

Professor Joshua E. Kastenberg
University of New Mexico, School of Law
1117 Stanford NE MSC11 6070, 1 University of New Mexico
Albuquerque, NM 87131-0001
(703) 725-0420
jkastenberg@yahoo.com or joshua.kastenberg@law.unm.edu

EMPLOYMENT HISTORY: Academic

2016-2024, University of New Mexico School of Law: Teach law school courses in criminal law and criminal procedure, evidence, ethics, national security law, and legal history. Developed a national security law course for the University of New Mexico's graduate Global Studies graduate program.

SERVICE TO NEW MEXICO

Judicial Standards Performance Evaluation Commission: Evaluated performance and competency of court of appeals judges as mandated per state law. Also assisted the law school dean in advising the New Mexico governor on the competency of judicial selections to the New Mexico Court of Appeals and the New Mexico Supreme Court.

Ethics Subcommittee Chair on Human Trafficking: Investigate allegations of human trafficking and develop educational programs for the state university system

SERVICE TO LEGAL INSTITUTIONS

2021-2021 Advisor to United States Senate, Armed Services Committee: Assisted Senator Kirsten Gillibrand's office shape the most significant military justice reform bill since the adoption of the Uniform Code of Military Justice in 1950

2018-2019 Kazakhstan Judicial Branch Advisor: Advised and assisted the Kazakhstan Judicial Branch on establishing criminal procedural rules and judicial ethics norms for Kazakhstan's pretrial investigative judges through the American Bar Association's Rule of Law Initiative.

OTHER

2017-2021 Legal Analyst, British Broadcasting Corporation: Provided analysis on United States legal issues including January 6 insurrection to the BBC. Also provided analysis to the Global News (Canada) and the Canadian Broadcast Corporation

PRIOR EMPLOYMENT HISTORY: UNITED STATES AIR FORCE

2011-2016 Military Judge, United States Air Force Trial Judiciary: Enforced due process in over 200 military trials including courts-martial and military commission trials. Ruled on evidentiary and jurisdictional challenges, as well as assertions of executive branch supremacy. Served as a judge in four murder trials, forty-one sexual assault trials, twelve child abuse and computer pornography trials, armed robbery trials, and over one hundred narcotics distribution and use, and financial crimes trials. Served as key judicial ethics advisor to the military trial judges. Taught judicial continuing legal education courses on ethics, evidentiary updates, and sentencing.

2010-2011 Chief of Personnel Law, Headquarters, USAF, Pentagon: Counsel to the Judge Advocate General. Lead advisor to Headquarters USAF on repeal of 10 U.S.C. 654. Reviewed and revised all military regulations and orders to eliminate facial prejudice against service-members. Reported to Congress on the Department of Defense's efforts to ensure that all military regulations and orders mandated equal treatment under the law and guaranteed constitutional rights of all LGBT service-members.

2009-2010 Staff Judge Advocate, 332 Air Expeditionary Wing, Joint Base Balad, Iraq: Chief advisor to the commander, U.S. Air Forces – Iraq on matters on international law and agreements, criminal law, fiscal law, and ethics. Advised on human intelligence and targeting operations. Investigated contractor malfeasance and human rights abuses. Led a twenty-four personnel military unit in a hostile war environment.

2007-2009 Staff Judge Advocate, Joint Task Force-Global Network Operations (US Strategic Command), Washington DC: Lead advisor to the commander on laws and regulations governing national security and the conduct of classified military and intelligence operations through cyber-space. Served as the United States' legal liaison to five-nation intelligence alliance on anti-espionage operations. Additionally, appointed as summary court-martial judge in four trials and as administrative judge in three hearings.

2005-2007 Chief of International Law, Headquarters, USAF, Pentagon: Counsel to the Judge Advocate General on international law and highly classified national security law matters. Served as first line law officer in coalition affairs during allied military operations and exercises. Deployed Staff Judge Advocate for Intelligence Law: Task Force 134, Baghdad, Iraq. Oversaw the conduct of detainee operations and ensured compliance with international law. Investigated malfeasance allegations of U.S. Service personnel and private contractors. Served as a preliminary hearing officer in a judicial capacity in seven hearings.

2003-2005 Deputy Staff Judge Advocate: Spangdahlem Air Base, Germany. Advised US and NATO commands on international and criminal law issues including extradition, foreign prosecutions, war-crimes prosecutions, and human rights law. Negotiated with European government agencies regarding property leases, landing rights, and status of forces agreements. Mentored junior counsel and sat as first chair in courts-martial. Appointed as summary court-martial judge in two trials and as administrative judge in six hearings

2003-2003 Deployed Chief of Intelligence and National Security Law: Joint Task Force, Operation Enduring Freedom. Deployed to U.S. Naval Base, Guantanamo Bay. Advised command on legal issues including: detainee and third party rights under international law, public release of intelligence, and interrogation techniques. Investigated detainee conditions to ensure compliance with international and domestic law and prepared intelligence briefings for department officials before the United States Congress.

1999-2002 Circuit Trial Counsel: Central Circuit Office, Randolph AFB, Texas. Prosecuted over seventy complex courts-martial world-wide including: child sex crimes, conspiracy, contract and claims fraud, rape, computer crimes, and murder. Advised and negotiated with the attorneys general of the Netherlands to obtain extradition of material evidence and witness testimony. Taught evidence and litigation to junior counsel as an adjunct faculty instructor to the Air Force JAG School.

1998-1999 Area Defense Counsel: Whiteman AFB, Missouri. Defended the rights of military personnel in courts-martial and adverse disciplinary proceedings. Successfully represented an accused in the Air

Force's only death penalty case, *United States v. Jose Simoy* (on rehearing 1999). Managed a 230+ person caseload. Litigated three acquittals out of eighteen high-level criminal cases and secured favorable sentences for other clients.

1996-1998 Assistant Staff Judge Advocate: Whiteman AFB, Missouri. Represented the Department of Defense in U.S. District Court in two Title VII discrimination suits. Also represented the Air Force before two Merit Systems Protection Boards and two Federal Labor Relations Authority hearings. Re-negotiated a ten-year old collective bargaining agreement with AFGE Local 2675. Represented the Air Force in four state labor cases and seventeen unemployment compensation hearings. Prevailed in all cases and hearings.

1996-1998 Special Assistant United States Attorney: Western District of Missouri, by appointment. Prosecuted over 150 civilians under United States and Missouri criminal codes.

EDUCATION

Georgetown University Law Center, Master of Laws (LLM) in International Law, awarded May 2003.

*Thomas Bradbury Chetwood S.J. Award for graduating first out of 142 students

*Attended via Department of Defense (AFIT) sponsored scholarship

Marquette University Law School, Milwaukee, WI, Juris Doctor, awarded May, 1996.

*Top 1/3 in Class Standing

*AMJUR Award for highest course grade in International Law, Ethics, and Advanced Torts

*Articles Editor, Marquette University Sports Law Journal

Purdue University, West Lafayette, IN, Master of Arts in History, awarded May 1992.

University of California at Los Angeles. Bachelor of Arts in History, August 1989.

SCHOLARSHIP

BOOK PUBLICATIONS

Goldwater v. Carter: Foreign Policy, China, and the Resurgence of Executive Branch Primacy (Lawrence KS: University Press of Kansas, 2023)

The Campaign to Impeach Justice William O. Douglas: Nixon, Vietnam, and the Conservative Attack on Judicial Independence (Lawrence, KS: University Press of Kansas, 2019)

To Raise and Discipline an Army: Major General Enoch Crowder, the Judge Advocate General's Office and the Realignment of Civil and Military Relations in World War I (DeKalb, IL: Northern Illinois University Press, 2017).

In a Time of Total War: The Federal Judiciary and the National Defense, 1940-1954 (London: Ashgate Press, 2016).

Governing a Constitutional Military During Seven Decades of Conflict: The Federal Judiciary and the Shaping of the Nation's Military Law, 1940-2012 (London: Ashgate Press, 2014).

Law in War, Law as War: Brigadier General Joseph Holt and the Judge Advocate General's Department in the Civil War and Early Reconstruction, 1860-1868 (Durham, NC: Carolina Academic Press, 2011).

The Blackstone of Military Law: Colonel William Winthrop, 1831-1899 (Lanham, MD: Scarecrow Press of Rowman & Littlefield, 2009).

LAW REVIEW PUBLICATIONS

Commander in Chief Authority and the Religious Rights of Service Members in Crisis Times: The Vaccine Mandate as a Call for Reincorporating the Standing Army Fears in Jurisprudence and Depoliticizing the Bench, 83 Louisiana Law Review 1 (2023)

Reversing a Devolutionary Pathway of Shoddy History Protecting Commander in Chief "Authorities" in the Article I Courts: A Dual Call for Judicial Rigor and a Broader Amicus Practice in Adjudicating Military and Veterans Appeals 70 Baylor Law Review 2 (2002)

Neither Constitutionally Demanded nor Accurately Interpreted: The Judicial Conservatives' Pockmarked Pathway of Military Law to the Unitary Executive, 54 Texas Tech Law Review 451 (2022)

Judicial Ethics in the Confluence of National Security and Political Ideology: William Howard Taft and the "Teapot Dome" Oil Scandal as a Case Study for the Post-Trump Era, Vol 53 St Mary's Law Review (2022)

General Erich Ludendorff's Ghost: Insurrection, Accountability and the Retired Generals in Military Law, A National Security Imperative in the Aftermath of Donald Trump, __ American Journal of Criminal Law __ (2021)

The Limits of Executive Power in Crisis Times in the Early Republic: Martin v. Mott – an "Old Gray Mare" – Reexamined through the Lens of its own History, Vol 82 Louisiana State Law Review, Fall, 2021 .

Sufficiently Judicial: The Need for a Universal Ethics Rule on Attorney Behavior in Legislative Impeachment Trials, Vol 11 Saint Mary's Journal of Malpractice and Legal Ethics (Symposium), Winter 2021.

The Crisis of June 2020: The Case of the Retired General and Admirals and the Clarion Calls of their Critics in Lex Non-Scripta (Historic) Perspective, Vol 99 Nebraska Law Review, Winter 2021

Fears of Tyranny: The Fine Line Between Presidential Authority Over Military Discipline and Unlawful Command Influence Through the Lens of Military History in the Era of Bergdahl, Vol 49 Hofstra Law Fall 2020

Fifty Years On: The Normalization of United States Military Operations in Cambodia (1969-1973) As a Mirror of Fighting in Laws Gaps, Vol 26, Southwestern Journal of International Law (Symposium), Winter 2020

Goldwater v. Carter at Forty: A Historic Analysis of Judicial-Legislative Relations, the Court's Role in the Regrowth of Executive Branch Supremacy, and Senator Barry Goldwater's Prescient Warning for our Time, Vol 38, Quinnipiac Law Review, Spring 2020

Alcohol Prohibition in the New Mexico and Arizona State Judiciaries at 100 Years: The Development of Law and Shaping of Society in the Southwest, Vol 50, New Mexico Law Review, Winter 2020

National Security and Judicial Ethics: The Exception to the Rule of Keeping Judicial Conduct Judicial and the Politicization of the Judiciary, Vol 12, *Elon Law Review* (Symposium), Fall 2020

Evaluating Judicial Standards of Conduct in the Current Political and Social Climate: The Need To Strengthen Impropriety Standards and Removal Remedies to Include Procedural Justice and Community Harm, Vol 82, *Albany Law Review*, Fall 2019

Safeguarding Judicial Integrity during the Trump Presidency: Richard Nixon's Attempt to Impeach Justice William O. Douglas and the Use of National Security as a Case Study, Vol 40, *Campbell Law Review*, Winter 2018.

The Right to an Independent Judiciary and the Avoidance of Constitutional Conflict: The Burger Court's Flawed Reasoning in Chandler v. Judicial Council of the Tenth Circuit and Its Unfortunate Legacy, Vol 8 *Saint Mary's Journal of Malpractice and Legal Ethics*, Spring 2018.

Safeguarding Judicial Integrity by Making the Executive Branch's Unfettered Amicus Gateway Transparent: An Argument for the Supreme Court to Exercise its Inherent Authority to Make Public the President's Tax and Investment Records, Vol 38, *Northern Illinois Law Review*, Fall, 2017.

Chief Justice William Howard Taft's Conception of Judicial Integrity: The Legal History of Tume v. Ohio, Vol 65, *Cleveland State Law Review*, Spring 2017.

Command Responsibility in the Twenty-First Century: The United States Basic Framework and Future Military (and Quasi-Military) Operations, Vol 46, *Southwestern Law Review*, Spring 2017.

Nearing Thirty Years: The Legal History of Strickland v. Washington and the Burger Court's defining Parameters of the Right to Counsel, Vol 11, *Journal of Appellate Process and Procedure*, Spring 2014.

Recent Proposals to Change the Military Retirement System to Mirror the Federal Civil Service Retirement: Eroding Discipline and Civil Military Relations through Potentially Unlawful and Certainly Questionable Acts, Vol 46, *Creighton University Law Review*, Summer 2013.

Hugo Black's Vision of the Lawyer, The First Amendment, and the Duty of the Judiciary: The bar Applicant Cases in a National Security State, Vol 20, *William and Mary Bill of Rights Journal*, March 2012.

Cause and Effect: The Origins and Impact of Justice William O. Douglas' Anti-Military Ideology from World War II to O'Callahan v. Parker, Vol 26, *Thomas Cooley Law Review*, Winter 2009-2010.

A Sesquicentennial Historic Analysis of Dynes v. Hoover and the Supreme Court's Bow to Military Necessity: From its Relationship to Dred Scott v. Sanford to its Contemporary Influence, *University of Memphis Law Review*, Vol 39, Winter, 2008.

The Customary International Law of War and Combatant Status, *Gonzaga Law Review*, Vol. 39, Spring 2004.

Universal Jurisdiction and the Concept of a Fair Trial: Prosecutor v. Niyonteze, a Study in Swiss Military Justice, *University of Miami International and Comparative Law Review*, Vol. 11,

Winter 2003.

The Right to Effective Assistance of Counsel in Military and War Crimes Tribunals, a Comparative Law Analysis, Indiana International Law Review, Vol 14, Fall 2003 .

A Three Dimensional Model for the Use of Psychiatric and Psychological Expert Testimony in False Confession Defenses, Seattle University Law Review, Vol. 26, Summer 2003.

-Cited by the Supreme Court of New Jersey in *State v. Cook*, 155 N.J. 533 (2004)

Enforcing Internationally Recognized Human Rights Violations under the Alien Tort Claims Act: an Analysis of the Ninth Circuit's Decision in Doe v. Unocal, Pierce Law Review, Vol. 1, Spring 2003.

The Attorney-Client Privilege: Practical Military Applications of a Professional Core Value, Air Force Law Review, Vol. 49, Fall 2000. (With Norman Thompson) .

-Cited by the Supreme Court of Alabama in *Marks v. Tenbrunsel*, 910 S.2d. 1255 (2005)

The Legal Regime for Protecting Cultural Property During Armed Conflict. Air Force Law Review, Vol. 42, Spring 1997.

A Three Dimensional Model for Stadium Owner Liability in Spectator Injury Cases. Marquette University Sports Law Journal, Vol.7, Fall 1996.

Assessing the Available Recovery Actions in Cultural Property Claims. De Paul University Art and Entertainment Law Review, Vol. 5, Fall, 1995.

OTHER PUBLICATIONS

“Book Review,” *Lest We Forget: World War I and New Mexico*, by David Holtby, Great Plains Quarterly, Summer 2020

War Time Hysteria, 1917: Senator Miles Poindexter, ‘American-ness’ and the Strange Case of Colonel Carl Reichmann, Vol 37 War & Society (Fall, 2018)

Georgia's Left Hook: The New Age of Neutrality in Cyber Warfare, Parameters, The Journal of the Army War College. (January 2009)

“Book Review,” *Kill Now, Talk Forever, Debating Sacco & Vanzetti*, by Richard Newby, August 2004. *Wisconsin Bar Journal*, August 2004

LECTURES and PRESENTATIONS

Expert Evidence Update, New Mexico Tort Lawyers CLE, Summer 2021

Evidence for State Magistrates, Judicial Conclave, Summer 2020

Judicial Ethics, Judicial Conclave, New Mexico, Summer 2019

Populism and the State Judiciary in the United States: Building a 21st Century Bill of Rights, University College London, Summer 2018

Supreme Court Politicization – Historical Development, Pepperdine University, Summer 2017

New Challenges in Battlefield Accountability, Southwestern University-International Committee of the Red Cross Symposium, October 2016

Cyber Law and National Defense, University of Richmond Law School, Fall Semester .2013

Courts-Martial and Deployments, Campbell University School of Law, Spring Semester, 2013

The Civil Law and the Law of War during the Civil War, Johns Hopkins University, Spring Semester, 2009

BRIEFS AND ARGUMENTS TO THE COURTS

Amicus Brief, with Professor J. Wesley Moore, in *Larrabee v. Harker* to the United States Court of Appeals for the District of Columbia (argument pending)

Amicus Brief, with Professor Rachel Vanlandingham, in *United States v. Bergdahl* to the Court of Appeals for the Armed Forces. (cited in dissenting opinion)

Amicus Brief, with Professors John King, Cliff Villa, and Maryam Ahranjani , in *New Mexico v. Oliver*, to the New Mexico Supreme Court