

Seton Hall Law Review 2010 Symposium

**National Security Policy and the Role of Lawyering:
Guantánamo and Beyond**

About the Speakers



ERIC M. FREEDMAN

*Maurice A. Deane Distinguished Professor of Constitutional Law,
Hofstra University School of Law*

Eric M. Freedman is the Maurice A. Deane Distinguished Professor of Constitutional Law at Hofstra Law School. His career combines scholarship in constitutional law with public interest litigation in a variety of civil liberties fields including capital punishment, the habeas corpus rights of alleged terrorists and others, and the First Amendment. He has testified to Congress on several of these matters as well as on the limits of Presidential power. Professor Freedman serves as the Reporter for the American Bar Association's Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (2d ed., 2003), reprinted in 31 Hof. L.R. 913 (2003). He is the author of *HABEAS CORPUS: RETHINKING THE GREAT WRIT OF LIBERTY* (NYU Press 2001), which has become a principal reference for journalists and Supreme Court Justices alike, and of numerous articles in constitutional law and history. Hofstra University has awarded him its Stessin Prize for Outstanding Scholarship for his work on the Articles of Confederation, and named him as its Distinguished Scholarly Lecturer for his research into Presidential immunity. In 2004, the American Association on Mental Retardation presented Professor Freedman with its Dybwad Humanitarian Award for his efforts on behalf of Earl Washington, Jr., a mentally retarded black man who was the first person ever released from Death Row in Virginia on the grounds of innocence. A graduate of the Phillips Exeter Academy and Yale College, Professor Freedman earned a Master's Degree in history from Victoria University of Wellington, New Zealand while on a Fulbright Scholarship there. He received his law degree from Yale Law School, where he was an editor of the Yale Law Journal. He is an elected member of the American Law Institute, a Fellow of the American Bar Foundation, and serves as a Director of and Counsel to the National Coalition Against Censorship. Prior to coming to Hofstra, Professor Freedman clerked for Judge Irving R. Kaufman of the United States Court of Appeals for the Second Circuit and practiced as a litigator at the firm of Paul, Weiss, Rifkind, Wharton & Garrison in New York and Washington.



JOSEPH MARGULIES

*Clinical Professor of Law,
Northwestern University School of Law*

Mr. Margulies is an attorney with the Roderick MacArthur Justice Center and a Clinical Professor at Northwestern University Law School in Chicago. He received his B.A., with distinction, from Cornell University in 1982, and his J.D., cum laude, from Northwestern in 1988. After a clerkship with the Hon. William Hart of the Northern District of Illinois, Margulies joined the staff of the Texas Capital Resource Center, where he represented men and women on Texas' death row. In 1994, Margulies entered private practice in Minneapolis, specializing in civil rights and capital defense. In 2002, he was the Distinguished Practitioner in Residence at Cornell University Law School, and in 2004, he joined the MacArthur Center. Margulies was Counsel of Record in *Rasul v. Bush* (2004), involving detentions at the Guantánamo Bay Naval Station, and in *Geren v. Omar & Munaf v. Geren* (2008), involving detentions at Camp Cropper in Iraq. Presently he is counsel for Abu Zubaydah, whose interrogation in 2002 prompted the Bush Administration to draft the "torture memos." In June 2005, at the invitation of Pennsylvania Senator Arlen Specter, Margulies testified at the first Senate Judiciary Committee hearing on detainee issues. Margulies writes and lectures widely on civil liberties in the wake of September 11 and his commentaries have appeared in numerous publications, including the Washington Post, the Los Angeles Times, the Chicago Tribune, the National Law Journal, the Miami Herald, the Christian Science Monitor, the Virginia Quarterly Review, and the Legal Times. He is also the author of the widely acclaimed book, *Guantánamo and the Abuse of Presidential Power* (Simon and Schuster 2006). Among other accolades, *Guantánamo* was named one of the best books of 2006 by The Economist magazine. It received the prestigious Silver Gavel Award of 2007, given annually by the American Bar Association to the book that best promotes "the American public's understanding of the law and the legal system." It also won the Scribes Book Award of 2007, given annually by the American Society of Legal Writers to honor "the best work of legal scholarship published during the previous year." Margulies has also won numerous awards for his work since 9/11.



DAVID FRAKT

*Associate Professor of Law,
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Professor Frakt is Associate Professor of Law at the Barry University Dwayne O. Andreas School of Law in Orlando, Florida and a Lieutenant Colonel in the U.S. Air Force Judge Advocate General's Corps Reserve. He earned his B.A., summa cum laude, from the University of California, Irvine and his J.D., cum laude, from Harvard Law School. After law school, he clerked for the Honorable Monroe G. McKay, former Chief Judge of the U.S. Court of Appeals for the Tenth Circuit. From 1995 to 2005, he served on active duty with the U.S. Air Force Judge Advocate General's Corps (JAG) before transitioning to the Air Force Reserve and becoming a law professor. He was Director of the Criminal Law Practice Center at Western State University College of Law from May 2005 to July 2010. From April 2008 to August 2009, Professor Frakt took a military leave of absence from teaching to serve as lead defense counsel with the Office of Military Commissions, representing two detainees at Guantanamo facing war crimes and terrorism charges before the U.S. military commissions. He was the first defense counsel to win the pretrial dismissal of all charges against his client, Mohammed Jawad, a juvenile from Afghanistan, and also won Mohammed's release through a habeas corpus petition in federal court. He was the sole defense counsel in one of the only two military commission trials completed during President Bush's tenure in office, representing Ali Hamza al Bahlul. Professor Frakt is a highly regarded expert in the field of international war crimes, military law and military commissions and has been frequently quoted in the national media, including in the New York Times, Washington Post, Newsweek, Los Angeles Times, New York Review of Books, Wall Street Journal, USA Today, Miami Herald, The Nation and the Atlantic Monthly. He has written widely in both scholarly and popular periodicals. His articles and letters have been published in the Washington Post, the New York Review of Books, the Harvard Human Rights Journal, the American Journal of Criminal Law, the Florida State University Law Review, as well as online on Salon.com, CNN.com, Huffington Post, and truthout.org. He has been a repeat guest on MSNBC's Rachel Maddow Show, and on PRI's "The World" and recently debated terrorism issues on the "Intelligence Squared" Debate series, which is broadcast on Bloomberg News and NPR. Professor Frakt is a contributor to the ACLU National Security Project's Torture Report and was featured in the book *The Guantanamo Lawyers: Inside a Prison, Outside the Law*. Professor Frakt teaching and scholarship areas are criminal law, criminal procedure, evidence, international war crimes and international humanitarian law. His most recent articles will be published in the Duke Law Journal, the Case Western Reserve Journal of International Law and the Air Force Law Review.



GLENN M. SULMASY
Professor of Law,
U.S. Coast Guard Academy

Captain Sulmasy is the Chairman of the Humanities Department at the United States Coast Guard Academy. He is a professor of law, judge advocate and a member of the Academy's Permanent Commissioned Teaching Staff (PCTS). He coordinates and teaches international law and constitutional law in the Humanities Department. Previous military tours have included USCGC GALLATIN (WHEC-721), USS Dwight D. EISENHOWER (CVN-69) Battle Group during the Persian Gulf War, executive officer of USCGC MORRO BAY (WTGB-106), Office of the Judge Advocate General, USCG Headquarters, Deputy University Counsel at USCGA, Special Assistant US Attorney (D. Ct.), National Security Fellow/Aide to former Congressman Rob Simmons, Assistant Professor of Law and Governmental Affairs Officer at CGA, Visiting Fellow at the Heritage Foundation and Professor of International Law at US Naval War College. Captain Sulmasy received his BS in government from the U. S. Coast Guard Academy in 1988, earned his JD cum laude from the University of Baltimore School of Law, his LL.M in national security law from Berkeley Law School (Boalt Hall) and attended the Harvard Kennedy School. He served on the adjunct faculty of Roger Williams University School of Law from 2000-2005 where he taught courses in Military Law and Homeland Security Law. He serves on the Advisory Board of the Center of International and Comparative Law (Balt., Md) and on the Executive Committee for the National Security and International Law Practice Group for the Federalist Society. In 2005, he was appointed to the Northeast Regional Ocean's Council by Governor M. Jodi Rell and also serves on the Governor's Military Staff. Captain Sulmasy has been a National Security and Human Rights Fellow at the Carr Center for Human Rights Policy at Harvard University. He has written and lectured widely on national security and constitutional law and frequently is a guest on National Public Radio and other national radio outlets. His articles have appeared in numerous law journals as well as the LA Times, New York Times, San Francisco Chronicle, New York Post, and the Boston Globe among others. He is co-editor of *International Law Challenges: Homeland Security and Combating Terrorism* and the author of *The National Security Court System – A Natural Evolution of Justice in an Age of Terror* (Oxford University Press 2009).



JAMES A. COHEN

*Associate Professor of Law,
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James Cohen is an Associate Professor of Law at Fordham Law School and the Director of the Trial and Arbitration Advocacy Program. Professor Cohen founded Fordham's Clinical Education Program in 1986 and currently co-teaches in the Federal Litigation Clinic. The Federal Litigation Clinic represents defendants assigned through the Criminal Justice Act and also maintains a docket of civil cases – primarily focusing on civil rights claims. Prof. Cohen has tried over 100 jury trials in over 30 years of practice. In addition, he has argued numerous cases in the Second Circuit, and in the U.S. Supreme Court. In 2004 he and his colleague, Professor Martha Rayner, began representing four detainees in custody at the Guantanamo Bay Naval Base. Both have visited clients several times a year. Additionally, he teaches Professional Responsibility and co-teaches Psychology and Criminal Law, and Psychology and Civil Law.



JOSHUA L. DRATEL

*President,
Law Offices of Joshua L. Dratel P.C.*

Joshua L. Dratel is an attorney in New York City, and practices criminal defense law in the state and federal courts. In his 30 years as a lawyer, his practice has included a wide range of matters, including “white collar,” “organized crime,” drugs, sex offenses, and capital cases. He is a past President of the New York State Association of Criminal Defense Lawyers (2005), as well as former Chair of its Amicus Curiae Committee. He is also a Co-Chair of the Amicus Curiae Committee of the National Association of Criminal Defense Lawyers, Chair of its National Security Committee, and a former member of its Board of Directors and Public Affairs Council. He is also Senior Fellow for Legal Research at New York University Law School’s Center on Law & Security, and a member of its Board of Advisors. as well as the Advisory Board of The Champion, the magazine of the National Association of Criminal Defense Lawyers. Mr. Dratel has been defense counsel in numerous terrorism and national security prosecutions, and was lead and civilian counsel for David Hicks, an Australian detained at Guantanamo Bay, Cuba, in Mr. Hicks’s prosecution by U.S. military commission. He has written and lectured widely on terrorism issues, including torture, the USA PATRIOT Act, the Classified Information Procedures Act, and the Foreign Intelligence Surveillance Act, and his articles on some of those subjects have appeared in the *CARDOZO PUBLIC LAW, POLICY AND ETHICS JOURNAL*, the *WAYNE STATE LAW REVIEW*, the *JOURNAL OF THE NATIONAL SECURITY FORUM*, and the *NEW YORK LAW SCHOOL LAW REVIEW*. He is co-editor with Karen J. Greenberg of *The Torture Papers: The Legal Road to Abu Ghraib* (Cambridge University Press: 2005), a compendium of government memoranda, and *The Enemy Combatant Papers: American Justice, the Courts, and the War on Terror* (Cambridge Press: 2008), a digest of the litigation documents in the five most important enemy combatant cases. He has also contributed essays to *The Guantanamo Lawyers*, edited by Mark Denbeaux and Jonathan Hafetz (New York University Press: 2009), and *The Torture Debate in America*, edited by Karen J. Greenberg (Cambridge University Press: 2005). In 2006, he was the recipient of NACDL’s Robert C. Heeney Award, that organization’s highest honor. In 2007, along with other lawyers representing Guantanamo Bay detainees, he was a recipient of the Frederick Douglass Human Rights Award from the Southern Center for Human Rights. He was named one of New York’s Super Lawyers for both 2008 and 2009 in publications of the same name, which also appear as a supplement to *The New York Times Magazine*. He is a 1978 Magna Cum Laude graduate of Columbia College, and a 1981 graduate of Harvard Law School.



SHAYANA KADIDAL

*Senior Managing Attorney,
Guantanamo Global Justice Initiative at the Center for Constitutional
Rights*

Shayana Kadidal is senior managing attorney of the Guantánamo Global Justice Initiative at the Center for Constitutional Rights in New York City. He is a graduate of the Yale Law School and a former law clerk to Judge Kermit Lipez of the United States Court of Appeals for the First Circuit. In his eight years at the Center, he has worked on a number of significant cases in the wake of 9/11, including the Center's challenges to the detention of prisoners at Guantánamo Bay (among them torture victim Mohammed al Qahtani and former CIA ghost detainee Majid Khan), which have twice reached the Supreme Court, and several cases arising out of the post-9/11 domestic immigration sweeps. He is also counsel in CCR's legal challenges to the "material support" statute (decided by the Supreme Court last term), to the low rates of black firefighter hiring in New York City, and to the NSA's warrantless surveillance program.



JAMES J. BENJAMIN JR.
Partner,
Akin Gump Strauss Hauer & Feld LLP

James J. Benjamin Jr., a partner in the New York office of Akin Gump Strauss Hauer & Feld LLP, represents clients in a wide variety of government and regulatory investigations and litigation. Mr. Benjamin has extensive experience with matters arising under the federal securities and commodities laws, including allegations of insider trading, improper accounting and disclosure, market manipulation and other trading violations, and foreign corrupt practices. He also has broad experience with other alleged violations, including health care fraud and many provisions of federal and state criminal law. Mr. Benjamin has conducted numerous jury trials and has briefed and argued many cases before federal and state appellate courts. Before joining Akin Gump in early 2001, Mr. Benjamin served for more than five years as a federal prosecutor in the U.S. Attorney's Office for the Southern District of New York. During his tenure there, he served as deputy chief appellate attorney and as a member of the Securities and Commodities Fraud Task Force. As an assistant U.S. attorney, he received an award for superior performance from Attorney General Janet Reno. Before joining the U.S. Attorney's Office, Mr. Benjamin served as a law clerk at the U.S. Supreme Court for Justices Lewis F. Powell Jr. and John Paul Stevens. Before that, he worked for several years as an associate at a major Washington, D.C.-based law firm and served as a law clerk for the Honorable J. Frederick Motz, a federal district judge in the District of Maryland. Mr. Benjamin received his A.B. magna cum laude in 1987 from Dartmouth College, where he was a member of Phi Beta Kappa and was awarded the Colby Government Prize. He earned his J.D. in 1990 from the University of Virginia School of Law, where he was the research and projects editor of the Virginia Law Review and a member of the Order of the Coif. He is a member of the New York, Maryland and District of Columbia bars and is admitted to practice before numerous federal courts. Mr. Benjamin is the chair of the New York City Bar Association's Task Force on National Security and the Rule of Law and is a member of the New York Council of Defense Lawyers and the New York American Inn of Court. He is a recognized expert on terrorism prosecutions and has spoken extensively on developments in white collar enforcement, especially regarding SEC enforcement and the FCPA. Mr. Benjamin was recognized in 2010 as a leading lawyer by Chambers USA: America's Leading Lawyers for Business in the areas of white collar crime and government investigations.



MARC D. FALKOFF

*Associate Professor of Law,
Northern Illinois University College of Law*

Marc Falkoff is associate professor at Northern Illinois University College of Law, where he teaches courses in criminal law, criminal procedure, and the federal courts. Since 2004 he has represented 17 Yemeni prisoners at Guantánamo Bay. He is a graduate of Columbia Law School, where he was Articles Editor for the Columbia Law Review and a James Kent and Harlan Fiske Stone Scholar. He holds a Ph.D. in American Literature from Brandeis University, an M.A. from the University of Michigan, and a B.A. from the University of Pennsylvania. Following law school, he clerked for the Honorable Carlos F. Lucero of the U.S. Court of Appeals for the Tenth Circuit and for the Honorable Jack B. Weinstein of the U.S. District Court for the Eastern District of New York. He was appointed Habeas Corpus Special Master for the EDNY from 2003 to 2004. He is the compiler and editor of *Poems from Guantánamo: The Detainees Speak*, a bestselling anthology of prisoner poetry that has been translated into a dozen languages.



JON CONNOLLY

*Associate,
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Jon Connolly is a lawyer in private practice in New York City. He graduated from Columbia Law School, where he was an Articles Editor of the Law Review, and also earned a Ph.D. from the University of California, Santa Barbara. From 2004-2007 he was part of a team from WilmerHale that represented seven Guantanamo detainees in habeas corpus petitions.



GABOR RONA

*International Legal Director,
Human Rights First*

As the International Legal Director of Human Rights First, Gabor Rona advises Human Rights First programs on questions of international law and coordinates litigation. He also represents Human Rights First with governments, intergovernmental and non-governmental organizations, the media and the public on matters of international human rights and international humanitarian law (IHL - the law of armed conflict). Before coming to Human Rights First, Gabor was a Legal Advisor in the Legal Division of the International Committee of the Red Cross (ICRC) in Geneva. At the ICRC he focused on the application of international humanitarian and human rights law in the context of counter-terrorism policies and practices. He represented the ICRC in intergovernmental, nongovernmental, academic and public forums and his articles on the topic have appeared in the Financial Times, the Fletcher Forum on World Affairs and the Chicago Journal of International Law, among other publications. In addition, he represented the ICRC in connection with the establishment of international and other criminal tribunals, including the International Criminal Court. He teaches IHL at Columbia Law School and has taught IHL and international criminal law at the International Institute of Human Rights in Strasbourg, France and the University Centre for International Humanitarian Law in Geneva, Switzerland.



STEPHEN I. VLADECK

Professor of Law,

American University Washington College of Law

Stephen I. Vladeck is a Professor of Law at American University Washington College of Law, where his teaching and research focus on federal jurisdiction, national security law, constitutional law (especially the separation of powers), and international criminal law. A nationally recognized expert on the role of the federal courts in the war on terrorism, he was part of the legal team that successfully challenged the Bush Administration's use of military tribunals at Guantánamo Bay, Cuba, in *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006), and has co-authored amicus briefs in a host of other lawsuits challenging the U.S. government's surveillance and detention of terrorism suspects. Vladeck has also drafted reports on related issues for a number of organizations, including the First Amendment Center, the Constitution Project, and the ABA's Standing Committee on Law and National Security, and he is a senior editor of the peer-reviewed *Journal of National Security Law and Policy*. Professor Vladeck graduated from Yale Law School in 2004, after which he clerked for the Honorable Marsha S. Berzon on the U.S. Court of Appeals for the Ninth Circuit, and the Honorable Rosemary Barkett on the U.S. Court of Appeals for the Eleventh Circuit. While a law student, he was Executive Editor of the *Yale Law Journal* and the Student Director of the Balancing Civil Liberties & National Security Post-9/11 Litigation Project, and he was awarded the Potter Stewart Prize for Best Team Performance in Moot Court and the Harlan Fiske Stone Prize for Outstanding Moot Court Oralist. He earned a B.A. summa cum laude in History and Mathematics from Amherst College in 2001, where he wrote his senior thesis on "Leipzig's Shadow: The War Crimes Trials of the First World War and Their Implications from Nuremberg to the Present." Vladeck is also a regular contributor to *PrawfsBlawg* <http://www.prawfs.com>, and *National Security Advisors* (<http://www.natseclaw.com>); is the Chair of the Association of American Law Schools' Section on National Security Law, and Chair-Elect of the Section on New Law Professors; and is admitted to practice in the State of New York, Third Department.



DAFNA LINZER
Senior Reporter,
ProPublica

Dafna Linzer is a senior reporter with ProPublica, the nonprofit investigative news organization in New York. She has spent the last year writing about Guantanamo and detention issues. She was, until 2008, a national security reporter for The Washington Post, covering intelligence and nonproliferation. Her coverage of the Iranian nuclear issue won the United Nations 2005 Gold Medal award for international reporting. Before joining the Post, she spent ten years as a foreign correspondent for Associated Press. Based in Jerusalem, New York, and the United Nations, she reported from more than a dozen countries covering terrorism, nonproliferation, and conflict. Her reporting from Baghdad, on the hunt for weapons of mass destruction, won national attention and praise, ending with her report that the fruitless hunt had quietly come to an end. She lives in New York with the journalist Bart Gellman and their children.



JOSHUA COLANGELO-BRYAN

*Senior Attorney,
Dorsey & Whitney LLP*

Joshua Colangelo-Bryan is a Senior Attorney at Dorsey & Whitney, LLP in New York where he specializes in complex civil litigation and white-collar criminal defense. He represents individuals and entities before federal and state agencies, and conducts internal investigations. Further, Joshua devotes a substantial portion of his practice to pro bono matters, including the representation of Guantanamo Bay detainees. In this vein, he serves as a consultant to Human Rights Watch. Prior to working for Dorsey, Joshua served with the United Nations Mission in Kosovo, where he was involved in the prosecution of criminal cases involving war crimes and terrorism. He also has done post-conflict humanitarian aid work in the Balkans.



SCOTT HORTON
*Contributing Editor,
Harper's Magazine*

Scott Horton is a Contributing Editor of Harper's Magazine. A New York attorney known for his work in emerging markets and international law, especially human rights law and the law of armed conflict, Horton lectures at Columbia Law School. A life-long human rights advocate, Horton served as counsel to Andrei Sakharov and Elena Bonner, among other activists in the former Soviet Union. He is a co-founder of the American University in Central Asia, and has been involved in some of the most significant foreign investment projects in the Central Eurasian region. Horton recently led a number of studies of abuse issues associated with the conduct of the war on terror for the New York City Bar Association, where he has chaired several committees, including, most recently, the Committee on International Law. He is also a member of the board of the National Institute of Military Justice, the Andrei Sakharov Foundation, the EurasiaGroup and the American Branch of the International Law Association. He was a partner at Patterson, Belknap, Webb & Tyler until January 2007, when he left to write a book on private military contractors and to manage a project on that subject for Human Rights First. In addition to his work for Harper's Magazine, he is the author of a regular opinion column for the American Lawyer.