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GEORGIA STATE UNIVERSITY
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JUDICIAL REVIEW AND JUDICIAL INDEPENDENCE: THE APPROPRIATE ROLE OF THE JUDICIARY

FOREWORD

"It is emphatically the province and duty of the judicial department to say what the law is." With these and other stately words in the 1803 case of *Marbury v. Madison*,[1] the Supreme Court attempted to carve out the appropriate role of the judiciary and ushered in the concept of judicial review. In the ensuing decades, the nation has diligently attempted to ensure judges have the independence necessary to carry out the role of judicial review. At times, however, observers have argued that the judiciary has moved beyond saying "what the law is" and has inappropriately begun to say "what the law should be," a function of the legislative branch. Throughout 1997 and the early months of 1998, the ongoing tension between judicial independence and judicial activism was once again a staple in the news as Congress and the President grappled over the judicial appointment process and stories abounded concerning controversial decisions by judges.

Against this backdrop, a prestigious panel including a former U.S. Attorney General, a current Federal Court of Appeals Judge, three nationally known law professors, and a prominent criminal defense attorney discussed the delicate balance between judicial independence and judicial activism at a symposium hosted by the *Georgia State University Law Review* on February 26, 1998. Over 350 guests attended the six-hour program entitled "Judicial

1. 5 U.S. (1 Cranch) 137.

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Review and Judicial Independence: The Appropriate Role of the Judiciary" to hear a wide range of views on this enduring but still pressing legal topic. Some of the specific areas discussed were the history of political attacks on the judiciary and their effects on judicial independence, how the other branches of government should respond to judges who render questionable decisions, the persisting need for an independent judiciary, the proper methods of conducting judicial review, and the effects of judicial activism in both the state and federal courts. These are contentious topics, as we were rather surprised to discover, and the presentations often ventured into related areas that are currently "hot button" political issues, such as affirmative action, impeachment of government officials, and questions of federalism. The lively and sometimes fervent debate included members of the audience during lengthy question-and-answer sessions at the end of each segment. Throughout the presentations, *Law Review* rediscovered a hearty respect for freedom of expression on controversial topics, a respect that has sadly begun a retreat in these times of overwrought sensitivities.[2]

The six speakers who participated in the *Law Review* symposium were as follows, in alphabetical order: Stephen B. Bright, Director of the Southern Center for Human Rights in Atlanta; Professor Barry Friedman of the Vanderbilt University Law School; Professor Lino Graglia of the University of Texas School of Law; Judge Alex Kozinski of the U.S. Ninth Circuit Court of Appeals; The Honorable Edwin Meese III, of the Heritage Foundation and the Attorney General of the United States in the Reagan Administration; and Professor Suzanna Sherry of the University of Minnesota College of Law. Professor Eric Segall of the Georgia State University (GSU) College of Law acted as moderator for the event, and fellow GSU Law Professors Charles Marvin and L. Lynn Hogue provided additional commentary during the symposium.

As a student-run event, the symposium was largely planned and orchestrated by the members of the *GSU Law Review*. With no intention of slighting the many people who worked tirelessly

2. *See* NAT HENTOFF, FREE SPEECH FOR ME--BUT NOT FOR THEE: HOW THE AMERICAN LEFT AND RIGHT RELENTLESSLY CENSOR EACH OTHER (1992).

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on the activities, the top credit for the event's success clearly goes to Symposium Editor Jeremy Citron, who was primarily responsible for the detailed planning in the months leading up to the symposium. Throughout the three days of symposium activities, many other students from *Law Review* provided crucial assistance. Funding for the symposium was provided by generous grants from the Southeastern Legal Foundation, The Federalist Society, the Student Bar Association, and a discretionary distribution by Judge Albert Pickett of the Superior Court in Augusta, Georgia. The Southeastern Legal Foundation and The Federalist Society also provided invaluable help in contacting the speakers and booking their appearances. It was a great pleasure to work with both of these fine organizations.

What follows in this issue are the papers and transcripts from the symposium, presented in the same order that the speakers made their live presentations. The articles closely parallel the comments from the symposium itself. The views presented are diverse, provocative, and perhaps even innovative, just as a symposium should be. We hope you enjoy them.

W. Kent Davis
Editor-in-Chief