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The ACLU in American Life

By Anita Aboulafia

April 3, 2012 – Why is the American Civil Liberties Union such a polarizing force on the U.S. political landscape today? A panel of first amendment and constitutional law experts explored – and debated – that question, as well as the role the 92-year-old ACLU has played in American life, on April 3 at a forum hosted by the Benjamin N. Cardozo School of Law.

Anthony D. Romero, the ACLU's executive director, started the discussion by acknowledging that the organization doesn't do a good enough job explaining what it does and why it does it. He said for example, when the ACLU defends the First Amendment right of Fred Phelps to mount protests at the funerals of American soldiers "it needs to take that extra step and explain why we're defending him."

Theodore B. Olson, a partner at Gibson, Dunn & Crutcher who served as U.S. Solicitor General (2001-2004) in George HW Bush's administration and generally supports more conservative views, commended the ACLU for "attacking the issues...that are most profoundly divisive and challenging us individually and as a society."

Moderator Jeffrey Brown, senior correspondent for PBS NewsHour then asked Romero about the organization's proudest case. According to Romero, it was the Anwar Al-Awlaki case, in which a Freedom of Information Act (FOIA) request was submitted in October 2011 seeking information about the targeted killing of Al-Awlaki, an American citizen, and two other men. "Where are the checks and balances?" Romero asked, in a case where "we allowed our government to hunt and kill one of its own citizens, not in a theater of war, with no assertion of a legal framework... We're on the cusp of losing the very basic rules, basic protections about what defines a republic." The issue, Olson explained, is that if intelligence tells you that someone is plotting to blow something up and you have the capacity to prevent destruction, you can't put the civil rights of one alleged terrorist ahead of the people you're sworn to protect. "Sometimes," replies Romero, "the intelligence is wrong. We went to war over intelligence that was wrong... And sometimes, you could kill the wrong people." What if Al-Awlaki had a change of heart, Romero asked, and he chose to renounce terrorism?



Panelists then discussed the hot-button issue of racial profiling. The New York City Police Department's contentious stop-and-frisk practices were debated, with Romero and Steven R. Shapiro, ACLU's legal director, sparring with Heather Mac Donald, a fellow at the Manhattan Institute for Policy Research, Inc., which is a conservative think tank.

According to Mac Donald, people in the mostly minority neighborhood of Brownsville, Brooklyn are victimizing their law-abiding neighbors at an 80 percent higher rate than those in the mostly white neighborhood of Bay Ridge,

Brooklyn. “It’s not racist policing,” she said, but rather, it’s a data-driven policy that has resulted in less crime in minority communities. “The ACLU has done a disservice to police departments across the country by charging them with racial profiling when, in fact, they’re looking at behavior,” said Mac Donald.

However, Shapiro noted that less than one percent of the 600,000 individuals stopped were ever arrested. If we want to police the projects in a better way, do you think, he asked, does it make sense to alienate the hard working families who fear the police? Ultimately, said Romero, “I’m no different than my cousin who’s serving time in jail. The difference is that I was given a chance. Opportunity defines one’s life progress.”



Following the lively discussion, four Cardozo students took turns questioning the panelists. One student, Akil Alleyne, asked about the campaign finance law – *Citizens United* (2010). Adam Liptak, the Supreme Court correspondent for the *New York Times*, explained that the case had brought together a broad spectrum of organizations that generally sit on opposite sides of the fence, among them: the ACLU, AFL-CIO, National Rifle Association and the U.S. Chamber of Commerce, all of whom filed *amicus* briefs supporting the measure. Liptak weighed in, declaring that the law is not about free speech but politics. The ACLU, Shapiro said, filed the brief because it did not want to limit the supply of money available to candidates. Its position, however, has changed; the answer, he said, is to expand, not limit, the resources available by providing qualified candidates with public financing.

Cardozo student Hugo Arenas asked about the Health Care and Education Reconciliation Act of 2010, better known as the health care reform bill. Deborah Pearlstein, an assistant law professor at Cardozo, said the legislation has been framed as a case for individual rights – i.e., “You can’t force me to buy health insurance. Why should I subsidize some else’s health care?” This is exactly what the government is doing whenever it taxes people, Pearlstein said. She contended that the bill would be okay if you substituted the word ‘tax’ for ‘provision.’ The conference was organized by Professor David Rudenstine. It was co-sponsored by the Cardozo Student Chapter of the American Constitution Society and moderated by Jeffrey Brown, senior correspondent for the *PBS Newshour*. C-SPAN covered the event.

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