

Floersheimer Center for Constitutional Democracy

at Cardozo School of Law

PUBLICATIONS

Much of the Center's work involves hosting conferences, which in turn produce articles for the *Cardozo Law Review* or other journals. In addition, the Center produces a series of Occasional Papers and other free-standing reports and monographs.

Occasional Papers

(1) Anthony Lewis, *The Press and the "War on Terror": A Failure of Courage?*

Originally presented at the Floersheimer Center's 2004 Conference, *Weapons of Mass Destruction, National Security, and the Free Press*, this paper argues that the news media have failed to cover adequately the Bush Administration's failure to safeguard civil liberties in pursuing its war on terrorism. He argues that the press has a critical role to play in checking presidential excesses during wartime because the courts and Congress tend to defer to the President.

(2) David R. Johnson, Susan P. Crawford, & John G. Palfrey, Jr., [The Accountable Net](#), bound with *The Accountable Net Roundtable*

This paper argues that we should regulate the internet collectively through self-regulation, not through governmental mandates. The authors contend that new technologies will facilitate a more decentralized governance structure in which citizens, not the government, monitor and police each other to limit socially undesirable forms of internet activity.

(3) Gail H. Miller, [Defining Torture](#)

This monograph is a sweeping survey of the legal definition of torture under domestic and international law. Although virtually all nations condemn torture, ambiguity about what conduct amounts to torture creates space that governments can exploit to engage in harsh, cruel methods of interrogation. For this reason, the paper argues, it is important to develop a clear and uniform definition of torture. An addendum to the paper is available [here](#), and the appendix is available [here](#).

Conference Papers

(1) Papers from the symposium ***Innovative Approaches to Immigrant Representation: Exploring New Partnerships***, held on May 3, 2011, appeared in Volume 33, number 2 of the *Cardozo Law Review* (December 2011). A pdf version of each article is available by clicking on its title below:

Robert A. Katzmann, [Foreword](#)

John Paul Stevens, [Revised Remarks to the Symposium on Innovative Approaches to Immigrant Representation at the Benjamin N. Cardozo School of Law](#)

Lewis J. Liman, [Justice Stevens's Legacy and Immigrant Representation](#)

Denny Chin, [Representation of the Immigrant Poor: Upstate New York](#)

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Lori Adams & Alida Lasker, [*The Asylum Representation Project and the Leon Levy Fellowship at Human Rights First: An Innovative Partnership to Increase Pro Bono Representation for Indigent Asylum-Seekers*](#)

Careen Shannon, [*To License or Not to License? A Look at Differing Approaches to Policing the Activities of Nonlawyer Immigration Service Providers*](#)

Anne R. Traum, [*Constitutional Immigration Law on Its Own Path*](#)

Lindsay C. Nash, [*Considering the Scope of Advisal Duties Under Padilla*](#)

Alice Clapman, [*Petty Offenses, Drastic Consequences: Toward a Sixth Amendment Right to Counsel for Noncitizen Defendants Facing Deportation*](#)

Geoffrey Heeren, [*Illegal Aid: Legal Assistance to Immigrants in the United States*](#)

Special Content from the New York Immigrant Representation Study Group:

[*Accessing Justice: The Availability and Adequacy of Counsel in Immigration Proceedings*](#)

[*Accessing Justice II: A Model for Providing Counsel to New York Immigrants in Removal Proceedings*](#)

(2) Papers from the conference **Twenty Years After Employment Division v. Smith: Assessing the Twentieth Century's Landmark Case on the Free Exercise of Religion and How It Changed History**, held on October 6-8, 2010, appeared in Volume 32, number 5 of the *Cardozo Law Review* (May 2011). A pdf version of each article is available by clicking on its title below:

David B. Frohnmaier, [*Employment Division v. Smith: "The Sky that Didn't Fall"*](#)

Marci A. Hamilton, [*Employment Division v. Smith at the Supreme Court: The Justices, the Litigants, and the Doctrinal Discourse*](#)

Alan Brownstein, [*The Religion Clauses as Mutually Reinforcing Mandates: Why the Arguments for Rigorously Enforcing the Free Exercise Clause and Establishment Clause Are Stronger when Both Clauses Are Taken Seriously*](#)

Angela C. Carmella, [*Exemptions and the Establishment Clause*](#)

Daniel O. Conkle, [*Religious Truth, Pluralism, and Secularization: The Shaking Foundations of American Religious Liberty*](#)

James G. Dwyer, [*The Good, the Bad, and the Ugly of Employment Division v. Smith for Family Law*](#)

Stephen M. Feldman, [*Conservative Eras in Supreme Court Decision-Making: Employment Division v. Smith, Judicial Restraint, and Neoconservatism*](#)

Richard W. Garnett, [*The Political \(and Other\) Safeguards of Religious Freedom*](#)

Leslie C. Griffin, [*Smith and Women's Equality*](#)

B. Jessie Hill, [*Whose Body? Whose Soul? Medical Decision-Making on Behalf of Children and the Free Exercise Clause Before and After Employment Division v. Smith*](#)

Steven D. Jamar, [*Religious Use of Copyrighted Works After Smith, RFRA, and Eldred*](#)

Ira C. Lupu & Robert W. Tuttle, [*The Forms and Limits of Religious Accommodation: The Case of RLUIPA*](#)

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William P. Marshall, [Smith, Christian Legal Society, and Speech-Based Claims for Religious Exemptions from Neutral Laws of General Applicability](#)

Linda C. McClain, [Religious and Political Virtues and Values in Congruence or Conflict?: On Smith, Bob Jones University, and Christian Legal Society](#)

Richard Schragger, [The Politics of Free Exercise After Employment Division v. Smith: Same-Sex Marriage, the "War on Terror," and Religious Freedom](#)

Steven D. Smith, [Religious Freedom and Its Enemies, or Why the Smith Decision May Be a Greater Loss Now than It Was Then](#)

Nelson Tebbe, [Smith in Theory and Practice](#)

Laura S. Underkuffler, [Odious Discrimination and the Religious Exemption Question](#)

(3) Papers from the conference **The Domestic Commander in Chief**, held on April 16, 2007, appeared in Volume 29, number 3 of the *Cardozo Law Review* (January 2008). A pdf version of each article is available by clicking on its title below:

Michael Les Benedict, ["The Perpetuation of Our Political Institutions": Lincoln, the Powers of the Commander in Chief, and the Constitution](#)

Louis Fisher, [Domestic Commander in Chief: Early Checks by Other Branches](#)

David L. Franklin, [Enemy Combatants and the Jurisdictional Fact Doctrine](#)

Elizabeth L. Hillman, [Franklin D. Roosevelt, Commander in Chief](#)

Heidi Kitrosser, [Congressional Oversight of National Security Activities: Improving Information Funnels](#)

Stephen I. Vladeck, [The Calling Forth Clause and the Domestic Commander in Chief](#)

(4) Papers from the conference **Preserving Civil Liberties in an Age of Global Terror: International Perspectives**, held on September 20-21, 2006, appeared in Volume 29, number 1 of the *Cardozo Law Review* (October 2007). A pdf version of each article is available by clicking on its title below:

Daphne Barak-Erez, [Terrorism and Profiling: Shifting the Focus from Criteria to Effects](#)

Justice Arthur Chaskalson, [Preserving Civil Liberties in an Age of Global Terror: International Perspectives](#)

Olivier Dutheillet de Lamothe, [Information Collection Based on New Technologies: Comments on Protecting Liberty in an Age of Terror](#)

A.N. Medushevsky, [Terrorism and the State: Limits of Self-Protection \(The Parameters of Internet \(Runet\) Regulation\)](#)

Igor Primoratz, [A Philosopher Looks at Contemporary Terrorism](#)

Kent Roach, [Review and Oversight of National Security Activities and Some Reflections on Canada's Arar Inquiry](#)

Bernhard Schlink, [The Problem with "Torture Lite"](#)

Philip Heymann, [Response to Reviewers](#)

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(5) Papers from the conference ***Jurocracy and Distrust: Reconsidering the Federal Judicial Appointments Process***, held on March 22, 2004, appeared in volume 26, number 2 of the *Cardozo Law Review* and were also collected in a single volume published by the Floersheimer Center. A pdf version of each article is available by clicking on its title below:

Catherine Fisk and Erwin Chemerinsky, [*In Defense of Filibustering Judicial Nominations*](#)

Michael J. Gerhardt, [*Merit vs. Ideology*](#)

Edward A. Hartnett, [*Recess Appointments of Article III Judges: Three Constitutional Questions*](#)

Michael Herz, [*Abandoning Recess Appointments?: A Comment on Hartnett \(and Others\)*](#)

Dawn E. Johnsen, [*Should Ideology Matter in Selecting Federal Judges?: Ground Rules for the Debate*](#)

David S. Law, [*Appointing Federal Judges: The President, the Senate, and the Prisoner's Dilemma*](#)

William P. Marshall, [*Constitutional Law as Political Spoils*](#)

John O. McGinnis and Michael B. Rappaport, [*Supermajority Rules and the Judicial Confirmation Process*](#)

Judith Resnik, [*Judicial Selection and Democratic Theory: Demand, Supply, and Life Tenure*](#)

Lawrence B. Solum, [*Judicial Selection: Ideology Versus Character*](#)

David A. Yalof, [*Dress Rehearsal Politics and the Case of Earmarked Judicial Nominees*](#)

(6) The September 28, 2004 Conference Bellhead/Nethead: The FCC Takes on the Internet led to four reports summarizing each of the conference panels. The reports were prepared by Marvin Ammori, Daniel Benoliel, Jeanne C. Fromer, and Eddan Katz, all of whom are fellows at the [*Yale Information Society Project*](#).

(7) Papers from the ***Emergency Powers and Constitutions*** conference, which was held on May 4-5, 2003, appeared in [*Volume 2, number 2*](#) of I•CON, the International Journal of Constitutional Law (April 2004).