to deny certain segments of the population some rights—to bring about other benefits, such as increased security and more efficient law enforcement.

Following September 11, both the executive and the legislative branches of the federal government have spoken of limiting certain rights for two purposes: (1) to enable the government to detain, arrest, prosecute, and punish the people who were behind the terrorist attacks; and (2) to prevent future attacks. As Attorney General John Ashcroft said while defending the administration's proposed antiterrorism legislation, "We want to enhance the authority of the INS [Immigration and Naturalization Service] to detain or remove suspected terrorists from our borders." Senator Edward M. Kennedy (D-Mass.) responded, however, that "many of us have serious concerns about the administration's proposal to detain someone indefinitely on mere suspicion." Even House Majority Leader Dick Armey (R-Tex.), a conservative, said, "This is a tougher area for us. . . . [The issue] is how we equip our . . . agencies with the tools they need while we preserve the most fundamental thing, which is the civil liberties of the American people."

The tension between freedom and security in times of crisis was well-illustrated by President Bush's statement fourteen days after the tragedy: "Ours is a land that values the constitutional rights of every citizen, and we will honor those rights, of course, but we are at war . . . and in order to win the war we must make sure the law enforcement men and women have got the tools necessary, within the Constitution, to defeat the enemy."

So our leaders want it both ways: They want to provide tools aimed at increasing our security, which to some extent will limit rights, and at the same time they seek to protect rights. Are both possible? The difficulties that we will encounter become even clearer when

we examine times in our country's history when we had to walk this tightrope before.

Restrictions on Rights in Previous Wars

In past times of crisis, the U.S. government has superseded or abridged the rights of citizens, sometimes in drastic ways. During the civil war, *habeas corpus* was suspended; in World War I, both oral and written speech criticizing U.S. involvement were restricted; and in World War II, the government interned Japanese-American citizens.

The Suspension of *Habeas Corpus* in the Civil War

The first major crisis that forced a president to decide whether to suspend the rights of citizens was the Civil War. Abraham Lincoln chose to use the one emergency provision in the U.S. Constitution,¹ which allowed him to suspend the writ of *habeas corpus* (a document filed with the court that forces the government to show its reasons for detaining an individual) during the war. But as early as 1866, when the war was over, the U.S. Supreme Court said that Lincoln had gone too far when he ordered civilians to be tried in military courts. The court in *Ex Parte Milligan*² declared, "The Constitution of the United States is a law for rulers and people, equally in war and peace, and covers with the shield of its protection all classes of men, at all times and under all circumstances."

Restrictions on Speech in World War I

In World War I, Congress passed laws that restricted both oral and written speech that criticized U.S. involvement in the war. State and local governments went further. In most cases, these laws were upheld by the courts, which were called on to balance individual rights against the state's need for an internal climate favorable for winning the war. *Schenck v. the United States*³ is one such case. It is perhaps best known for requiring the state to show a "clear and present danger" before suppressing speech, but the U.S. Supreme Court also said, "When a nation is at war many things

that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional rights."

Constitutional historian Michael Klarman has written that during World War I, "the city of Pittsburgh banned Beethoven's music; the Los Angeles Board of Education forbade discussion of peace in the schools; and many states prohibited German language instruction."⁴ In today's climate, I doubt that such actions would be allowed, even in wartime. I make this prediction in light of the "rights revolution" of the 1960s, and although the present Supreme Court is perhaps not as devoted to individual rights, its decisions have shown that freedom of speech is still one right that it holds dear.

Internment of Japanese Americans in World War II

The U.S. government took one of the most drastic actions in history aimed at restricting human rights during World War II, when it gave military commanders the power to exclude all persons of Japanese ancestry, including U.S. citizens, from designated areas on the West Coast. Claiming military necessity, military officials suspended the rights of approximately 112,000 residents of Japanese heritage, evacuated them from their homes, forced them into internment camps, and seized their property. Lt. Gen. John L. DeWitt, the commander of one such area, declared "In the war in which we are engaged, racial affiliations are not severed by migration. The Japanese race is an enemy race. . . . A jap is a jap."⁵

While Japanese Americans' rights were trampled, those rights of people of German ethnicity generally were not. There was some internment of Italian Americans on the West Coast, though the numbers, compared to the numbers of Japanese Americans, were very small (about 250). Many Italian immigrants, however, who were not yet citizens (approximately 600,000), were classified as "enemy aliens" and subject to curfews and other restrictions. The father of Joe



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A group of Japanese American internees board a train at Fort Amador.

DiMaggio, one of the nation's most popular baseball players, for example, was not allowed to go to his son's restaurant in San Francisco during the war.

The curfews enforced on Japanese Americans were upheld by the U.S. Supreme Court in *Hirabayashi v. United States*,⁶ and their internment also was ruled constitutional in *Korematsu v. United States*.⁷ In *Korematsu*, Justice Hugo Black said that "Hardships are a part of war, and in greater or lesser measures, citizenship has its responsibilities as well as its privileges."⁸ Even Justice William O. Douglas, one of the most liberal justices ever to sit on the Supreme Court, concurred in *Hirabayashi*, saying, "Where the perils are great and time is short, temporary treatment on a group basis may be the only practical expedient."⁹

After September 11

Fortunately, I do not believe that most Americans today would approve a measure so extreme as internment of a whole group of people. In fact, since September 11, President Bush, Attorney General Ashcroft, and other administration officials have spoken out against holding a whole group, such as Arab Americans or Muslims, to blame for an act perpetrated by a minute group of extremists. Even though the Japanese internment has, since the 1940s, been condemned by many people, it still has never been formally overruled. In the 1980s, Japanese Americans who had been interned, as well as some of their heirs, sought and were awarded reparations by Congress and President Ronald Reagan, who

signed legislation awarding each individual \$20,000.

This important precedent is likely to give any president pause when considering measures to restrict individual or group rights. But we should heed the words of constitutional scholar Lawrence Tribe regarding issuing powers in times of crisis: "Because they are exercised in an emergency, they are Constitutional grants of authority that the Supreme Court is least likely to limit."¹⁰

There is a Latin expression, "*Inter arma silent leges*," meaning that "in war, laws are silent." Commenting on this, U.S. Supreme Court Chief Justice William Rehnquist has stated a slightly different view. In his book, which examines the question of what rights the courts have allowed in the past, he says that laws during wartime are not silent, but "they speak in a somewhat different voice."¹¹

During war, great deference is usually given to the executive branch, but today's war is a "war against terrorism," not a traditional war against one or more countries. Because of this lack of clarity as to who exactly "the enemy" is, restricting the rights of a particular nationality or religious group may be both ineffective and unconstitutional.

The random action and indiscriminate assaults and killing that have marked terrorism in the late twentieth and early twenty-first centuries naturally make people call for heightened security. These cries for increased exercise of authority and control conflict with our notions of civil liberties and human rights.

Current proposals and new practices and policies will certainly have an effect on the freedom and privacy of travelers. Closely related to this is the possibility that racial and ethnic profiling will be tolerated in practice (even if profiling is not considered right in principle) in measures aimed at ensuring the safety of travelers and in initiatives to investigate terrorism.

A major question is the extent to which citizens' rights of privacy will be challenged by new measures of surveillance aimed at preventing or investigating acts of terrorism. A critical issue in



AP PHOTO/PAUL SAKUMA

Three National Guard soldiers stand at attention at the United Airlines terminal at San Francisco International Airport, Friday, October 5, 2001. About 120 National Guards were deployed at the airport for security in the wake of the terrorist attacks on September 11, 2001.

this regard is whether such surveillance will be conducted very broadly or whether it will need to be justified on the ground that it is aimed at specific targets in clearly defined circumstances. Whatever the case, visitors to the United States and immigrants who are not citizens are likely to be even more affected by these measures than U.S. citizens.

Airports and Airplanes

The atmosphere in airports and aboard planes is already different and is likely never to be as open and free as before. Many people say that the events of September 11 were caused by lax airport and airplane security, and if changes are made, hijackings can at least be reduced, if not stopped. Plans have been proposed to federalize some security staff in airports, especially those who operate the bag scanners and metal detectors. These employees—the majority of whom have been estimated to be non-citizens—have long been underpaid and undertrained.

Following September 11, most American travelers seem willing to accept the increased time at the airport if we get better security, but how many restrictions on our rights will we put up with? Would we accept the kind of secu-

rity that is common at Ben-Gurion Airport in Tel Aviv, where passengers are routinely asked personal questions about where they have been, what they did, and where they are going? Refusal to answer often results in missed flights. Would Americans put up with eye, facial, voice, and fingerprint recognition tests? Some security companies and politicians are proposing just such measures. Would we endure occasional strip searches or the total unpacking of suitcases by inspectors? Should all travelers be subject to these measures, or only certain people? One thing is clear: airports will never be the same again.

Airplanes will never be the same, either. After September 11, President Bush ordered that the National Guard be stationed at many airports. The federal government is already putting armed federal marshals aboard many airplanes. They may become a permanent fixture in air travel. Cockpit doors are being fitted with stronger locks and may be sealed during flights. Some groups propose that pilots be armed with either pistols or stun guns. Passengers are no longer allowed to bring on board knives or sharp instruments, such as razors, tweezers, scissors, or box

cutters. Items that could double as weapons must be stored, left at home, or checked in a suitcase. To date, little or no protest has occurred over these inconveniences. Time will tell to what extent and for how long passengers will accept these restrictions, but it seems likely that more will be implemented.

Racial and Ethnic Profiling

One of the most controversial issues arising from the freedom-versus-security debate concerns racial and ethnic profiling. In this profiling, law enforcement officials subject persons of a particular race or ethnicity to searches, questioning, detention, or other measures to which the larger population is not subjected, when there are not other suspicious circumstances against the person. Critics say that it violates whole groups' rights to privacy, equal protection under the law, security, and protection against illegal searches. In recent years, many African Americans have felt singled out and harassed by police for the "crime" of "DWB" (driving while black). Studies have verified that this practice has taken place, and in some instances, courts and police commissioners have ordered the practice stopped. In the aftermath of September 11, both President Bush and Attorney General Ashcroft have spoken out against racial and ethnic profiling and said that they would work at the federal level to crack down on it if it occurred.

All terrorists, even the majority of terrorists, are not Arabs, Middle Eastern, or Muslim. In fact, of the 87 terrorist incidents in the United States between 1984 and 1998, only two were linked to an Arab group. Just as very few Christians are extremists and perform violent acts, such as bombing abortion clinics, only a tiny proportion of Arabs are extremists, and only a minute number of extremists are terrorists.

Since September 11, however, some officials have singled out this broad group for racial and ethnic profiling, including people who may look like they are from the Middle East. Unfortunately, Americans are not often well-educated about different countries and cultures, though our population

includes people from every corner of the globe. Since September 11, many Americans have been looking askance at Indians (especially Sikhs, who wear beards and turbans), Pakistanis, or people of myriad other ethnic backgrounds and nationalities, believing them to be Arabs and therefore suspicious. Arab Americans and people of other ethnic backgrounds have had property vandalized and destroyed; adults and children have been harassed and beaten up. The same treatment has been inflicted on Muslims of a number of ethnicities—Muslims from Central Europe and all parts of Asia and Africa, as well as American Muslims.

Lumping all Muslims in the United States with a small extremist group whose violent acts violate all the basic tenets of Islam is wrong. But many Americans are doing it, which means that they are violating the rights of others in a country whose cornerstone is freedom. Visiting a mosque in Virginia two weeks after September 11, I was told of many instances of profiling and discrimination, including an instance where a Muslim woman wearing the *hijab* (head-scarf) was confronted on the street by a white man, who ripped off her veil and threw it in a nearby trash can, while bystanders looked on. To his credit, six days after the terror, President Bush visited a mosque and spoke out against such acts: “The face of terror is not the true faith of Islam; Islam is peace.” (In fact, the word *Islam* is derived from the word meaning “peace” in Arabic.) Recalling a similar story, President Bush also said that the women who cover their heads should not fear leaving their homes. “That’s not the America I know,” he said. “That should not and that will not stand in America.”¹²

Three weeks after the attacks, I interviewed Jean AbiNader, managing director of the Arab American Institute (AAI), which represents Arab American interests in government and politics in the United States. He told me that during the three weeks since the attacks, AAI had received 420 complaints of discrimination, many times the number of complaints the group ever before received during a similar time period. In

his view, the biggest impact on Arab Americans may be on their right to move freely, especially by plane. Some staffers in his own organization were unable to do their jobs, which required travel, because of fears of harassment by other passengers or airline officials. We have all read the newspaper reports of such incidents as a pilot telling an Arab American passenger that unless he got off the plane, he would not fly it. Many Arab Americans fear being subjected to the suspicions of other passengers and the crew.

At the same time, AbiNader expressed appreciation for the fact that many Americans and U.S. organizations are reaching out to the Arab American community. He told me that the community had been very impressed by the support given it by administration officials, including the President and Attorney General, against hostility, violence and discrimination after September 11.

Although the President, the Attorney General, and many others have said that racial and ethnic profiling are wrong, airlines are under tremendous pressure to prevent future hijackings. Some say that in this instance, such profiling is reasonable and justifiable. On a recent television show, author William F. Buckley said, “It makes sense to check Arabs who are traveling. It is less likely that a non-Arab-looking person is going to hijack an airplane.”¹³ Neil Livingstone, an expert on terrorism security with Global Options, an international risk management firm, said recently that “Ethnicity is the single most important determinant of who is going to cause a problem on an airplane. If you are going to give the same attention, because it is mandated, to a little old lady with blue hair, or to a young African American . . . as you give to a Middle Easterner, you are undermining the system already.”¹⁴

But other security experts, such as Raymond Kelly, a former New York City Police Commissioner and U.S. Customs Commissioner, disagree. Kelly says that other factors, such as place of birth, length of time spent in the United States, and country of origin, are just as important as ethnic background. Although gathering such data on all

passengers will infringe on everyone’s privacy rights, perhaps it is better than singling out many millions who may, in a security person’s eyes, “look” Middle Eastern or Arab.

One thing to keep in mind, however, if we pass laws or make policies that allow for the restrictions of the rights of certain groups, is that we may be going down a slippery slope. Today we might decide that it is worthwhile to limit Arab Americans’ rights. Tomorrow, another group of Americans worried about the Mafia or the contemporary drug trade might feel it in the interests of national security to restrict the rights of Italian Americans or Colombian Americans. With the Arab American example as a precedent, such measures might become easier and easier to put into effect.

All of us want to be treated with dignity—the basis of all human rights. Whether security personnel use dignified or undignified methods to single out people for extensive searches, questioning, or other restrictions will make a big difference in the extent to which we allow racial and ethnic profiling and rights restrictions in the future.

Surveillance Versus Privacy Rights Wiretaps

While we now expect searches at airports as part of air travel, how much privacy infringement should we expect in our use of the phone and Internet? Again, will these intrusions be applied to all Americans or to select groups? After the Oklahoma City bombing, Congress enacted the Anti-Terrorism Act of 1996. The act took major steps to increase the federal government’s ability to gather evidence about suspected terrorists by expanding wiretap powers and eliminating the need for a warrant to obtain information on electronic transfers of funds. The act even went so far as to allow the FBI to investigate activities that had previously been protected by the First Amendment. There are mixed opinions on the effectiveness of this law. Some say that it went too far and accomplished nothing; others say that it did not go far enough and that the government now needs more power to combat terrorism.

In the aftermath of September 11, the Bush administration has made a strong call for increased powers. Attorney General Ashcroft and others have testified before Congress and made numerous television appearances asking for “tools to build our capacity to fight terrorism.” In the communication area, this includes broadening powers that the FBI now has under the Foreign Intelligence Surveillance Act to wiretap those people it believes may be gathering intelligence for other countries—without needing to show probable cause as would normally be required for domestic criminal investigation cases.

The FBI has a controversial software program called “Carnivore,” which can be installed into an Internet service provider’s server to monitor all traffic moving through it. Many critics complain that the software is a major violation of privacy because it can intercept any e-mails going through the server, not just those of the suspected terrorist. Many people predict an increased use of this system.

Some of the people suspected of carrying out recent attacks appear to have used cell phones extensively. Consequently, Attorney General Ashcroft has called for a new law to allow wiretapping of “roving phones.” In October 2001, the Congress answered the President’s request by giving the administration more power to wiretap, including “roving wiretaps,” which covers not only cell phones but also multiple telephones, e-mail, and Internet traffic. One controversy was whether these provisions should have a “sunset clause,” meaning that after three to five years, some provisions would expire.

National Identity Cards

It is likely that one byproduct of September 11 will be a renewed debate on the issue of national identity cards. Traditionally, Americans have abhorred the idea. They viewed it as similar to what South Africa had under apartheid when it required blacks to carry “pass books” and arrested large numbers of people who failed to do so. But technology experts argue that such cards could carry, besides photos, a great deal of

other data, perhaps as much as 2,000 bytes worth, which could help determine whether the person could be a terrorist. This data could include fingerprints, criminal history, and whether the person was on a list of suspected terrorists. The standardization of drivers licenses might also accomplish this task, requiring even non-drivers to obtain a photo ID. But opponents see this as infringing on what Nadine Strossen of the American Civil Liberties Union calls the human right “to be left alone.”

Surveillance Cameras

It is now likely that Americans’ right to be left alone will be further limited through the use of surveillance cameras. In 1993 and 1994, two terrorist bombs planted by the Irish Republican Army (IRA) exploded in London’s financial district. In response, the government installed a “ring of steel,” a network of closed-circuit cameras on all gates leading to that part of the city. Since then, the use of such cameras has expanded countrywide, and now an estimated 2.5 million cameras are watching the moves of people in the British Isles. Americans are familiar with these cameras in office buildings and stores. More recently, the cameras have been used to catch drivers for traffic violations. But would we tolerate cameras on every street corner, or peering into the windows of our homes? It sounds downright un-American, but many say it is coming.

Limitations on the Rights of Immigrants

The 1996 Anti-Terrorism Act and the recent proposals from the Bush administration often assume that new immigrants are a group especially likely to include terrorists. In general, non-naturalized immigrants have fewer rights than citizens, and so there are fewer restrictions on ways to investigate them. In addition, less rigorous evidence is needed to deport immigrants than to criminally prosecute a person in a U.S. courtroom. One of the effects of the current situation may well be a much stronger differentiation between the rights of visitors and immigrants who are not citizens, on one hand, and the

rights of U.S. citizens, on the other.

Under the 1996 Act, immigrants can be deported on the basis of secret evidence. They also can be deported if they have given material support to an organization designated to support terrorism. Professor David Cole of Georgetown University has said that “the first one [secret evidence provision] did away with due process and the second [punishing people for supporting an organization] indulged in guilt by association.” The 2001 law proposed by the administration again includes these two types of provisions, and Cole has criticized them for their broad definitions of terrorism (“almost any violent act” says Cole) and “terrorist organizations.” One draft of the law defined terrorist organization as “any organization that had ever used violence.”¹⁵

Although the courts have accepted that immigrants have fewer rights than citizens, as early as 1866 the Supreme Court said that they have some constitutional rights. In 2001, the Supreme Court expanded the rights of immigrants when, in a series of cases, the Court made clear that:

- ▶ Immigrants who have been ordered deported by the INS cannot be held in detention indefinitely, which the administration has sought, but only should be held for a reasonable amount of time needed to bring about their removal from the country;
- ▶ The federal courts have the power to decide what is a “reasonable amount of time”;
- ▶ The federal courts retain the right to have what is called “*habeas corpus* jurisdiction,” which means that they have the power to review challenges by immigrants to INS deportation orders.¹⁶

In all likelihood, there will be greater restrictions in the future on the rights of immigrants, including their ability both to enter and to stay in the country. Right now, many people enter the country on student and tourist visas and stay much longer than is legally approved. These practices will undoubtedly be subject to more restrictions. The borders of the United States, especially along the Canadian border, are open, with some border

crossings left unattended throughout the night. One proposal under review would restrict movement across the Canadian border and allow for a seven-day detention period, at which time a decision must be made to charge or release a suspect.

Freedom Versus Security

The extent to which American rights become more limited as a result of the current "war on terrorism" will depend on how long it lasts and how much more terrorism occurs on American soil.

Americans seem to be of two minds in the debate between freedom and security. They want to be left alone and yet they want to be protected. They do realize that they are likely to relinquish some freedom; in a poll taken during the month following the attacks, eight out of ten Americans said that they believed that they would have to give up some of their personal freedom to make the country safe from terrorism. Yet the debate in Congress since September 11 shows hesitancy among many lawmakers, both Democrats and Republicans, when limiting the rights of Americans in the name of security. Most agree, however, that some restrictions on the rights of those suspected of terrorism are needed.

Do we have to choose between freedom and security, or can we find a balance? Often in our constitutional history, we have negotiated this balance best when we tried to include the interests of both sides while keeping true to the country's founding values. This may be what George F. Kennan, former U.S. ambassador to Russia and one of the most knowledgeable people about the Cold War, meant fifty years ago when he wrote that the fear of communism could turn us "intolerant, suspicious, cruel, and terrified of internal dissension because we have lost our own belief in ourselves and in the power of our ideals." We will not be defending democracy if we abandon basic democratic values in the pursuit of our security. ☐

Notes

1. U.S. Constitution, articles 1, 8, and 9.
2. Ex Parte *Milligan*, 71, U.S. 295 (1866).

3. *Schenk v. United States*, 249 U.S. 47, 52 (1919).
4. Evan P. Schultz, "In Times of Crisis, Law Can Get Muffled," in *American Lawyer Media*, Fulton County Daily Report (September 18, 2001).
5. Headquarters Western Defense Command and Fourth Army, *Final Report: Japanese Evacuation from the West Coast 1942-34* (June 5, 1943), and *Brief Reply for Appellants, Hirabayashi v. U.S.* 81, no. 2 (1943).
6. *Hirabayashi v. United States*, 320 U.S. 214 (1944).
7. *Korematsu v. United States*, 323 U.S. 214 (1944).
8. *Hirabayashi*, 320 U.S. at 219.
9. *Ibid.* at 107 (Douglas J., concurring).
10. Lawrence H. Tribe, *American Constitutional Law* (Foundation Press, 1988), 355.
11. See William H. Rehnquist, *All the Laws but One: Civil Liberties in Wartime* (McKay, David, 1998).
12. "Bush Visits Mosque to Forestall Hate Crimes," *The Washington Post* (September 18, 2001): A1, A23.
13. William F. Buckley made this statement on *Sunday Morning* CBS (September 30, 2001).
14. "Rethinking the Security at Airports," *The New York Times* (September 19, 2001), B3.
15. David Cole made this statement on *The Diane Rehm Show*, WAMU Radio (September 2001).
16. *Calcano-Martinez v. INS*, 121 S. Ct. 2268 (2001); *INS v. St. Cyr*, 121 S. Ct. 2271 (2001).

Ed O'Brien is Executive Director, Street Law Inc., and an adjunct professor of law, Georgetown University Law Center. He would like to thank Street Law Inc. student interns June Marshall and Rachana Katkar for their help in research for this article, and Andra Miotto for her strong editing.

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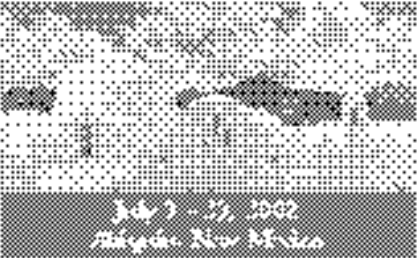
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