

# PROFESSOR ERIC M. FREEDMAN

Siggi B. Wilzig Distinguished Professor of Constitutional Rights  
Hofstra University School of Law  
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## I. PERSONAL DATA

### Business Address

Hofstra University School of Law  
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## 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. M.A. in History awarded 1977.

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).

### III. EMPLOYMENT DATA

#### Post-Graduation Employment

Siggi B. Wilzig Distinguished Professor of Constitutional Rights, Hofstra University, 2014 - present.

Maurice A. Deane Distinguished Professor of Constitutional Law, Hofstra University, 2004 - 2014.

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.

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, New York City and Washington, D.C., October 1979 - November 1986.

#### 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 and Research

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, including remedies for Presidential misconduct. The second is litigation-centered and includes the fields of civil and criminal procedure and strategy, with a focus on the death penalty, habeas corpus, and issues arising from the struggle against terrorism.

#### Other

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).

Faculty advisor to the Hofstra Law Review and the law school's joint J.D./M.A. program in forensic linguistics. <https://tinyurl.com/y7pxaynv>

#### University Honors and Awards

John DeWitt Gregory Research Scholar, 2019. Awarded competitive grant to pursue research into history of habeas corpus.

Professor of the Year, Hofstra Law Review, 2019, 2010, 2003, 2001.

Distinguished Faculty Lecturer, 2017. Chosen in University-wide competition to deliver lecture based on article *No Execution if Four Justices Object*. <https://tinyurl.com/yarj5agg>

Public Interest Achievement Award, Hofstra Public Justice Foundation, 2010, 2005, 2002.

Outstanding Faculty Award, Law School Alumni Association, 2007.

Professor of the Year, Student Body Association, 2006.

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

#### 1. Books

MAKING HABEAS WORK: A LEGAL HISTORY (New York University Press 2018).

<https://nyupress.org/books/9781479870974/>

HABEAS CORPUS: RETHINKING THE GREAT WRIT OF LIBERTY (New York University Press 2001; published in paperback 2003). <https://nyupress.org/9780814727188/habeas-corpus/>

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

#### 2. Articles

Montgomery and “Substantive” Rights Enforceable Retroactively in State Post-Conviction Proceedings: A Brief Reply to Professor Vázquez, *Ohio St. J. Cr. L.* 689 (2021).

*The Substance of Montgomery Retroactivity: The Definition of States’ Supremacy Clause Obligation to Enforce Newly-Recognized Federal Rights in Their Post-Conviction Proceedings and Why it Matters*, 18 *Ohio St. J. Cr. L.* 633 (2021).

*Habeas Corpus in Three Dimensions - Dimension Three: Habeas Corpus as an Instrument of Checks and Balances*, 8 *Northeastern L.J.* 251 (2016).

*Habeas Corpus in Three Dimensions - Dimension Two: Habeas Corpus as a Legal Remedy*, 8 *Northeastern L.J.* 1 (2016).

*Idea: No Execution if Four Justices Object*, 43 *Hof. L.R.* 639 (2015).

“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* (Carolina Academic Press, 3d ed. 2014 & 2d ed. 2003 & 1<sup>st</sup> ed. 1998) (James Acker et al., eds.).

“New Frontiers in American Capital Punishment Litigation,” in *HUMAN RIGHTS AND CIVIL RIGHTS IN THE 21<sup>ST</sup> CENTURY* (Springer Verlag, Amsterdam, 2014) (Yves Haeck et al., eds.).

*Enforcing the ABA Guidelines in Capital State Post-Conviction Proceedings After Martinez and Pinholster*, 41 *Hof. L.R.* 591 (2013).

Book Review of Brian McGinty's *THE BODY OF JOHN MERRYMAN* and Jonathan W. White's *ABRAHAM LINCOLN AND TREASON IN THE CIVIL WAR*, 99 J. Am. Hist. 929 (2012).

Book Review of William J. Stuntz's *THE COLLAPSE OF AMERICAN CRIMINAL JUSTICE*, 43 J. Interdisc. Hist. 333 (2012).

*State Post-Conviction Remedies in the Next Fifteen Years: How Synergy Between the State and Federal Governments Can Improve the Criminal Justice System Nationally*, 24 Fed. Sent. Rep. 298 (2012).

Book Review of Justin J. Wert's *HABEAS CORPUS IN AMERICA: THE POLITICS OF INDIVIDUAL RIGHTS*, 43 J. Interdisc. Hist. 122 (2012).

*Habeas Corpus in Three Dimensions - Dimension One: Habeas Corpus as a Common Law Writ*, 46 Harv. C.R.-C.L. L. Rev. 591 (2011).

*Liberating Habeas Corpus*, 39 Revs. Am. Hist. 395 (2011) (book review of Paul Halliday's *HABEAS CORPUS FROM ENGLAND TO EMPIRE*).

"Articles of Confederation," in *OXFORD INTERNATIONAL ENCYCLOPEDIA OF LEGAL HISTORY* (Oxford University Press 2009).

"Leo M. Frank," in *YALE BIOGRAPHICAL DICTIONARY OF AMERICAN LAW* (Yale University Press 2009).

"The Effects of AEDPA on Justice," in *THE FUTURE OF AMERICA'S DEATH PENALTY: AN AGENDA FOR THE NEXT GENERATION OF CAPITAL PUNISHMENT RESEARCH* (Carolina Academic Press 2009) (with David R. Dow).

*Reconstructing Journalists' Privilege*, 29 Cardozo L.R. 1381 (2008), reprinted in *PROFESSIONAL PRIVILEGES AND JUDICIAL APPROACH* (Amicus Books 2008).

*Re-stating the Standard of Practice for Death Penalty Counsel: The Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases*, 36 Hof. L.R. 663 (2008).

*Who's Afraid of the Criminal Law Paradigm in the "War on Terror"?*, 10 N.Y.C. L.R. 323 (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 Deane 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).

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

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

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

*Brown v. Allen: The Habeas Corpus Revolution That Wasn't*, 51 Alabama L.R. 1541 (2000).

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

*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).

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).

*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. Teaching Materials

PUTTING LEGAL DOCTRINE INTO PRACTICAL CONTEXT: A CASE FILE FOR CIVIL PROCEDURE COURSES, SACHS V. JEFFERSON INSTITUTE OF TECHNOLOGY (Wolters, Kluwer, online at <https://tinyurl.com/yyoajcgu>) (2016) (with Jennifer A. Gundlach, Andrew Schepard & Kevin McElroy).

## C. General

- Hari-Kari on First Street*, Justia Verdict Blog, June 28, 2022, <https://tinyurl.com/2p8bm2cw>.
- Book Review of Mark Bookman's A DESCENDING SPIRAL: EXPOSING THE DEATH PENALTY Rutgers Criminal Law and Criminal Justice Books, August 2021, <https://tinyurl.com/53z5ptfk>.
- Implications of Trump Impeachment*, Scholars Roundtable, Pacifica Radio, February 11, 2021, <https://tinyurl.com/5af5npk8>.
- The Past, Present and Future of the British Constitution in Protecting Prisoners' Rights on Both Sides of the Atlantic*, Oxford University Webinar Presentation, May 5, 2020, <https://tinyurl.com/ycnakvc>.
- Naming Robert Mueller as Special Prosecutor isn't Enough*, L.A. Times, May 17, 2017, <http://tinyurl.com/m4xgc27> (with Erwin Chemerinsky).
- Court Errs in Denying Habeas Corpus to Immigrants*, Phila. Inquirer, Sept. 19, 2016, <https://tinyurl.com/hojyv4n>.
- Criminal Law Enforcement versus the Free Press*, Panel Presentation at Federalist Society National Lawyers Convention, November 15, 2013, <http://www.youtube.com/watch?v=1EO4SpElvP4>  
Edited transcript at 39 U. Dayton L. R. 379 (2015).
- Solution to Rampant Gerrymandering Resides Within the States*, Natl. L.J., December 2, 2013.
- Habeas Corpus Past and Present*, The Federal Lawyer, May 2012.
- From Brown to Brown*, Lecture at Hofstra University Conference on Racial Issues in Education, October 27, 2011, C-Span video, <https://tinyurl.com/336m45y4>.
- Guantanamo Bay and History: Will the Future Belong to Dick Cheney?*, Huffington Post, March 23, 2010, <https://tinyurl.com/ymyjekt6>.
- Lessons from Past Guide Future*, Newsday, July 18, 2008.
- The Importance of Boumediene*, Opinio Juris (www.opinionjuris.org), June 13, 2008.
- Hearing the Knock on the Door: Hudson and the Fourth Amendment*, Jurist, July 10, 2006, <http://jurist.law.pitt.edu/forumy/2006/07/hearing-knock-on-door-hudson-and.php>.
- 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.) and CRIMES AND CRIMINALS: OPPOSING VIEWPOINTS (Greenhaven Press 2000) (Tamara L. Roleff, ed.).  
*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 at trial and appellate levels in state and federal courts include habeas corpus actions arising out of the detentions of alleged enemy combatants in Iraq and at 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 challenge to zoning discrimination against a youth group home.

### Professional Outreach

Both domestically and internationally I am extensively involved in providing counsel to others in my fields of expertise, particularly death penalty, habeas corpus and the First Amendment. I regularly advise attorneys; author and contribute to amicus briefs and provide expert testimony; organize and appear on educational programs for lawyers and judges; and make submissions to legislative, judicial, and disciplinary bodies.

I have submitted invited written and oral testimony to Congress on federal capital punishment

legislation; whether a sitting President may be indicted <https://tinyurl.com/sacy6se>; a proposed bill for the relief of Terri Schiavo; and the ABA's testimony respecting amendments to the federal habeas corpus statute.

### Selected Professional Affiliations

Special Advisor, ABA Death Penalty Representation Project, 2020 - present. Member, Steering Committee, 2017 - 2020; 2004 - 2010.

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

Elected Member, American Law Institute, 2000 - present.

Life Fellow, American Bar Foundation, 2009 - present. Fellow, 1998 - 2009.

Member, Advisory Boards, National Death Penalty Archive, University at Albany, 2014 - present; Capital Punishment Research Initiative, 2007 - present.

Member, Task Force on Plain Language Jury Instructions in Capital Cases, ABA Criminal Justice Section, 2010 - 2012.

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.

### Commercial Litigations

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

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