SALZBURG GLOBAL SEMINAR

THIRD ANNUAL LLOYD N. CUTLER LECTURE
ON THE RULE OF LAW

MONDAY
NOVEMBER 12, 2012

The lecture convened in the Courtroom of the Supreme Court of the United States, 1 First Street, N.E., Washington, D.C., at 6:00 p.m., Associate Justice Sandra Day O'Connor (Ret.), Host, and Adam Liptak, Moderator, presiding.

PRESENT:
SANDRA DAY O'CONNOR, Associate Justice (Ret.), Supreme Court of the United States, Host

ADAM LIPTAK, Supreme Court Correspondent, The New York Times, Moderator

BARONESS HELENA KENNEDY, Member, House of Lords

ANNE-MARIE SLAUGHTER, Bert G. Kerstetter 66 University Professor of Politics and International Affairs, Princeton University

STEPHEN L. SALYER, President, Salzburg Global Seminar
(6:08 p.m.)

JUSTICE O'CONNOR: I'm Sandra O'Connor and I am very happy to welcome all of you tonight to the Court to hear the lecture that we are going to have and to be able to honor the Salzburg Seminar. How many of you have ever been over to the Salzburg Seminar? I raise a hand, too. Most of you have. And it is just an unforgettable experience. It is fabulous. And if there are a few of you who haven't, make sure you have an -- invite them now so they can go. Find out who hasn't because it is a wonderful experience and I really think that it has helped us in so many ways in our understanding, our consensus building, if you will, around the world on some very important issues. And I applaud the work of the Salzburg Seminar very much. It has been wonderful.

And I welcome them here to the Court. It is on a holiday. I don't think we
thought about that when we set this date but it is some kind of a national holiday and that has caused things to be kind of quiet around here, but that is all right. We will liven it up a bit tonight. And I welcome all of you and I am so pleased to do something at the Court that is in honor of the Salzburg Seminar.

So who is going to be emcee up here and get things going from here on? Are you?

MR. LIPTAK: Yes.

JUSTICE O'CONNOR: Okay. So come on. I will hand you the microphone and turn it over to you.

MR. LIPTAK: Thank you very much, Justice O'Connor.

(Appause.)

MR. LIPTAK: Well thank you so much, Justice O'Connor. It is a special privilege to be introduced by you in a setting where you made history and where your work
endures. I am delighted to welcome you to this year's Cutler Lecture and to introduce you to two participants who really need no introduction, of course, and your materials have the extensive biographical materials on them.

But let me give you just the briefest of overviews. On my far right is Baroness Helena Kennedy, who is a member of the House of Lords, a leading barrister and expert in human rights law, civil liberties, and constitutional issues. She was Chair of the Charter88 from 1992 to 1997, the Human Genetics Commission from 1998 to 2007, and the British Council from 1998 to 2004.

She has received honors for her work on human rights from the governments of France and Italy and has been awarded more than 30 honorary doctorates.

BARONESS KENNEDY: Thirty-six on the last count.

MR. LIPTAK: Thirty-six, okay.
(Laughter.)

MR. LIPTAK: And for all we know, we will get reports of even more as the evening progresses.

Anne-Marie Slaughter, I am sure, is well-known to many of you. She is currently the Bert G. Kerstetter '66 University Professor of Politics and International Affairs at Princeton University. That must require an extra-large business card.

From 2009 to 2011, she served as Director of Policy Planning at the State Department, the first woman to hold that position. And before her government service, Professor Slaughter was Dean of Princeton's Woodrow Wilson School of Public and International Affairs from 2002 to 2009.

So I can think of no one better than our two conversant participants tonight to think about the issue that most engaged the man whose legacy we honor tonight, Lloyd
Cutler, which is the commitment to the rule of law and to try and understand what that commitment means, whether it is an empty abstraction or whether it gives rise to meaningful constraints. And that question, I think has gotten only more difficult since the September 11 attacks and the widely but not universally accepted view that those attacks put the United States on a perpetual war footing and on a battlefield without geographic limits and technical advances in the last decade have only complicated matters.

I wanted to start with a question for Professor Slaughter and to try to bring some of these abstractions vividly to life. The question of drone warfare. The Obama administration says that it is faithful to the rule of law in deciding whom it targets for assassination. But critics say it is hard to trust a system that is secret, that takes place wholly within one branch of the government, and that seems accountable to
neither scrutiny nor oversight.

What is the right way to think about this issue?

PROFESSOR SLAUGHTER: Thank you. Well, I have to start, first of all, by saying how pleased I am to be here but second just to say how amazing it feels to be sitting where the justices sit, looking out at all of you. I am pretty certain I will never, ever be formally in this position but it is good --

BARONESS KENNEDY: You will.

PROFESSOR SLAUGHTER: I don't think so. Not after what I am about to say.

(Laughter.)

PROFESSOR SLAUGHTER: So this may not cause a great deal of debate but I think we are not following the rule of law with respect to drone warfare in the sense that ultimately there cannot be a system for an indefinite period targeting individuals all over the world, including quite possibly American citizens but even independently, that
has no formal checks on it, other than what is essentially a system that says trust me.

I do trust President Obama. I do trust the lawyers that I know are very conscientiously applying their standards, but I haven't seen those standards. I haven't had a chance to vet them. I haven't had a chance to debate them and I don't at all, necessarily, trust all the people who could apply them. So I actually think we are sowing a harvest we are going to be very unhappy to reap. That this is a way of warfare that is going to continue for a very long time and that doing it all within the executive branch is not going to be the rule of law as we will want to uphold it.

MR. LIPTAK: What is the perspective from across the Atlantic on this issue?

BARONESS KENNEDY: Well, this is a really interesting one because at this very moment in time in Britain, a case has been
launched, it is called Noor Khan versus the Secretary of State for the Foreign Office and the attempt is to have a declaration as to the unlawfulness of intelligence operatives in the United Kingdom providing locational intelligence to the United States for the purposes of having drone attacks.

And it has been quite interesting because the initial hearing allowed for an application to be made and we are now waiting to see whether the courts will allow this to proceed or whether they will accept the argument that it is not justiciable.

And so the non-justiciable argument is that this has to do with the policy of another country and, therefore, it is impossible to have it litigated in Britain. Whereas, what is being argued by the lawyers for Noor Khan whose father was killed by a drone in Northern Waziristan and he, Noor Khan, lives in Britain and his elderly father was killed. And his argument is that his
father was a civilian. He had no part in any jihadist or Taliban activities or any links to anything to do with terrorism and that he was one of the civilians who remain -- there is a question always on the numbers of civilians killed by drones but we do know that significant numbers of civilians are killed. And it is claimed that as many as 178 children have been killed by drones in drone attacks.

And so the argument that is being mounted by the Noor Khan litigation is that this involves our intelligence operatives at GCHQ, which is the headquarters where we have listening in and where we gain intelligence on people living in parts of the world usually through intersect of satellite contact.

And so the argument is that our personnel there who are civilians and not military are noncombatants and, therefore, they would not be able to claim that they were covered by international humanitarian law and that they in fact are at risk of being
prosecuted in the domestic courts for being accessories to unlawful killing. And, therefore, there should be a declaration as to the unlawfulness of this to protect our own intelligence officers.

And so it is a very interesting argument.

PROFESSOR SLAUGHTER: That is -- many different --

BARONESS KENNEDY: Yes, what is being argued, though, which is important, is there was no attempt here to prosecute our intelligence officers. What they are saying is we have to have, if you will, light shone on this kind of conduct. And one of the ways of doing it is to have a declaration made or to call upon the court to make a declaration as to the legal position of those who are supplying locational intelligence.

PROFESSOR SLAUGHTER: Well I mean --

BARONESS KENNEDY: So go back to
Anne-Marie's point, which is what do we feel? And it is obviously a way of flushing out the issue of lawfulness of the use of drones and the risks which people could argue about proportionality. That the proportionate, there are highly high risks of a disproportionate nature when it comes to civilian loss of life. And so that is the argument.

PROFESSOR SLAUGHTER: But it does raise something that gets to the indefinite nature of this because our courts have done the same thing. When the estate of the son of Anwar al-Aulaqi tried to sue here, essentially it was a political question. It was pushed off. And that is perfectly understandable for courts in the middle of a traditional war. But if you get this kind of a case when there is a hot battle in the middle of World War II or the Korean War or Vietnam, you can push it off because there will be an end and after that end, then you can take that case and you
can declare the law. There is no end here.

There is no end in sight.

So at some point, the courts have to adjudicate. There has to be some law that governs these kinds of actions, whether it is international or national and what source. But it can't be that it is just a no-law zone forever.

BARONESS KENNEDY: I agree.

MR. LIPTAK: But the very question of unlawful killing suggests there is a body of law that we should look to and I'm not sure what body of law that is.

BARONESS KENNEDY: Well Anne-Marie is the person who would help you better on international humanitarian law. I am a lawyer who practices in the criminal courts of the United Kingdom and in the European Court of Human Rights, occasionally in the European Court of Justice.

And so international humanitarian law is not part of my normal daily run. Of
course I have to know about it and understand it because as well as being a practitioner, I sit in the House of Lords and I am involved in the legislative process and these issues are coming up for us really fairly constantly. And I think there is a very strong feeling in Britain of unhappiness about the business of drones. We for the first time now have the capacity ourselves to launch drones. We have been able to, if you like, piggyback on the expertise here in the United States but the actual sort of, if you like, direction, the direction that comes I think from Oregon here, we were relying on Oregon to do that for us and now the capacity has been moved to the United Kingdom.

So the debate has become quite a hot debate in Britain and I think that the general public are very uneasy about the use of drones because of the risk to civilian life.

PROFESSOR SLAUGHTER: I'm uneasy
because of the risk to civilian life. But more generally I mean this goes to your question of what kind of law. This is smack in-between traditional law of war and the criminal law. Right? And these are individual cases planning individual attacks. That sounds a lot like criminal cases for terrorism. We know how to do that. We've prosecuted them in domestic courts. On the other hand, at least until now where we are finding people in Afghanistan or Pakistan, that is still a hot war zone that is controlled by the law of war because it is a declared initial war. Now shift that to Somalia where you have, say a member of al-Shabaab. Al-Shabaab is a jihadist terrorist group. It is not part of al-Qaeda. In fact, its leadership has debated whether or not to be part of al-Qaeda. We have thus not declared war on them, nor have they declared war on us. And they are in Somalia, not Afghanistan or Pakistan. Now, at that point,
it is not the same physical battlefield and it
is not the same enemy but it has to be subject
to some law. It is not, in my view, subject
to our domestic law authorizing the attack on
Afghanistan. The question I would probably
start with international humanitarian law
because I think it forces a global dialogue
and ultimately that is what we need. But the
first stage is to force the recognition that
there has to be some rules. Because you can
use drones and so can the Chinese. Can you
imagine if China decided that a Uyghur
terrorist group located in Northern Virginia
was mounting a threat against them and used a
drone? Or many other countries.

BARONESS KENNEDY: One of the
other things, of course, is that international
humanitarian law is about the law of war in
war.

PROFESSOR SLAUGHTER: Yes.

BARONESS KENNEDY: And so if you
are sitting at a computer bank in Oregon and
you are a member of the CIA, then you are not covered by international humanitarian law. It is domestic law that would cover you.

And so I think that people who are in that position should be made aware, as indeed this litigation in Britain currently is seeking to do, of the risks because of domestic law being the area of law that would cover your activity.

And so that is the point, you see.

If you are not directly engaged in war, then you are not covered by international humanitarian law and if you are a member of the CIA or you are sitting as a security services agent at GCHQ, which is the general communications headquarters in Britain, then you would not be covered by international humanitarian law but you would be by domestic law and you could be considered to be aiding and abetting murder.

PROFESSOR SLAUGHTER: Exactly.

And you could have seen a civilian who then
triggers an attack that results in the killing
of another civilian. So at that point that
does look like murder. Right?

BARONESS KENNEDY: It is very
tempting for government, and I have great
sympathy with this, you can understand we in
Britain like you here in the United States,
although you in much greater numbers, are
seeing our soldiers being killed in
Afghanistan. Families are bereft. There is
grieving of a real kind, over the loss of
young life, particularly young life. And how
tempting it is that you actually can engage in
warfare which is actually at a distance.

And we may be looking at the
future nature of war.

PROFESSOR SLAUGHTER: Oh, we are.

BARONESS KENNEDY: And therefore,
we have to start thinking about the kind of
law that we have to put together to deal with
that. And that is a big challenge for us,
particularly in the advanced world where you
can be sure that if we don't take a lead on
the rule of the law, they are going to be
nations who care less about the rule of law
who are going to have this kind of technology
in their hands, too, as Anne-Marie has said.

PROFESSOR SLAUGHTER: Would you
oppose -- I mean, so we may have a little of
this. Would you oppose the use of drones in
warfare, if it were up to you?

BARONESS KENNEDY: No. I can see
very good reason why in more you would. But
Pakistan has remained very silent on this. I
mean what you have now is the use of drones in
another sovereign territory and it would be
interesting if litigation were to be created
by Pakistan over the use of drones in parts of
Waziristan which is not Afghanistan, and that
is where the big complaint is. And that is
why the Noor Kahn case is taking place in the
British courts.

MR. LIPTAK: So each of you has
described a problem, I guess, and one on which
there is not a lot of daylight between you
that is crying out for a solution and yet it
is very hard to know what that solution is,
except for what sounds like a somewhat round
about judicial declaration that might put
someone on notice that they might want to do
something different.

Is there any more direct way to
get at this?

BARONESS KENNEDY: Well, I think
that Anne-Marie was right in saying that what
one has to do is we all know the antiseptic of
sunlight in dark places. And the idea I think
of sometimes bringing a case is about shedding
that kind of light, about there being a public
debate. So that the public are themselves
alert and aware of what is happening.

And I think that is one of the
purposes of that litigation that is currently
taking place is to have a bigger debate about
the law of war, about how there are new things
happening in our world around technology which
actually are challenging some of the traditions and we have seen that around the Geneva Conventions and the arguments that they are aware around whether they are applied in Guantanamo. We should be looking with care at how law should be dealing with these new challenging issues.

PROFESSOR SLAUGHTER: And I mean one way to get at this is actually something, Adam, you have written about, as have I, which is a kind of conversation of courts. So that if the point is you have to crystallize the case or controversy by bringing a case and this is extremely difficult to do, and as you have just said, the courts right now don't want to weight in but they are going to have to weight in. But if you imagine cases brought in Britain, cases brought in the European Court of Human Rights, probably it would be the European Court of Human Rights. Here, a number of other regional courts and national courts, then what you will get are
multiple legal authorities who have the
capability of declaring their area of law
weighing in and listening to each other. That
may be -- I mean, if I could waive a wand, I
would probably invite the signatories to the
Geneva Conventions to come together and
address this. There are any number of
difficulties with that and, indeed, many human
rights lawyers don't want that to happen
because they are afraid that the people would
go backwards on the protections that the
conventions now actually afford. So even
those great supporters of the conventions do
not want a conference to extend them. And
needless to say, many countries don't either.

So absent that, absent some kind
of rational debate among the nations of the
world who are going to be affected, the best
we may be able to do is a conversation among
courts that then actually informs a public and
possibly legislative debate.

BARONESS KENNEDY: It is very
interesting that you should raise that
question of how internationally human rights
lawyers are anxious that because of the, if
you like, febrile state of our world, that
this might not be the great opportunity or
moment to have discussions about how we can
advance law. Because the fear is that we will
retreat and we will go backwards.

And in fact, we are having that
discussion in Britain just now where we don't
have a constitution like you do. And for my
part, I came here as a young lawyer to the
United States and I have always looked with
envy on the fact that you had a written
Constitution and a Bill of Rights and that is
why I became a great campaigner for those
things in Britain.

Well, we incorporated the European
Convention into domestic law. We had signed
up for it back in the '50s but didn't make it
part of our domestic law until the year 2000.
It was 1998 when we passed the legislation
through and by that time I was in the House of Lords but we made it part of our domestic legislation. And now there is talk about shouldn't we have a Bill of Rights. That instead of just having a European Convention on Human Rights, that we should actually have a sort of tailor-made British Bill of Rights which would protect things like jury trial. However, there is a great fear in the human rights community in Britain that if we open up that door, we will actually go back. Because in fact some of the things that people might want to do is they would like to be able to return people to countries where people might be tortured. And at the moment, there is a reservation on doing that.

MR. LIPTAK: Well we have been looking to the courts mostly for a solution the problem the two of you have sketched out. Are there other places to look?

I mean, you have said that the administration has standards, it just won't
tell us what they are. The legislative branch
could force the executive to describe aspects
of what is going on, but chooses not to. Is
it really only the courts we can look to?

PROFESSOR SLAUGHTER: I thought of
course you were going to say we should look to
the writings of publicists as international
lawyers always do, so the professors would
provide the answers, but no.

You know, I again, I think
actually Congress can, even if it is taking up
legislation, either of its own sort of broad
framework within which these decisions had to
be made or to ask the executive to make these
things clear, it would actually be an ounce of
prevention worth a pound of cure. Because
these issues are going to be leaked. There
are going to be killings that are going to
either, again, American citizens, civilians in
ways, or simply at some point a connection
that is so tenuous to the original war in
Afghanistan and the original attack on 9/11,
that it's going to come out but it is not
going to come out in a good way. It is not
going to come out in a rational way. It is
not going to come out with time to debate it.
It is going to be sort of leaked and then
immediately the subject of probably a much
more febrile discussion that might not take us
backwards but these are really important
questions.

So yes, I would actually hope that
this President, as a constitutional lawyer,
does not want to leave as part of his
historical legacy the equivalent of suspending
habeas corpus when you are Abraham Lincoln,
except the Civil War never ends.

MR. LIPTAK: Let's turn the topic
to another post-9/11. It is not a new
development but it seems to be new instances
of it and Guantanamo is the prime example, but
detention without charge on the theory that
these are soldiers in some sort of war that
goes on forever.
Baroness Kennedy, you and I talked briefly and you mentioned the British experience with the IRA and how that might have informed your thinking on the topic.

BARONESS KENNEDY: Well when I was a younger lawyer, in the late '70s we started seeing bombing campaigns in Britain and I started doing those cases. And all through the '80s and in fact into the early '90s until the peace process really got underway, I did many of the big Irish cases that came out of the Troubles.

And if I have learned anything, it was that the challenge of terrorism to governments, to states, it is so easy for us to respond to it by seeking to somehow almost surrender to the very things that terrorists are wanting of us. You end up giving up the very values that they are attacking and which are the things that we are proud of.

And in the '70s we in Britain introduced internment in Northern Ireland,
basically detention of people suspected of perhaps having links to the IRA and it was a recruiting sergeant for the IRA. It actually worked in the very opposite ways in which people would have wanted it to work. It actually, instead of acting as a deterrent, it actually fired up even greater antagonism towards the British state.

And so I have always firmly been of the view that you have to hold true to your core values. Which isn't to say, and I always quote Aharon Barak who was one of the judges in the Supreme Court of Israel who said in one of the judgments around the use of torture, that sometimes you have to protect democracy with one arm tied behind your back. And that is what it feels like.

But at the same time, I think there is a really vital importance of holding true to the standards that really are at the heart of the rule of law. And we, for example, in the late '70s we were brought by
the European Court of Human Rights, taken to
that court by Ireland, by southern Ireland,
for the way in which we interrogated people.
We made all the mistakes that governments
make. We hooded people. We held them in
stress positions. We deprived them of food,
of sleep, and so on. And we were found guilty
of conducting interrogations using inhumane
practices.

And I think that unfortunately I
would have liked the United States to have
learned from our experiences because we got it
wrong. But let me assure you we didn't learn
from the past because as soon as 9/11
happened, we, too, detained people without
trial. We detained non-citizens whom we
suspected might have links to terrorism. And
they were people who were already in Britain
and we detained 16 people without limit. We
would have liked to have deported them but we
couldn't deport them to places where they
would be tortured or face a death penalty.
And so we then locked them up in Belmarsh
Prison.

And it took a number of years
before the case came before our own highest
court, the House of Lords Appellate Committee
and our most senior judges found that it was
an affront to human rights on the basis that
we were discriminating against non-citizens.
And that human rights are vested in people
because of their humanity and not because of
citizenship.

And the temptation for government
might have been to lock everybody up, citizens
and non-citizens alike. But in fact we then
introduced a process called control orders,
which was like house arrest.

But we really hadn't learned. We
hadn't learned from the Irish experience. And
I think that we have to learn that it doesn't
work. And I think we have alienated the
Muslim community in Britain considerably and
we are having to work very hard to recover
their confidence in institutions of government and of the state.

PROFESSOR SLAUGHTER: So let me just ask. So the final disposition of those 16 is they are now under house arrest?

BARONESS KENNEDY: Well in fact eight of them are free and eight of them continue to be under sort of -- it was a control order allowed people to be detained for up to, in fact up to 18 hours a day. They were only allowed out for short periods of time. They were not allowed to use computers or the internet or mobile cell phones. There people who were prescribed that they couldn't have contact with.

And then eventually a case was brought saying that such stringent conditions was tantamount to loss of liberty and, therefore, there had to be a reduction.

And so it has been a complex set of responses to the problem of what you do.

PROFESSOR SLAUGHTER: Yes. I mean
this is exactly again this in-between the
criminal law and the international law of war.

And the people that we picked up

who are in Guantanamo still now, we have been
trying prisoner by prisoner to find countries
that would take them to reduce the population,
to deport them. You know they were people who
were picked up in ways I don't think will ever
stand the test of a criminal law. They now

have military commissions that I still don't
think probably would meet our best standards.

But that is a case that resulted from a time
before we thought through these issues.

Now it seems to me you have got to
back it up. If you know that you can capture
someone and detain them indefinitely with no
review and real due process, I mean absolutely
why are you being held and here is the
evidence and here is the evidence against you,
then unlike previous wars, capturing becomes
a weapon of war. The individuals who are on
our list are on a capture/kill list. And
traditionally, you didn't go into battle to
capture your opponents. You went in to defeat
them and when they gave up, you captured them.
But you didn't go in with the idea that your
goal was to snatch them and interrogate them
and keep them. It is as good -- capturing
somebody and interrogating them is just as
good as killing them from the point of view of
a war where we need intelligence.

So unless we have got real
standards, just as we have standards for
police who aren't going to coerce evidence
because they know that evidence isn't going to
be used. I'm not saying we should use the
exclusionary rule. But unless we have clear
standards, what is the disincentive simply to
have a sweep and round up whoever you think
might be useful and then just keep them?

BARONESS KENNEDY: It is one of
those interesting things about doing these
cases in the courts and I have done them
through the Irish cases. I was involved in
representing a woman who was acquitted at halftime by the judge because in the bombing of the Israeli Embassy, very, very unsatisfactory evidence.

Then cases more recently arising out of this wave of Islamic terrorism. So I have got a lot of experience of doing these cases. So that people might understand, we take great pride in Britain that senior lawyers do cases that are difficult and where there is going to be huge unpopularity. And we do it as a matter of principal, it is called the cab rank principle and we do it with a fair amount of pride in the fact that maintaining high standards mean that there is less likely to be miscarriages of justice and so on and that it is actually about keeping our system true.

And so while my mother used to say why can't you get nicer clients, that didn't quite meet her test. But it is about the importance of the rule of law, of due process,
of testing evidence in the proper way, and when people are convicted, that they are convicted rightly on proper evidence.

And all my experience has taught me that every so often, there are people in those sweeps who are not what you think they are. They are people's younger brothers. They are people who hang around the periphery of groups but who are not by any means involved in terrorist activities. And so there are people who end up in court who are innocent. And having proper processes is absolutely vital and that is all my experience has taught me that.

All I would say that is that the United States, and I'd like to say Britain, too, have been beacons to the world on the rule of law. And it is so important that we maintain that status as being nations built on law where we see law as being one of the pillars of our systems and that we hold true to very, very high standards, and that you
don't suddenly jettison them because we are being tested because they are not worth it if they can't survive the test.

And so I was very critical of the kind of changes that Britain sought to make and I have to say that I feel rather proud of our highest court because there were two really major decisions our Supreme Court made and we now call it a Supreme Court. It used to be the Judicial Committee.

MR. LIPTAK: So you are getting a Bill of Rights and you have a Supreme Court. You are catching up to us like crazy.

BARONESS KENNEDY: We are actually catching up with you guys. It is coming back in.

One of the things that the judges did was that they decided that detention without trial was unacceptable. And government didn't like it. And courts sometimes, you know, judges and independent lawyers are the control function in all of
this. And our judges also decided that it was unacceptable to use evidence in courts if there was a likelihood that it had been produced from torture.

I feel very proud that our courts took those stands, I really do. And I think I would like to see the United States doing it, too. And it is very tempting, I know. And we didn't pass the test in the Irish situation. We, who did terrible things to people we interrogated but all I would say is we have learned from experience that it doesn't work and that, in fact, it is abhorrent. And it actually, in a way, it debases us and who we are.

MR. LIPTAK: I wonder more than a decade after 9/11 what the answer to the hope you expressed was. The hope was that we are looked to as a beacon for the rule of law around the world.

How do you think, Professor Slaughter, the rest of the world views us
across that dimension?

PROFESSOR SLAUGHTER: Mixed, I think. I do think we have regained some of the ground that I think we really lost terribly after 9/11, although many people here understood some of the choices we were making. I remember Mary Robinson saying every time we diverge this much from our own values and our own standards, it was allowing other governments to diverge this much, because of course they could say, look the U.S. does this. We can do this as well.

So I think actually in many ways, in terms of holding to strict rule of law values, Europe is well ahead of us in the eyes of the world as the countries that are sticking to rule of law. You know, I think though there is a different burden on us as the largest military power, as the preeminent military power. So, for instance, with land mines, and I would love to see land mines gotten rid of, we are in a different situation
if you look at the demilitarized zone in Korea. I mean, the North Koreans could overrun Seoul immediately and those land mines are there. The Koreans certainly want them there. I think there are good reasons for us to have taken the position we took.

And similarly, putting myself in the position of a President and lawyers that I know, people like Harold Koh, my colleague at State, who are trying to figure out what is the path through when we are in this new world of boundless war in both time and geography.

So what I am saying is I don't think we are the beacon we once were. I'm not sure we have ever been the beacon we thought we were. We are very good at seeing ourselves in that light. But I do think that we have made up some real ground and I do think countries see us grappling with these issues and somebody does have to grapple with these issues.

BARONESS KENNEDY: Well, it's
interesting. I have just -- every so often I
do broadcasting and I just made a program that
went out last Sunday on law and literature.
And one of the things I was suggesting was
that unlike in Britain where we are so
skeptical about lawyers, and I know that there
are a lot of bad things said about lawyers in
the United States, too, but you still have the
tradition of the heroic lawyer. We don't have
that in Britain. I don't think we have. You
know, that whole business of, you know, To
Kill a Mockingbird and that great Jeffersonian
speech.

We still think of American lawyers
as being great champions of liberty and
freedom. And I am not sure that lawyers -- we
are still stuck in the Dickensian image of
lawyers, which is less supportive.

PROFESSOR SLAUGHTER: That's true.
And I should say I do think -- I was actually
thinking that today as I was walking up from

Union Station, I was looking at the Thurgood
Marshall Courthouse and thinking exactly that, of the great civil rights lawyers and the many lawyers who have been champions of equal justice under law sitting in the Supreme Court.

I do think also for the world watching Barack Obama be elected president and be re-elected president, that is a different kind of the rule of law. It is saying there is equality under law, even though we have departed from that in many ways through our history and still do in various places. That is a promise fulfilled. And so I agree with you that that is a different understanding of living up to your constitution that I think many countries are not sure they would pass the test.

Just as you say you are proud of your high court, I feel very proud of us in that connection.

MR. LIPTAK: So a theme that has run through these two topics, drones and
detention, has been the right balance between
national security, which requires secrecy, and
accountability and transparency. And I know
it is impossible to in abstraction say where
to strike the balance, but what are standards?
And maybe as a sub-theme, what role does the
press play? And I think the press might play
very different roles in the two different
countries.

PROFESSOR SLAUGHTER: Well,
whatever we think the right balance should be,
and I think as you framed it, that's right,
there has definitely got to be some secrecy.
I mean, just think about the Osama bin Laden
mission. Right? If anything had been
breathed, it would have been torpedoed. And
there are many cases where lives are at stake
and the sense that you absolutely have to keep
this secret, in that balance I think is there.
But I would say regardless of
where any of you would come down, it is going
to be more transparent than you would like.
In other words, these things are going to be leaked. WikiLeaks was not a one-off. It may have been a one-off with Julian Assange, but the idea that somebody disgruntled can -- or somebody who disagrees with the policy can make all that public is going to happen in other governments all around the world and here again.

You have an entire movement devoted to the idea that there should be complete transparency in government, which I disagree with. But again, the technology is such that that's going to stay one step ahead. So the rule in Washington is always don't say it unless you want it on the front page of the Washington Post. Well, I think we are going to start saying don't try to keep it secret unless you have a really good plan for what you are going to do when it is leaked in some way.

BARONESS KENNEDY: I have done cases involving official secrets. I
represented someone who was done for espionage
and at the time had access to material -- I
mean, we are now talking about over 20 years
ago. So what was secret then is not secret
anymore. But what became clear to me from
doing cases involving secrecy is that very
often the bar is set too high. I mean,
governments like to keep things secret that
are embarrassing and we have got to make sure
that when we talk about official secrets and
national security that we really are talking
about national security and not talking about
the sort of egg-on-the-faces of certain
people.

And I think there is too much
secrecy around and I think that we sometimes
use it to excuse bad behavior or to cover bad
behavior.

And we are having a problem about
it now. We have got a piece of legislation
going through the House of Lords and it is
about, you know, should there be closed
material procedures in civil litigation. And this is about once courts get used to having special procedures for dealing with what is secure material, then it becomes very tempting to government to start introducing all over the place, you know? It is very hard to vacuum-seal some of these things, to deal with real security and you start finding it leaches into other areas of law. So we are having to fight that off.

And so I just think that we have to make sure that when people are talking about national security we are really talking about national security and not about things that are just embarrassing.

PROFESSOR SLAUGHTER: Yes, and if I could add to that also, Admiral Stavridis, the head of the European Command, actually has a whole theory of what he calls open source security. And his point is, of course, that actually in a world where so many more people have information than we do, there are few
secrets, but actually if you embrace that, you can actually enhance your security by getting more information by making it easier for people to actually tell you what they know.

So I doubt we will ever go to a complete paradigm shift but it is very interesting that the head of European Command is talking about open source security and actually practicing it in some interesting ways.

MR. LIPTAK: I think it's terrific and sort of an example of what the Salzburg Seminars do to hear the two of you compare experiences from different backgrounds. And it is hard to be in this setting and not ask the question of whether that experience -- you know, with Richard Goldstone in the audience -- whether that experience of a dialogue among people ought or ought not be replicated in a dialogue between national constitutional courts.

So I am sure you know that it has
been quite controversial on the U.S. Supreme Court about the extent to which, in constitutional cases, it should look to take account of, cite to, foreign and international law. And I wanted to get your thoughts about whether that has a place in national constitutional jurisprudence.

BARONESS KENNEDY: Well, it really has been hugely beneficial to the United Kingdom, and I think to the quality of our highest judiciary, that we have, first of all, it started with judges meeting much more regularly at international events, which were really about senior judiciaries from other parts of the common law world. And obviously now it also involves meetings with judges from other judicial systems, too.

But the common law, we have so much in common, that it was obvious that there should be some sort of discourse. And now our judges, I would say over the last probably 15 or 20 years, there has been much more
willingness to hear about cases in the Canadian Supreme Court, in your own Supreme Court. We can invoke cases in New Zealand, Australia, Hong Kong and we regularly do. I mean, judges are not going to be tied to them. I mean, they have no authority but our judges are willing to hear how those issues were dealt with and were responded to by judiciary in other places.

And of course by meeting socially with judges at seminars -- there is a Cambridge Seminar, a seminar that takes place with Canadian judges and often invite American judges to it as well. I have met Ruth Ginsburg there. And often those things provide opportunities for judges to talk, meet, discuss, and deal with the different kinds of challenges the courts have, and then opens up a willingness to actually hear cases which are really on all fours with cases before the court and to just have them in mind.
And I think it has enriched our processes and I don't think it has in any way undermined our sovereignty. And I actually think it had made for better judgment.

PROFESSOR SLAUGHTER: Well, as you were saying this, I was thinking -- I think it may be the third article I ever wrote in 1994 called Toward a Theory of Transjudicial Conversation. Talk about a clunky way to put it. You could tell I was a young law professor. You know, looking at this phenomenon that has then grown so much. And Justice O'Connor is my hero over here as one of the most articulate and, I think, prudent advocates of the value of learning from fellow justices around the world to inform you, not ever to bind you, but to inform you and to basically make you a better justice.

And I think there are two things that are sad about this. One, the U.S. Supreme Court is tying its hands behind its back by so staunchly refusing to look at many
of these precedents -- some justices, not all
of these justices -- but if you do not listen,
other people are much less likely to listen to
you. Try persuading somebody if you refuse to
be persuaded. I do this on a regular basis
with my teenagers. It does not work. Unless
they think that I am going to hear them, they
are not going to hear me.

And so I have watched the Canadian
Supreme Court, the South African Supreme
Court, the Indian Supreme Court, the European
Courts. They have more influence. It used to
be that we were one of the first stops on the
transjudicial tour and we, I think, are looked
to less as a result.

But there is also something very
fundamental, sitting in the Supreme Court and
thinking about Lloyd Cutler, the idea that a
judge is a judge wherever she may be and that
she will have the same reflective qualities
and take her office of deliberation equally
seriously wherever she is, no matter how
different the law, is a pillar of what we mean by the rule of law. We really believe in judicial deliberation.

I spent my life as a law professor doing battle against those who say it is only politics. And of course the answer is, well, it is not all law but it is not only politics either. And if you are a judge, you really feel that duty to decide on the law.

So there is something in this idea of a global community of courts that I think is actually deeply connected to the concept of the rule of law.

BARONESS KENNEDY: It has been part of the American tradition.

PROFESSOR SLAUGHTER: When we liked the law.

BARONESS KENNEDY: Yes, when we liked the law. I mean, often when I am talking about human rights, I mean I go back to the business of Eleanor Roosevelt inviting jurists from around the world to her flat in
Washington Square for that first meeting in
the post-Holocaust horrors at the end of the
Second World War. And bringing all these
people from different traditions but all of
the jurists, all of them judges, all of them
people with a wealth of experience in law and
to say what are the values that we all share
and to out of that create the Universal
Declaration of Human Rights.

It came out of you guys. And it
seems to me that that is a proud tradition and
it has to be reclaimed and it has to be that
the fertile soil of meeting and coming
together has to be reclaimed. It is so
important.

And the convening power of your
senior judiciary is considerable. And so all
I would say is use it and please make the case
for saying this is something that has to
happen.

MR. LIPTAK: So we have reached
perfect agreement, at least among the two of
you, on this point.

PROFESSOR SLAUGHTER: Yes.

MR. LIPTAK: I wanted to turn to

the audience. We have a little bit more time

left and I see so many distinguished people,

I would love to get your questions for the

panelists tonight. John.

MR. BELLINGER: So, John

Bellinger.

BARONESS KENNEDY: Hello.

MR. BELLINGER: Nice to see you.

I wanted to take the first two

questions that you had about drones and about

detention. Of course, it is widely known and

I think you acknowledged that there has been

more continuity than change between the Bush

Administration and the Obama Administration.

The whole idea of a Global War on Terror, a

term that has been used in different countries

around the world; that military commissions

detention without trial; the idea that we can

use force against other countries if they are
unwilling or unable to do something about it.

And perhaps the biggest change, in fact, has been the drones. Four times more people killed by drone strikes than ever held in Guantanamo.

And I guess my question is first for you, Baroness Kennedy, although Anne-Marie will have a view, is why has there been so much silence from Europeans as there has been continuity? The Europeans widely expected there was going to be dramatic change. They got dramatic change on day two with the signing of the orders to close Guantanamo. And then that was about the last time there was really any major change, other than these drone strikes that have been increasing.

And so I just wonder, and I have written about this, will the Obama Administration face in its second term, you know, the incredible hostility that we got from Europe in the Bush Administration's second term or will the view be, really,
things like, for one, we like President Obama better, or we have gotten used to some of these things we used to criticize. So why so much silence, and is it going to change in the second term of the Obama Administration?

I guess, Anne-Marie, for you, do you think the Obama Administration is going to worry about that or are they going to just feel Europeans are our natural constituency they are not going to criticize us?

MR. LIPTAK: And just in case the questions didn't project all the way back, maybe as you answer you can give a little bit of a sense.

BARONESS KENNEDY: Yes. The question was really about why Europe is somehow not stamping its feet more loudly over the continuing existence of Guantanamo Bay, over the drone policy and so on. And I suppose it depends very much where you are sitting as to whether you think that is right or not.
Regularly in debates in the House of Lords, for example, in the chamber in which I sit, there are debates about these very issues. There is great disappointment in the fact that despite the promise the President made that he was going to close Guantanamo Bay that it is still open. And in Britain we have one last -- a British resident who is still there, Shaker Aamer. And the Shaker Aamer case, in fact, there is still campaigning around it and efforts are being made to try and undo something about it because a moment was reached where we all were expecting that he would arrive back. His family were preparing for his arrival and then suddenly there was a change of heart. And we are told by our Foreign Secretary that it is at this end that the change of heart has taken place. And so I don't think you will find that it has gone silent, but what you will find is that perhaps our governments still want to maintain the Special Relationship.
which we like to believe that we have with the United States and that we are kind of quietly hoping that somehow progress will be made. And when Obama failed to close down Guantanamo Bay and continue to use drones and so on, I think that there was a great deal of disappointment in him as a President that we expected much more from.

But I think that when we saw the color of the eyes of the alternative, we also felt very anxious about what that would mean. And I speak as somebody who is saying that even the Conservative Party was by and large wanting an Obama victory. And so it is interesting that that was how it was seen.

I mean, for example, Obama has spoken out very clearly about his opposition to torture. But I think it was shocking, to Britain certainly and to the rest of Europe, that Mitt Romney actually wanted a revisiting of the whole business of waterboarding. I mean, that is shocking to us because I think
that -- there aren't many absolutes.

You see, the European Convention on Human Rights does not create absolute rights. The only absolute is around torture and it really is the sort of non-negotiable. All the rest are sort of balanced. You know, the rights to free expression is balanced with the risks that there might be, for example, to minorities, if people were allowed to have free rein in free speech. So there is all this sort of balancing about interests.

However, when it comes to torture, there is no balancing. We are seeking to stop torture around the world and the United States should be leading the way on that. And I am afraid we have been -- it was quite shocking in Britain and there was a lot of debate around the fact that the Republican Party was talking about still having waterboarding as an acceptable thing.

MR. BELLINGER: This criticism -- I mean, a lot of what Europe did and the
criticism had an effect on the Bush administration. And that really gets to my point.

BARONESS KENNEDY: You think it has gone quieter. And it may have gone quieter. You may be right.

MR. BELLINGER: Do you find Europeans looking the other way?

BARONESS KENNEDY: Well, I think that -- yes. I mean, I think that there hasn't been enough debate about it. And it is one of the reasons why I think this case may actually bring this onto the front pages of our newspapers. And I think it is right. I think that there has been. You are absolutely right. I think there has been enthusiasm for the idea of a black President in the United States and what that message that that gives to the rest of the world. And I think there was excitement about that across the political spectrum. And so perhaps it meant that we have indulged the incumbent more than perhaps
we ever did with George Bush.

Please, Anne-Marie.

PROFESSOR SLAUGHTER: I mean, I think there is -- I agree that they have been quieter. But the main issue, you know, he did overturn any torture/enhanced interrogation. So that was a flashpoint issue and Obama did end that on his second day and that was very important.

And you are right, he promised to close Guantanamo. I think it took a while, but torture, I think, is a much easier issue to get people passionate about than drones. Drones are complicated and most people -- I think we have to have rules around them but I would also argue that it is better to use a drone than it is to bomb a village and kill all the civilians there, much less actually invading a country. So it is a complicated issue.

And I was saying, my mother called the other day and said I don't think I agree
with you on drones. So even among people who
generally --

BARONESS KENNEDY: You probably

should get together on that.

PROFESSOR SLAUGHTER: Well, that's

my point. Even among people who generally

share their politics, it is complicated.

But, John, I think there is

something else going on. And you took an

extraordinary amount of that heat personally

and tried to fight the good fight within the

Administration and I think abroad.

But the Obama Administration has

been incredibly multi-lateral, right? They

have gone to the United Nations on every

single issue. They continue to do so even

when good liberals like me are pounding at

them not to do so with respect to Syria. So

I think that bought them a lot of margin here,

that Europe feels consulted. Europe feels

like it is part of the overall decisionmaking

and that that is in some ways a counterweight
to these specific issues.

That said, I would love to see the Europeans pushing on this issue because I think we do need a debate. And I don't think, as I said, this President wants his legacy to be what it is now as a constitutional lawyer.

MR. LIPTAK: So one question over there and then we will turn here and I think then we will call it a night.

MR. KALB: Thank you both very much. My question has to do with the drone and the President's right to use it.

At the end of World War II, the big new weapon of war then was an atomic bomb. It was used twice. It killed hundreds of thousands of people.

The newest weapon that a president uses today is the drone. You could argue it is a more humanitarian weapon. It is targeted. It is a surgical weapon. It goes after specific people.

Not so much as a legal issue but
as a political issue, I cannot imagine any law that would stop an American president from using the weapons of war available to him to protect this country, if he feels those weapons should be used. It is his decision.

So what legal framework of any realistic nature could be applied as a brake on that power?

BARONESS KENNEDY: Well, I mean, the difficulty I have, and I have had it as we have had the conversation, is the business of warfare.

You see, I know that one of the things that has -- the language that has changed between the administrations, is the business of the War on Terror. But the United States and United Kingdom are involved in a conflict in Afghanistan, but we are not involved in a conflict with the Pakistani government. And it's that business of going into Pakistani territory and using drones there, and people that we feel who are
actively involved in activity in Afghanistan
and that they are seeking refuge there or
whatever, we have to ask ourselves the
question about whether we think it is
acceptable to be using drones there.

MR. KALB: Was it correct, for
example, if it is true, for the Iranians to
send the drone over Israel, the Israeli's
shoot it down, is that an act of war?

BARONESS KENNEDY: I think that it
raises the very issue that Anne-Marie raised
earlier, which is that as we look at this
business of the use of drones, we have to
expect and anticipate that drones are going to
be used by many other nations, which may have
lesser standards and less commitment to the
international rules than either your country
or mine. And I think that is one of the
reasons why we have to think this through with
some care at this stage.

But I don't think it is -- I'm
afraid -- I'm not a believer, you see, that if
the government says that it is okay that it `s fine. And whether it is the President or whether it the Prime Minister of my own country, I think that everybody has to be accountable and held to account; and that is presidents as well as prime ministers, as well as whoever. And law is a way of doing it.

PROFESSOR SLAUGHTER: I would just say that the legal framework will follow the practical reality. The reason that the nuclear weapons were used only twice is because the Soviet Union got one and then got more. Right? So we knew that if we used one, we risked having people use them against us and then we developed a legal framework.

And I think the same will happen here. That is why I used the example of China with a Uighur group, but any number of governments who, as we do, look to another country and see individuals or groups who are plotting terrorist attacks against them.

And if you then look at the
miniaturization of these things, and one of my
colleagues, former colleagues at Harvard Law
School is writing a book on the future of
warfare and she talks about drones the size of
spiders. This is not a pretty picture. This
is not a world we are going to want to live
in. And I suspect that what will actually
turn us around is precisely that another power
will use one against us or in a third party
and we will decide that this is a technology
that is ultimately going to destroy us unless
we have really clear rules about how and when
they can be used.

MR. LIPTAK: Let's have one last
question from Ted Shaw.

MR. SHAW: Thank you. I wanted to
go back to the early part of the conversation
in which you, I think, posited -- I think both
of you posited -- a scenario in the context of
a question about checks on the use of drones,
the possibility that those people who sit in
Oregon or wherever they sit, might be exposed
to some kind of liability, criminal or otherwise. And I want to suggest that there is no prosecutor in the United States who would prosecute somebody sitting behind one of their controls. No state prosecutor because of the politics of doing that, and no federal prosecutor for obvious reasons. So therefore, I think we would be talking about civil actions and --

BARONESS KENNEDY: In Britain we have, they are very rarely ever used, but we have the capacity of bringing up private prosecution, criminal prosecution against someone. It is possible to bring a prosecution that is not a state prosecution.

MR. SHAW: Well, we don't have any comparable mechanism, that I can think of anyway. And so I just don't see that happening.

But I wanted to also prod you a little bit more with respect to how you see the possibility of a civil action being an
effective implementation of a check because I suggest a jury is unlikely to do that. And then I also want to --

BARONESS KENNEDY: I'm sorry, I couldn't hear you.

MR. SHAW: I suggest that civil juries are unlikely to find liability also under those circumstances, or even in bench trials. Federal judges, the best chance would be there.

But I also want to leave one other thing on the table with you. There was an extraordinary set of articles about the President's involvement, this President's involvement, with the decisions with respect to drone strikes. And he has taken on these decisions in a very personal way. I think he reviews every decision. And I think that is probably unlike any other executive's involvement in the specifics of warfare.

And it's a two-edged sword. One might say he takes it on and understands the
very weighty considerations deciding who lives, who dies, when we exercise this power. On the other hand, there is a question I think about what, and this is one of the things I want to -- the last thing I want to put before you. What this does to the President or the presidency, what the exercise of that power and having it in his hands as opposed to in the hands of a military decisionmaker, even though he is always the commander in chief, this is different.

What do you think it does to the President and the presidency? Is that a concern?

PROFESSOR SLAUGHTER: That is a very interesting question. Let me give myself a half-second to think about it by answering the first part of your question, which is it may well be that no prosecutor would prosecute and no jury would find against, or judge.

Still you could have those young men in Oregon unable to travel. If you
I thought there was a colorable claim, they are not going to risk going abroad and finding themselves in a judicial system either under international law or a claim that would be brought, a civil claim, not a prosecution, wherever they travel.

So I would say just as with a number of parts of international and humanitarian law, we don't enforce it, and that was true on torture as well, but other countries do.

So I again think actually we shouldn't look to discretion of any kind to protect those individuals and that is the point of this British case.

Now your point about what it does to the presidency is fascinating. I mean, my immediate reaction when you started saying that was well, yes, it is like governors who rule on appeals for clemency from the death penalty. And, you know, there are governors who are merciful and then there are governors
who really aren't. And this is exactly why I
would not want to leave this up to individual
presidents.

But you are asking a different
question, and I hadn't thought of it that way,
that part of the civil control of the military
is precisely that the generals generally make
this decision. Yes, he is the Commander in
Chief but he is generally reviewing his
generals' decisions.

But also, again, it is the
individualization of warfare, that one man is
deciding that another man shall die, because
that is what this is. You know, there is
somebody on a list and he either says yes or
he says no and the drone acts. And I worry
about that, even though I admire this
President for wanting to take it on and I
think he sees it as his obligation and I
respect him for that, but I'm not sure that is
something we want with the presidency.

BARONESS KENNEDY: I think it is a
really interesting question, too. And
reflecting on it, I think it is probably -- it
would better if you didn't. I mean, I admire
the sort of moral imperative that he feels,
that if someone is going to have to make such
a difficult decision it should rest with him
and the buck stops there.

But I actually do think that
constitutionally it probably isn't right
because, as Anne-Marie says, he is supposed to
be the person who, in the end, if there is a
review of a decision, one of those sort of is
a bit like being the chairman or the chief
executive, that the actual operational stuff
should be the matter for the generals. And
that on occasion there will be, if there were
any sort of sense of controversy or question
mark against it, then it should be resolved by
the President rather than that he is, himself,
the person making the operational decision.

It just seems to me that -- and I
have never reflected on this actually. I
actually, like Anne-Marie, I was impressed that he had taken it on as a personal burden so that at the highest level these decisions are being taken and it showed how serious it was being taken. But in a way, I think it probably would be better that it was taken by generals and if there is any need for it to go one up, then there is somebody to take it to. Whereas in this way, there is nobody to take it to.

MR. LIPTAK: What a fascinating, provocative, and valuable discussion. Please join me in thanking our two panelists.

(Applause.)

MR. SALYER: Thank you so much for that really stimulating conversation tonight. It has been a great pleasure to be here in this place and have a Salzburg Seminar at this level with such a great audience and such wonderful speakers.

Let me thank Baroness Kennedy, Anne-Marie Slaughter, Adam Liptak for their
wonderful contributions. I also want to thank the co-chairs of our Lloyd Cutler Center for the Rule of Law, Tom Mansbach and Bailey Morris-Eck, for their work on behalf of this and others of you in the audience who have been involved in helping to advance this work.

Special thanks, of course, to Justice O'Conner for hosting us for our third Cutler Lecture. She has been such a wonderful part of our family for a while and we are pleased to have her and have her inviting us back to this wonderful place tonight.

I wanted just to mention we have a few students with us tonight who are going to be a part of a program that we launch, inaugural program, on Friday at the United States Institute of Peace.

And this is a new activity of the Cutler Center. Nine very fine American law schools who are each sending five of their top students who are interested in international law and careers in law and public service. So
we are really delighted to have them here. It is a small group tonight. It will be a bigger group on Friday, 45 in all coming from the nine schools.

And also I wanted to say that people like Justice Goldstone and John Bellinger and others who are going to be a part of the faculty for that day are going to make a tremendous contribution and I know get us off to a great start with that program.

The last thing I would say is that I believe if Lloyd Cutler were here with us tonight, he would be very pleased with what happened here, the kind of conversation, the kind of thoughtfulness that was brought to bear. And I think he also would be very excited about the work that continues with the Salzburg Seminar in his name.

So we are going to now move next door for a reception. I hope you will all join us for a few minutes.

JUSTICE O'CONNOR: Not next door,
just down the hall.

MR. SALLYER: Just down the hall, and I hope as many of you will stay as you can. And thank you all for coming this evening and being a part of this Salzburg Global Seminar.

(Whereupon, at 7:24 p.m., the foregoing lecture was concluded.)
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CERTIFICATE

This is to certify that the foregoing transcript

In the matter of: Third Annual Lloyd N. Cutler Lecture on the Rule of Law

Before: Salzburg Global Seminar

Date: 11-12-12

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.

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Court Reporter