



SCHOOL OF LAW

FORUM: PRESIDENTIAL POWERS

We the People

Article I

Is The President Always Right?

An Examination of Presidential Authority

*A forum sponsored by the Seattle University School of Law
as part of its Law & Public Policy Initiative*

Friday, November 3, 2006

11:30 a.m. to 4:30 p.m.

Seattle University School of Law, Pigott Auditorium

“The President is always right.” That assertion was made by Steven Bradbury, Acting Assistant Attorney General, Office of Legal Counsel, U.S. Department of Justice, in testimony before the Senate Judiciary Committee on July 14, 2006.

Along with their elected representatives in the United States Congress, the citizens of this nation are engaging in a discussion of how we should respond to acts of terrorism in both the international and domestic arenas and the implications of our responses for our Constitutional system of government.

Seattle University School of Law, in pursuit of its mission of academic excellence and social justice, sponsored this public forum to examine the Administration’s assertion of presidential authority in the “war on terror,” as well as the President’s use of signing statements. A panel of distinguished jurists, attorneys and scholars focused on these major issues among others:

- The interrogation and treatment of enemy combatants
- The Geneva Conventions
- Habeas corpus for terrorist suspects
- The recent passage of the Military Commissions Act of 2006
- NSA surveillance programs
- The use of presidential signing statements

Speakers included:

- **Luncheon speaker:** [Lt. Cmdr. Charles D. Swift](#), Office of Chief Defense Counsel, Department of Defense, and a 1994 graduate of Seattle University School of Law, whose defense of his client led to the historic ruling in *Hamdan v. Rumsfeld*.
- [Bruce Fein](#), Bruce Fein & Associates, former Associate Deputy Attorney General, U.S. Department of Justice (Reagan Administration); member of the ABA Task Force on Domestic Surveillance in the Fight Against Terrorism and the ABA Task Force on Presidential Signing Statements and the Separation of Powers Doctrine.

- [The Honorable Robert S. Lasnik](#), Chief Judge, U.S. Federal District Court, Western District of Washington.
- [Jules Lobel](#), Professor of Law, University of Pittsburgh School of Law; Vice President, U.S. Center for Constitutional Rights.
- [Deborah N. Pearlstein](#), Director, U.S. Law and Security Program, Human Rights First; Visiting Scholar, Woodrow Wilson School for Public and International Affairs, Princeton University.
- [Robert F. Turner](#), Co-Founder, Center for National Security Law at University of Virginia School of Law; three-term Chairman, ABA Standing Committee on Law and National Security.

Organized by [Helen P. Howell](#), Distinguished Practitioner in Residence, and [S. James Rosenfeld](#), Adjunct Professor of Law, Seattle University School of Law.

Schedule, Program and Speakers

- | | |
|--------------------------------|--|
| 11:30 A.M. – 12:15 P.M. | Registration and Box Lunch |
| 12:15 – 12:25 P.M. | Welcome and Introductions <ul style="list-style-type: none"> • <i>Helen P. Howell</i> |
| 12:25 – 1:00 P.M. | Luncheon Presentation: Lessons of <i>Hamdan v. Rumsfeld</i> <ul style="list-style-type: none"> • <i>Lt. Cmdr. Charles D. Swift</i> |
| 1:00 – 1:10 P.M. | Jurisdiction Stripping <ul style="list-style-type: none"> • <i>Chief Judge Robert S. Lasnik</i> |
| 1:10 – 2:30 P.M. | Interrogation and Treatment of Enemy Combatants <ul style="list-style-type: none"> • <i>Deborah Pearlstein</i> • <i>Professor Jules Lobel</i> |
| 2:30 – 3:00 P.M. | Habeas Corpus <ul style="list-style-type: none"> • <i>Chief Judge Robert S. Lasnik</i> • <i>Professor Jules Lobel</i> |
| 3:00 – 3:15 P.M. | Refreshment Break |
| 3:15 – 4:00 P.M. | NSA Surveillance Programs <ul style="list-style-type: none"> • <i>Professor Robert Turner</i> • <i>Bruce Fein</i> |
| 4:00 – 4:45 P.M. | The Use of Presidential Signing Statements <ul style="list-style-type: none"> • <i>Bruce Fein</i> • <i>Professor Robert Turner</i> |

Keynote Speaker

Lt. Cmmdr. Charles D. Swift

Office of Chief Defense Counsel, U.S. Department of Defense

Lieutenant Commander Charles D. Swift is assigned as a defense counsel in the Office of the Chief Defense Counsel in the Department of Defense (DoD) Office of Military Commissions. He is currently detailed to represent Salim Ahmed Hamdan, who is facing trial by Military Commission.

Lieutenant Commander Swift is a 1984 graduate of the United State Naval Academy. Lieutenant Commander Swift left active service to attend law school at Seattle University School of Law (formerly the University of Puget Sound School of Law) in 1991. After graduating cum laude, he affiliated with the navy's Judge Advocate Generals Corps and returned to active service in 1994.

Lieutenant Commander Swift's initial assignment as Judge Advocate was as a defense counsel and legal assistance officer at Naval Legal Service Northwest where he was selected as the Junior Officer of the Year for 1997. His next assignment was as Staff Judge Advocate and Special Assistant United States Attorney for Naval Station Roosevelt Roads, Puerto Rico where he participated extensively in the litigation involving the Navy's target range at Vieques, Puerto Rico. Most recently he was assigned as the Officer-in Charge of the Navy's second largest Naval Legal Service Detachment at Naval Station Mayport, Florida, where in addition to representing individual service members he was responsible for the oversight of the military and civilian attorneys and Legalmen assigned to his detachment.

Lieutenant Commander Swift has nine years of litigation experience, six of those as a defense counsel and has represented more than 150 service members in military justice proceedings including serving as lead military counsel in more than 20 contested courts-martials. Lieutenant Commander Swift is admitted to practice before the Supreme Court of the state of North Carolina. He is a native of Franklin, North Carolina.

Panelists

Bruce Fein

***The Lichfield Group
Washington, DC***

Bruce Fein graduated from Harvard Law School with honors in 1972. After a federal judicial clerkship, he joined the U.S. Department of Justice, where he served as assistant director of the Office of Legal Policy, legal adviser to the assistant attorney general for antitrust, and the associate deputy attorney general. Mr. Fein then was appointed general counsel of the Federal Communications Commission, followed by an appointment as research director for the Joint Congressional Committee on Covert Arms Sales to Iran.

He has authored several volumes on the United States Supreme Court, the United States Constitution, and international law. He has assisted two dozen countries in constitutional revision, and consulted foreign nations on matters ranging from telecommunications and cable regulation to sugar quotas, oil and gas pipelines, and human rights.

Mr. Fein has been an adjunct scholar with the American Enterprise Institute, a resident scholar at the Heritage Foundation, a lecturer at the Brookings Institute, and an adjunct professor at George Washington University. He has also been executive editor of World Intelligence Review, a periodical devoted to national security and intelligence issues. He was recently invited by the Foreign Policy Institute of Turkey and Bilkent University to lecture on constitutional models for Iraq.

At present, he writes a weekly column for The Washington Times devoted to legal and international affairs, guest columns for numerous other newspapers, and articles for professional and lay journals. He is invited to testify frequently before Congress and administrative agencies by both Democrats and Republicans. He appears regularly on national broadcast, cable, and radio programs as an expert in foreign affairs, international and constitutional law, telecommunications, terrorism, national security, and related subjects.

Chief Judge Robert S. Lasnik

***Western District of Washington
Seattle, WA***

Judge Robert S. Lasnik became Chief Judge of the Western District of Washington on September 1, 2004. He was appointed to the United States District Court by President Clinton in 1998. Prior to that he served as a King County Superior Court Judge for nine years. He formerly was Chief of Staff in the King County Prosecutor's Office. Judge Lasnik graduated from Brandeis University with a degree in psychology and sociology and later obtained two master's degrees from Northwestern University in journalism and in counseling. He is a graduate of the University of Washington School of Law and was an instructor there in Interviewing and Counseling for Lawyers.

Judge Lasnik is Chair of the Ninth Circuit's Public Information and Community Outreach Committee. He is the Chair of the 2007 9th Circuit Judicial Conference and was the Program Chair for the 2006 Judicial Conference. In 2005 he was appointed by Chief Justice Rehnquist to the Judicial Conference U.S. Budget Committee where he chairs the recently created Congressional Outreach Subcommittee. He was Chair of the Washington State Committee of Selection for the Rhodes Scholarships from 2001-2004.

Professor Jules Lobel

***University of Pittsburgh School of Law
Vice President, U.S. Center for Constitutional Rights
Pittsburgh, PA***

Through the U.S. Center for Constitutional Rights, Jules Lobel has litigated important issues regarding the application of international law in the U.S. courts. In the late 1980's, he advised the Nicaraguan government on the development of its first democratic constitution, and has also advised the Burundi government on constitutional law issues. He currently teaches Constitutional Law, International Law, Human Rights, and Foreign Relations Law.

Professor Lobel is editor of a text on civil rights litigation and of a collection of essays on the U.S. Constitution, *A Less Than Perfect Union* (Monthly Review Press, 1988). He is author of numerous articles on international law, foreign affairs, and the U.S. Constitution in publications including *Yale Law Journal*, *Harvard International Law Journal*, *Cornell Law Review*, and *Virginia Law Review*. He is a member of the American Society of International Law.

Deborah N. Pearlstein

Director, U.S. Law and Security Program, Human Rights First, New York, NY
Visiting Scholar, Woodrow Wilson School for Public & International Affairs, Princeton University

Deborah Pearlstein is Director of the U.S. Law and Security Program at Human Rights First, and a visiting scholar at the Woodrow Wilson School for Public and International Affairs at Princeton University. Deborah leads Human Rights First's efforts in research, litigation, and advocacy related to U.S. counterterrorism and national security policies. An expert in U.S. constitutional law, she focuses on U.S. detention and intelligence operations, executive power, and the role of the courts.

Before embarking on a career in law, Deborah served in the White House as a Senior Editor and Speechwriter for President Clinton. In 1998, Deborah received her J.D. magna cum laude from Harvard Law School, where she was an articles editor of the Harvard Law Review. She also served as a teaching fellow in Harvard College and in the Law School. Following law school, Deborah clerked for Judge Michael Boudin of the U.S. Court of Appeals for the First Circuit, then for Justice John Paul Stevens of the U.S. Supreme Court.

After her clerkships, Deborah joined the law firm of Munger, Tolles & Olson, where she devoted a substantial portion of her time to pro bono litigation in immigration, privacy, and election law matters on behalf of individuals and non-profit organizations. She has briefed and argued cases in trial and appellate courts, and has written numerous briefs to the U.S. Supreme Court. In 2002, Deborah shared the ACLU's Voting Rights Award for her work on election systems reform in California following the 2000 presidential election.

Deborah is a frequent public speaker on security-related topics in U.S. constitutional law, including in testimony before the U.S. Congress. She is a regular columnist for The American Prospect, and has published numerous popular and academic articles on the work of the U.S. Supreme Court.

Robert F. Turner

Professor General Faculty
Associate Director, Center for National Security Law
University of Virginia School of Law

Robert F. Turner holds both professional and academic doctorates from the University of Virginia School of Law. He co-founded the Center for National Security Law with Professor John Norton Moore in April 1981 and has served as its Associate Director since then except for two periods of government service in the 1980s and during 1994-95, when he occupied the Charles H. Stockton Chair of International Law at the U.S. Naval War College in Newport, Rhode Island. A veteran of two Army tours in Vietnam, he served as a Research Associate and Public Affairs Fellow at Stanford's Hoover Institution on War, Revolution and Peace before spending five years in the mid-1970s as national security adviser to Senator Robert P. Griffin, a member of the Senate Foreign Relations Committee. He has also served in the Pentagon as Special Assistant to the Under Secretary of Defense for Policy, in the White House as Counsel to the President's Intelligence Oversight Board, at the State Department as Principal Deputy Assistant Secretary for Legislative Affairs, and as the first President of the congressionally established United States Institute of Peace.

A former three-term chairman of the ABA Standing Committee on Law and National Security (and for many years editor of the ABA National Security Law Report), Turner has taught undergraduate courses at Virginia on international law, U.S. foreign policy, the Vietnam War,

and foreign policy and the law in the Woodrow Wilson Department of Government and Foreign Affairs, in addition to co-teaching with Moore the law school seminars Advanced Topics in National Security Law I & II. The author or editor of more than a dozen books and monographs (including coeditor of the Center's National Security Law and National Security Law Documents) and numerous articles in law reviews and professional journals, Turner has also contributed articles to most of the major U.S. newspapers and has testified before more than a dozen different congressional committees on issues of international or constitutional law and related topics.

Turner is a member of the Committee on the Present Danger, the Council on Foreign Relations, and other professional organizations.

Moderator

Helen P. Howell

Distinguished Practitioner in Residence
Seattle University School of Law

Professor Howell's extensive public policy and advocacy experience includes White House, United States Senate, Washington State Executive branch and nonprofit advocacy work.

Although a Seattle native, she held a number of significant positions in Washington, D.C. prior to returning to her hometown. As counsel to United States Senator Patty Murray, Professor Howell advised the Senator on civil rights, juvenile justice, women's health and other social welfare issues. She also served as special assistant to the president and deputy staff secretary at the White House under President Clinton where she vetted and synthesized diverse materials for the President. In addition, as vice president for public policy at Planned Parenthood Federation of America, she ran the national organization's Washington, D.C. office.

More recently, Professor Howell served as director of the Washington State Department of Financial Institutions (DFI), where she administered a \$30 million biennial budget and supervised 147 professional examiners, attorneys and staff in the regulation of a wide range of financial services providers chartered or licensed by the state. Prior to serving as DFI director and a member of Governor Gary Locke's Executive Cabinet, Professor Howell served as deputy chief of staff to the governor.

Professor Howell is currently teaching two public policy seminars at the Law School. She earned her bachelor's degree from Vassar College, a diploma in Legal Studies from Oxford University, and her juris doctorate from Columbia University School of Law.

Coordinator

S. James Rosenfeld

Adjunct Professor and Director of Continuing Legal Education
Seattle University School of Law

This program arose from a suggestion by Professor Rosenfeld, who also assisted in compiling resource materials, identifying speakers and, as Director of Continuing Legal Education, overseeing program logistics. He previously taught in the Ronald A. Peterson Law Clinic, currently teaches a seminar on Special Education Law and Policy, and is the founder and Director of the Academy for IDEA Administrative Law Judges and Hearing Officers.