Letter sent to the United States Congress regarding recent human rights issues in Iraq

June 16, 2004

To: Members of the U.S. House of Representatives and the U.S. Senate.

As members of university faculties in law, international relations, diplomacy, and public policy, we write to register our objection to the systematic violation of human rights practiced or permitted by authorities of the United States within occupied Iraq during recent months: we request Congressional action to ensure accountability for such violations and to safeguard against such egregious abuses in the future. Current circumstances require that all transcend partisan politics or considerations. Action by Congress is necessary to promote a rule of law produced and enforced through a democratic process and to protect the physical and psychological integrity of all people consistent with the traditions of our nation.

I. Accountability for human rights violations
Congressional action is necessary to examine and ensure accountability for the organizational and individual failures that allowed persons within the control of U.S. forces to be subjected to acts of torture and to cruel, inhuman and degrading punishment.

There can be no doubt that the acts of abuse in Abu Ghraib prison constitute violations of both the domestic and international legal obligations of the United States and its agents. Executive Branch officials have admitted as much. International humanitarian law provides that those classified as prisoners of war are entitled to special protections against such abuses under the Third Geneva Convention, ratified by the United States in 1955. Inhabitants of occupied territories are protected under the Fourth Geneva Convention, also ratified by the United States in 1955, against physical or moral coercion to obtain information from them. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by the United States in 1994, requires that States party take measures to prevent both torture, and other acts of cruel, inhuman, or degrading treatment. The Constitution of the United States protects prisoners from cruel and unusual punishment.

Accepting the applicability of international and domestic law, military officials have initiated prosecutions of lower level personnel. That response,

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(489)
as of 18 June 2004

Benjamin Aaron, Professor of Law Emeritus, UCLA School of Law
Richard L. Abel, Connell Professor of Law, UCLA School of Law
David Abraham, Professor of Law, University of Miami School of Law
Roger I. Abrams, Richardson Professor of Law, Northeastern University School of Law
Alice G. Abreu, William K. Jacobs Visiting Professor of Law, Harvard Law School (Spring '04), and Professor of Law, Temple University Beasley School of Law
Bruce Ackerman, Sterling Professor of Law and Political Science, Yale Law School
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Lee A. Albert, Professor of Law, University at Buffalo, SUNY, Law School
Barbara B. Aldave, Loran L. Stewart Professor, Department of Law, University of Oregon
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Philip Alston, Professor of Law, and Director, Center for Human Rights and Global Justice, New York University School of Law
Jose E. Alvarez, Director, Center on Global Legal Problems, Columbia Law School
David A. Anderson, Fred and Emily Marshall Wulff Centennial Chair in Law, University of Texas at Austin School of Law
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Claudia Angelos, Professor of Clinical Law, New York University School of Law
Deborah Anker, Lecturer on Law and Director, Harvard Immigration and Refugee Clinical Program, Harvard Law School
George J. Annas, Edward R. Utley Professor and Chair, Department of Health Law, Bioethics & Human Rights, Boston University School of Public Health, and Professor, Boston University School of Law; Boston University School of Medicine
Annette R. Appell, Professor of Law, William S. Boyd School of Law, University of Nevada – Las
while necessary, is clearly insufficient. Congress has an obligation to investigate and assess responsibility at all levels of the Executive Branch from the highest officers on down for the abuses in Abu Ghraib and other Iraqi prisons.

Despite clear and repeated notice [1], abuse of detainees has been both frequent and pervasive during the military occupation of Iraq. The fact that military officials failed after such notice to identify and eradicate the pattern of abuse itself constitutes a grave breach of responsibility.

In addition, a growing body of evidence indicates that the abuses practiced on detainees under American control are the consequence of policies developed at the highest levels in the months and years immediately preceding the scandal. First, there are reports that harsh interrogation tactics, designed for use against only the most serious terrorist suspects and themselves violative of humanitarian law, have been authorized and applied generally against detainees in Iraq. Second, authorization to coerce detainees to speak creates the potential for grave abuse. It is thus evident that very clear lines must be established and vigorously policed. Yet authorities failed to supervise subordinates adequately, or to establish minimal safeguards against abuse. Third, the dilatory response by military and other officials to reports by international agencies, human rights groups, and the media concerning egregious abuse operated as a predictable signal to those on various levels below that their admittedly illegal conduct was condoned, accepted, or encouraged. Fourth, Executive Branch officials have diverged from past practice by asserting presidential power to designate certain prisoners as not entitled to any judicial or other meaningful review of any aspects of the legality of their confinement, including imposition of torture. That approach to detainees created a culture facilitating disregard for the protections required to be accorded prisoners in Iraq.

II. Democratic definition of policies involving coercion

Military and intelligence officials have acknowledged that official U.S. policy now involves use of coercive methods that are morally questionable and that may violate international and domestic law. The question whether various forms of coercion against persons under American control can be justified goes to the heart of our identity as a democratic community.

Given the profound problems it may raise as a moral, legal, and constitutional matter, any decision to adopt a coercive interrogation policy and the definition of any such policy, if adopted, should be made within the strict confines of a democratic process. While the

Vegas
Susan Frelitch Appleton, Lennart Barkeloo & Phoebe Couzins Professor of Law, Washington University School of Law
Jennifer Arlen, Norma Z. Paige Professor of Law, New York University School of Law
Marianne Artusio, Associate Professor of Law and Director of Clinical Education, Touro College, Jacob D. Fuchsberg Law Center
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Steven M. Bernstein, Deputy Director – Asylum Project, International Human Rights Advocacy Project, University of Denver College of Law
Dora Bertram, Director of Public Services and Lecturer in Law, Washington University School of Law, and Director of Public Services and Lecturer in Law, Washington University Law Library
Jacqueline Bhabha, Executive Director, University Committee on Human Rights Studies, Harvard University, and Adjunct Lecturer in Public Policy, John F. Kennedy School of Government, Harvard University
Richard B. Bilder, Foley & Lardner Emeritus

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Executive Branch should retain sufficient authority to conduct military affairs, basic principles and policies regarding human rights must be defined by a representative and accountable body acting in transparent and deliberative fashion. In turn, the courts must retain ultimate responsibility for judicial oversight in order to ensure that the law meets constitutional requirements.

Thus, insofar as Executive Branch officials have authored and implemented a coercive interrogation policy, that policy must be submitted to Congress for examination and debate. Congress should determine afresh its wisdom, its consistency with basic democratic principles of humane treatment, and its conformity with international and domestic law. If any such policy were to be adopted by Congress, the reviewability of such law through the operation of the courts in due course must be assured.

Conclusion

Given the accumulation of reliable evidence demonstrating the practice of torture and degrading treatment of detainees by U.S. forces, and given Executive responsibility for creating the conditions enabling such practice to occur, and with regard for democratic responsibility with respect to these issues at the heart of our understanding of our nation, its culture and values, we ask that Congress take action to:

(1) assess responsibility for the abuses that have taken place, identifying the officials at all levels who must be held accountable for enabling these abuses to occur and for the failure to investigate them, and determining what sanctions, including impeachment and removal from office of any civil officer of the United States responsible, may be appropriate;

(2) decide whether the U.S. should have an official policy of coercion in connection with interrogation, and if so what form it should take as well as what safeguards it should include to protect against abuses in violation of the policy.

Sincerely,

[The undersigned]

[1] As summarized in a recent letter to President Bush:

For the past year and a half, The Wall Street Journal, Washington Post, USA Today, Newsday, New York
and other leading newspapers have repeatedly quoted
unnamed U.S. intelligence officials boasting about the
use of torture and other ill-treatment of prisoners.
Numerous detainees have been killed or attempted
suicide in custody in Afghanistan, Iraq and
Guantanamo Bay prompting unprecedented
expressions of concern by the International Committee
of the Red Cross; suspects have been turned over to
the foreign intelligence services of countries, such as
Syria, with records of brutal torture; the ICRC has also
specifically expressed concern about conditions at Abu
Ghraib prison in Iraq; and now, the US military's own
inquiry has found "systemic and illegal abuse of
detainees" at Abu Ghraib.

Letter of May 7, 2004 to President George W. Bush
from William Schulz, Amnesty International USA, et al.

University of Wisconsin Law School
Dan L. Burk, Oppenheimer, Wolff & Donnelly
Professor, University of Minnesota Law School
Scott Burris, James E. Beasley Professor of Law,
Temple University Beasley School of Law
Burton Caine, Professor of Law, Temple University
Beasley School of Law
Deborah A. Calloway, Professor of Law, Temple University
Beasley School of Law
Richard Cappalli, Klein Professor of Law and
Government, Temple University Beasley School of Law
David D. Caron, C. William Maxeiner Distinguished
Professor of International Law, Boalt Hall –
University of California Berkeley School of Law
Paul D. Carrington, Professor of Law, Duke
University
Peter C. Carstensen, Young-Bascom Professor of
Law, University of Wisconsin Law School
James Cavallaro, Associate Director, Human
Rights Program, Harvard Law School, and Jeremiah
Smith, Jr. Lecturer on Law, Harvard Law School
Rosanna Cavallaro, Professor of Law, Suffolk
University Law School
David L. Chambers, Professor, Emeritus, University
of Michigan Law School
Anupam Chander, Professor of Law, University of
California, Davis
Robert S. Chang, Professor of Law, Loyola Law
School, Los Angeles
Anthony Tirado Chase, Assistant Professor,
Department of Diplomacy and World Affairs,
Occidental College
Oscar G. Chase, Professor of Law, New York
University School of Law
Antonia Chayes, Visiting Professor of International
Politics and Law, Fletcher School of Law and
Diplomacy, Tufts University
Alan K. Chen, Professor of Law, University of
Denver College of Law
Ronald K. Chen, Associate Dean for Academic
Affairs, Rutgers School of Law – Newark
Kenneth D. Chestek, Clinical Associate Professor
of Law, Indiana University School of Law –
Indianapolis
Carol Chetkovich, Associate Professor of Public
Policy, John F. Kennedy School of Government,
Harvard University
Paul G. Chevigny, Joel S. and Anne B. Ehrenkranz
Professor of Law, New York University School of
Law
Gabriel J. Chin, Professor of Law, University of
Arizona James E. Rogers College of Law
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Minnesota Law School
Richard Chused, Professor of Law, Georgetown
University Law Center
Robert C. Clark, Harvard University Distinguished
Service Professor, Harvard Law School

<table>
<thead>
<tr>
<th>Name</th>
<th>Position and Affiliation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nadine Farid</td>
<td>Climenko/Thayer Lecturer on Law, Harvard Law School</td>
</tr>
<tr>
<td>Eric A. Feldman</td>
<td>Assistant Professor, University of Pennsylvania Law School</td>
</tr>
<tr>
<td>Mary Louise Fellows</td>
<td>Professor of Law, University of Minnesota Law School</td>
</tr>
<tr>
<td>Mark Fenster</td>
<td>Associate Professor, Fredric G. Levin College of Law, University of Florida</td>
</tr>
<tr>
<td>Angela J. Ferguson</td>
<td>Adjunct Professor of Law, Washburn Law School</td>
</tr>
<tr>
<td>Thomas G. Field, Jr.</td>
<td>Professor of Law, Franklin Pierce Law Center</td>
</tr>
<tr>
<td>Daniel M. Filler</td>
<td>Associate Professor of Law, University of Alabama</td>
</tr>
<tr>
<td>Keith Findley</td>
<td>Clinical Associate Professor of Law, University of Wisconsin Law School</td>
</tr>
<tr>
<td>Claire Finkelstein</td>
<td>Professor of Law and Philosophy, University of Pennsylvania Law School</td>
</tr>
<tr>
<td>Ted Finman</td>
<td>Bascom Professor of Law Emeritus, University of Wisconsin-Madison</td>
</tr>
<tr>
<td>Stanley Z. Fisher</td>
<td>Professor of Law, Boston University School of Law</td>
</tr>
<tr>
<td>William W. Fisher</td>
<td>Professor of Law, Harvard Law School</td>
</tr>
<tr>
<td>Catherine Fisk</td>
<td>Professor of Law, University of Southern California Law School</td>
</tr>
<tr>
<td>John Flym</td>
<td>Professor of Law, Northeastern University School of Law</td>
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<tr>
<td>Taylor Flynn</td>
<td>Associate Professor, Northeastern University School of Law</td>
</tr>
<tr>
<td>William E. Forbath</td>
<td>Lloyd M. Bentsen Chair in Law, Professor of History, University of Texas at Austin School of Law</td>
</tr>
<tr>
<td>Denise D. Fort</td>
<td>Professor of Law, University of New Mexico School of Law</td>
</tr>
<tr>
<td>Eleanor M. Fox</td>
<td>Walter J. Derenberg Professor of Trade Regulation, New York University School of Law</td>
</tr>
<tr>
<td>James R. Fox</td>
<td>Director, Law Library and Professor of Law, Dickinson School of Law of the Pennsylvania State University</td>
</tr>
<tr>
<td>Mary Louise Frampton</td>
<td>Director, Center for Social Justice, Boalt Hall – University of California Berkeley School of Law</td>
</tr>
<tr>
<td>Sally Frank</td>
<td>Professor of Law, Drake University</td>
</tr>
<tr>
<td>Eric M. Freedman</td>
<td>Professor of Law, Hofstra University School of Law</td>
</tr>
<tr>
<td>Niels W. Frenzen</td>
<td>Clinical Associate Professor of Law, University of Southern California Law School</td>
</tr>
<tr>
<td>A. Michael Froomkin</td>
<td>Professor of Law, University of Miami School of Law</td>
</tr>
<tr>
<td>Gerald E. Frug</td>
<td>Louis D. Brandeis Professor of Law, Harvard Law School</td>
</tr>
<tr>
<td>Russell C. Gabriel</td>
<td>Director, Legal Aid &amp; Defender Clinic, University of Georgia School of Law</td>
</tr>
<tr>
<td>Martha E. Gaines</td>
<td>Associate Clinical Professor of Law, University of Wisconsin-Madison</td>
</tr>
<tr>
<td>Marc Galanter</td>
<td>John and Rylla Bosshard Professor of Law and South Asian Studies, University of</td>
</tr>
</tbody>
</table>
Wisconsin Law School, and Centennial Professor, Department of Law, London School of Economics and Political Science

Paula Galowitz, Clinical Professor of Law, New York University School of Law

Marshall Ganz, Lecturer in Public Policy, John F. Kennedy School of Government, Harvard University

Heather Gerken, Assistant Professor of Law, Harvard Law School

Regina Germain, Visiting Assistant Professor of Law, University of Denver College of Law

Shubha Ghosh, Professor of Law, University at Buffalo, SUNY, Law School

Hugh Gibbons, Professor of Law, Franklin Pierce Law Center

David G. Gil, Professor of Social Policy, Heller School of Social Policy and Management, Brandeis University

Stephen Gillers, Vice Dean and Professor of Law, New York University School of Law

Maria Eugenia Gimenez, Associate Director, Rusk Center – International, Comparative & Graduate Legal Studies and International Judicial Training Program Co-Director, University of Georgia School of Law

Joseph W. Glannon, Professor of Law, Suffolk University Law School

Theresa Glennon, Professor of Law, Temple University Beasley School of Law

Dale Goble, Margaret Wilson Schimke Distinguished Professor of Law, University of Idaho College of Law

A. Thomas Golden, Professor of Law, Thomas Jefferson School of Law

Phyllis Goldfarb, Professor of Law, Boston College Law School

Alvin Goldman, William T. Lafferty Professor, University of Kentucky College of Law

Anne B. Goldstein, Professor of Law, Western New England College School of Law

Robert Golten, Director, Center for International Human Rights Advocacy, University of Denver College of Law

Ryan Goodman, J. Sinclair Armstrong Assistant Professor of International, Foreign, and Comparative Law, Harvard Law School

Robert W. Gordon, Chancellor Kent Professor of Law and Legal History, Yale Law School

Sarah Barringer Gordon, Professor of Law and History, University of Pennsylvania Law School

Jennifer Gordon, Associate Professor of Law, Fordham University School of Law

Gil Gott, Assistant Professor and Director of Graduate Studies, International Studies Program, DePaul University

Stephen E. Gottlieb, Professor of Law, Albany Law School

Stuart P. Green, L.B. Porterie Professor of Law, Louisiana State University Law Center
<table>
<thead>
<tr>
<th>Name</th>
<th>Affiliation</th>
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<tbody>
<tr>
<td>Thomas A. Green</td>
<td>John Philip Dawson Collegiate Professor of Law and Professor of History, University of Michigan Law School</td>
</tr>
<tr>
<td>Jack Greenberg</td>
<td>Professor of Law, Columbia Law School</td>
</tr>
<tr>
<td>Judith Greenberg</td>
<td>Professor of Law, New England School of Law</td>
</tr>
<tr>
<td>Leigh Hunt Greenhaw</td>
<td>Senior Lecturer-in-law, School of Law, Washington University – St. Louis</td>
</tr>
<tr>
<td>Robin Greenwald</td>
<td>Associate Clinical Professor of Law, Rutgers School of Law – Newark</td>
</tr>
<tr>
<td>Ariela J. Gross</td>
<td>Professor of Law and History, University of Southern California Law School</td>
</tr>
<tr>
<td>Sofia Gruskin</td>
<td>Associate Professor on Health and Human Rights and Director, International Health and Human Rights Program, FXB Center for Health and Human Rights, Harvard School of Public Health</td>
</tr>
<tr>
<td>Lani Guinier</td>
<td>Bennett Boskey Professor of Law, Harvard Law School</td>
</tr>
<tr>
<td>Susan R. Gzesh</td>
<td>Lecturer in Law &amp; Director, Human Rights Program, University of Chicago Law School</td>
</tr>
<tr>
<td>Phoebe A. Haddon</td>
<td>Professor of Law, Temple University Beasley School of Law</td>
</tr>
<tr>
<td>Lee Hall</td>
<td>Adjunct Faculty of Law, Rutgers School of Law – Newark</td>
</tr>
<tr>
<td>Janet Halley</td>
<td>Professor of Law, Harvard Law School</td>
</tr>
<tr>
<td>Daniel Halperin</td>
<td>Stanley S. Surrey Professor of Law, Harvard Law School</td>
</tr>
<tr>
<td>James Hambleton</td>
<td>Professor of Law, Texas Wesleyan Law School</td>
</tr>
<tr>
<td>Kathleen Hamill</td>
<td>Assistant Adjunct Professor, Fletcher School of Law and Diplomacy, Tufts University</td>
</tr>
<tr>
<td>Daniel Hamilton</td>
<td>Assistant Professor, Chicago-Kent College of Law</td>
</tr>
<tr>
<td>Jon Hanson</td>
<td>Professor of Law, Harvard Law School</td>
</tr>
<tr>
<td>Frederick M. Hart</td>
<td>Professor of Law, University of New Mexico School of Law</td>
</tr>
<tr>
<td>Melissa Hart</td>
<td>Associate Professor of Law, University of Colorado School of Law</td>
</tr>
<tr>
<td>Dina Haynes</td>
<td>Advocacy Fellow, Center for Applied Legal Studies, Georgetown University Law Center</td>
</tr>
<tr>
<td>Paul J. Heald</td>
<td>Allen Post Professor, University of Georgia School of Law</td>
</tr>
<tr>
<td>Robert Heidt</td>
<td>Professor of Law, Indiana University School of Law – Bloomington</td>
</tr>
<tr>
<td>Benjamin Hellie</td>
<td>Assistant Professor, Sage School of Philosophy, Cornell University</td>
</tr>
<tr>
<td>William O. Hennessey</td>
<td>Professor of Law, Franklin Pierce Law Center, and Adjunct Professor, Fletcher School of Law and Diplomacy, Tufts University</td>
</tr>
<tr>
<td>Berta Esperanza Hernandez-Truyol</td>
<td>Levin, Mabie &amp; Levin Professor of Law, Fredric G. Levin College of Law, University of Florida</td>
</tr>
<tr>
<td>Randy Hertz</td>
<td>Professor of Clinical Law, New York University School of Law</td>
</tr>
<tr>
<td>Richard A. Hesse</td>
<td>Professor Emeritus, Franklin</td>
</tr>
</tbody>
</table>
Richard S. Kay, George and Helen England Professor of Law, University of Connecticut School of Law
Juliette Kayyem, Senior Fellow and Adjunct Lecturer, John F. Kennedy School of Government, Harvard University
Gregory C. Keating, William T. Dalessi Professor of Law, University of Southern California Law School
David W. Kennedy, Manley Hudson Professor of Law, Harvard Law School
Duncan Kennedy, Carter Professor of General Jurisprudence, Harvard Law School
Alexander Keyssar, Matthew W. Stirling, Jr. Professor of History and Social Policy, John F. Kennedy School of Government, Harvard University
Sanjeev Khagram, Assistant Professor of Public Policy, John F. Kennedy School of Government, Harvard University
Charles P. Kindregan, Jr., Professor of Law, Suffolk University Law School
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Karl Klare, George J. and Kathleen Waters Matthews Distinguished University Professor, Northeastern University School of Law
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Barbara Lah, Reference Librarian, University of New Mexico School of Law Library
D. Bruce La Pierre, Professor of Law, Washington University School of Law
John Lande, Associate Professor and Director, LL.M. Program in Dispute Resolution, University of Missouri – Columbia School of Law
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Frederick M. Lawrence, Law Alumni Scholar and Professor of Law, Boston University School of Law
Sylvia R. Lazos, William S. Boyd School of Law, William S. Boyd School of Law, University of Nevada – Las Vegas
Jennifer Leaning, Director of the Program on Humanitarian Crises, FXB Center for Health and Human Rights, Harvard School of Public Health
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Donna R. Leff, Faculty Affiliate, Institute for Policy Research, and Professor, Medill School of Journalism, Northwestern University
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Leslie C. Levin, Professor of Law, University of Connecticut School of Law
Sanford Levinson, W. St. John Garwood and W. St. John Garwood, Jr. Centennial Chair in Law and Professor of Government, University of Texas at Austin School of Law
Hope Lewis, Professor of Law, Northeastern University School of Law
Antoinette Sedillo Lopez, Associate Dean for Clinical Affairs, University of New Mexico School of Law
Ann Lousin, Professor, The John Marshall Law School
David Luban, Frederick Haas Professor of Law and Philosophy, Georgetown University Law Center
Mary A. Lynch, Clinical Professor of Law, Albany Law School
David Lyons, Professor of Law and of Philosophy, Boston University School of Law
Kenneth Mack, Assistant Professor, Harvard Law School
W. Bentley MacLeod, Professor of Economics and Law, and Co-Director, Center in Law, Economics and Organization, University of Southern California Law School, and Visiting Professor of Economics, Princeton University
Holly Maguigan, Professor of Clinical Law, New York University School of Law
Karl Manheim, Professor of Law, Loyola Law School, Los Angeles
Marsha M. Mansfield, Clinical Assistant Professor, Economic Justice Institute, University of Wisconsin Law School
Deborah Maranville, Professor of Law, University of Washington School of Law
Wendy K. Mariner, Professor of Health Law, Bioethics and Human Rights, Boston University School of Public Health, and Professor of Law, School of Law and Professor of Socio-Medical Sciences, School of Medicine, Boston University
Daniel Markovits, Associate Professor of Law, Yale Law School
Elizabeth Phillips Marsh, Professor of Law, Quinnipiac University School of Law
Harry S. Martin III, Henry N. Ess III Librarian and Professor of Law, Harvard Law School
Michael R. Masinter, Professor of Law, Nova Southeastern University – Shepard Broad Law Center
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Miranda Oshige McGowan, Associate Professor of Law, University of Minnesota Law School
Betsy McKenzie, Director, Suffolk University Law Library
Judith A. McMorrow, Professor of Law, Boston College Law School
M. Isabel Medina, Ferris Family Professor of Law, Loyola University New Orleans, School of Law
Steve Melli, Clinical Associate Professor, University of Wisconsin Law School
Michael Meltsner, Matthews Distinguished University Professor of Law, Northeastern University School of Law, and Visiting Professor of Law, Harvard Law School
Carrie Menkel-Meadow, Professor of Law, Georgetown University Law Center
Naomi Mezey, Associate Professor of Law, Georgetown University Law Center
Frank I. Michelman, Robert Walmsley University Professor, Harvard Law School
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Alan D. Minuskin, Associate Clinical Professor of Law, Boston College Law School
Robert H. Mnookin, Samuel Williston Professor of Law and Chair, Program on Negotiation, Harvard Law School
Nancy Morawetz, Professor of Clinical Law, New York University School of Law
Joelle Anne Moreno, Associate Professor, New England School of Law
Muriel Morisey, Associate Professor of Law, Temple University Beasley School of Law
Corinne Seither Morrissey, Director of Academic Achievement, The John Marshall Law School
Russell G. Murphy, Professor of Law, Suffolk University Law School
Peter L. Murray, Braucher Visiting Professor of Law from Practice, Harvard Law School
Louis Natali, Professor of Law, Temple University Beasley School of Law
William E. Nelson, Judge Edward Weinfeld Professor of Law, New York University School of Law
Alizabeth Newman, Director Immigrant Initiatives, CUNY School of Law
Marie Stefanini Newman, Associate Professor of Law, Pace University School of Law
Binaifer Nowrojee, Jeremiah Smith, Jr. Lecturer on Law, Harvard Law School
Robert L. Oakley, Director of the Law Library and Professor of Law, Georgetown University Law Center
Christiana Ochoa, Associate Professor of Law,
Krista M. Ralston, Clinical Professor of Law, Director, Legal Defense Program, University of Wisconsin Law School
Elizabeth Rapaport, Professor of Law, University of New Mexico School of Law, and 2003-04 Visiting Professor, University of Connecticut School of Law
Jamin B. Raskin, Professor of Law, American University, Washington College of Law
Kal Raustiala, Professor, UCLA School of Law
Martha Rayner, Associate Clinical Professor of Law, Fordham University School of Law
Anne M. Rector, Administrative Professor, Emory University School of Law
Sarah E. Redfield, Professor of Law, Franklin Pierce Law Center
James D. Redwood, Professor of Law, Albany Law School
Henry J. Richardson III, Professor of Law, Temple University Beasley School of Law
Michael L. Richmond, Professor of Law, Nova Southeastern University – Shepard Broad Law Center
Ruth Robarts, Assistant Dean for Student & Academic Affairs, University of Wisconsin Law School
Thomas E. Roberts, Professor of Law, Wake Forest University School of Law
Toni Robinson, Professor of Law and Co-Director, Tax Clinic, Quinnipiac University School of Law
Florence Wagman Roisman, Michael D. McCormick Professor of Law, Indiana University School of Law – Indianapolis
Kermit Roosevelt, Assistant Professor, University of Pennsylvania Law School
Lory Diana Rosenberg, Adjunct Professor of Law, American University, Washington College of Law, and Director, Defending Immigrants Partnership, National Legal Aid & Defender Association
Jamie Baker Roskie, Clinical/Adjunct Professor, University of Georgia School of Law & College of Environment & Design
Meredith J. Ross, Clinical Professor of Law and Director, Frank J. Remington Center, University of Wisconsin Law School
Richard J. Ross, Associate Professor of Law and History, University of Wisconsin-Madison
Susan Deller Ross, Professor of Law and Director, International Women’s Human Rights Clinic, Georgetown University Law Center
Brad R. Roth, Associate Professor of Political Science and Law, Wayne State University Law School
James Rowan, Associate Dean, Northeastern University School of Law
Gary Rowe, Acting Professor of Law, UCLA School of Law
David Rudovsky, Senior Fellow, University of Pennsylvania Law School
David S. Rudstein, Professor of Law, Chicago-Kent
College of Law

Susan Rutberg, Professor, Golden Gate University School of Law

Theodore Ruthizer, Lecturer in Law, Columbia Law School

Robert M. Saltzman, Associate Dean and Adjunct Professor, University of Southern California Law School

Frank E.A. Sander, Bussey Professor of Law, Harvard Law School

Austin Sarat, William Nelson Cromwell Professor of Jurisprudence and Political Science, Departments of Law, Jurisprudence & Social Thought and Political Science, Amherst College

Lewis D. Sargentich, Professor of Law, Harvard Law School

Jane Schacter, James E. & Ruth B. Doyle-Bascom Professor of Law, University of Wisconsin Law School

Daniel C. Schaffer, Professor of Law, Northeastern University School of Law

Irene Scharf, Professor of Law and Dean for Clinical Studies, Southern New England School of Law

David Scheffer, Visiting Professor of International Law, Georgetown University Law Center, and Former U.S. Ambassador at Large for War Crimes Issues (1997-2001)

Harry N. Scheiber, Director, Earl Warren Legal Institute, and Riesenfeld Professor of Law & History, Boalt Hall - University of California Berkeley School of Law

Kim Lane Scheppelle, John J. O'Brien Professor of Comparative Law, University of Pennsylvania Law School

Margo Schlanger, Assistant Professor of Law, Harvard Law School

Ferdinand P. Schoettle, Professor of Law, University of Minnesota Law School

Hilary M. Schor, Professor of English and Law, University of Southern California Law School

Miguel Schor, Assistant Professor of Law, Suffolk University Law School

Philip G. Schrag, Professor of Law, Georgetown University Law Center

Robin M. Schreiber, Professor of Law, Emory University School of Law

Steven Schulhofer, Robert B. McKay Professor of Law, New York University School of Law

Herman Schwartz, Professor of Law, American University, Washington College of Law

Helen S. Scott, Professor of Law, New York University School of Law

Ellen M. Scully, Clinical Assistant Professor and Director of Columbus Community Legal Services, Catholic University of America, Columbus School of Law

Robert A. Sedler, Distinguished Professor of Law and Gibbs Chair in Civil Rights and Civil Liberties,
Wayne State University Law School
Ilene Seidman, Associate Clinical Professor of Law, Suffolk University Law School
Pat Sekaquaptewa, Director, Native Nations Law & Policy Center, UCLA School of Law
Jeff Selbin, Lecturer, Boalt Hall - University of California Berkeley School of Law, and Executive Director, East Bay Community Law Center
Gregory Shaffer, Associate Professor, University of Wisconsin Law School, and Co-Director, University of Wisconsin Center on World Affairs and the Global Economy
Ann Shalleck, Professor of Law and Carrington Shields Scholar, American University, Washington College of Law
Laurie Shanks, Director Field Placement Project, Albany Law School
David Shapiro, William Nelson Cromwell Professor of Law, Harvard Law School
Steve Sheppard, Associate Professor, International Law, University of Arkansas School of Law
Andrew Siegel, Assistant Professor of Law, University of South Carolina School of Law
David M. Siegel, Professor of Law, New England School of Law
Carole Silver, Senior Lecturer, Northwestern University School of Law
Marjorie A. Silver, Professor of Law, Touro College, Jacob D. Fuchsberg Law Center
Linda Sandstrom Simard, Professor of Law, Suffolk University Law School
Jonathan Simon, Professor of Law/Jurisprudence and Social Policy, Boalt Hall – University of California Berkeley School of Law
Steve Simon, Clinical Professor, University of Minnesota Law School
Dan Simon, Professor, University of Southern California Law School
Joseph W. Singer, Professor of Law, Harvard Law School
Morton Sklar, Adjunct Faculty, Catholic University of America, Columbus School of Law
David Slawson, Torrey H. Webb Professor of Law, University of Southern California Law School
Abbe Smith, Professor of Law, Georgetown University Law Center
Michael E. Smith, Associate Professor, University of Wisconsin Law School
Edwin M. Smith, Leon Benwell Professor of Law, International Relations, and Political Science, and Academic Director of International Programs, University of Southern California Law School
Robert A. Solomon, Clinical Professor of Law and Director of Clinical Studies, Yale Law School
Girardeau A. Spann, Professor of Law, Georgetown University Law Center
Sophie M. Sparrow, Professor of Law, Franklin Pierce Law Center
Shaun Spencer, Climenko/Thayer Lecturer on Law,

Harvard Law School

Jane Stapleton, Ernest E. Smith Professor of Law, University of Texas at Austin School of Law

Barbara Stark, Distinguished Visiting Professor of International Law, New England School of Law

Carol Steiker, Professor of Law, Harvard Law School

Michael Stein, Associate Professor of Law, William & Mary Law School, and Visiting Fellow, Human Rights Program, Harvard Law School

Henry J. Steiner, Director, Human Rights Program, Harvard Law School, and Jeremiah Smith, Jr. Professor of Law, Harvard Law School

Joan Steinman, Distinguished Professor of Law, Chicago-Kent College of Law

Margaret Stewart, Professor of Law, Chicago-Kent College of Law

Alan A. Stone, Touroff-Glueck Professor of Law and Psychiatry, Harvard Law School

Randolph N. Stone, Clinical Professor of Law, University of Chicago Law School

John A. Strait, Associate Professor of Law, Seattle University School of Law

Kurt A. Strasser, Phillip I. Blumberg Professor, University of Connecticut School of Law

Robert N. Strassfeld, Professor of Law, Case Western Reserve University School of Law

Andrew Strauss, Professor of Law, Widener University School of Law

Catherine T. Struve, Assistant Professor, University of Pennsylvania Law School

Stephen N. Subrin, Professor of Law, Northeastern University School of Law

Madhavi Sunder, Professor of Law, University of California, Davis

Julie-Anne Tarr, Professor of Law, Indiana University School of Law – Indianapolis

Susan Douglas Taylor, Supervising Attorney, Immigrant & Refugee Rights Clinic, CUNY School of Law

Kim Taylor-Thompson, Professor of Clinical Law, New York University School of Law

Judson L. Temple, Professor of Law, Oklahoma City University School of Law

Joseph R. Thome, Emeritus Professor of Law, University of Wisconsin Law School, and Visiting Professor for 2004-05, De Paul University Law School, Chicago

Peter Tillers, Professor of Law, Cardozo School of Law, Yeshiva University

Daniel P. Tokaji, Assistant Professor of Law, The Ohio State University Moritz College of Law

Michael Tonry, Professor of Law and Public Policy, University of Cambridge, UK, and Sonosky Professor of Law and Public Policy, University of Minnesota

Paul L. Tractenberg, Board of Governors Distinguished Service Professor and Alfred C. Clapp Distinguished Public Service Professor of Law.
Rutgers School of Law – Newark

Rebecca S. Trammell, Assistant Professor of Law and Law Library Director, University of Kentucky College of Law

Laurence H. Tribe, Ralph S. Tyler, Jr. Professor of Constitutional Law, Harvard Law School

Deborah Tuerkheimer, Associate Professor, University of Maine School of Law

Deborah Tussey, Assistant Professor, Oklahoma City University School of Law

Detlev F. Vagts, Bemis Professor of International Law, Harvard Law School

Gloria Valencia-Weber, Henry Weihofen Professor of Law, University of New Mexico School of Law

Jon M. Van Dyke, Professor of Law, William S. Richardson School of Law, University of Hawaii at Manoa

Beth Van Schaack, Assistant Professor, Santa Clara University School of Law

Penny M. Venetis, Clinical Professor of Law and Associate Director, Constitutional Litigation Clinic, Rutgers School of Law – Newark

Christine Ver Ploeg, Professor of Law, William Mitchell College of Law

David C. Vladeck, Associate Professor of Law and Co-Director, Institute for Public Representation, Georgetown University Law Center

Valorie K. Vojdik, Associate Professor of Law, West Virginia University College of Law

Robert Volk, Associate Professor of Legal Writing and Director, First-Year Writing Program, Boston University School of Law

Peter W. Wakefield, Assistant Director, Office of International Affairs and Program Director, Claus M. Halle Institute for Global Learning, Emory University

Stephen M. Walt, Robert and Renee Belfer Professor of International Affairs, John F. Kennedy School of Government, Harvard University

Rhonda Wasserman, Professor of Law, University of Pittsburgh School of Law

Paul C. Weiler, Henry J. Friendly Professor of Law, Harvard Law School

Mark S. Weiner, Associate Professor of Law, Rutgers School of Law – Newark

Lloyd L. Weinreb, Dane Professor of Law, Harvard Law School

Marley S. Weiss, Professor of Law, University of Maryland School of Law

Deborah M. Weissman, Associate Professor of Law and Director of Clinical Programs, University of North Carolina at Chapel Hill

Robin L. West, Professor Law, Georgetown University Law Center

Lucie E. White, Louis A. Horvitz Professor of Law, Harvard Law School

James Q. Whitman, Ford Foundation Professor of Comparative and Foreign Law, Yale Law School

Lucy A. Williams, Professor of Law, Northeastern University School of Law