

Political Science 321

Civil Liberties in the Balance: Defendants' Rights in Crisis Times

Spring 2002

Course Syllabus

Instructor: Professor Lynda Dodd
Office: 230 PNE
Office Hours: TBA,
and by appointment

Class Location: Seminar
Time: Wed. 7-9:30 pm

Phone: (w) 283-2996

ldodd@wellesley.edu

I. Description

In this seminar, we will be spending much of our time studying and evaluating Supreme Court doctrines concerning the Fourth, Fifth, and Sixth Amendments. In addition, we will embark on an in-depth review of the current debates surrounding the U.S. Government's counter-terrorism initiatives.

II. Course Texts

The following required textbooks are available for purchase at the Wellesley Bookstore:

- Jerold H. Israel, Yale Kamisar, and Wayne R. LaFave, *Criminal Procedure and the Constitution* (2001) ("IKL")

- David Weissbrodt, *Immigration Law and Procedure* (1998) ("W")

- Assigned readings are available in Lexis-Nexis, via webpage link, or will be distributed in class.

III. Course Requirements and Grading

- There is a midterm examination, which is worth 20% of your course grade. The midterm examination is closed book, and includes short answer identification questions, and 1-2 essay questions. I will provide you with a study guide to help you prepare for the exam.

- You will also complete a research project, worth a total of 40% of your course grade. I will assign research questions to each of you, which will be tailored to your interests, and I will also provide a brief guide to the literature, including bibliographies, for you to use. Because these papers will be distributed to your fellow classmates and will be “required reading” for the final examination, there will be a strict 20 page limit applied. The goal for these research projects is to give you an opportunity to develop, in a more rigorous and complete manner, an argument evaluating the scholarship of leading criminal procedure scholars listed in the recommended readings sections.

- The closed book, self-scheduled final examination is worth 30% of your course grade. The examination will include both short identification and essay questions. I will provide you with a study guide to help you prepare for the exam.

- Class participation is worth 10% of your course grade. Two seminar members will be “on call” during each seminar meeting. One class member will be “pro-defendant” and the other will be “pro-government.” Your responsibilities will include (1.) submitting one or two questions or comments the day before the Wednesday you’re scheduled, and (2.) preparing to answer questions and to present an overview of the cases in class.

- The recommended readings are listed to help you prepare for your class presentations and the research papers.

IV. Schedule of Readings and Assignments

Jan. 30 Introduction to the Seminar

1. Multiple Agendas

- The CQ Researcher, “Civil Liberties in Wartime,” (December 14, 2001) (available on-line Wellesley “e-resources a-z”)
- Sanford Levinson, “What is the Constitution’s Role in Wartime?” Findlaw’s Writ (Oct. 17, 2001)
- John Gibeaut, “Winds of Change: The Terrorism Tragedies Have Swept in a New World Where the Finely Drawn Lines Among Legal Institutions Are Shifting and, in Some Cases, Disappearing,” ABA Journal (Nov. 2001)

2. The Incorporation Doctrine

- IKL, Ch.2, pp. 33-44

- *Palko v. Connecticut* (1937)
- *Adamson v. California* (1947)
- *Duncan v. Louisiana* (1968)

3. An Overview of the Criminal Justice Process

- IKL, Ch. 1 (review)

A. INVESTIGATIONS

Feb. 6 Fourth Amendment: Foundations

1. Early History

2. Expectations of Privacy: Defining “Searches” and “Seizures”

- *Katz v. United States* (1967)
- *California v. Greenwood* (1988)
- *Florida v. Riley* (1989)
- *United States v. Karo* (1984)
- *Smith v. Maryland* (1979)*
- *Kyllo v. United States* (2001)
- *Bond v. United States* (2000)*
- *United States v. White* (1971)
- *Zurcher v. Stanford Daily* (1978)
- *Florida v. Bostick* (1991)

3. Recommended Readings

- William J. Stuntz, “Privacy’s Problem and the Law of Criminal Procedure,” 93 MICH. L. REV. 1016 (1995)
- Louis Michael Seidman, “Response: The Problems with Privacy’s Problem,” 93 MICH. L. REV. 1079 (1995)
- Daniel Yeager, “Does Privacy Really Have a Problem with the Law of Criminal Procedure?” 49 RUTGERS L. REV. 1283 (1997)

Feb. 13 Fourth Amendment: Warrants and the Exclusionary Rule

1. The Warrant Requirement

- *Maryland v. Garrison* (1987)
- *Richards v. Wisconsin* (1997)

2. What Constitutes “Probable Cause”?

- *Spinelli v. United States* (1969)
- *Illinois v. Gates* (1983)

3. Remedies & the Exclusionary Rule Debate

Exclusionary Rule

- *Wolf v. Colorado* (1949)
- *Mapp v. Ohio* (1961)

“Good Faith Exception”

- *United States v. Leon* (1984)
- *Arizona v. Evans* (1995)*

4. Fruit of the Poisonous Tree Analysis

“Inevitable Discovery”/ “Independent Source” Rule

- *Nix v. Williams* (1984)

5. Recommended Readings

- William J. Stuntz, “Warrants and Fourth Amendment Remedies,” 77 VA. L. REV. 881 (1991)
- Akhil Reed Amar, “Fourth Amendment First Principles,” 107 HARV. L. REV. 757 (1994)
- Tracey Maclin, “When the Cure for the Fourth Amendment is Worse than the Disease,” 68 S. CAL. L. REV. 1 (1994)
- Thomas Davies, “Recovering the Original Fourth Amendment,” 98 MICH. L. REV. 547 (1999)
- Christopher Slobogin, “Why Liberals Should Chuck the Exclusionary Rule,” 1999 U. ILL. L. REV. 363 (1999)

Feb. 20

Fourth Amendment: Exceptions to the Warrant Requirement

1. Searches Incident to Arrest

- *Chimel v. California* (1969)

2. Regulatory Searches

- *Veronia School District 47J v. Acton* (1995)

3. Consent

- *Illinois v. Rodriquez* (1990)

4. “Plain View” Exception

- *Arizona v. Hicks* (1987)*

5. Exigent Circumstances

- *United States v. Santana* (1976)*

6. Automobile Search Doctrines

- handout

7. Recommended Readings

- William J. Stuntz, "Implicit Bargains, Government Power, and the Fourth Amendment," 44 STAN. L. REV. 553 (1992)

Feb. 27

Fourth Amendment: *Terry* and Its Impact on Police Practices

1. Terry "Stop and Frisk" Analysis

- *Terry v. Ohio* (1968)
- *Florida v. J.L.* (2000)
- *Illinois v. Wardlaw* (2000)
- *United States v. Place* (1983)

2. "Plain Feel" Addendum?

- *Minnesota v. Dickerson* (1993)*

3. Cases Informing the Racial Profiling Debate

- *United States v. Martinez-Fuerte* (1976)*
- *Florida v. Royer* (1983)
- *United States v. Sokolow* (1989)*
- *United States v. Arvizu* (2002)*
- Appendix B

4. Recommended Readings

- Tracey Maclin, "Race and the Fourth Amendment," 51 VAND. L. REV. 333 (1998)
- _____, "Terry and Race: *Terry v. Ohio*'s Fourth Amendment Legacy," 72 ST. JOHN'S L. REV. 1271 (1998)
- Susan Bandes, "*Terry v. Ohio* in Hindsight: The Perils of Predicting the Past," 16 CONST. COMM. 491 (1999)
- Anthony C. Amsterdam, "Stopping the Usual Suspects: Race and the Fourth Amendment," 74 N.Y.U. L. REV. 956 (1999)

March 6

The USA PATRIOT Act and Government Surveillance

1. Background

The Foreign Intelligence Surveillance Act (FISA)

- William C. Banks, "Deportation, National Security, and Aliens' Rights After *Reno v. American-Arab Anti-Discrimination Committee*: The "L.A. Eight" and

Investigation of Terrorist Threats in the United States,” 31
COLUM. HUM. RTS. L. REV. 479 (2000).

Government Wiretapping & Surveillance Laws

- Johnny Gilman, “Carnivore: The Uneasy Relationship
Between the Fourth Amendment and Electronic Surveillance
of Internet Communications,” 19 COMMLAW CONSPECTUS
111 (2001)

2. The USA PATRIOT Act

3. News Articles and Commentary

- Appendix A

***** March 13 Midterm Examination, closed book *****

B. INTERROGATIONS AND PRE-TRIAL PROTECTIONS

**March 27
& April 3**

Fifth Amendment: The Privilege Against Self-Incrimination

1. Pre-Miranda Standards

- *Ashcraft v. Tennessee* (1944)
- *Watts v. Indiana* (1949)
- *Massiah v. United States* (1964)
- *Escobedo v. Illinois* (1964)

2. The Miranda Doctrine

- *Miranda v. Arizona* (1966)
- *Berkemer v. McCarty* (1984)
- *Rhode Island v. Innis* (1980)
- *Illinois v. Perkins* (1990)
- *Minnick v. Mississippi* (1990)
- *New York v. Quarles* (1984)
- *Moran v. Burbine* (1986)
- *Withrow v. Williams* (1993)

Discussion: Does John Lindh’s waiver of counsel pass muster
under *Moran v. Burbine*? Should *New York v. Quarles* apply?

News Packet:

- Charles Lane, “Walker’s Case Poses Novel Legal Issues,”
Wash. Post (Dec. 20, 2001)
- Harriet Chiang, “Walker Case Enters New Legal Territory,”
S.F. Chron. (Jan. 16, 2002)

- Edward Epstein, "Walker Case Not Airtight," S.F. Chron. (Jan. 17, 2002)
- Brooke Masters and Dan Eggen, "Walker Statements a Trial Issue," Wash. Post (Jan. 17, 2002)
- William Glaberson, "Whether Walker Knew of Counsel is an Issue," N.Y. Times (Jan. 17, 2002)

3. Did Congress Overrule *Miranda*?

- *Dickerson v. United States* (2000)

4. Recommended Readings

- Akhil Amar and Renee Lettow, "Fifth Amendment First Principles: The Self-incrimination Clause," 93 MICH. L. REV. 857 (1995)
- Albert W. Alschuler, "A Peculiar Privilege in Historical Perspective: The Right to Remain Silent," 94 MICH. L. REV. 2625 (1996)
- George C. Thomas III, "Dialogue on *Miranda*: Is *Miranda* a Real-World Failure? A Plea for More (and Better) Empirical Evidence," 43 UCLA L. REV. 821 (1996)
- Stephen J. Schulhofer, "*Miranda*'s Practical Effect: Substantial Benefits and Vanishingly Small Social Costs," 90 NW. U.L. REV. 500 (1996)
- Paul Cassell, "*Miranda*'s Social Costs: An Empirical Reassessment," 90 NW. U. L. REV. 387 (1996)
- _____, "The Statute That Time Forgot: 18 U.S.C. § 3501 and the Overhauling of *Miranda*," 85 IOWA L. REV. 175 (1999)
- Yale Kamisar, "Can (Did) Congress 'Overrule' *Miranda*?" 85 CORNELL L. REV. 883 (2000)
- Donald Dripps, "Is *Miranda* Caselaw Really Inconsistent? A Proposed Fifth Amendment Synthesis," 17 CONST. COMM. 19 (2000)
- _____, "Constitutional Theory for Criminal Procedure: *Dickerson*, *Miranda*, and the Continuing Quest for Broad-but-Shallow," 43 WM. AND MARY L. REV. 1 (2001)
- William Stuntz, "*Miranda*'s Irrelevance: *Miranda*'s Mistake," 99 MICH. L. REV. 975 (2001)

April 10

Sixth Amendment: Scope & Limits

1. The Right to Appointed Counsel

- *Gideon v. Wainwright* (1963)
- *Argersinger v. Hamlin* (1972)
- *Scott v. Illinois* (1979)

2. The Adequacy of Appointed Counsel

- *Strickland v. Washington* (1984)
- *Lockhart v. Fretwell* (1993)

3. New AG Rule for Attorney-Client Monitoring of Suspected Terrorists

- 28 CFR Parts 500 and 502 National Security; Prevention of Acts of Violence and Terrorism; Final Rule (Oct. 31, 2001)
- George Lardner, "U.S. Will Monitor Calls to Lawyers; Rule on Detainees Called 'Terrifying'," Wash. Post (Nov. 9, 2001)
- Akhil Reed Amar and Vikram David Amar, "The New Regulation Allowing Federal Agents to Monitor Attorney- Conversations: Why It Threatens Fourth Amendment Values," Findlaw's Writ (Nov. 16, 2001)
- Jerry Jastrab, "Beware: Erosion of the Lawyer-Client Privilege," New Jersey Lawyer (Nov. 26, 2001)
- David E. Rovella, "Defense Lawyers Say Ashcroft Monitoring Rule Puts Them in a Bind," National Law Journal (Nov. 26, 2001)
- Steven Kimelman, "Protecting Privilege," National Law Journal (Dec. 3, 2001)

3. Recommended Readings

- Jeffrey Levinson, "NOTE: Don't Let Sleeping Lawyers Lie: Raising the Standard for Effective Assistance of Counsel," 38 AM. CRIM. L. REV. 147 (2001)

C. ADJUDICATION

April 17 Speedy & Public Trials, Press Access, Juries

1. Right to a Speedy Trial

- *Doggett v. United States* (1992)

2. The *Brady* Rule

- *United States v. Bagley* (1985)

3. Trial by Jury

- lecture

4. Press Access & Fairness

- *In re Oliver* (1948)

5. Recommended Readings

- Bennett Gershman, "The Prosecutor's Duty to Truth," 14 GEO. J. LEGAL ETHICS 309 (2001)

April 24- May 1 The Due Process Rights of Foreign Nationals

1. Background

- W, Chs. 1-4

2. Criminal Investigations & Prosecutions

History

- W, Chs. 13 & 14

Constitutional Rights of Aliens and/or Foreign Nationals Under Investigation

- *Miranda*/Due Process protections: Aleinikoff, pp. 848-850

No right to paid counsel

Expedited Removal of Suspected Terrorists

a. History

- Johnson, "The Antiterrorism Act, the Immigration Reform Act and Ideological Regulation in the Immigration Laws: Important Lessons for Citizens and Noncitizens," 28 ST. MARY'S L.J. 833 (1997)

b. Post-IRIRA

- INA §§ 501-507 (expedited removal)
- INA § 212(a)(3)(B)(iii) (defining terrorist activity)

c. Post-USA Patriot Act

Secret Evidence

- Classified Information Procedures Act § 6(c)
- IIRIRA

Detention

- *Korematsu v. U.S.*, 323 U.S. 214 (1944)

a. Post-IRIRA

- *Zadvydas v. Davis* (2001)*
- INA § 241(a)

b. Post-USA Patriot Act

- Appendix B
- Shirley Huey et al., "Administrative Comment: Indefinite Detention Without Probable Cause: A Comment on the Interim Rule 8 C.F.R. § 287.3," 26 N.Y.U. REV. L. & SOC. CHANGE 397 (2001)

Military Tribunals

- *Ex Parte Milligan*, 71 U.S. 2 (1866)
- *Ex Parte Quirin*, 317 U.S. 1 (1942)
- Appendix C

May 8

Conclusion

Appendix A

The USA PATRIOT ACT

- Julie Hilden, "The Civil Liberties We Get to Keep, and Those We Can Afford to Lose: Evaluating the Government's Proposals," Findlaw's Writ (Sep. 20, 2001)
- Jeffrey Rosen, "Tapped Out: The Terrorism Does Too Much and Not Enough" New Republic (Oct. 15, 2001)
- Susan Herman, "The USA PATRIOT Act and the US Department of Justice: Losing Our Balances?"
- Office of the Attorney General, "Field Guidance on New Authorities (Redacted) Enacted in the 2001 Anti-Terrorism Legislation"
- Carrie Kirby, "Watchdogs Say Terror Bill Goes Too Far," S.F. Chron. (Oct. 25, 2001)
- Mark Roth, "Legislation Subpoenas, Search Warrants, and Surveillance Orders – Coming to an ISP Near You?" E-Commerce (Nov. 2001)
- ACLU, Legislative Analysis: "USA PATRIOT Act Boost Government Powers While Cutting Back on Traditional Checks and Balances," (Nov. 2001)
- Federalist Society White Paper, "The USA PATRIOT Act of 2001: Criminal Procedure Sections," (Nov. 2001)
- Federalist Society White Paper, "Surveillance and Wiretap Laws, Developing Necessary and Constitutional Tools for Law Enforcement," (Nov. 2001)
- Adam W. Lasker, "Students Learning Privacy Law as it Unfolds," Chicago Daily Law Bulletin (Nov. 30, 2001)
- Patricia Williams, "War and the Law: This Dangerous Patriot's Game," The Observer (Dec. 2, 2001)
- Bart Kosko, "Your Privacy is a Disappearing Act: A Digital Spying Net May or May Not Catch Terrorists, But It Will Ensnare Us," L.A. Times (Dec. 2, 2001)
- Kevin Galvin, "Rights and Wrongs: Why New Law-Enforcement Powers Worry Civil Libertarians," Seattle Times (Dec. 6, 2001)

- Nancy Chang, "How Does the USA PATRIOT Act Affect Bill of Rights?" New York Law Journal (Dec. 6, 2001)
- Lou Dolinar, "Upping the Pressure: With New Tools and Laws, Authorities Can Target Suspects' Computers With Accuracy," Newsday (Dec. 12, 2001)
- Peter Grier, "Fragile Freedoms," Christian Science Monitor (Dec. 13, 2001)
- Abraham McLaughlin, "CIA Expands Its Watchful Eye to the United States," (Dec. 17, 2001)
- Terry Eastland, "General Ashcroft: Justice Goes to War," Weekly Standard (Dec. 17, 2001)
- Salim Muwakkil, "Forgotten Freedoms," In These Times (Jan. 7, 2002)
- Karen Branch-Brioso, "Terror Bill Civil Rights Watchdog is Now in Place," St. Louis Post-Dispatch (Jan. 10, 2002)
- Scott Harris, "Freedom Fighters of the Digital World: ...the Electronic Frontier Foundation," L.A. Times Magazine (Jan. 13, 2002)

Appendix B

The Investigation & War

- William Glaberson, "Racial Profiling May Get Wider Approval By Courts," N.Y. Times (Sep. 21, 2001)
- Sherry F. Colb, "The New Face of Racial Profiling: How Terrorism Affects the Debate," Findlaw's Writ (Oct. 10, 2001)
- Bob Woodward et al., "A Deliberate Strategy of Disruption; Massive, Secret Detention Effort Aimed Mainly at Preventing More Terror," Wash. Post (Nov. 4, 2001)
- Stuart Taylor Jr. "Politically Incorrect Profiling: A Matter of Life or Death," National Journal (Nov. 5, 2001)
- Dan Eggen and Susan Schmidt, "Count of Released Detainees is Hard to Pin Down," Wash. Post (Nov. 6, 2001)
- Robin Toner and Neil A. Lewis, "Civil Liberties: White House Push on Security Steps Bypasses Congress," N.Y. Times (Nov. 15, 2001)
- Robin Toner, "Despite Some Concerns, Civil Liberties Are Taking a Back Seat," N.Y. Times (Nov. 17, 2001)
- Robin Toner, "Civil Liberty v. Security: Finding a Wartime Balance," N.Y. Times (Nov. 18, 2001)
- Dana Milbank, "In War, It's Power to the President: In Aftermath of Attacks, Bush White House Claims Authority Rivaling FDR's," Wash. Post (Nov. 20, 2001)
- Charles Lane, "Liberty and the Pursuit of Terrorists," Wash. Post (Nov. 25, 2001)
- Michael D. Patrick, "The USA PATRIOT Act of 2001: The Impact on Immigration," New York Law Journal (Nov. 26, 2001)
- Jeffrey Rosen, "Holding Pattern: Why Congress Must Stop Ashcroft's Alien Detentions," New Republic (Nov. 29, 2001)
- David Firestone and Christopher Drew, "The Cases: Al Qaeda Link Seen in Only a Handful of 1,200 Detainees," N.Y. Times (Nov. 29, 2001)

- William Glaberson, "Groups Gird for Long Legal Fight on New Bush Anti-Terror Powers," N.Y. Times (Nov. 30, 2001)
- Robin Toner, "The Attorney General: Ashcroft and Leahy Battling Over Greater Police Powers," N.Y. Times (Dec. 2, 2001)
- Robin Toner, "Political Memo; Few in Congress Questioning President Over Civil Liberties," N.Y. Times (Dec. 5, 2001)
- Allan Rivlin, "Poll Position: Safety Now – The Constitution Can Wait," National Journal (Dec. 6, 2001)
- Liberty vs. Security: An NPR Special Report, Ashcroft Faces Scrutiny for Steps Taken Since Sept. 11
- Robin Toner, "The Questioning: Senators Spar Carefully in Hearing on Security," N.Y. Times (Dec. 7, 2001)
- Neil A. Lewis, "The Senate Hearing: Ashcroft Defends Antiterror Plan; Says Criticism May Aid U.S. Foes," N.Y. Times (Dec. 7, 2001)
- Dick Polman, "Fearful Americans Shun Liberty Lobby," Phil. Inquirer (Dec. 10, 2001)
- Robin Toner and Janet Elder, "Public is Wary But Supportive of More Rights Curbs," N.Y. Times (Dec. 12, 2001)
- Henry Weinstein and David Savage, "Suspects' Attorneys Face Unique, Daunting Challenge," L.A. Times (Dec. 13, 2001)
- Dan Eggen, "Officials Winnow Suspect List," Wash. Post (Dec. 14, 2001)
- David Cole, "National Security State," The Nation (Dec. 17, 2001)
- Dan Eggen and Bob Woodward, "FBI Probe of Al Qaeda Implies Wide Presence," Wash. Post (Dec. 20, 2001)
- Ruth Wedgwood, "The Rules of War Can't Protect Al Qaeda," N.Y. Times (Dec. 31, 2001)
- Harriet Chiang, "ACLU Strives for Balance Between Civil Rights and Danger," S.F. Chron. (Jan. 6, 2002)

Appendix C

Military Tribunals

- Spencer J. Crona and Neal A. Richardson, "Justice for War Criminals of Invisible Armies: A New Legal and Military Approach to Terrorism," 21 OKLA. CITY U. L. REV. 349 (1996)
- Douglas W. Kmiec, "Infinite Justice: Military, Not Federal Trials, for the Terrorists," National Review Online (Oct. 11, 2001)
- Heritage Foundation Legal Memorandum, David B. Rivkin et al., "Bringing Al-Qaeda to Justice: The Constitutionality of Trying Al-Qaeda Terrorists in the Military Justice System," (Nov. 5, 2001)
- Bush Executive Order, "Military Order: Detention, Treatment and Trial of Certain Non-Citizens in the War Against Terrorism," (Nov. 13, 2001)
- Elisabeth Bumiller and David Johnston, "Immigration; Bush Sets Option of Military Tribunals in Terrorist Cases," N.Y. Times (Nov. 14, 2001)
- Elisabeth Bumiller and Steven Lee Myers, "The Presidential Order: Senior Administration Officials Defend Military Tribunals for Terrorist Suspects," N.Y. Times (Nov. 15, 2001)
- Joan Biskupic and Richard Willing, "Military Tribunals: Swift Judgments in Dire Times," USA Today (Nov. 15, 2001)
- Jason Zengerle, "Infinite Justice: Can Courts Try Terrorists?" New Republic (Nov. 19, 2001)
- Rogers M. Smith, "With Justice for Some, Not All?" Christian Science Monitor (Nov. 20, 2001)
- Michael R. Belknap, "Military Tribunals: Legal, But Dubious," San Diego Union-Tribune (Nov. 25, 2001)
- Matthew Purdy, "The Law: Bush's New Rules to Fight Terror Transform the Legal Landscape," N.Y. Times (Nov. 25, 2001)
- Joanne Mariner, "O.J. and Osama: The Fear of a Highly Publicized Bin Laden Trial, and the Problem with Military Commissions," Findlaw's Writ (Nov. 26, 2001)
- Insider Interview, Jonathan Turley, "Military Tribunals: The Trouble with Changing the Rules," National Journal (Nov. 28, 2001)

- Vanessa Blum, "When the Pentagon Runs the Courtroom," Legal Times (Nov. 26, 2001)
- Jim Oliphant, "Justice During Wartime: Order on Military Trials Final Piece of Sep. 11 Response," Legal Times (Nov. 26, 2001)
- Charles Krauthammer, "In Defense of Secret Tribunals: Why Bush is Right," Time Mag. (Nov. 26, 2001)
- David E. Sanger, "President Defends Secret Tribunals in Terrorist Cases," N.Y. Times (Nov. 30, 2001)
- White House Counsel Alberto R. Gonzales, "Martial Justice, Full and Fair," N.Y. Times (Nov. 30, 2001)
- Katharine Q. Seelye, "The Military Tribunals: In Letter, 300 Law Professors Oppose Tribunals Plan," New York Times (Dec. 8, 2001)
- Evan Thomas and Michael Isikoff, "Justices Kept in the Dark," Newsweek (Dec. 10, 2001)
- Laurence H. Tribe, "Trial by Fury: Why Congress Must Curb Bush's Military Courts," New Republic (Dec. 10, 2001)
- Byron York, "Dems Cave on Tribunals? A Star Witness Makes the Case *For* Tribunals," National Review On-line (Dec. 3, 2001)
- Edward Lazarus, "The History and Precedential Value of the Supreme Court Case Cited in Support of the Bush Administration's Military Tribunals," Findlaw's Writ (Dec. 11, 2001)
- Warren Richey, "Tribunals on Trial," Christian Science Monitor (Dec. 14, 2001)
- Robert H. Bork, "Having Their Day in (a Military) Court," National Review Online (Dec. 17, 2001)
- William Glaberson, "Critics' Attack on Tribunals Turns to Law Among Nations," N.Y. Times (Dec. 26, 2001)
- Neal A. Lewis, "The Military Tribunals: Rules on Tribunals Require Unanimity on the Death Penalty," N.Y. Times (Dec. 28, 2001)
- Katharine Q. Seelye, "Draft Rules for Tribunals Ease Worries, But Not All," N.Y. Times (Dec. 29, 2001)

- George P. Fletcher, "War and the Constitution," American Prospect (Jan. 2002)
- Sen. Joseph Lieberman, "A Strong Case for Military Tribunals," Houston Chron. (Jan. 6, 2002)
- Herman Schwartz, "Tribunal Injustice," The Nation (Jan. 21, 2002)
- Gary Cohen, "The Keystone Kommandos," Atlantic Monthly (Feb. 2002)