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Rosalie B. Levinson

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INTRODUCTION TO DEAN CHEMERINSKY'S ARTICLE, *THE LOWER FEDERAL COURTS AND THE WAR ON TERRORISM*

Rosalie Berger Levinson*

In the Fall of 2004, VUSL was extremely fortunate to have Dean Erwin Chemerinsky participate in its Law Review Symposium on federal courts. Dean Chemerinsky is the preeminent authority on constitutional law and federal courts. In addition, the *National Jurist* magazine has, in recent years, named him the most influential person in legal education in the United States. His textbooks and treatises have educated VU law students for over four decades. Students have uniformly praised the clarity of his writing and his uncanny ability to take extremely difficult subjects and make them understandable.

In this article, Dean Chemerinsky discusses the difficult task of balancing civil liberties against concerns for national security, addressing more specifically the fight against the War on Terrorism in the three years immediately after September 11th. This is a timeless problem that resonates with us today. Dean Chemerinsky provides a critical historical context, revealing how, over the years, our country has much too frequently compromised civil liberties in the name of national security, oftentimes with the stamp of approval of our courts. Only in retrospect has the error of these decisions been revealed. He then describes, through five examples from different appellate courts, how, in the post-9/11 years, federal district courts were more protective of civil liberties than the United States Courts of Appeals. He offers some explanation as to why this is so, suggesting in part the heightened role that the White House plays in selecting federal appellate court judges, as compared to district court judges.

Recently, we have witnessed lower federal courts enjoining allegedly unconstitutional actions of the Trump administration taken in the name of national security, such as the "Muslim" ban, only to be overturned by the Supreme Court. Dean Chemerinsky's article reminds us that giving undue deference to the executive branch in the name of national security poses a great danger to our liberty—a message that could not be more critical today.

* Senior Research Professor, Valparaiso University Law School.