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Chief Justice Harry L. Carrico and the Ideal of Judicial Independence

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ASSASSINATION, THE WAR ON TERRORISM, AND THE CONSTITUTION

Rodney A. Smolla *

On behalf of everyone in the University of Richmond School of Law community connected to the annual Allen Chair Symposium, I wish to express sincere thanks to the Allen family for once again providing generous support to the law school for this annual symposium event, including the scholarly articles published in this issue of the *University of Richmond Law Review*.

The topic of the symposium, *Political Assassination as an Instrument of National Policy—An Inquiry into Operations, Expediency, Morality, and Law*, was triggered, of course, by the terrorist attacks of September 11, 2002. Professor John Paul Jones, a leading national expert on national security law issues, organized the symposium, bringing together experts from around the country on national security law, political science, philosophy, religion, and ethics to discuss and debate the legal, moral, and political propriety of political assassination as an instrument of national policy, as well as the practical and operational expediency of such an effort.

The symposium began with a hypothetical problem posing, as an imaginary event, a report delivered to the President of the United States from the American intelligence community at the operational and lower policy analysis levels in which a firm consensus was reached on a number of points and recommendations:

(1) That Osama bin Laden is the command-and-control political and military leader of the al-Qaida, and is directly responsible for the September 11 attacks, and that the United States is at war with al-Qaida.

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(2) That American intelligence sources have confirmed through a combination of human and satellite intelligence Osama bin Laden's physical location at an underground compound within Afghanistan, and that there is a ninety-five percent probability that this information is accurate.

(3) That taking into account potential loss of life of American forces, international political consequences, and legality, the most efficient and efficacious policy option is to conduct a relatively small-scale covert paramilitary operation in which specially trained American forces will storm the compound, kill Osama bin Laden and all others present, and then publicly announce and verify Osama bin Laden's death with appropriate photographic displays.

(4) That American intelligence forces have a well-developed plan to plant news media leaks backed by credible supporting evidence creating the impression that the "breakthrough" that allowed American forces to finally pinpoint the whereabouts of Osama bin Laden was the result of an act of betrayal directed by Iraqi leader Saddam Hussein, who had come to the judgment that his own personal interests would be served by Osama bin Laden's assassination by American forces.

(5) That Saddam Hussein has actively aided and abetted international terrorism, including the al-Qaida network, and is directly responsible for acts of genocide and terrorism both inside and outside of Iraq, including acts connected and not connected to the al-Qaida network.

(6) That through human intelligence sources deemed ninety-five percent reliable it has been verified that Saddam Hussein will be vacationing within Iraq at a private compound beginning in ten days.

(7) That American special forces have the capability to undertake a covert operation in which Americans storm Hussein's compound and assassinate him, disguised as dissident members of the al-Qaida network who believe that Saddam Hussein has acted to betray and depose Osama bin Laden, and that the entire event can be made to appear as if it is a revenge killing by al-Qaida dissidents outraged at Hussein's betrayal of bin Laden.

(8) That the President authorized all of the operations suggested above.

For two days experts debated this hypothetical problem, and myriad permutations of this problem, from a wide variety of disciplinary perspectives. Through the assistance of many student and staff volunteers, including members of another of the law school's journals, the *Journal of Law and Technology*, the entire symposium was available in a live webcast on the Internet.

In the months since this debate, events have in some ways overtaken the problem. At the time the scholarly articles prepared for the *University of Richmond Law Review* were being edited and revised, President Bush and the Congress of the United States were engaged in deliberations regarding the use of force to attack Iraq to destroy or degrade that nation's ability to wage war or support terrorism with weapons of mass destruction, as well as possible operations seeking "regime change" in Iraq; a euphemism plainly denoting the deposing of Saddam Hussein as that nation's leader. One option in the pursuit of such a "regime change" would be the targeting of Hussein himself.

The debate was conducted at the law school, and the excellent pieces published in this symposium issue all speak to these questions, a part of our ongoing national response to the attacks of September 11 and the threats posed by international terrorism. It would be easy to dismiss these efforts as "mere academic exercises,"—rituals that are "merely academic" in that they lack the reality and intensity of the real world, and that are simply "exercises" in that they could never actually happen. Experience, however, teaches us the contrary. In bringing together many of the nation's foremost authorities on these issues, many of whom have past or present access to the corridors of American power, a university fulfills one of its most important societal missions: the encouragement of deep and reflective thought on the profound issues of the day. In publishing the intellectual fruits of these deliberations, university publications such as the *University of Richmond Law Review* contribute to the public record and to thoughtful public discourse on these issues. It is one of the great redeeming hallmarks of our open culture that in the midst of national crisis we remain able to debate options, and publically express and publish our views, in a collective effort to guide our country wisely.

This entire event did the law school proud, in no small part because of the generous efforts of many faculty, staff, and student volunteers. In our own small way we have participated, individu-

ally and as an institution, in the national discussion on this fundamental question. To the fine scholars who have written for this issue, to the many others who participated in the live event, to the Allen family for its financial support, and to the many volunteers who made it happen, we owe our heartfelt thanks.