

Sixty Years After the Internment: Civil Rights, Identity Politics, and Racial Profiling

Dale Minami,[†] Karen Narasaki,^{††} Heba Nimr,^{†††}
Joannie Chang^{††††}

Moderated by Phil Ting^{†††††}

[†] Dale Minami, a partner with Minami, Lew & Tamaki LLP in San Francisco, specializes in personal injury and entertainment law. He was a co-founder of the Asian Law Caucus, Inc., a co-founder of the Asian Pacific American Bar Association of the Greater Bay Area, the Asian Pacific Bar of California and the Coalition of the Asian Pacific Americans. Mr. Minami received a B.A. in Political Science from the University of Southern California in 1968. He received his J.D. from Boalt Hall School of Law, University of California in 1971.

^{††} Karen Narasaki is the President and Executive Director of the National Asian Pacific American Legal Consortium (NAPALC). Ms. Narasaki also serves on the Executive Committee of the Leadership Conference on Civil Rights as the Chairperson of its Compliance/Enforcement Committee and is the Chairperson of the National Council of Asian Pacific Americans.

^{†††} Heba Nimr is currently the Resource Center Manager of the Northern California Citizenship Project. At the time of the forum, she was an attorney and Soros Justice Fellow with INS Watch, a project of La Raza Centro Legal, in San Francisco.

^{††††} Joannie C. Chang is the Director of Employment & Labor Projects at the Asian Law Caucus. A graduate of New York University School of Law, Ms. Chang clerked for the United States District Court, District of Massachusetts, and was the Ruth Chance Law Fellow at Equal Rights Advocates and a Staff Attorney at The Legal Aid Society - Employment Law Center before joining the Asian Law Caucus in 2002. In addition to litigating Title VII and FMLA/CFRA cases, she has drafted, testified, and lobbied for the passage of the first comprehensive paid family leave law in the nation. The mission of the Asian Law Caucus (ALC) is to promote, advance and represent the legal and civil rights of the Asian and Pacific Islander communities. Because many Asians and Pacific Islanders in the U.S. are low-income immigrants and refugees, the ALC strives to create an informed and educated community empowered to assert its rights and to participate actively in American society. This perspective is reflected in its broad strategy, which integrates the provision of legal services, educational programs, community organizing initiatives, and advocacy.

^{†††††} Phil Ting is the Executive Director of the Asian Law Caucus, founded in 1972 to advance and promote the legal and civil rights of the Asian Pacific Islander community. With a focus on immigration, employment, housing, consumer, anti-Asian violence and voting issues, the Asian Law Caucus employs a three prong model of litigation and legal services, community organizing and outreach and policy advocacy. Mr. Ting was recently appointed to California's first ever Asian and Pacific Islander American Affairs Commission. He currently serves on the board of Chinatown Community Development Center and the National Asian Pacific American Legal Consortium. Previously, Mr. Ting has worked as a management consultant, a real estate investment analyst, community organizer, and political campaign field director. He is a graduate of UC Berkeley (B.A.) and Harvard University (M.P.P.).

PHIL TING: My name is Phil Ting and I am the Executive Director of the Asian Law Caucus. I am going to be moderating this panel tonight. I am very honored and happy to have everybody here. I want to mention who the sponsors are for tonight. I want to thank the Asian Law Journal and the Berkeley Journal for Employment and Labor Law for helping us secure the place. I also want to thank the Asian Pacific American Law Students Association. Thanks a lot for your support of this panel as well as Third Thursdays. Lastly, I want to thank the California Civil Liberties Public Education Project for also supporting this program.

Many of you may wonder, "Why do you want to talk about the Internment sixty years after it happened?" There is a quote by Judge Marilyn Patel that warns, "[I]n times of war or declared military necessity our institutions must be vigilant in protecting our constitutional guarantees."¹ I don't think it could be any more appropriate, unfortunately, than in this time that we are now facing. We are in a time of war. We are in a time of war at home, where people are attacking our civil rights and taking money away from us so they can fight wars across the world.

Tonight, we have a very distinguished panel to talk about many of those specific issues.

DALE MINAMI: I guess they let the oldest person talk first because I know more history than anyone else—I've lived it. I used to get nervous coming here because this is where I went to law school. I am glad to be here now though among friends, without professors or tests.

I'd like to thank you for inviting me here today. I think the topic is very important because what happened to Japanese Americans sixty years ago has relevance today. On December 7, 1941, the United States was suddenly and deliberately attacked by the Imperial forces of Japan at Pearl Harbor.² The aftermath had terrific implications for Japanese Americans. Because of war hysteria, racism, and lack of political leadership, 120,000 Japanese Americans were taken from their homes and put in the nether regions of this country, in desolate areas, to live as prisoners for up to four years.³ They had no due process rights to trial. They had no lawyers. They received no notice of the charges.⁴

The United States, at that time, seemed invulnerable, and the attack shocked this nation. It was particularly surprising because it was accomplished by a group of people of color from another nation, a group of which Americans were largely ignorant and had stereotyped as inferior. Among those taken away were my parents, grandparents and brother, who

1. *Korematsu v. United States*, 584 F. Supp. 1406, 1420 (N.D. Cal. 1984).

2. See RONALD TAKAKI, *STRANGERS FROM A DIFFERENT SHORE* 357-405 (1988) (documenting the attack on Pearl Harbor and its effect on Asian Americans, especially Japanese Americans).

3. *Id.* at 379-405.

4. LESLIE T. HATAMIYA, *RIGHTING A WRONG: JAPANESE AMERICANS AND THE PASSAGE OF THE CIVIL LIBERTIES ACT OF 1988* 15-17 (1993).

was one year old at the time. All were considered a military threat. The claim of military necessity demanded that they be taken away to avoid the threat of espionage and sabotage despite the fact that not one Japanese American was ever charged or convicted with either crime.⁵ It was clear that what was done to Japanese Americans was a case of massive racial profiling. German Americans were not taken away. Italian Americans were not taken away although America was at war with their ancestor countries.

It is also significant that only a small group of Japanese Americans from Hawaii were put in camps, despite the fact that there is where our Pacific naval fleet was deployed.⁶ Hawaii was where Pearl Harbor was attacked and where the largest majority of Japanese Americans in the United States lived.⁷ Racism and also economic self-interest by the mainland farming industry all played a role in the decision to imprison.⁸

The Commission on the Wartime Relocation and Internment of Civilians determined that the causes of this civil rights disaster were war hysteria, lack of political leadership, and racism.⁹ Those who were forced into camps had their lives changed dramatically. The toll in broken homes, shattered dignity, and hundreds of millions of dollars of property loss was incalculable.¹⁰

Every branch of government—the Executive, the Legislative and the Judiciary—participated in this civil rights nightmare. Three Supreme Court decisions by supposedly the wisest people in the land upheld the curfew and exclusion, and by implication, the detention as well, against assertions of due process violations and illegal discrimination.¹¹

Japanese Americans left the camps and returned to their old homes or found new ones, trying to rebuild their lives. They tried to live their lives quietly and make life better for their children, but the idealism of African Americans ignited the fires of the Civil Rights Movement and inspired Asian Americans to discover their true history.¹² Through this journey, Japanese Americans were moved to demand justice for their incarceration. With allies of all colors, they mounted a massive campaign for redress,

5. TAKAKI, *supra* note 2, at 388-89; JACOBUS TEN BROEK ET AL., PREJUDICE, WAR AND THE CONSTITUTION 105 (1954) ("No Japanese, citizen or alien, was indicted or convicted of sabotage, espionage, or any major violation of wartime security laws.")

6. TAKAKI, *supra* note 2, at 379-82.

7. *Id.* at 379.

8. *Id.* at 389.

9. Susan Kiyomi Serrano & Dale Minami, *Korematsu v. United States: A "Constant Caution" in a Time of Crisis*, 10 ASIAN L.J. 37, 44 (2003).

10. TAKAKI, *supra* note 2, at 379-405 (describing the aftereffects of interning the Japanese Americans).

11. Serrano & Minami, *supra* note 9, at 40-42.

12. See Mari J. Matsuda, *McCarthyism, The Internment and the Contradictions of Power*, 40 B.C. L. REV. 9, 34 (1998) ("A challenge for the Japanese-American community is to make the victory of redress part of a progressive Constitutional vision. This is our obligation, for the courage to stand up for redress was inspired by our brothers and sisters in the African-American civil rights movement.") (footnote omitted).

which began in the early '70s, and succeeded in 1988 when they extracted an apology and \$20,000 for each individual from our country.¹³ But the legacy was not just the money or the apology; the legacy was a gift to America—a gift of education and a lesson about civil rights.

September 11, 2001 was a replay of Pearl Harbor. A great nation is suddenly attacked by people with ancestral ties to foreign nations resulting in the sudden and tragic deaths of many Americans. The ensuing hysteria of a people whose once invincible nation became suddenly and dramatically vulnerable. Both attackers, Japanese and Arab Americans, were a racial minority born with an appearance that Anglo America did not recognize as American. Each group was subject to stereotypes and demeaning media images. Neither was politically powerful. Each came from cultural, social, and political traditions about which Anglo Americans were woefully ignorant.

While we feel profound sadness for those who lost their lives and their loved ones and deep anger at the zealots who took innocent lives, we must put this tragic event in the context of history.

There were differences. This time, politicians spoke out against hate crimes targeted at Muslim and Arab Americans.¹⁴ This time, the media, in general, warned against racial profiling.¹⁵ And this time, Arab and Muslim Americans attracted allies to help them fight. I believe that the Redress Movement had successfully injected the mythology of the injustice to Japanese Americans into popular culture—the idea that what was happening to Arab and Muslim Americans had happened unfairly to a group before and it should not happen again.

Yet, the fallout of September 11 is still dangerous and pernicious. What we see is legislation curtailing civil rights—Patriot I, and now Patriot II.¹⁶ We see the disappearance of tens of thousands of Arab and Muslim Americans.¹⁷ We have seen illegal detentions of persons whom the government won't even name, who have disappeared without notice and without charges to unknown places for indefinite periods of time.¹⁸

13. MITCH MAKI ET AL., *ACHIEVING THE IMPOSSIBLE DREAM: HOW JAPANESE AMERICANS OBTAINED REDRESS* 75-76, 90, 213 (1999).

14. See Editorial, *Rights and the New Reality*, L.A. TIMES, Sept. 21, 2002, at B22 (describing an FBI advertisement in Arab American newspaper emphasizing agency's pledge to investigate hate crimes against Arab Americans); see also Henry Lee, *Anti-Hate Campaign Begins in S.F.*, S.F. CHRON., Aug. 27, 2002, at A19 (describing the unveiling of an anti-hate poster campaign by San Francisco civic leaders).

15. Editorial, *supra* note 14, at B22; Lee, *supra* note 14, at A19; see also Arianne Anyanpur, *Group Urges Steps to Prevent Anti-Muslim Hate Crimes*, L.A. TIMES, Nov. 14, 2002, at A28.

16. See Richard B. Schmitt, *Patriot Act Author Has Concerns*, L.A. TIMES, Nov. 30, 2003, at A1 (author of Patriot I expressing concerns regarding civil right abuses against immigrants and others); see also Jill Zuckman, *Some Fear Big Brother Lurks Inside Patriot II*, CHICAGO TRIB., Apr. 24, 2003, at C1.

17. AMNESTY INTERNATIONAL, *AMNESTY INTERNATIONAL'S CONCERNS REGARDING POST SEPTEMBER 11 DETENTIONS IN THE USA* § 1 (2002), at <http://web.amnesty.org/library/print/ENGAMR510442002> (last visited Mar. 29, 2003).

18. *Id.* §§ 1-2.

Even though we haven't yet seen a mass internment of a racial group like the Japanese Americans or the "enemy," we are experiencing a subtler undercutting of our civil rights, something that our leaders are trying to institutionalize right now. And, once these policies are legitimized during a time of crisis they tend to become permanent features of our country's institutions, as Professor Eric Yamamoto points out.¹⁹

We are witnessing the most ardent attack on civil rights since the McCarthy era. Because it is bolstered by support of a war in Iraq, it has given the President and Congress much freedom to do virtually whatever they want, the Constitution be damned. And the War on Dissent is a part of this attack. In 1942, Americans remained silent, and we experienced a civil rights disaster. We should understand that it is our duty to dissent and to speak out to voice opinions when the government cannot offer concrete, real justifications for their actions.

If there is anything that came out of the Internment and the Redress Movement, it is this: we know that when Japanese Americans were interned in 1942, they were virtually alone. Nobody stood up for them except the Northern California branch of the ACLU and some of the Quakers.²⁰ But in 1988, when they gained redress from a country reluctant to look itself in the mirror and see the ugly face of racism, when they won that victory in the legislative halls, they mobilized the political support of people of all colors.²¹

Today, Arab Americans and Muslim Americans have friends and the support that Japanese Americans never had. And I think that it has been a great deterrent for what they [the government] might have done, because the Bush Administration has trotted out *Korematsu v. United States* as a justification for mass internment.²² They have dressed it up in new clothes and tried to pretend that this is a legal precedent for what they might be able to do. Congressman Coble accepts the internment as valid, although he now apologizes half-heartedly.²³ So do many in this country, who still feel some of these massive civil rights violations can occur, especially if it is against certain people of color.

I think we, as Japanese Americans, and we, as Asian Americans, are able to see history through a very unique lens—the lens of what we have experienced being confined by barbed wire and ignorance but seeing the sunlight of a redress movement, where political power was able to build something that was very significant.

19. See generally RACE, RIGHTS AND REPARATION: LAW AND THE JAPANESE AMERICAN INTERNMENT (Eric K. Yamamoto et al. eds., 2001).

20. William R. Tamayo, *When the "Coloreds" Are Neither Black Nor Citizens: The United States Civil Rights Movement and Global Migration*, 2 ASIAN L.J. 1, 6 (1995).

21. MAKI ET AL., *supra* note 13, at 75-76, 90.

22. Serrano & Minami, *supra* note 9, at 38-39.

23. Brian Falter, *Lawmakers Under Fire for Comments Deemed Insensitive*, WASH. POST, Feb. 10, 2003, at A5.

It is like African Americans who had to endure slavery, who had to go through what they went through—segregation and violence perpetrated upon them. They gained a moral authority through their suffering and struggle to gain equal rights and dignity, and while I cannot compare our suffering to theirs, we do have a moral authority and duty to speak out. We have a duty to dissent. We have a duty not to let the Bush Administration, or any administration, cow us into silence because that is what happened in 1942.

That is the legacy of redress for me and a lot of Japanese Americans and Asian Americans. We have to be able to stand up and fight back.

KAREN NARASAKI: Good evening. It's been well over a year now since that fateful morning of September 11. In that short time, American ideals and human rights principles have faced a really fierce attack. The attacks have not just come from the terrorists overseas but from our elected officials in Washington and in the states. Indeed, while many of us continue to grieve for the lives that were taken and the lives that were forever changed in the aftermath of the events that followed, we have tried to fight against the fact that our democracy is actually under siege.

As all of you already well understand, this is an incredibly critical place in our nation's history. My esteemed colleague, Dale Minami, says because of our history, Japanese Americans and other Asian Americans have a particularly important role to play. I know I got into civil rights because my parents were interned, and one of the lessons I learned from that was you could not be silent, you had to speak out.

One of the lessons of the Internment is that when our nation is at a time of crisis, that is when we are the most vulnerable to caving in to our fears and letting our prejudices override our commitment to justice. I come from Washington; it is a very lonely place out there. It is very hostile territory.

We have an Attorney General who has been quite relentless in his pursuit of the wholesale shredding of our Constitution. He leads a Department of Justice that undermines, rather than enforces, our civil and human rights. He is seeking more power to use against Americans in the form of secret evidence, secret detention, finger printing and registration, domestic spying, intimidation, and racial and ethnic profiling.²⁴

He is seeking to return us to the days when the FBI spied on Dr. Martin Luther King, Jr. and other leaders in the civil rights movement

24. See e.g., Sameer M. Ashar, *Immigration Enforcement and Subordination: The Consequences of Racial Profiling After September 11*, 34 CONN. L. REV. 1185, 1192-93 (2002) (racial profiling); Joseph Braml, *Rule of Law or Dictates by Fear: A German Perspective on American Civil Liberties in the War Against Terrorism*, 27 FALL FLETCHER F. OF WORLD AFF. 115, 124-28 (Summer/Fall 2003) (secret evidence, secret detention, finger printing and registration); Toni Locy, *Broader Domestic Spying Allowed; Court Says U.S. Can Employ New Powers*, USA TODAY, Nov. 19, 2002, at A1 (domestic spying); E.E. (Bo) Edwards, *Ashcroft Must Be Stopped*, CHAMPION, Nov. 27, 2003, at 4 (intimidation).

because their dissent over the status quo was being taken by some as disloyalty to America.²⁵ He has turned the rule of law on its head, claiming more powers without the benefit of legislation.²⁶

For Japanese Americans whose families were ripped from their homes and held behind barbed wire, I feel that we have a special responsibility to sound the alarm because we are seeing, again, a failure of political leadership. We are seeing, again, how far even well-intentioned individuals are willing to go to sacrifice the freedoms of others in order to make themselves feel, however falsely, safe. We are seeing, again, bigots seeking to take advantage of all of our fears, pushing their anti-immigrant agenda in the hope of turning back the clock to an America that used to be.

During World War II, our community knew how it felt to be totally vulnerable in a world with few advocates on our behalf. I'm very proud that so many community organizations and leaders have stepped forward to speak out against what is happening to the Arab, Muslim, and South Asian community, because we know too well the stigma of being stereotyped as forever foreign, our loyalty always questioned.²⁷

Japanese Americans certainly learned that during Internment.²⁸ The Filipino Veterans learned it after World War II when their veteran benefits were summarily stripped from them.²⁹ Korean Americans learned it when the police failed to protect their families and businesses during the Los Angeles riots.³⁰ Chinese Americans learned it during the McCarthy period, and were reminded of it during the saga of Dr. Wen Ho Lee.³¹ Southeast Asian immigrants learned it when they bore the brunt of welfare reform.³² And South Asian and Arab Americans unfortunately are learning it now.³³

It is so important that we make sure that our stories are shared with the American public and with policy makers so that the lessons of history are not ignored and forgotten.

25. See Mark Engler, *Attacks on MLK Show Need to Protect Rights*, NEWSDAY, Jan. 14, 2004, at A29.

26. See, e.g., Edwards, *supra* note 24, at 4.

27. See, e.g., L.A. Chung, *Speaking Out on Liberties Since 9/11/01*, SAN JOSE MERCURY NEWS, Feb. 21, 2003, at 1.

28. See Thomas W. Joo, *Presumed Disloyal: Executive Power, Judicial Deference, and the Construction of Race Before and After September 11*, 34 COLUM. HUM. RTS. L. REV. 1, 18-22 (2002).

29. The Rescission Act of 1946 denied medical benefits and veterans' burial to Filipino soldiers who had fought with U.S. Armed Forces in the Far East. However, in December 2003, President George W. Bush signed two laws reversing the Rescission Act and giving full military benefits to Filipino WWII veterans. Jia-Rui Chong, *Patience Pays for Filipino Veterans; Hundreds Who Fought for the U.S. in WWII Fill a VA Center to Finally Stake Their Claims to Full Benefits*, L.A. TIMES, Dec. 23, 2003, at B1.

30. See Sam Chu Lin, *Moving Past the Fires: Ten Years After the L.A. Riots, the APA Community Looks Back and Heads Forward*, ASIANWEEK, May 1, 2002, at 19.

31. See Michael Scaperlanda, *Are We That Far Gone?: Due Process and Secret Deportation Proceedings*, 7 STAN. L. & POL'Y REV. 23, 23 (1996); see Joo, *supra* note 28, at 5-13 (Wen Ho Lee).

32. See generally Bill Ong Hing, *Don't Give Me Your Tired, Your Poor: Conflicted Immigrant Stories and Welfare Reform*, 33 HARV. C.R.-C.L. L. REV. 159 (1998).

33. See *supra* notes 14-16.

Our nation has acknowledged the failure of political leadership that led to the internment,³⁴ yet we're still poised to make those same mistakes. In the name of preventive detention, well over 1,000 people have disappeared, while families anxiously pressed the Department of Justice for information about where their loved ones were being held and why.³⁵

The Department of Justice has called on the FBI and local law enforcement to become enforcers, making our communities more vulnerable to criminal exploitation, domestic violence, and hate crimes as they become more afraid of working with the police.³⁶ The Attorney General recently made an open call for law enforcement to jail immigrants on the pretext of immigration law violations and to automatically hold all asylum seekers from Muslim countries in jail.³⁷

Unfortunately, I have to report that Congress has not been much better. Even when there was a Democratic-led Senate, there were all too few portraits in courage. The Aviation and Transportation Security Act was enacted.³⁸ It resulted in thousands of Asians, Arabs, and Latinos losing their jobs as airport screeners because they are not yet citizens, despite the fact that thousands of them are serving with distinction in the U.S. military, some having lost their lives in the recent Iraq conflict.³⁹

Patriot Act I was enacted with federal prosecutors and law enforcement agencies requiring sweeping arbitrary powers, from non-public hearings to unchecked wiretap authority, from violating the right to counsel to domestic spying in places of worship.⁴⁰

34. See Civil Liberties Act of 1988, 50 U.S.C. § 1989, et seq. (1988) (providing for an official apology, payments of \$20,000 to each surviving internee, and the establishment of a public education fund).

35. See AMNESTY INTERNATIONAL, *supra* note 17, at § 1; see also Braml, *supra* note 24, at 125.

36. See generally *As Surveillance Powers Grow Accountability Languishes*, USA TODAY, May 12, 2003, at A11. But see *supra* note 14.

37. See Michael Riley & Jim Hughes, 'Capone' Tactic in Terror Fight Questioned; Suspects Can Be Held Indefinitely for Routine Immigration Violations, DENVER POST, July 27, 2003, at A6; Ricardo Alonso-Zaldívar, *Rights Groups Blast Policy to Detain Asylum Seekers*, L.A. TIMES, Mar. 19, 2003, at A12.

38. Aviation and Transportation Security Act, Pub. L. No. 107-71, 115 Stat. 597 (2001) (codified in scattered sections of 49 U.S.C.; 5 U.S.C. §§ 5313, 8331; 26 U.S.C. § 9502; 31 U.S.C. § 1105).

39. See Kevin R. Johnson, *September 11 and Mexican Immigrants: Collateral Damage Comes Home*, 52 DEPAUL L. REV. 849, 860-61 (2003). The citizenship requirement not only led to the loss of jobs, but to the arrests of undocumented Arabs, Muslims, Asians, and Latinos. *Id.* See also Marjorie Valbrun, *A Military Track to Citizenship—Newcomers Win Acceptance Through Service in Post-Sept. 11 Chill*, N.Y. TIMES, Apr. 2, 2003, at A4 (describing the role of noncitizens in the U.S. military during the Iraq conflict).

40. See *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot) Act of 2001*, Pub. L. No. 107-56, 115 Stat. 272 (codified at 8 U.S.C.A. § 1226a (West 2003)); American Civil Liberties Union (ACLU), *Surveillance Under the USA Patriot Act*, at <http://www.aclu.org/SafeandFree/SafeandFree.cfm?ID=12263&c=206> (last visited Mar. 4, 2004) [hereinafter *ACLU, Surveillance*]; ACLU, *The USA Patriot Act and Government Actions That Threaten Our Civil Liberties*, at <http://www.aclu.org/Files/OpenFile.cfm?id=11812> (last visited Mar. 4, 2004); see generally John W. Whitehead & Steven H. Aden, *Forfeiting "Enduring Freedom" For "Homeland Security": A Constitutional Analysis of the USA Patriot Act and the Justice Department's*

It is now a felony to donate money to a person or organization that is later designated by the government to be a terrorist organization.⁴¹ And you have the burden of proving that you had no reason to know that ten years later, the government would designate the organization as a terrorist agency.⁴²

The proposed Patriot Act II is like any nightmare that George Orwell could have even dreamed up.⁴³ It would expand the definition of terrorism and create fifteen new death penalties.⁴⁴ The new definition of terrorism would arguably cover protest activities, such as those conducted by People for the Ethical Treatment of Animals, Greenpeace and Operation Rescue.⁴⁵ It would strip even native-born Americans of all rights of citizenship, if they provide support for anything considered as terrorism in any place around the world.⁴⁶ It would provide for arbitrary deportations of even long time, lawful permanent residents, without the right to challenge in court.⁴⁷

Under Patriot Act I, the government already has the ability to force local libraries and book stores to tell them what books you checked out and what web sites you visit.⁴⁸ Librarians and bookstore clerks are subject to prosecution if they inform you of the government inquiry.⁴⁹ Under the new proposal, the government would be able to secretly obtain your credit report and your health history without your consent and without review of any court.⁵⁰ It would grant immunity to private businesses that provide your information, even if it was done in violation of your right to privacy and even if the information shared shows a reckless disregard for the truth.⁵¹ It does not take much imagination to see how this could be used by hostile employers, neighbors, or coworkers to harass individuals who would absolutely have no recourse to stop it.

Anti-Terrorism Initiatives, 51 Am. U. L. Rev. 1081 (2002).

41. USA Patriot Act § 411 (soliciting funds for terrorist organizations included in the definition of endorsing terrorists). This provision has chilled monetary donations from Arabs in the United States to charities in their homeland for fear of supporting terrorist organizations. Adrienne R. Bellino, Note, *Changing Immigration for Arabs with Anti-Terrorism Legislation: September 11th Was Not the Catalyst*, 16 TEMP. INT'L & COMP. L.J. 123, 139 (2002).

42. Section 411 of the Patriot Act requires a person accused of supporting a terrorist organization with "demonstrat[ing] that he did not know, and should not reasonably have known, that the act would further the organization's terrorist activity." USA Patriot Act § 411.

43. Domestic Security Enforcement Act (Patriot Act II) (Proposed Draft), at <http://www.dailyrott.com/source-docs/patriot2draft.html> (last visited Mar. 4, 2004).

44. See Memorandum from Timothy H. Edgar, Legislative Counsel, ACLU, Section-by-Section Analysis of Justice Department Draft "Domestic Security Enhancement Act of 2003," Also Known As "Patriot Act II" (Feb. 14, 2003), at <http://www.aclu.org/SafeandFree/SafeandFree.cfm?ID=11835&c=206>.

45. See *id.*

46. See *id.*

47. See *id.*

48. See ACLU, *Surveillance*, *supra* note 40.

49. *Id.*

50. See Edgar, *supra* note 44.

51. *Id.*

The proposed legislation also shelters criminal prosecution of federal agents engaged in illegal spying on individuals. It would permit spying and searches of U.S. citizens on behalf of foreign governments, including dictatorships and human rights abusers.⁵² It would eliminate procedural protections against police spying that were initially created to prevent the McCarthy-era persecution based on political and religious affiliation.⁵³

Just last year, the Denver police had to admit to spying on Native American and Quaker groups like AFSC, who were labeled in their files as criminal extremists.⁵⁴ In Portland, police admitted to spying on a food co-op, a bicycle repair collective, and a group creating a shelter for abused women.⁵⁵

One could easily see how these new powers could be used against Americans who protest human rights violations here or around the world. Now, as in World War II, there is a risk that judges will mistake unquestioning acceptance of reactionary dictates for patriotism.

We are very concerned because, as you know, there is a battle going on right now in Washington about who our judges are going to be, and I don't need to tell this audience that it very much matters who they are. You can imagine the lack of meaningful checks and balances already existing with the House, Senate, and White House all being held in Republican hands. Imagine a court that would do nothing to check their excesses.

Over the next few months, there will be a debate over this, and there will probably be a debate over the composition of the Supreme Court. I hope that you will keep this in mind because clearly we are at a crossroads. We can speak out against the onslaught upon civil and human rights violations in this country, or be complicit in our silence.

HEBA NIMR: I think it is really important to not only draw links with past historical moments in terms of World War II and the Internment, but also, the historical moment just before September 11th.

There is a story I want to share that will highlight the need for such attention. Right after the first special registration deadline, we were hearing reports that hundreds of Iranians were arrested in Southern California and that there were many more arrests around the country, including up here in the Bay Area.⁵⁶ A friend of mine had gone down to

52. *Id.*

53. *Id.*

54. See *Rockies: Colorado: Halt to Secret Files*, N.Y. TIMES, Apr. 18, 2003, at A13.

55. See Dean Schabner, *Big Brother Comeback? Seattle Eyes Easing Police Spy Rules As Other Cities Face Up to Past*, ABCNews.com, Jan. 2, 2003, at http://abcnews.go.com/sections/us/DailyNews/police_spying030102.html (last visited Feb. 1, 2004); see *The Secret Watchers*, PORTLAND TRIB., at <http://www.portlandtribune.com/secret.shtml> (last visited Feb. 1, 2004).

56. Louise Cainkar, *Special Registration: A Fervor for Muslims*, 7 J. ISLAMIC L. & CULTURE 73, 83 (2003); James Sterngold, *Iranians Furious over INS Arrests: Abuse Alleged After Men Agreed to Register in L.A.*, S.F. Chron., Dec. 21, 2002, at A1; William Booth & Dan Eggen, *INS Detaining Some After Registration: Security Effort is Called Harassment by Critics*, WASH. POST, Dec. 20, 2002, at

the San Francisco INS office as part of the second wave, which started immediately after the first deadline. And, despite all the arrests that they heard of, she was a U.S. citizen and her North African husband had an adjustment application pending, so they figured they were safe from the risk of detention and decided to go in earlier rather than later in the second wave. So, a few days after that first deadline, they went to register. He was detained, and she called me frantic that night. I went down with her to INS the next day and that was just a whole maze of a day, totally Orwellian, totally crazy. Go to this floor, go to that floor—no one could give us a clear answer about what was happening.

At some point when it was clear that he was going to be detained another night, we were downstairs waiting so she could speak to him in the visiting room. And yes, there was a whole hallway of Iranians and Arabs from that week of detentions waiting to get answers about their family members and speak to them. However, in the visiting room, there were not just Arabs and Iranians, but also Latinos and Asians, because there are Latinos and Asians in INS detention too.⁵⁷ Lots of them.

A few days later, I was still navigating the special registration maze. This time with the wife of a Syrian man who was detained. As we were leaving the INS building, a van from one of the mainstream TV stations screeches up in front of us. A reporter and cameraperson jump out. They run up to the woman I was accompanying, asking “Are you the wife of a detainee?” And she says, “Yes,” so they taped her story, asking lots of questions, and getting lots of footage.

Meanwhile, also exiting the building is the Latino wife of another detainee. She sees the television news talking about this big detention crisis, and she approaches the reporter and says that it is so great they are doing a story on detention. She says, “I want to tell you about my husband. I want to tell you about the two weeks that he has been in detention.” The reporter asks if her husband is Arab and the woman says, “No.” The reporter asks, “Are you Middle Eastern?” “No.” “Okay, I don’t want to talk to you.”

As bad as things are—and they are really, really bad now—and as much as the Arab and South Asian communities are targeted a particular way, what we are seeing now is not new, but an escalation in INS enforcement and detention that was happening ten or fifteen years prior to September 11th.⁵⁸ I think it is important to make those connections.

Before September 11, between 1994 and 2001, the daily INS detention population tripled.⁵⁹ In that short period of time, it tripled! The fastest

A16.

57. Cf. Press Release, American Civil Liberties Union of Southern California, ACLU Joins Coalition Calling For INS To End Abusive Immigration Raids (Oct. 13, 1998) (stating that immigration raids target Latinos and Asian), available at <http://www.aclu-sc.org/print/News/Releases/100251/>.

58. See Charles Ogletree, Jr., *America's Schizophrenic Immigration Policy: Race, Class and Reason*, 41 B.C. L. REV. 755, 767-770 (2000).

59. Statements of Joseph Greene, Acting Deputy Executive Associate Commissioner for Field

growing segment of the federal prison population is non-citizens.⁶⁰ After NAFTA, walls were built on our southern border, forcing people trying to cross the border to take more dangerous routes⁶¹—people have been and are dying in the desert in Arizona.⁶²

In the late 1990s, an interior enforcement strategy had been developed and was increasing the numbers of immigration raids happening in people's homes and workplaces.⁶³ Throughout the 1990s, secret evidence had been used in immigration proceedings against, predominately, Arabs.⁶⁴ The secrecy of the INS did not start on September 11, 2001.⁶⁵

And there's even more context. Before September 11th, the increase in immigration enforcement and detention was happening against the backdrop of a deteriorating social safety net, and increasing prison budgets, while we saw decreasing school budgets. Again, that economic reality, that economic backdrop didn't go away on September 11, 2001. It has only gotten more acute and frankly, more desperate. People are in desperate places.

I feel like we have to make these types of links as we look at what is happening now, in order to be able to speak to our communities across the United States and make change. After September 11, we have often heard some speaking ominously: "First they came for the Middle Easterners, and then they came for . . . , and then they came for . . ." It makes it seem like we are only at the beginning of a potential crisis. But, the fact is that we are at the late stages of an actual crisis that was mounting long before September 11.

I think the other link that we need to be drawing out is between U.S. foreign policy and U.S. domestic policy. During World War II, the U.S. government used the "national security" excuse to crack down domestically.⁶⁶ The U.S. government still talks about the international situation when framing their domestic policies. So must we, especially

Operations, and Edward McElroy, District Director, New York, U.S. Immigration and Naturalization Service Before the House Committee on the Judiciary Subcommittee on Immigration and Claims regarding a Review of the Department of Justice Immigration Detention Policies, 1 (Dec. 19, 2001), available at http://uscis.gov/graphics/aboutus/congress/testimonies/2001/greene_121901.pdf.

60. Cf. JOHN SCALIA & MARIKA F.X. LITRAS, BUREAU OF JUSTICE STATISTICS, IMMIGRATION OFFENDERS IN THE FEDERAL CRIMINAL JUSTICE SYSTEM 8 (2000) (stating that non-citizens accounted for about a third of the growth in the Federal prison population from 1985 to 2000), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/iofcjs00.pdf>.

61. Cf. Heffern Ponicki, *What is the Impact of the FTAA on Immigrants?*, MEX. SOLIDARITY NETWORK, at http://www.mexicosolidarity.org/ftaa_immigrants.html (last visited March 7, 2004).

62. Arizona Advisory Committee to the U.S. Commission on Civil Rights, Briefing on Tragedy Along the Arizona-Mexico Border: Undocumented Immigrants Face the Desert, Executive Summary (2002), available at <http://www.usccr.gov/pubs/sac/az0802/sum.htm>.

63. CHRISTIAN PARENTI, LOCKDOWN AMERICA: POLICE AND PRISONS IN THE AGE OF CRISIS 139-60 (1999).

64. See Christopher Marquis, *U.S. Frees Palestinian Held 3 Years on Secret Evidence*, N.Y. TIMES, Dec. 16, 2000, at A12.

65. See *id.*

66. See TAKAKI, *supra* note 2, at 388-89.

when we are talking about immigration. Immigrants do not come to the United States in a vacuum. There are forces that push them here. There are forces that pull them here. We have to talk about and interrogate those global forces. And, I think by doing that, we ask ourselves some questions that will take us deeper into understanding where our efforts for positive change must be focused.

After NAFTA, why are so many children of immigrant parents traveling thousands of miles by themselves to desperately find their mothers who are working here, not just in Los Angeles, but also in rural North Carolina or South Carolina?⁶⁷ What is happening? What causes that phenomenon?

Why are stateless Palestinians targeted here in the U.S. for speaking out and politically organizing against Israeli occupation of their land, and then end up in immigration detention because of some technical immigration violation?⁶⁸ And then end up in endless detention limbo because they are stateless?⁶⁹ What is happening around that? We have to talk about those factors too.

Why are very young refugees from the killing fields of Cambodia coming to the United States to be swept up in the urban poverty and violence that marks so many areas in this country?⁷⁰ And then to find out later on, because of their involvement with the criminal justice system, they are going to be deported back to a land where they do not have any more surviving family and they do not speak the language.⁷¹

We have to look at all those phenomena together.

Why is it easier now for a Filipino or Guatemalan who has lived in the U.S. most of his or her life to get citizenship after they are dead or seriously injured fighting a colonial war, rather than having direct access to higher education and legalization?⁷²

There are just some bizarre things that are happening, and I think we really just need to ask a lot of different questions. I know they are hard questions. I think about how challenging these times are, and people saying: "No, we can't go there. We can't draw those connections. We have to focus only on this or that specific crisis."

67. See Sonia Nazario, *Enrique's Journey*, L.A. TIMES, Oct. 7, 2002, at A1 (describing a boy's journey from Honduras to find his immigrant mother in North Carolina).

68. See David Cole & James X. Dempsey, *Terrorism and the Constitution* 35-48 (2002). See also The Amer Jubran Defense Committee, (describing the situation of Amer Jubran, who was targeted for deportation because of his voice and politics), at <http://www.amerjubrandefense.org> (last visited March 7, 2004).

69. Cole & Dempsey, *supra* note 68, at 35-48. See Gaiutra Bahadur, *Many Detainees Still Not Charged*, PHILA. INQUIRER, Feb. 16, 2003, available at <http://www.philly.com/mld/inquirer/5193612.htm>.

70. Deborah Sontag, *In a Homeland Far From Home*, N.Y. TIMES, Nov. 16, 2003, §6, at 48.

71. *Id.*

72. See Nick Anderson, *Easier Citizenship Sought for 'Green Card' GIs*, L.A. TIMES, May 8, 2003, at A27; Jessica Kowal, *Soldier Seeks Citizenship for Himself, Parents; After Serving in Iraq War, an Illegal Immigrant Learns His Mom and Dad Face Deportation*, CHI. TRIB., Nov. 6, 2003, at C17.

But, we must make these links together in order to understand and address the larger context that frames all these crises. I think we have to because they take us deeper into what is happening and take us further in promoting positive social change.

JOANNIE CHANG: I really appreciate the point you make, Heba. It is particularly interesting, given another perspective I have been hearing from immigration attorneys who point out that, in the summer of 2001, our nation seemed poised to undertake a new approach to immigration: Only days before 9/11, President Bush held a historic meeting with Mexican President Vicente Fox that many believed would lead to an accord on legalization and more regularized migration flows across our borders.⁷³

While I think that Heba's point was right, that we need to look at the attacks on immigrants as nothing new but rather an escalation in an ongoing phenomenon, I think we also need to recognize that things were at a critical point before 9/11. The situation for immigrants in the United States could have changed for the better, and we might have realized just how far we have come.

The attacks of 9/11, combined with the economic downturn, led many of us to believe that any reforms considered would be more likely to increase the restrictions on immigrants, rather than reduce them.⁷⁴ And that's exactly what's happened—in response to 9/11, our government is developing a series of policies that specifically target immigrants, and we, as a nation, are allowing it to happen because we are afraid.⁷⁵

One of the most immediate and visible forms of discrimination coming out of 9/11 is the termination of thousands of immigrant airport screeners: the [San Francisco] Bay Area's airport screeners, largely Filipino immigrants who had been working these jobs for years, who had gotten good performance reviews, who had been promoted through the ranks, and who had trained newer employees, had their livelihood and their civil rights stripped from them as a result of 9/11.⁷⁶

Equally tragic, many Americans feel that these actions were justified under today's "special circumstances" and are too willing to trade our hard-fought civil rights for a false sense of security. So, following 9/11 and the mass hysteria surrounding "national security," the responsibility for the employment of screeners was transferred to the federal government.⁷⁷

73. See, e.g., Letta Tayler, *Seeking Protection; Mexicans Hope Bush, Fox Will Aid the Undocumented*, NEWSDAY, Sept. 3, 2001, at A8; Press Release, Joint Statement Between the United States of America and the United Mexican States (Sept. 6, 2001), available at <http://www.whitehouse.gov/news/releases/2001/09/20010906-8.html>.

74. See generally Barbara Hines, Comment, *So Near Yet So Far Away: The Effect of September 11th on Mexican Immigrants in the United States*, 8 TEX. HISP. J.L. & POL'Y 37, 44-46 (2002).

75. See, e.g., *id.*

76. See, e.g., Alan Gathright, *U.S. Screeners Oust Private Workers; Guards Protest, Cry Racism at San Jose, Oakland Airports*, S.F. CHRON., Oct. 1, 2002, at A13; May Chow, *San Jose, Oakland Airport Screeners Displaced*, ASIANWEEK, Oct. 9, 2002, at 14.

77. Aviation and Transportation Security Act, Pub. L. No. 107-71, § 111, 115 Stat. 597 (2001).

As has been well publicized, a U.S. citizenship requirement was imposed, excluding a large number of incumbent screeners from these jobs.⁷⁸ While the ACLU of Southern California's challenge to the citizenship requirement imposed by the Aviation and Transportation Security Act (ATSA) gained significant ground with Judge Takasugi's signing of the Order Granting a Preliminary Injunction (enjoining the federal government from enforcing the citizenship requirement in Section 111 of the ATSA), that Order benefits only the nine named plaintiffs in that lawsuit.⁷⁹ The remaining non-citizen screeners across the country, many of whom had or have naturalization applications pending, have been left without recourse, unable to participate in the assessment process that would enable them to qualify for the federalized screener positions.⁸⁰

To add to that, the ATSA requires anyone applying for a job as an airport screener, including those who had been employed as airport screeners prior to November 2002, to pass an assessment test that includes a computerized assessment test with an English language test that we believe is not only entirely unrelated to the duties of the screener position, but also, has a disparate impact based on race and national origin.⁸¹

This must be put in a historical context in which immigrant Asian and Pacific Islander communities have faced basic problems of unequal access to the legal system and social institutions. Discrimination based on race, language, and immigration status is an ongoing problem, even for second- and third-generation Asian and Pacific Islanders. Here, there is also a clear economic impact, on our ability to hold gainful employment, in the face of this anti-immigrant backlash.

This is a prime example of discrimination that has a clear economic impact. After November 19, the date when all airport security jobs were required to be staffed by federal employees, our clients lost their jobs, right before the holiday season.⁸² The harm impacted not just the former screeners, but also their families and their community. One of the important points that Heba raised was the need to put a human face on the impact of the anti-immigrant policies we are allowing our government to

78. § 111(e)(2)(A)(ii); see, e.g., Gathright, *supra* note 76, at A13; Chow, *supra* note 76, at 14.

79. Gebin v. Mineta, 239 F. Supp. 2d 967, 968-69 (C.D. Cal. 2002), vacated by 328 F.3d 1211 (9th Cir. 2003). The Ninth Circuit vacated Gebin v. Mineta on May 7, 2003, one month after this forum: "After the district court issued the preliminary injunction, Congress amended Section 111 of the Aviation and Security Transportation Act to expand eligibility for federal airport screening positions to U.S. nationals. Pub.L. No. 107-296, Sec. 1603." 328 F. 3d at 1212. However, the amendment to include U.S. nationals still bars lawful "permanent resident aliens" from working as airport screeners, a restriction blocking eight of the nine original plaintiffs. Henry Weinstein, *Ruling Voided on Citizenship of Screeners A Judge Had Barred U.S. from Allowing Only American Citizens in the Airport Jobs. Court Says He Should Take Change in Law into Account*, L.A. TIMES, May 21, 2003, at B3.

80. See Weinstein, *supra* note 79, at B3.

81. See § 111(e)(3), (f)(1)(c).

82. See Stephen Power, *As Deadline Looms, Bush Hasn't Signed Contracts with Airport-Screening Firms*, WALL ST. J., Feb. 5, 2002, at A20 (explaining that the ATSA provided a one-year deadline for the federal government to take responsibility of airport security).

put into place, and this, to us, was a clear example of the harm created by the ATSA, which we've been told is for our own good, for our protection, for our "national security."⁸³

So, we, the Asian Law Caucus, have filed EEO and EEOC charges on behalf of the screeners in the Bay Area.⁸⁴ The heart of this case is the language discrimination/national origin claim under Title VII, challenging the level of English proficiency required by the assessment tests.⁸⁵ The screeners whom we represent are citizens who have been able to take the assessment tests required of all airport screeners but have failed at alarming rates.⁸⁶ Between 70 and 80 percent of the Bay Area's former screeners who have taken the assessment test failed it and as a result, lost their jobs.⁸⁷ The high failure rate of individuals who have successfully performed the screener jobs for years raises serious questions concerning the relevance of the level of English proficiency required by the test.

A significant number of the questions on the test involved English grammar, spelling, verb tense, and use of possessive words.⁸⁸ Now, effective communication skills are undoubtedly essentially to the job duties of airport screeners, but are perfect grammar and the ability to spell critical? By filing these complaints, we want to encourage the public to begin asking, "How does all of this relate to the ability to do this job?" "Why is it that the people who have been doing these jobs for years are not able to pass these tests?" And, "Do these tests really assess abilities that are necessary to do the job of an airport screener?"

Most importantly, the English proficiency segment of the assessment test serves a gate-keeping function, in that individuals who were unable to pass this first segment were not permitted to proceed to subsequent portions of the assessment test.⁸⁹

To further put a human face on this tragedy, I want to share a story about one of our clients, Nestor Reyes, a former screener at SFO [San Francisco International Airport]. When we interviewed Nestor about this situation, he explained: "When I started I was only making \$4.25 an hour, no benefits, then I got a raise of 10 cents a year! No one wanted that job. But for me, it wasn't about the money—I liked the job because day-to-day, it was different, and I met many interesting people."⁹⁰

He told us, "I took this job into my heart and worked hard to make sure I did my job well. I eventually became a supervisor and made sure

83. See, e.g., Remarks on Signing the Aviation and Transportation Security Act, 2 PUB. PAPERS 1421-1422 (Nov. 19, 2001).

84. EEO/EEOC Complaints filed by Asian Law Caucus (not available for public access) (on file with author).

85. *Id.*

86. *Id.*

87. *Id.*

88. Interview with complainants (Feb. 2003-Mar. 2003) (notes not available for public access) (on file with author).

89. *Id.*

90. Interview with Nestor Reyes (Feb. 14, 2003) (on file with author).

those who worked under me took their jobs to heart too. But now, I'm suddenly not good enough. Suddenly, the government is telling me I can't do this job, the same job that I have been doing since 1994!"⁹¹

Nestor's comments really capture it all; his story parallels that of so many others who had been doing these jobs well and making sure that we were flying safely. Despite the fact that no airport screener failed in his or her job duties on 9/11, the government has chosen to institute new qualifications for the job—at the expense of the dedicated immigrant workers who had been performing these jobs competently for decades.⁹² The horrors of 9/11 have not been linked to an airport screener who could not speak in perfect English, yet the events of 9/11 have been, and will continue to be used as an excuse to perpetrate the same forms of discrimination the API community has faced for years, based on race and ethnicity, immigration status, and language ability or accent, unless we take appropriate action.

History has shown time after time that by virtue of our race and/or ethnicity, our loyalty as API immigrants is automatically suspect when national security is at issue. Many of us look back on history, and we are appalled that the Japanese Americans were interned during World War II, despite the fact that they were citizens.⁹³ We, as a nation, allowed it to happen because we didn't characterize Japanese Americans as citizens, but rather, as aliens.

And how does that relate to what's happening now? In the screeners' situation, the non-citizens were explicitly excluded from the new, federalized screener jobs on the basis that citizenship is necessary for "national security"—contrast that with the fact that members of the National Guard, who were stationed, for various periods, at our nation's airports and *are armed*, are *not* required to be U.S. citizens.⁹⁴ Well, so that's not so bad, right, because it's okay to base loyalty on citizenship, right?

But, the point to recognize is that citizenship is *not* the defining characteristic here—even the screeners who *are* U.S. citizens, who have been performing the duties of this job for numerous years, are being excluded from the positions.⁹⁵ And on what basis? Well, they have failed the tests at alarming rates based, we believe, on their language ability, and what is language ability primarily based on? National origin.⁹⁶

91. *Id.*

92. *See, e.g.,* Gathright, *supra* note 76, at A13; Chow, *supra* note 76, at 14.

93. *See* TAKAKI, *supra* note 2, at 392.

94. *See* 32 C.F.R. § 571.2 (2004) (allowing permanent resident aliens and nationals to qualify under the citizenship requirement of the Department of the Army).

95. *See, e.g.,* Gathright, *supra* note 76, at A13.

96. *See* Juan F. Perea, *Ethnicity and Prejudice: Reevaluating "National Origin" Discrimination Under Title VII*, 35 WM. & MARY L. REV. 805, 822-30 (1994) (discussing the courts' interpretations of "national origin," including those involving language abilities and accents).

So, the defining characteristic during the period of Internment was "alienage," and again, today, the defining characteristic is one's national origin, not citizenship. And that is only possible because no matter how long we've been here, no matter how perfect we speak English, there will always be questions raised about our citizenship, and about our loyalty.

The last point I want to make is that it's been a struggle to figure out how to make the screeners' issue relevant to other API communities, just as it's been a struggle to figure out how to make East Asians understand that the INS's special registration policies affect them. We need to think about what our message should be. There must be common themes that we can all understand; we have to come to the conclusion that it's not just about special registration, and it's not just about Filipino screeners losing their jobs, but it's all part of something bigger.

Even though I am a lawyer, and we're holding this forum at a law school, I also think that we need to recognize the limitations of the legal system. Because I don't think we can win this case on our legal arguments alone. I think we're going to have to change the way our country thinks about immigrants, about national security, and about how much we're willing to give up for this false sense of security.

I believe that with every challenge comes an opportunity, and I believe these challenging political times also provide an opportunity to unite the immigrant community and to empower immigrants to assert their legal rights. And I think we can do it.

PHIL TING: I am going to start off with two questions. The first question was with Japanese Americans being a very small population. How did they broaden their message when in a time of war no one stood up to a time when a number of people stood up with them? How did they make that link so that other people would respond to their needs?

Also, many people here do not work for non-profits, and they are not full time activists or lawyers or professionals. The second question is how can they speak out? How would you recommend that they participate at this time?

DALE MINAMI: The broadening of the issue was not just a masterstroke but a necessity. Japanese Americans knew they could not win redress just by casting it as a Japanese American issue.⁹⁷ Instead, they cast it as an American issue, a constitutional issue.⁹⁸ They had a lot of support to be able to do it that way. They had Japanese American veterans of the 442nd Regimental Combat Unit, one of the most decorated units for its size in the history of the United States Army.⁹⁹ These men from the 442, who were fighting heroically in a war when their parents were put in camps,

97. HATAMIYA, *supra* note 4, at 152-53.

98. *Id.*

99. *Id.* at 22-23.

came forward and became strong supporters of redress.¹⁰⁰ These were American patriots who supported the issue.

Japanese American leaders broadened the base by winning over a diverse group. By casting redress as an American issue, they were able to win over people like Alan Simpson, a conservative Senator from Wyoming¹⁰¹ and Newt Gingrich, the conservative Congressman from Georgia.¹⁰² The use of media was also critical because without favorable publicity, it is difficult to influence the national agenda.¹⁰³ By publicizing the human face of the exclusion and detention, Japanese Americans gained much sympathy.¹⁰⁴

KAREN NARASAKI: I think one of the important things was that there was a series of hearings set up by congressional commission, with a very high-ranking mix of Congressional members and people from religious faiths.¹⁰⁵ The commission then had hearings around the country and ended up writing a report and making recommendations.¹⁰⁶ It was not just Japanese Americans saying this was a bad thing, but there was actually an official commission that was set up to look at this.¹⁰⁷

In some ways, it has been very interesting that since September 11, the Hate Free Zone has borrowed from that history. The Hate Free Zone is a great activist grassroots group based in Seattle.¹⁰⁸ They recently held a hearing where they brought in many people who have been directly affected by post-September 11 events.¹⁰⁹ As Joannie and Heba said, we need to try to put a face on it. I think that is what the hearings did for the Japanese American community. You were not just saying 120,000 Japanese and Japanese Americans. It was now this person who is a grandmother or a person who was five years old, and a person who was an orphan. It really helped Americans to see that it was not just this mass group of a different race, but people with families and neighbors and jobs

100. See *id.* at 82-83 (describing how a member of the 442nd Regimental Combat Team and other Nisei veterans visited Congressman Charles Bennett, who opposed redress legislation, in order to persuade him to cast his vote in favor of redress).

101. *Id.* at 154-55.

102. *Id.* at 153.

103. *Id.* at 178-80 (describing the impact the media had on raising awareness of the redress efforts).

104. *Id.*

105. *Id.* at 88. This commission, known as the Commission on Wartime Relocation and Internment of Civilians, was created by Pub. L. No. 96-317, 94 Stat. 964 (1980). The members of the Commission were selected by President Carter, the House of Representatives, and the Senate. *Id.*

106. *Id.* at 89. The Commission's report was entitled *Personal Justice Denied*. *Id.*

107. *Id.* at 91-92.

108. See Hate Free Zone Campaign of Washington, at <http://www.hatefreezone.org/> (last visited Jan. 28, 2004).

109. See Hate Free Zone Campaign of Washington, *A Historic Public Hearing: Justice for ALL: The Aftermath of September 11, 2001*, at <http://www.hatefreezone.org/home/aHistoricPublic.htm> (last visited Jan. 28, 2004); see also Janet I. Tu, "Enough with the Targeting"; *Forum Speakers Tell of Post-Sept. 11 Harassment*, SEATTLE TIMES, Sept. 22, 2002, at B1.

and communities.¹¹⁰

I also think the Japanese American Citizens League and other Japanese American groups have been part of the civil rights movement in the 1960s and marched with Dr. Martin Luther King on that famous march to Lincoln Memorial.¹¹¹ So when they came to the table with other civil rights group, they were not saying, “fix our issues.” They had been there on everybody’s issues so it was understood that this was something that was really a community fight, and not just a fight of one community.¹¹²

PHIL TING: My second question was in terms of how regular folks participate or join in this struggle. What would you recommend to them?

HEBA NIMR: The threat of other legislation is real.¹¹³ People are really coming out, saying they support all of this domestic crackdown.¹¹⁴ So, people who don’t support the repression need to be calling their legislators and setting up meetings. I think we also need to start engaging in conversations with our families because not everybody is in the same boat. There are people who are really scared and feeling reactionary, and talking about that on a one-on-one basis will help.

JOANNIE CHANG: I think we have to win the minds of the public. Earlier today, we were talking with different people who worked with the media and with reporters. We asked the reporters, “What does it take for you to print an article that talks about these issues, and do it in a responsible way?” One of the ways we can encourage the media to cover these stories is to call the editors and tell them, “We’re really happy that you reported on this issue. We haven’t seen it reported anywhere else, and we want to read about these topics.”

The other point I think is important to raise is that many of us have talked about how Patriot II will be introduced soon,¹¹⁵ but we don’t know if it is going to be introduced next week, three months from now, or what is really happening. I think we each have to take responsibility to stay on top

110. See HATAMIYA, *supra* note 4, at 133-35.

111. August 28, 1963: *JACL Participates in the Civil Rights March*, U*X*L MULTICULTURAL, Oct. 2001 (reporting that thirty-five members of the Japanese American Citizens League participated in the civil rights march on Washington, D.C. and that the JACL was the only known Asian American organization to participate in the march), available at <http://galenet.galegroup.com/servlet/SRC>; see Japanese American Citizens League, *About JACL*, at <http://www.jacl.org/about.html> (last visited Jan. 28, 2004).

112. See HATAMIYA, *supra* note 4, 156-57.

113. See, e.g., Domestic Security Enforcement Act, *supra* note 43.

114. See, e.g., United States Dep’t of Justice, *Preserving Life & Liberty*, at <http://www.lifeandliberty.gov> (last visited Feb. 4, 2004).

115. Charles Lewis & Adam Mayle, *Justice Dept. Drafts Sweeping Expansion of Anti-Terrorism Act*, CTR.FOR PUBLIC INTEGRITY, Feb. 7, 2003, at <http://www.publicintegrity.org/dtaweb/report.asp?ReportID=502&L1=10&L2=10&L3=0&L4=0&L5=0> (last visited Apr. 2, 2004); Ryan Single, *A Chilly Response to Patriot II*, WIRED NEWS, Feb. 12, 2003, at <http://www.wired.com/news/politics/0,1283,57636,00.html> (last visited Apr. 2, 2004).

of the issue, to find out more about the rumors regarding this new legislation, and to express our opinions to our elected officials.

The other point that came out in the roundtable discussion earlier today is that we should not try to focus on what the common message should be, but we should try to find a common theme. For example, we discussed the various ways in which the economic downturn has affected our communities. So, when we go out there and we talk to people about that common theme, there are different ways we are going to illustrate the example, depending upon our audience. And, it is going to take all of us because, as members of different communities, we will have to communicate our message in different ways—whatever it takes to make people understand how these issues affect them, so that the issues resonate with them. This is critical; we're all going to have to take this role on.

KAREN NARASAKI: I have a very different perspective. It is very important for members of Congress to hear that you supported them if they stand up for something. Or if they do not stand up, you are disappointed. California has a particularly influential senator, Senator Feinstein, who is on the Senate Judiciary Committee, and she is on the fence on a lot of these issues. She needs to hear from you that you are going to support her if she steps out there in defense of communities that are not particularly popular right now in America.

How many of you are familiar with Congressman Coble from North Carolina? You probably noticed that when James Moran, a Democratic member of Congress from Virginia made somewhat anti-Semitic statements, he was immediately removed from his leadership post.¹¹⁶ Coble, who is chairing the Judiciary Subcommittee and Homeland Security, has taken the position that our families were interned for their own safety.¹¹⁷ He is going to be the person making decisions about what kind of legislation passes the civil liberties constitutional legislative taskforce, which I consider to be quite ghastly.¹¹⁸

The reason the Democrats acted so quickly on Moran was because the DNC and all of those groups were immediately flooded by calls from the Jewish community who made it clear that they are going to be held accountable.¹¹⁹ The Republicans or RNC and the Senate Campaign Committee in the House have heard almost nothing from our communities, so the one thing that you could really do to help is to call and e-mail the Republican leadership, or to the Speaker of the House Dennis Hastert. And

116. David Firestone, *Lawmaker Under Fire Quits Leadership Post*, N.Y. TIMES, Mar. 15, 2003, at A7.

117. See Brian Falter, *Lawmakers Under Fire for Comments Deemed Insensitive*, WASH. POST, Feb. 10, 2003, at A5; Carl Ingram, *Assembly Demands Head of House Panel Quit*, L.A. TIMES, May 20, 2003, at B8.

118. See, e.g., Jim Schlosser, *Groups Call on Coble to Resign Chair*, GREENSBORO NEWS & REC., Feb. 8, 2003, at B1.

119. See Firestone, *supra* note 116, at A7.

you can say that you are going to hold them accountable in this next election round if they do not do something because they have not even said it was wrong. Not only have they not removed him but they have made no statement whatsoever about who they say is a nice guy and well liked.¹²⁰ So make a call—I can tell you that will make a huge difference.

DALE MINAMI: I've always believed that individuals should belong to organizations, which is why we have laws against conspiracies because organizations are effective. There is a reason for those laws because people who are organized are much more dangerous than individuals acting alone. I always believed that organizations should always link up with other organizations too, but what we have seen lately is Asian organizations now communicate better by coming together on an issue and issuing joint statements or joint support of any particular situation.

I believe we are using technology to link as many people as we can by e-mail because that is a communications vehicle Asians have access to, perhaps more so than anyone else.¹²¹ The process of writing e-mails is slightly more passive and maybe not as aggressive, but it could translate into power using non-traditional tools.¹²² It is pretty much like Karen was saying, it is all a matter of power, whether it is power to not elect somebody, power to influence agendas, or power to hurt them in some way.

We have to learn how to exercise that power, and one possible tactic is an economic boycott. We find sponsors of offending groups or individuals, list their products on a website, describe the offense, and send that information out to people asking them to support the boycott of those products. We would get a huge response. If we do this, I think it is going to have an effect. I always feel that cutting off funding is a way to exercise power.

We are currently working on a model for trying to coordinate economic boycotts among the different national and local groups. We can reach hundreds of thousands of people in hours with the technology we now have. If that ever works out, I think that linking up these different organizations and getting on the same page can create a serious and effective threat against people who are diminishing us, like Congressman Coble, among others.

120. See, e.g., Alex Wayne, *Rep. Burr Comes to Coble's Defense*, GREENSBORO NEWS & REC., Mar. 6, 2003, at B1.

121. Tom Spooner et al., *Asian Americans and the Internet: The Young and the Connected*, PEW INTERNET & AMERICAN LIFE, Dec. 12, 2002, at 4, at http://www.pewinternet.org/reports/pdfs/PIP_Asians_Report.pdf ("Asian-Americans who speak English are the most wired racial or ethnic group in America") (last visited Apr. 2, 2004).

122. See, e.g., Michael Janofsky & Jennifer Lee, *Net Group Tries to Click Democrats to Power*, N.Y. TIMES, Nov. 18, 2003, at A22 (reporting about MoveOn.org, "which has used the Internet to mobilize its 2.4 million members to sign online petitions, organize street demonstrations and donate money to run political advertisements").

PHIL TING: Because of the depressed economy, patrons and donors have less money to do their granting. What are the issues they funded in the past and what are the new, important issues that arise due to attacks on civil liberties? Given fewer resources, where would you tell others to focus their grant making?

KAREN NARASAKI: It is very challenging times in terms of resources because, as Heba already said, things were not going well because before September 11 happened, the economy was already going in a very bad direction. Quite frankly, donors were running away from the issue of civil rights for various reasons. My organization, the National Asian Pacific American Legal Consortium, has actually been working with other immigrant rights, human rights, and civil rights groups in trying to spell out what we think needs to happen on both a national and a local level in order to fight back on these initiatives.

As Heba notes, even the Internment did not come out of a vacuum. There was already a lot of anti-Japanese sentiment that made fertile ground for when the Internment happened.¹²³ We think it is very key, as Dale said and as Joannie noted, that we are going to have to change the American public opinion.

I would say if you are a donor, you need to work both on a local level and a national level to help us figure out how to talk to Americans to get them to understand that we really have to defend the constitutional rights of the most vulnerable if we are going to save everyone's constitutional rights.

HEBA NIMR: Given the climate that we are in, given the fear that permeates immigrant communities, funding and organizing the kinds of projects that allow affected communities to speak on behalf of themselves really does work.

PHIL TING: What would you say to the people who no longer consider themselves immigrants or care about immigrant issues? We talked a little bit about this earlier today in terms of the immigrant strategists.

KAREN NARASAKI: To Asians, I say that the reality is whether you are an immigrant or not, people who look at us assume we are. So if people are going to be discriminating based on citizenship status, they are going to assume that you are not a citizen. How many in this room have been told that you speak English well? Right, this is my point. We work with a lot of hate crimes. People do not ask before they start beating the crap out of you, if you are really an immigrant or if you are Chinese or Japanese because if you are Chinese, I am going to give you a pass. They

123. See TAKAKI, *supra* note 2, at 379-405.

do not ask that question. The reality for Asians is that we have a stake in all of this.

I will also say something else is that immigrants, whether they are undocumented or legal permanent residents, do not live in a vacuum. Many of us know that families are very much mixed. Kids are citizens, and spouses are citizens. You may work in a factory or at a job site with immigrants, so your community is going to be very much affected even if you are not an immigrant yourself.

I do not think it is a coincidence that the screeners in San Francisco did not get their jobs back because they were one of the few organized unions of screeners.¹²⁴ Qualified, yet somehow not passing the test—could it be because they used to be the leadership in an organized union?¹²⁵ These are things that really do impact the whole issue about what happens if law enforcement scares our communities, and they are afraid to come forth when they witness a crime, because the people are afraid that the light will shine on them, and they will be asked whether their family is here legally or not. They are not going to come forward and report crimes. We live in those communities, and the health and well being of all of our communities deteriorate if we are not protecting everybody in the community.

HEBA NIMR: A key immigration enforcement operation after September 11 was Operation Tarmac, which targeted airport workers.¹²⁶ INS was involved in those investigations and raids, along with a whole variety of agencies, including U.S. Attorney's offices, across the country.¹²⁷ The fact is that those raids not only targeted non-citizens, but they also swept up citizens and charged them with federal crimes for lying on applications.¹²⁸ This operation is an example of a very concrete and specific way that citizens got swept up, too.

KAREN NARASAKI: Do not forget that one of the pieces of Patriot Act II is to take away your citizenship, so it really is not going to matter anymore whether you are a citizen or not.¹²⁹

PHIL TING: The last question I was going to touch on is that people have become more sophisticated about how they discriminate. Can you

124. See, e.g., David Bacon, *Immigrant Workers in Crosshairs*, DOLLARS & SENSE, Jan. 1, 2003, at 11, available at 2003 WL 13716349.

125. *Id.*

126. Jennifer Oldham et al., *The Region; Dozens Held in Crackdown on Airport Access; Security: Most of the Other Workers for Private Firms Could Face Charges Related to Document Fraud. For Others, Immigration Charges May Lead to Deportation*, L.A. TIMES, Aug. 23, 2002, at B8.

127. *Id.*

128. See Michael Tackett, *Airport Net Caught Small Fry: Washington-Area Sweep Yielded No Terror-related Charges*, CHI. TRIB., Oct. 6, 2002, at C1; Ricardo Alonso-Zaldívar, *Airport Worker Arrests Assailed as Too Sweeping*, L.A. TIMES, Nov. 19, 2002, at A12.

129. See Memorandum from Timothy H. Edgar, *supra* note 44.

talk about how language has been much more an issue and a tool to discriminate against immigrants and limited English-speakers? Before people used to discriminate based on race, and now they discriminate based on language.¹³⁰ What issues do you see with the screeners?

JOANNIE CHANG: Language discrimination is a prime example of how national origin has become a proxy for race.¹³¹ For example, I may know I am not supposed to discriminate against you because you are Asian, but I might think it's acceptable to discriminate against you because you speak with an accent, as if one has no relationship to the other. The language discrimination cases I have handled involve immigrants who are qualified for the job and who are doing the job well, until new management enters the picture. So, for example, we have another case down in Fresno, a language discrimination case that involves low-skilled workers employed by a company that manufactures irrigation supplies.¹³² Our clients assemble plastic parts for irrigation supplies and operate the machinery that creates these parts. We have clients who have been working there as long as twenty-five years and who have done their jobs well.

Like the screeners, they worked their way up in the ranks, became shift supervisors, trained the new employees. Then, the company they worked for was bought out by an Indiana company, and a new supervisor comes in. He's a supervisor who never had to deal with immigrants before, so he doesn't know how to deal with the fact that there are five different languages on the shop floor. He cannot communicate with them. He doesn't understand their accents, so he can't understand how these people can do their jobs. He concludes that they must not be qualified if they cannot speak English. He provides a concrete example of how racist attitudes continue to exist, although the expression of those attitudes are not so blatant.

So, the manager develops a test and claims that the test assesses whether people have the knowledge needed to do their jobs well. One of the questions on the test is, "What do you do if you get injured on the job?" The answer is, "You tell your supervisor." You don't have to speak English; you don't have to read English; and you don't have to write English to know that that is what you are supposed to do. But because this is a written exam, if you can't read that question and write the answer in English, suddenly the conclusion is that you must not know this information, which then leads to the conclusion that you must not be able to do your job.

But the employer responds, "I'm not racist; I am not discriminating against them. I didn't fire these workers because they're Latino or because

130. See, e.g. Edward M. Chen, *Labor & Immigration: Examining the Intersection*, 6 ASIAN L.J. 223, 223-24 (1999).

131. *Id.*

132. *Rivera v. NIBCO, Inc.*, 204 F.R.D. 647 (E.D. Cal. 2001).

they're Southeast Asians or because they are Cambodian. I fired them because I don't think they can do the job." In reality, however, language discrimination is just a proxy for national origin and racial discrimination.¹³³ So, the real challenge is to get people thinking about how discrimination happens in these times.

PHIL TING: Thank you all for participating and for taking the time to come and speak on a very important issue. Our constitutional rights are clearly at risk, and the time to stand up is now.

133. See, e.g., Chen, *supra* note 130, at 223-24.