

PROF. ERIC M. FREEDMAN

I. PERSONAL DATA

Business Address

Hofstra University School of Law
Hempstead, N.Y. 11550
Telephone (516)-463-5167
Facsimile (516)-463-5129
LAWEMF@Hofstra.edu
http://people.hofstra.edu/faculty/Eric_M_Freedman

Home Office Address

250 West 94th Street
New York, New York 10025
Telephone (212)-665-2713
Facsimile (212)-665-2714

II. EDUCATIONAL DATA

Institutions Attended and Degrees Received

Yale Law School, 1977 - 1979. J.D., 1979. Received Honors grades in three-quarters of courses.

Columbia University Law School, 1976 - 1977.

Victoria University of Wellington (New Zealand), 1976. Wrote thesis on the history of New Zealand pension law and received M.A. in History.

Yale University, 1972 - 1975. B.A., 1975. Double major in History and English.

Princeton University, 1971 - 1972.

The Phillips Exeter Academy, 1968 - 1971. Classical Diploma, 1971. Completed high school in three years.

Academic Honors

Editor, Yale Law Journal.

Columbia Law Review (elected but did not serve, due to transfer).

Stone Scholar, 1977.

Young B. Smith Prize, 1977 (for the best year's work in Torts).

Fulbright Scholarship, 1975 - 1976 (used for travel around the world and study in New Zealand).

John Addison Porter Prize, 1975 (for Senior Essay on the Articles of Confederation).

Andrew D. White Prize, 1973 (for an essay on the history of libel law).

Blackmar Prize, 1971 (for the best year's work in American History).

III. EMPLOYMENT DATA

Post-Graduation Employment

Maurice A. Deane Distinguished Professor of Constitutional Law, 2004 - present.

Professor of Law, Hofstra University, 1997 (early promotion) - 2004.

Associate Professor of Law, Hofstra University (with tenure), 1994 - 1997.

Assistant Professor of Law, Hofstra University, April 1988 - 1994. Visiting Professor of Law, Palacky University, Olomouc, Czechoslovakia, April - May, 1995, April - June, 1992.

Law Clerk to Hon. Irving R. Kaufman, United States Court of Appeals for the Second Circuit, November 1986 - August 1987.

Associate, Litigation Department, Paul, Weiss, Rifkind, Wharton & Garrison, October 1979 - November 1986. On temporary assignment to Paul, Weiss Washington office, August 1983 - August 1984.

Selected Pre-Graduation Employment

Summer Associate, Cahill, Gordon & Reindel, 1978.

Campus Correspondent; Law Clerk; Newsroom Clerk, The New York Times, 1971 - 1975.

IV. ACADEMIC ACTIVITIES

Teaching

My academic interests center in two areas. One is constitutional law and history, with a special emphasis on the history of the Revolutionary period, First Amendment topics, and separation of powers. The second is litigation-centered and includes the fields of civil and criminal procedure and strategy, with a focus on the death penalty and habeas corpus.

Thus, I ordinarily teach such courses as: Constitutional Law, The Constitution and Social Reform, Mass Media and the First Amendment, The Death Penalty in Contemporary America, Critical Events in Anglo-American Legal History, Civil Procedure, Pre-trial Litigation, and Trial Techniques.

Other

I am 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).

University Honors and Awards

Outstanding Faculty Award, Law School Alumni Association, 2007.

Professor of the Year, Student Body Association, 2006.

Public Interest Achievement Award, Hofstra Public Justice Foundation, 2005, 2002.

Professor of the Year, Hofstra Law Review, 2001, 2003.

Stessin Prize for Outstanding Scholarship, 1993-94. Awarded in University-wide competition for article *Why Constitutional Lawyers and Historians Should Take a Fresh Look at the Emergence of the Constitution from the Confederation Period: The Case of the Drafting of the Articles of Confederation*.

Distinguished Faculty Lecturer, 1992. Chosen in University-wide competition to deliver lecture based on article *The Law as King and the King as Law: Is a President Immune from Criminal Prosecution Before Impeachment?*

Principal Publications

A. Scholarly

Are Journalists Privileged?, __ Cardozo L.R. __ (symposium issue, forthcoming 2008).
Who's Afraid of the Criminal Law Paradigm in the "War on Terror"? __ CUNY L.R. __ (forthcoming 2008).

"The Effects of AEDPA on Justice," in CAPITAL PUNISHMENT: THE NEXT GENERATION OF EMPIRICAL RESEARCH (North Carolina Academic Press, forthcoming 2008) (with David R. Dow).

"Leo M. Frank," in YALE BIOGRAPHICAL DICTIONARY OF AMERICAN LAW (Yale University Press, forthcoming 2007).

"Articles of Confederation," in OXFORD ENCYCLOPEDIA OF LEGAL HISTORY (Oxford University Press, forthcoming 2007).

Fewer Risks, More Benefits: What Governments Gain by Acknowledging the Right to Competent Counsel on State Post-Conviction Review in Capital Cases, 4 Ohio St. J. Cr. L. 183 (2006).

Giarratano is a Scarecrow: The Right to Counsel in State Capital Post-conviction Proceedings, 91 Cornell L. R. 1079 (2006).

Mend It or End It?: The Revised ABA Capital Defense Representation Guidelines as an Opportunity to Reconsider the Death Penalty, 2 Ohio St. J. Cr. L. 663 (2005).

A Rational Constitutional Faith (remarks on installation as Distinguished Professor), 33 Hof. L.R. 417 (2004).

The Revised ABA Guidelines and The Duties of Lawyers and Judges in Capital Post-conviction Proceedings, 5 J. App. Prac. & Proc. 325 (2003).

Add Resources and Apply Them Systemically: Governments' Responsibilities Under the Revised ABA Capital Defense Representation Guidelines, 31 Hof. L.R. 1097 (2003).

"Federal Habeas Corpus in Capital Cases," in AMERICA'S EXPERIMENT WITH CAPITAL PUNISHMENT: REFLECTIONS ON THE PAST, PRESENT AND FUTURE OF THE ULTIMATE PENAL SANCTION (North Carolina Academic Press, 2d ed. 2003 & 1st ed. 1998) (James Acker et al., eds.).

"Habeas Corpus," in DICTIONARY OF AMERICAN HISTORY (Charles Scribner's Sons, 2003).

Digitized Pornography Meets the First Amendment, 23 Cardozo L.R. 2011 (2002).

HABEAS CORPUS: RETHINKING THE GREAT WRIT OF LIBERTY (New York University Press, 2002; published in paperback 2003).

Earl Washington's Ordeal, 29 Hof. L.R. 1089 (2001).

Just Because John Marshall Said it, Doesn't Make it So: Ex Parte Bollman and the Illusory Prohibition on the Federal Writ of Habeas Corpus for State Prisoners in the Judiciary Act of 1789, 51 Alabama L.R. 531 (2000).

Leo Frank Lives: Untangling the Historical Roots of Meaningful Federal Habeas Corpus Review of State Convictions, 51 Alabama L.R. 1467 (2000).

Brown v. Allen: The Habeas Corpus Revolution That Wasn't, 51 Alabama L.R. 1541 (2000).
 Book Review of Christopher N. May's PRESIDENTIAL DEFIANCE OF "UNCONSTITUTIONAL" LAWS, 44 Am. J. Legal Hist. 226 (2000).

On Protecting Accountability, 27 Hof. L.R. 677 (1999), an updated version of *The Law as*

King and the King as Law: Is a President Immune from Criminal Prosecution Before Impeachment?, 20 Hastings Const. L.Q. 7 (1992) .

Remarks at Symposium on the Future of Legal Services, 25 Fordham Urb. L.J. 345 (1998).

“Open Legal Questions Remaining After Iran-Contra,” in *PRESIDENT REAGAN AND THE WORLD* (Greenwood Press, 1997) (Eric J. Schmertz et al., eds.).

Book Review of David Thomas Konig’s *DEVISING LIBERTY*, 16 Am. J. Legal Hist. 130 (1997).

A Lot More Comes into Focus When You Remove the Lens Cap: Why Proliferating New Technologies Make it Particularly Urgent for the Supreme Court to Abandon its Inside-Out Approach to Freedom of Speech, and Bring Obscenity, Fighting Words, and Group Libel Within the First Amendment, 81 Iowa L.R. 883 (1996), partially reprinted as “The Old Problem of New Communications Technologies: Can We do Better This Time?”, in *LAW AND THE ARTS* (Greenwood Press, 1999) (Susan Tiefenbrun, ed.) and as “History and Decency: Overcoming the Threat of an Inside-Out Approach,” in *REAL LAW@VIRTUAL SPACE: COMMUNICATION REGULATION IN CYBERSPACE* (Hampton Press, 1998; revised for 2d ed. 2005) (Susan J. Drucker and Gary Gumpert, eds.).

The Suspension Clause in the Ratification Debates, 44 Buff. L.R. 451 (1996).

GROUP DEFAMATION AND FREEDOM OF SPEECH: THE RELATIONSHIP BETWEEN LANGUAGE AND VIOLENCE (Greenwood Press, 1995) (edited with Monroe H. Freedman).

Why Constitutional Lawyers and Historians Should Take a Fresh Look at the Emergence of the Constitution from the Confederation Period: The Case of the Drafting of the Articles of Confederation, 60 Tenn. L.R. 783 (1993).

Challenging Law Students Through the Pretrial Litigation Course: Integrating Learning by Taking a Simulation Approach, and Letting the Campus Computer Network Help (National Institute for Trial Advocacy, 1992) (with Andrew Schepard).

Innocence, Federalism, and the Capital Jury, 18 N.Y.U. Rev. Law & Soc. Change 315 (1990-91).

Freedom of Information and the First Amendment in a Bureaucratic Age, 49 Brooklyn L.R. 829 (1983).

American Libel Law 1825 - 1896: A Qualified Privilege for Public Affairs?, 30 Chitty's L.J. 113 (1982).

Libel Law and the Preservation of the Republic 1787 - 1825, 30 Chitty's L.J. 176 (1982).

Book Review of John Hart Ely's *DEMOCRACY AND DISTRUST*, 48 Brooklyn L.R. 391 (1982).

Note, *The United States and the Articles of Confederation: Drifting Toward Anarchy or Inching Toward Commonwealth?*, 88 Yale L.J. 142 (1978).

Complementarity versus Similarity of Traits Operating in the Choice of Marriage and Dating Partners, 105 J. Social. Psyc. 147 (1978) (with Amnon Till).

B. General

Hearing the Knock on the Door: Hudson and the Fourth Amendment, Jurist (www.jurist.law.pitt.edu), July 10, 2006.

Senate Must Shed Light on Detainees’ Rights Bill, Newsday, November 18, 2005.

Justice Imperiled: The Anti-Nazi Lawyer Max Hirschberg in Weimar Germany (Book Review), The Champion, November 2005.

No New York Execution is in Sight, Newsday, December 30, 2003.

The Constitutional Archipelago, Hofstra Chronicle, November 20, 2003.

Peace Pact: The Lost World of the American Founding (Book Review), N.Y. L.J., June 20, 2003.

Hamdi and the Case of the Five Knights, Legal Times, February 3, 2003.

A Weakening Judiciary, Natl. L.J., November 11, 2002.

The Bush Military Tribunals: Where Have We Been? Where Are We Going?, Criminal Justice, Summer 2002.

Pixelized Pixies: Chasing Virtual Smut, Natl. L.J., October 8, 2001, a revision of *Pondering Pixelized Pixies*, Communications of the Association for Computing Machinery, August 2001.

Black-Jewish Relations on Trial (Book Review), N.Y. L.J., July 10, 2001.

A Tough Call Made Openly and Honestly, Newsday, December 10, 2000.

Legal Argument Alone Won't Suffice, Newsday, November 21, 2000.

Wait a Few Months to Judge Senate, Newsday, January 29, 1999.

The House Botched Impeachment Hearings, Newsday, November 24, 1998.

House Should Consider Censure Option, Newsday, September 14, 1998.

Clinton and the Irresistible Urge of History, Legal Times, August 3, 1998.

Achieving Political Adulthood, Nexus, Spring, 1997.

The Case Against the Death Penalty, USA Today Magazine, March, 1997, reprinted in *TAKING SIDES* (McGraw-Hill 2001) (George McKenna and Stanley Feingold, eds.).

To Catch a King, Legal Times, March 10, 1997.

The First Amendment Also Applies to Lawyers, Natl. L.J., September 11, 1995.

Tinkering With the Machinery in Capital Cases, Natl. L.J., August 23, 1993.

Vertical and Horizontal Separation of Powers in the Constitution of the United States of America, *Europske a Mezinarodni Pravo* ("European and International Law"), Winter, 1992.

Can Justice be Served by Appeals of the Dead?, Natl. L.J., October 19, 1992.

Habeas Corpus Cases Re-Wrote the Doctrine, Natl. L.J., August 19, 1991.

Presidential Paradox, Natl. L.J., August 12, 1991.

Controlling the Capital Jury: How Much Rationality is Too Much?, ABA Preview, December, 1989.

V. OTHER PROFESSIONAL ACTIVITIES

Honors and Awards

Dybwad Humanitarian Award of American Association on Mental Retardation, 2004. For work in exonerating Virginia death row inmate Earl Washington.

Public Interest Litigations

Representative public interest litigations for which I have had professional responsibility include habeas corpus actions arising out of the detentions of alleged enemy combatants in Guantanamo Bay; a challenge to the constitutionality of the prisoner exchange treaty between the United States and Mexico; collateral attacks on death penalties imposed in Texas, Florida, Louisiana, Connecticut, and Virginia, two of which resulted in gubernatorial clemencies and one of which was reviewed on the merits by the United States Supreme Court; the defense of two multimillion dollar libel actions; the representation of a literary agent claiming a First Amendment privilege against disclosure of his client's projects; a number of lawsuits under the Freedom of Information Act; claims on behalf of prisoners seeking damages for illegal arrests, searches, convictions and sentences; and a suit to nullify discriminatory zoning conditions imposed on a group home.

Professional Outreach

I am extensively involved in providing counsel to others in my fields of expertise. In the death penalty and habeas corpus areas, I actively advise attorneys, contribute to amicus briefs, provide expert testimony, organize and appear on educational programs for lawyers and judges, and have testified before various legislative bodies. I regularly teach litigation-oriented continuing legal education courses for such organizations as the National Institute for Trial Advocacy and the Practising Law Institute.

I have also submitted invited written and oral testimony to Congress on: federal capital punishment legislation, whether a sitting President may be indicted, and a proposed bill for the relief of Terri Schiavo. Most recently I presented the ABA's testimony respecting amendments to the federal habeas corpus statute.

Commercial Litigations

My private sector experience includes representations and expert testimony before state and federal trial and appellate courts and administrative agencies in the United States and abroad in connection with a variety of civil and criminal matters ranging from complex antitrust, bankruptcy, commodities, real estate, entertainment, and international controversies to straightforward matrimonial and contract ones.

Professional Affiliations

Member, Advisory Board, Capital Punishment Research Initiative, University at Albany, 2007-present.

Member, Steering Committee, ABA Death Penalty Representation Project, 2004 - present.

Counsel, National Coalition Against Censorship, 2004 - present. Member, Board of Directors, 2002 - present.

Elected Member, American Law Institute, 2000 - present.

Fellow, American Bar Foundation, 1998 - present.

Member, Executive Committee, Association of the Bar of the City of New York, 2001 - 2005.

Member, Communications Law Committee, Association of the Bar of the City of New York, 1998 - 2001, 1994 - 1995, 1982 - 1985.

Chair, Civil Rights Committee, Association of the Bar of the City of New York, 1995 - 1998. Member, 1985 - 1988, 1989 - 1992. Wrote: *Military Restrictions on Press Coverage: The Unacceptability of the Pentagon's Policies During the Persian Gulf Conflict*, 46 Rec. Assoc. Bar 843 (1991), reprinted in 23 U. Toledo L.R. 421 (1992); *Legislative Modification of Habeas Corpus in Capital Cases*, 44 Rec. Assoc. Bar 848 (1989); *Free Public Debate and the Espionage Acts*, 42 Rec. Assoc. Bar 215 (1987).

Member, Committee on Legal History, Association of the Bar of the City of New York, 1996 - 1998.

Member, Committee on Capital Punishment, Association of the Bar of the City of New York, 1994 - 2001.

Member, Committee on Lectures and Continuing Education, Association of the Bar of the City of New York, 1992 - 1994.

Chairperson, Communications Media Committee, American Civil Liberties Union, 1990 - 1992. Member, 1981 - 1989. Secretary, 1976 - 1977.

Member, Board of Directors, Initiative for Public Interest Law at Yale, 1985 - 1989.

August, 2007