

# Left Out in the Cold?

## The Chilling of Speech, Association, and the Press in Post-9/11 America

SEPTEMBER 20-21, 2007, AMERICAN UNIVERSITY WASHINGTON COLLEGE OF LAW, WASHINGTON, DC

In 1984, the ACLU held a "Free Trade in Ideas" conference that brought together leading free speech commentators to discuss barriers to the right of Americans to receive information from abroad.

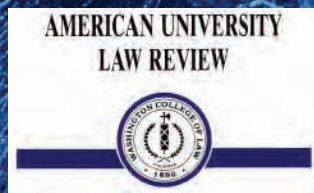
Nearly a quarter century later, many would argue that the threat to a marketplace of ideas has never been greater. Americans increasingly are denied access to information vital to self-governance.

Does the War on Terror require these sacrifices? Or, are we compromising at home the freedoms we advocate abroad? This symposium will address the question of whether liberty and security are mutually exclusive and require limitations on core First Amendment rights, including free speech, the right to associate, and freedom of the press.

American University Washington College of Law, American University Law Review, and the ACLU sponsor this two-day symposium that will identify what barriers, if any, exist to promoting speech and government accountability, and will identify possible legislative solutions to remove them.

These discussions will reinvigorate the public debate on these important issues through panels featuring government officials, policy makers, nationally known experts, scholars, journalists, and other interested parties.

The symposium marks the beginning of a national conversation on ways to promote the First Amendment in post-9/11 America. The dialogue will continue in a symposium edition of the *American University Law Review* to be published in Spring 2008, along with post-symposium chats with panelists as legislation is introduced in Congress.





# WELCOME

On behalf of the faculty and staff of the American University Washington College of Law (WCL) and the Washington Legislative Office of the American Civil Liberties Union (ACLU), we look forward to welcoming you to our symposium at American University in our nation's capital. We are excited to partner together for this landmark event, which highlights the important role WCL and the ACLU have played in protecting civil liberties.

Over one hundred years ago, two pioneering women founded WCL at a time when women were generally excluded from the legal profession. Today, WCL is an internationally focused institution committed to diversity, justice and the open exchange of ideas in all areas of law and government in which its faculty, students, and graduates serve throughout the world.

Since 1920, the ACLU has been the nation's premier guardian of the First Amendment, fighting to defend and preserve individual rights and freedoms guaranteed by the Constitution and the laws of the United States. The Washington Legislative Office of the ACLU leads efforts to promote the First Amendment and other rights and liberties in the legislative and policy arenas of the federal government and has been at the center of the debate about rights in post-9/11 America.

Our symposium will address civil liberties issues that affect all Americans and will present a wide range of views and perspectives. Nationally known panelists, spanning the ideological spectrum, will discuss the extent to which speech, association, and the press have been limited in the name of national security, and will debate possible legislative solutions. We hope that you will join us for this historic meeting.

Claudio M. Grossman,  
Dean, American University Washington College of Law



Caroline Fredrickson,  
Director, Washington Legislative Office  
American Civil Liberties Union





# AGENDA\*

Thursday, September 20, 2007

8:00 – 8:45 Registration and breakfast mixer

8:45 – 9:00 Welcome

Claudio M. Grossman, Dean, American University Washington College of Law  
Nadine Strossen, President of the ACLU and Professor of Law, New York Law School  
Stephen LeBlanc, American University Law Review Editor-In-Chief

9:00 – 10:00 Congressional Panel: Setting a positive legislative agenda for the First Amendment

Moderator: Caroline Fredrickson, Director, ACLU Washington Legislative Office

10:15 – 11:30 Panel: Constitutional overview of post-9/11 barriers to free speech and a free press

Moderator: Dr. James Thomas Tucker, ACLU First Amendment Policy Council

Panelists: Professor Thomas Healy, Seton Hall University School of Law  
Dean Rodney Smolla, Washington & Lee University School of Law  
Nadine Strossen, ACLU President and Professor, New York Law School

11:30 – 12:45 Lunch and keynote speaker

Eleanor Clift, Contributing Editor, *Newsweek*

12:45 – 2:00 Panel: Restrictions on freedom of association through material support prohibitions and visa denials

Moderator: Melissa Goodman, Staff Attorney, ACLU National Security Project

Panelists: Professor David Cole, Georgetown University Law Center  
Larry Siems, Director of International Programs, PEN American Center

2:00 – 2:30 Book Signing

Professor David Cole, Georgetown University Law Center  
*Less Safe, Less Free: Why America Is Losing the War on Terror* (New Press 2007)

2:30 – 3:45 Panel: Censoring and prosecuting the press--an assessment of reporters' shield legislation

Moderator: Professor Stephen Wermiel, American University Washington College of Law

Panelists: Professor Steven Clymer, Cornell Law School (on leave), Justice Department  
Lucy Dalglish, Executive Director, The Reporters Committee for Freedom of the Press  
Professor Randall Eliason, George Washington University Law School  
Eric Lichtblau, Reporter, *New York Times*

4:00 – 5:15 Panel: Surveillance and its impact on First Amendment rights

Moderator: Ronald K. L. Collins, Scholar, First Amendment Center

Panelists: Dr. James Carafano, Assistant Director and Senior Fellow, The Heritage Foundation  
Jim Harper, Director of Information Policy Studies, CATO Institute  
Jameel Jaffer, Director, ACLU National Security Project  
Professor Herman Schwartz, American University Washington College of Law

5:15 – 5:30 Closing remarks

5:30 – 7:00 Reception

\* Subject to change.



# AGENDA\*

Friday, September 21, 2007

8:00 – 8:45 Registration and breakfast mixer

8:45 – 10:00 Panel: Secrecy and barriers to open government

Moderator: Professor Daniel Marcus, American University Washington College of Law

Panelists: Professor Erwin Chemerinsky, Duke University School of Law  
Dr. Louis Fisher, Specialist in Constitutional Law, Library of Congress  
David M. Hardy, Section Chief, Record Information/Dissemination,  
Federal Bureau of Investigation  
Commander Glenn Sulmasy, U.S. Coast Guard, Professor, U.S. Coast Guard Academy

10:15 – 11:30 Panel: The role of whistleblowers to facilitate government accountability

Moderator: Mike German, ACLU National Security Policy Counsel

Panelists: Coleen Rowley, Former FBI Special Agent, "Time" Person of the Year in 2002  
Professor Stephen Vladeck, American University Washington College of Law

11:45 – 1:15 Lunch and keynote speaker

1:15 – 1:30 Closing remarks

The symposium will conclude early on September 21, 2007, in observance of Yom Kippur.

For more information about the symposium agenda and panel topics, please go to  
<http://www.wel.american.edu/journal/lawrev/symposia.cfm>

or

<http://www.aclu.org/symposium>.

\* Subject to change.



# PANELISTS

Dr. James Carafano  
Assistant Director  
Davis Institute for International Studies  
Senior Research Fellow  
Allison Center for Foreign Policy Studies  
The Heritage Foundation

Erwin Chemerinsky  
Alston & Bird Professor of Law  
and Professor of Political Science,  
Duke University School of Law

Steven D. Clymer  
Professor of Law (on Leave)  
Cornell Law School  
U.S. Department of Justice

David D. Cole  
Professor of Law  
Georgetown University Law Center

Ronald K.L. Collins  
Scholar  
First Amendment Center

Lucy Dalglish  
Executive Director  
The Reporters Committee  
for Freedom of the Press

Randall D. Eliason  
Professorial Lecturer in Law  
The George Washington  
University School of Law

Dr. Louis Fisher  
Specialist in Constitutional Law  
Library of Congress

Caroline Fredrickson  
Director  
ACLU Washington Legislative Office

Mike German  
Policy Counsel for National Security  
ACLU Washington Legislative Office

Melissa Goodman  
Staff Attorney  
ACLU National Security Project

David M. Hardy  
Section Chief  
Record Information/Dissemination  
Record Management Division  
Federal Bureau of Investigation

Jim Harper  
Director of Information Policy Studies  
CATO Institute

Thomas Healy  
Professor of Law  
Seton Hall University School of Law

Jameel Jaffer  
Director  
ACLU National Security Project

Eric Lichtblau  
Reporter  
New York Times

Daniel Marcus  
Fellow in Law and Government  
American University Washington  
College of Law

Coleen Rowley  
Former Special Agent  
Federal Bureau of Investigation  
"Time" Person of the Year in 2002

Herman Schwartz  
Professor of Law  
American University Washington  
College of Law

Larry Siems  
Director of Freedom to Write  
and International Programs  
PEN American Center

Rodney A. Smolla  
Dean and Professor of Law  
Washington and Lee University School  
of Law

Nadine Strossen  
Professor of Law  
New York Law School  
President, ACLU

Glenn M. Sulmasy  
Commander, U.S. Coast Guard  
Professor, U.S. Coast Guard Academy  
National Security and Human Rights Fellow  
John F. Kennedy School of Government  
Harvard University

Dr. James Thomas Tucker  
Policy Counsel for the First Amendment  
ACLU Washington Legislative Office

Stephen I. Vladeck  
Associate Professor of Law  
American University Washington  
College of Law

Stephen J. Wermiel  
Associate Director  
Marshall-Brennan  
Constitutional Literacy Project  
American University Washington  
College of Law

Click here for panelist biographies  
<http://www.aclu.org/symposium/panelists.html>

# REGISTRATION & PARTICIPATION

Registration information is available online at [http://www.wcl.american.edu/secle/cle\\_form.cfm](http://www.wcl.american.edu/secle/cle_form.cfm). For more information, contact the WCL Office of Special Events & Continuing Legal Education at [secle@wcl.american.edu](mailto:secle@wcl.american.edu) or (202) 274-4075.

## CLE ACCREDITATION

Continuing Legal Education (CLE) accreditation is available for the symposium. WCL is an accredited provider for Virginia, Pennsylvania, and New York. Accreditation for all other states is applied for as requested. For more information, visit <http://www.wcl.american.edu/secle/> or contact the WCL Office of Special Events & Continuing Legal Education at [secle@wcl.american.edu](mailto:secle@wcl.american.edu) or (202) 274-4075.

## CALL FOR PAPERS

We invite the submission of papers to be considered for publication in the *American University Law Review*. Papers should be limited to the symposium topics listed in the agenda. While papers may be of article length, we also encourage the submission of essays that are 25 to 35 pages long or shorter commentaries of approximately 10 to 15 pages on other submitted papers. Selected papers must be in law review format with full *Bluebook* citations (18th edition). Final drafts of selected papers will be due following the symposium in early January 2008, on a date to be agreed upon by the Law Review and the author. Selected papers will be published in Volume 57 of the *American University Law Review* in Spring 2008. For more information, contact Jasmine Watson, American University Law Review Senior Symposium Editor at [lawrev-projects-editor@wcl.american.edu](mailto:lawrev-projects-editor@wcl.american.edu).

## LOCATION

4801 Massachusetts Ave. NW  
Room 603  
Washington, DC 20016  
202-274-4000



# DIRECTIONS



## Arriving by Car

Go to <http://www.wcl.american.edu/direction/driving.cfm> for driving directions. You will be asked to enter your originating address. WCL's address will be entered automatically for you.

## Arriving by Metro and the American University Shuttle

From Union Station, National Airport, or downtown Washington, Washington's Metro subway trains run every day of the week. Metro stations open at 5 a.m. Monday through Friday and at 7 a.m. on Saturday and Sunday. Metro stations close at midnight Sunday through Thursday and at 3 a.m. on Friday and Saturday. Last trains leave some stations before the stations close. The closest Metro stop to American University is Tenleytown/AU on the Red Line. Public Metro buses run on regular schedules from Tenley Circle to the main campus, less than a mile away. Metro can give you information on specific routes and timetables for its buses and subways. Call its information service at (202) 637-7000 or visit the website of the Washington Metropolitan Transit Authority at <http://www.wmata.com/>.

From the Tenleytown/AU Metro stop you can pick up the American University Shuttle. The Law School Shuttle (WCL Direct Shuttle) runs daily at thirty-minute intervals (20 minutes and 50 minutes past the hour) from 7:20 a.m. to 12:20 a.m. Monday - Friday. Board the WCL Direct Shuttle on the North Side of 40th Street near the intersection of Albemarle Street. The shuttle stop is located across the street from the Hollywood Video. For more information please visit <http://www.american.edu/finance/ts/shuttle.html> or call (202) 885-3302.

# ACCOMMODATIONS

A block of rooms has been set aside at the Embassy Suites (\$179/night, plus applicable taxes) in Friendship Heights for symposium participants and attendees. Hotel space at the symposium rate is limited and you are strongly encouraged to call early for reservations. The cut off date for hotel registration is Friday, August 24, 2007. Reservations may be made by calling the hotel directly at 202-362-9300 or toll-free at 1-888-324-2728 and identifying yourself as a participant in the Washington College of Law/ACLU symposium. Fax requests for reservations may be sent to the attention of the Reservations Department at 202-686-3405. The hotel rate includes a complimentary cooked breakfast.

Embassy Suites Hotel  
4300 Military Road, N.W.  
Washington, D.C.  
(202) 362-9300

<http://www.embassy-suites.com/>

A list of other hotel accommodations near the Washington College of Law is available at <http://www.wcl.american.edu/admiss/lodging.cfm>.

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## QUESTIONS & ADDITIONAL INFORMATION

Additional information about the symposium and contact information for further assistance is available at <http://www.wcl.american.edu/journal/lawrev/symposia> or <http://www.aclu.org/symposium>.

**AMERICAN UNIVERSITY LAW REVIEW:** The American University Law Review is both the oldest and the largest journal at the American University Washington College of Law. For more than fifty years, the Law Review has made valuable contributions to both the law school and the larger legal community. Each year, the Law Review's staff of approximately one hundred members publishes six books that are distributed nationwide and abroad to law school libraries, private law firms, public legal organizations, and individual subscribers. For more information about the Law Review, contact Jasmine Watson, Senior Symposium Editor, at [lawrev-projects-editor@wcl.american.edu](mailto:lawrev-projects-editor@wcl.american.edu).

**ACLU WASHINGTON LEGISLATIVE OFFICE:** The American Civil Liberties Union is the nation's premier guardian of liberty, working daily in courts, legislatures, and communities to defend and preserve individual rights and freedoms guaranteed by the Constitution and the laws of the United States. The Washington Legislative Office of the ACLU leads the ACLU's federal lobbying effort by promoting ACLU priorities in Congress, the White House, and federal agencies. For more information about the Washington Legislative Office's work on First Amendment issues, contact James Thomas Tucker, Policy Counsel, at [jtucker@dcaclu.org](mailto:jtucker@dcaclu.org).

