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**EDUCATION:**

Columbia University School of Law, J.D. 1981; Articles Editor, Columbia Journal of Law and Social Problems; Harlan Fiske Stone Scholar, 1978-79, 1979-80.

Colgate University, B.A. in History, Magna cum Laude, 1978.

**LEGAL EXPERIENCE:**

**PROFESSOR OF LAW**, July 2001-  
**VISITING PROFESSOR**, July, 2000-June, 2001  
Roger Williams University School of Law  
Bristol, Rhode Island

Teaches National Security Law, Professional Responsibility, Immigration Law, and International Law.

**VISITING PROFESSOR**, January-May 2006  
St. John's University School of Law  
Queens, New York

Taught Professional Responsibility; participated in planning for Conference on Race, Culture, Class, and Crisis in Child Welfare: Theory into Practice.

**PROFESSOR OF LAW, DIRECTOR, IMMIGRATION CLINIC**, July 1992 - July 2000  
St. Thomas University School of Law  
Miami, Florida

Started and directed Immigration Law Clinic focusing on representation of refugees and immigrant families, with duties including supervision of clinic staff and outreach to community legal services providers; taught Professional Responsibility, Seminar on Law and Disability, and Law and Medicine; coordinated administration of three other clinical programs, including domestic violence clinic, externship program, and clinic in appellate litigation.

**VISITING PROFESSOR**, August 1989-July 1992  
City University of New York Law School at  
Queens College, New York, NY

Designed and taught seminar integrating representation of clients with disabilities, training in interviewing and counseling, and instruction in substantive doctrine in law of government benefits, education, employment, and housing pertaining to disability; as third semester simulation coordinator, designed and implemented required Lawyering Seminar curriculum, and taught seminar on legal analysis, negotiation, and trial practice integrated with substantive curriculum of property, evidence, and procedure.

**ASSOCIATE CLINICAL PROFESSOR**, January 1988-August 1989  
General Civil Clinic, Hofstra Law School  
Hempstead, N.Y.

Taught seminar in lawyering skills, including advocacy, interviewing, investigation, counseling, and negotiation; supervised students in live cases involving public benefits, family law, special education, immigration, and employment.

**CLINICAL ASSOCIATE PROFESSOR**, December 1984-December 1987  
Federal Litigation Clinic  
New York Law School, New York, New York

Helped design clinical program with the following responsibilities: teaching substantive law and lawyering skills through classroom instruction, tutorials, simulations and live cases involving governmental benefits, special education, disability discrimination, and criminal justice competency issues; supervising submission of comments on proposed federal regulations; coordinating and participating in amicus briefs and appellate litigation in United States Supreme Court and Second Circuit Court of Appeals.

**SENIOR ATTORNEY; STAFF ATTORNEY**, August 1981-December 1984  
Mental Health Information Service, New York, New York

Represented patients committed under the New York Mental Hygiene Law and Criminal Procedure Law in proceedings for furloughs, release, and retention, as well as appeals; represented amicus curiae in appellate proceedings; advocated on patients' behalf with state officials, doctors and other facility staff, and outside agencies; and initiated, supervised, and participated in class action litigation in state and federal courts.

## **PUBLICATIONS (Partial List):**

### **I. Books and Book Chapters:**

LAW'S DETOUR: POLITICS, IDEOLOGY, AND JUSTICE IN THE BUSH  
ADMINISTRATION (NYU Press 2010).

*Valor's Vices: Against a State Duty to Risk Forces in Armed Conflict*, in  
COUNTERINSURGENCY LAW: NEW DIRECTIONS IN ASYMMETRIC WARFARE  
(William C. Banks ed., Oxford Univ. Press 2012).

*Interpretations of IHL in Tribunals of the United States* (with Prof. Michael W. Lewis), in APPLYING INTERNATIONAL HUMANITARIAN LAW IN JUDICIAL AND QUASI JUDICIAL BODIES (Philip Van Tongeren ed., T.M.C. Asser Press 2014).

*Making Autonomous Weapons Accountable: Command Responsibility for Computer-Guided Lethal Force in Armed Conflicts*, in HANDBOOK ON REMOTE WARFARE (Jens David Ohlin ed., Edward Elgar Press, 2017)

*The Other Side of Autonomous Weapons: Using Artificial Intelligence to Enhance IHL Compliance*, in THE IMPACT OF EMERGING TECHNOLOGIES ON THE LAW OF ARMED CONFLICT (Ronald T.P. Alcala & Eric Talbot Jensen eds., Oxford University Press 2019)

NATIONAL SECURITY LAW: PRINCIPLES AND POLICY (with Professors Geoffrey S. Corn, Eric Talbot Jensen & Jimmy Gurule) (2d ed. Aspen Publishers 2019).

## II. Selected Articles

*The Virtues and Vices of Solidarity: Regulating the Roles of Lawyers for Clients Accused of Terrorist Activity*, 62 Md. L. Rev. 173 (2003).

*Judging Terror in the “Zone of Twilight”: Exigency, Institutional Equity, and Procedure After September 11*, 84 B.U. L. Rev. 383 (2004).

*Lawyers’ Independence and Collective Illegality in Government and Corporate Misconduct, Terrorism, and Organized Crime*, 58 Rutgers L. Rev. 939 (2006).

*When to Push the Envelope: Legal Ethics, the Rule of Law, and National Security Strategy*, 30 Fordham Int’l L.J. 642 (2007).

*True Believers at Law: Legal Ethics, National Security Agendas, and the Separation of Powers*, 68 Md. L. Rev. 1 (2008).

*The Detainees’ Dilemma: The Virtues and Vices of Advocacy Strategies in the War on Terror*, 57 Buff. L. Rev. 347 (2009).

*Judging Myopia in Hindsight: Bivens Actions, National Security Decisions, and the Rule of Law*, 96 Iowa L. Rev. 195 (2010).

*The Ivory Tower at Ground Zero: Conflict and Convergence in Legal Education’s Responses to Terrorism*, 60 J. Legal Educ. 373 (2011).

*Reforming Lawyers into Irrelevance?: Reconciling Crisis and Constraint at the Office of Legal Counsel*, 39 Pepperdine L. Rev. 809 (2012).

*The Fog of War Reform: Change and Structure in the Law of Armed Conflict After September 11*, 95 Marquette L. Rev. 1417 (2012).

*Advising Terrorism: Material Support, Safe Harbors, and Freedom of Speech*, 63 Hastings L.J. 455 (2012).

*Defining, Punishing, and Membership in the Community of Nations: Charging Material Support and Conspiracy in Military Commissions*, 36 Fordham Int'l L.J. 1 (2013).

*Networks in Noninternational Armed Conflicts: Crossing Borders and Defining "Organized Armed Group"*, 89 Int'l L. Stud. 54 (2013).

*Crossing Borders to Target Al-Qaeda and Its Affiliates: Defining Networks as Organized Armed Groups in Non-International Armed Conflicts* (with Matthew Sinnott), 16 Yearbook of Int'l Humanitarian L. 319 (2013)

*Constraining Targeting in Noninternational Armed Conflicts: Safe Conduct for Combatants Conducting Informal Dispute Resolution*, 46 Vand. J. Transnational Law 1041 (2013).

*Taking Care of Immigration Law: Presidential Stewardship, Prosecutorial Discretion, and the Separation of Powers*, 94 B.U. L. Rev. 105 (2014).

*Sovereignty and Cyber Attacks: Technology's Challenge to the Law of State Responsibility*, 14 Melb. J. Int'l L. 496 (2013).

*The NSA in Global Perspective: Surveillance, Human Rights, and International Counterterrorism*, 82 Fordham L. Rev. 2137 (2014).

*Aftermath of an Unwise Decision: The U.N. Terrorist Sanctions Regime After Kadi II*, 6 Amsterdam L. Forum 51 (2014).

*Detained Suspected Terrorists: Trial in Military Courts or Civilian Courts?*, 2 Federalist Ed. (Harv. J. L. & Pub. Pol'y) 157 (2015).

*Dynamic Surveillance: Evolving Procedures in Metadata and Foreign Content Collection After Snowden*, 66 Hastings L.J. 1 (2014).

*The Boundaries of Executive Discretion: Deferred Action, Unlawful Presence, and Immigration Law*, 64 Am. U. L. Rev. 1183 (2015).

*Defining "Foreign Affairs" in Section 702 of the FISA Amendments Act: The Virtues and Deficits of Post-Snowden Dialogue on U.S. Surveillance Policy*, 72 Wash. & Lee L. Rev. 1283 (2015).

*Justice at War: Military Tribunals and Article III*, 48 U.C. Davis L. Rev. 305 (2015).

*Deferred Action and the Bounds of Agency Discretion: Reconciling Policy and Legality in Immigration Enforcement*, 55 Washburn L.J. 143 (2015).

*Reauthorizing the FISA Amendments Act: A Blueprint for Enhancing Privacy Protections and Preserving Foreign Intelligence Capabilities*, 12 J. Bus. & Tech. L. 23 (2016)

*Surveillance by Algorithm: The NSA, Computerized Intelligence Collection, and Human Rights*, 68 Fla. L. Rev. 1045 (2016).

*Searching for Federal Judicial Power: Article III and the Foreign Intelligence Surveillance Court*, 85 Geo. Wash. L. Rev. 800 (2017).

*Global Cybersecurity, Surveillance, and Privacy: The Obama Administration's Conflicted Legacy*, 24 Ind. J. Global Legal Stud. 459 (2017).

*Bans, Borders, and Sovereignty: Judicial Review of Immigration Law in the Trump Administration*, 2018 Mich. St. L. Rev. 1.

*Curbing Remedies for Official Wrongs: The Need for Bivens Suits in National Security Cases*, 68 Case Western Reserve L. Rev. 1153 (2018).

*Deconstructing "Sanctuary Cities": The Legality of Federal Grant Conditions That Require State and Local Cooperation on Immigration Enforcement*, 75 Wash. & Lee L. Rev. 1508 (2018).

*The Travel Ban Decision, Administrative Law, and Judicial Method: Taking Statutory Context Seriously*, 33 Geo. Immigr. L.J. 159 (2019).

*Legal Dilemmas Facing White House Counsel in the Trump Administration: The Costs of Public Disclosure of FISA Requests*, 87 Fordham L. Rev. 1913 (2019).

*Rescinding Inclusion in the Administrative State: Adjudicating DACA, the Census, and the Military's Transgender Policy*, 71 Fla. L. Rev. 1429 (2019).

*The Boundaries of Habeas: Due Process, the Suspension Clause, and Judicial Review of Expedited Removal Under the Immigration and Nationality Act*, 34 Geo. Immigr. L.J. 405 (2019).

*The DACA Decision and Requiring Agencies to Turn 'Square Corners': Reading Reliance Interests in Immigration Law*, 2020 Cato Sup. Ct. Rev. 127 (2020).

*Autonomous Weapons in the Cyber Domain: Balancing Proportionality and the Need for Speed*, 96 Int'l L. Stud. 394 (2020).

*Searching for Accountability Under FISA: Internal Separation of Powers and Surveillance Law*, 103 Marquette L. Rev. \_\_ (forthcoming 2021).

## **SELECTED PRESENTATIONS AND WORKSHOPS:**

Surveillance and Human Rights, American Society of International Law (ASIL) Roundtable, Washington, D.C., May, 2014

Legal Ethics and Transnational Regulation of Money Laundering and Terrorist Financing, CLE, R.I. Attorney General, June, 2014

Military Commissions and Conspiracy Charges, YANKEE Operational Law Training, Naval War College, Newport, RI, July, 2014

Surveillance and Human Rights I, American Society of International Law (ASIL) Roundtable, Washington, D.C., September, 2014

Moderator, Surveillance and Extraterritorial Application of Human Rights Treaties, International Law Weekend, New York, NY, October, 2014

Convener, AALS Section on National Security Law Breakfast (with Harold Koh (Yale), Steve Vladeck (AU) & Marty Lederman (Georgetown)), Washington, D.C., January, 2015

Moderator, AALS National Security Law Section Program, Surveillance After Snowden, Washington, D.C., January 2015

President Obama's Deferred Action Plan and Immigration Law, AALS Workshop on Presidential Power and Congressional Inaction, Washington, D.C., January, 2015

Moderator, Surveillance and Privacy, Washington & Lee Law Review Symposium, Lexington, Va., January, 2015

Deferred Action and Immigration Law, American University Law Review Symposium, Washington, D.C., January, 2015

Workshop, Technology and the Future of the Law of War, Naval War College, Newport, RI, February, 2015

Surveillance and Human Rights, International Law Ass'n American Branch, International Law Weekend, Fordham Law School, Nov. 6, 2015

The Conflict in Syria and International Law, Naval War College, Nov. 16-18, 2015

National Security Law Academic Exchange Visit, Israel, December 13-19, 2015

Surveillance Abroad, Faculty Workshop, Western New England University School of Law, Jan. 19, 2016

Ethics and National Security Law: The Legacy of *Korematsu*, Duke University, Feb. 26, 2016

Surveillance and the Separation of Powers in International Perspective, Indiana University Maurer School of Law, March 4, 2016

Combating Money Laundering in the Legal Profession, George Washington University Law School, March 22, 2016

Debate on U.S. Supreme Court Case, *United States v. Texas*, with professors Stephen Legomsky and Ronald Levin, Federalist Society, Washington University School of Law, March 24, 2016

Reform of the Foreign Intelligence Surveillance Act, University of Maryland Carey School of Law, April 1, 2016

Talks on President Trump's travel ban (except where specified):

Southeastern Association of Law Schools (SEALS), Boca Raton, FL, Aug. 2017

National Conference of State Legislatures, Boston, MA, Aug. 2017

Surveillance and Human Rights, International Law Weekend, Fordham Law, NY, NY, Oct. 2017

Using Artificial Intelligence for Compliance with the Law of War, Lieber Institute on Armed Conflict, West Point, NY, Oct. 2017

Federal Preemption and Immigration Law, Appellate Judges Education Institute (annual program including appellate judges and practitioners, supported by Duke Law and ABA), Long Beach, CA, Nov. 2017

Immigration Policy in the Shadow of the Japanese-American Internment, Case Western Reserve University School of Law, Cleveland, OH, Nov. 2017.

American Association of Law Schools, Minority Scholars Section annual program, San Diego, CA, Jan. 2018

Washington & Lee Immigration Conference, Lexington, VA, Feb. 2018

The Law of War and Urban Warfare, Brigham Young University School of Law, Provo, UT, Feb. 2018

The Travel Ban Case and Administrative Law, remote presentation to Admin. Law class at Washington & Lee Law, March, 2018

Federal Bar Association (with Prof. Jared Goldstein), Providence, RI, March, 2018.

The Travel Ban Case and the Supreme Court, presentation to cadets majoring in law, West Point, NY, Apr. 2018.

Immigration Under Trump, Northeastern People of Color (NEPOC) Legal Scholarship Conference, Albany Law School, May, 2018

Legal Ethics and Government Lawyers, Fordham Law School, October, 2018

Surveillance and Privacy Law Update, International Law Weekend, American Branch of Int'l Law Ass'n, Fordham Law School, October 2018

Immigration and Administrative Law, University of Pennsylvania School of Law, October, 2018

The U.S. Military & Immigration Enforcement, AALS Ann. Meeting, New Orleans, LA, January, 2019

Immigration, Islamophobia & Anti-Semitism, AALS Ann. Meeting (as above)

Immigration & the Trump Administration, Harvard Law School, February, 2019

Separation of Powers and Cybersecurity, U.S. CyberCommand, Andrews Air Force Base, MD, March, 2019

Naval War College, Newport, RI, June 24-26: *Workshop on Law of Armed Conflict*

Southeastern Association of Law Schools (SEALS), Boca Raton, FL, July 30-Aug. 1: *Panel on Immigration Law*

Columbia Law School, Oct. 10, 2019: *Privacy, Surveillance, and Human Rights*

International Law Weekend, Am. Branch, Int'l L. Ass'n, Fordham Law School, Oct. 11, 2019, *Privacy, Surveillance, and Human Rights*

Am. Bar Ass'n, Apr. 6, 2020, Center for Professional Development Webinar, *U.S. Surveillance Law for Privacy Lawyers*

19th Annual Constitution Day, Cato Institute, Sept. 17, 2020, *Executive Power and the Constitution*

North Atlantic Treaty Organization Cooperative Cyber Defence Center of Excellence, Oct. 7, 2020, *Autonomous Cyber Capabilities and International Law*

International Law Weekend, Am. Branch, Int'l L. Ass'n, Oct. 22, 2020, *Privacy, Surveillance, and Human Rights: The Outlook for 2021*

#### **ACADEMIC ACTIVITIES:**

Reviewer, Tenure and Promotion Applications, California Western School of Law, San Diego, California; Touro Law School, Huntington, New York; Catholic University, Washington, D.C.;



City University of New York Law School at Queens College; University of New Mexico School of Law; Syracuse University School of Law; University of Baltimore School of Law; University of Miami Law School; Wake Forest University College of Law.

Coordinator, Conference on Legal Dilemmas in a Dangerous World: Law, Terrorism, and National Security, Roger Williams University School of Law, November 9, 2007.

Coordinator, Cybersecurity in Domestic and International Law, Roger Williams University School of Law, June, 2013.

Coordinator, Immigration Law in the Age of Trump, Roger Williams University School of Law, October, 2017.

Faculty Advisor, Roger Williams Law Review, 2006 - 2012.

Member, Executive Committee, Section on National Security Law, American Association of Law Schools, 2008 – 2010; Chair, 2014.

Member, Executive Committee, Section on Professional Responsibility, American Association of Law Schools, 2009 - 2011; Chair, 2012.

#### **COMMUNITY AND PROFESSIONAL ACTIVITIES:**

Board of Directors, Public Interest Law Foundation at Columbia, 1980-1989.

Board of Directors, Manhattan Legal Services Corporation, November 1983- May 1985.

Board of Directors, MFY Legal Services, Inc., September, 1985 - July 1992 (Member, Executive Committee; and Secretary, 1988).

Member, Forum for Haitian Justice, Rep. Carrie Meek, Congress of the United States, House of Representatives, 1994-98.

Counsel for *amicus curiae* in federal and state cases involving immigration, due process, and national security, 1985- present, in cases including:

##### I. United States Supreme Court:

*Trump v. Hawaii*, 138 S. Ct. 2392 (2018) (upholding President Trump's travel ban)  
*Jesner v. Arab Bank*, 138 S. Ct. 1386 (2018) (holding that foreign corporations were not appropriate defendants under Alien Tort Statute)

*Bank Markazi v. Peterson*, 136 S. Ct. 1310 (2016) (holding that Congress had power to designate certain Iranian assets as available for attachment by victims of Iran-sponsored terrorist attacks);

*Humanitarian Law Project v. Holder*, 130 S. Ct. 2705 (2010) (upholding statute barring provision of material support to foreign terrorist organizations, when statute also permits independent advocacy);

*Padilla v. Kentucky*, 559 U.S. 356 (2010) (holding that failure to advise defendant of immigration consequences of plea constitutes ineffective assistance of counsel under the Sixth Amendment);

## II. Federal Circuit Courts of Appeal:

*Boim v. Holy Land Found. for Relief & Dev.*, 549 F.3d 685, 698 (7<sup>th</sup> Cir. 2008) (holding that Anti-Terrorism Act allowed suit by victims against entity that allegedly provided funding to Hamas and knew of Hamas's history of violence against civilians).

*East Bay Sanctuary Covenant v. Trump*, 950 F.3d 1242 (9<sup>th</sup> Cir. 2020) (affirming preliminary injunction against Department of Homeland Security (DHS) rule that denied asylum to persons who entered United States at other than officially designated points).

*East Bay Sanctuary Covenant v. Barr*, 964 F.3d 832 (9<sup>th</sup> Cir. 2020) (affirming injunction against DHS rule that denied asylum to foreign nationals who failed to apply for asylum in third country, such as Mexico, that they traveled through en route to United States).

## III. United States District Courts

*Nat'l Ass'n of Manufacturers v. DHS*, 2020 U.S. Dist. Lexis 182267, at 21 n. 3 (N.D. Ca. Oct. 1, 2020) (citing brief of *amici curiae* Immigration Law teachers in granting injunction against DHS rule that suspended nonimmigrant work visas).

## IV. State Tribunals

*Matter of Brown v. Blumenfeld*, 930 N.Y.S.2d 610 (App. Div. 2d Dep't 2011) (holding that prosecutor was not entitled to writ of prohibition barring trial court from determining whether prosecutor's pre-arraignment program for interviewing criminal suspects violated ethics rules).

*In re Town of Little Compton*, 37 A.3d 85 (R.I. 2012) (holding that nonlawyer member of union staff did not engage in unauthorized practice of law when he represented union in arbitration).

*FIA Card Servs., N.A. v. Pichette*, 116 A.2d 770 (R.I. 2015) (holding that attorney providing unsigned assistance to pro se litigant does not violate court or ethics rules, as long as that assistance is competent, limits on scope of representation are reasonable, and client provides informed consent).

*In re Opinion No. 56*, New Jersey Bar Committee on the Unauthorized Practice of Law (comment filed Nov. 16, 2020) (providing views of legal ethics, education law, and disability

law scholars and teachers on proposed rule barring special education advocates from speaking in meetings conducted under U.S. Individuals with Disabilities Education Act)

Member, Board of Governors, Society of American Law Teachers, 2000-02.

Member, Rhode Island Supreme Court Committee to Revise the Rules of Professional Conduct, 2002-05.

Consultant, National Disability Rights Network Legal Ethics Panel, 2005- .