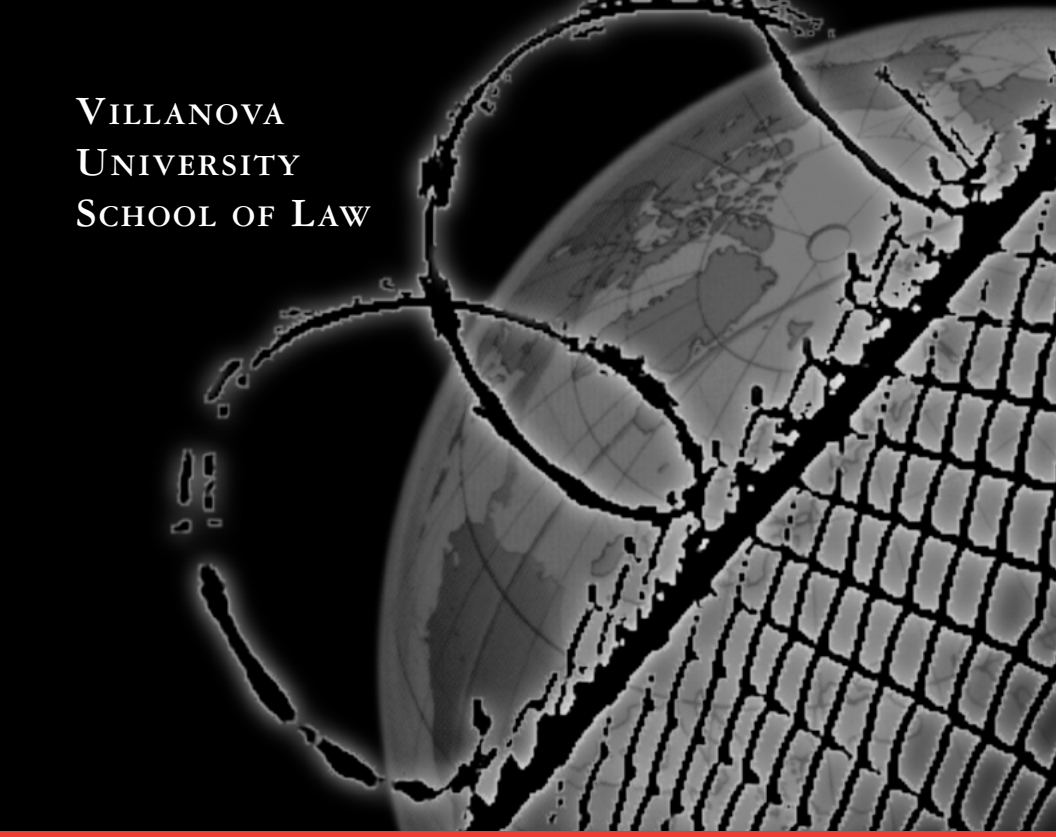

Villanova University School of Law

SYMPOSIUM

Brave New World: U.S. Responses to the Rise in International Crime

Brave New World: U.S. Responses to the Rise in International Crime

In recent years, and especially since the terrible events of September 11, 2001, the United States has been facing a "Brave New World" of international crime. U.S. responses to this increased threat of international crime, especially that posed by fundamentalist terrorism, drug trafficking, and so-called "narco-terrorism," have engendered substantial controversy.

In particular, there has been considerable debate over whether the threat of Al Qaeda terrorism should be addressed primarily as an international criminal law matter or as part of a worldwide "war on terrorism." The use of armed force in Afghanistan, Iraq, and elsewhere, as well as the prospective use of armed force against terrorists or so-called "rogue states" supporting them under a doctrine of preemption espoused by the Bush Administration, have been met with claims that such use of armed force violates fundamental norms of the UN Charter. The adoption of legislation following September 11, especially the U.S.A. PATRIOT ACT, and actions taken pursuant thereto, have precipitated court and other challenges to their constitutionality. The U.S. Supreme Court has recently handed down three decisions — in the *Rasul, Hamdi,* and *Padilla* cases — on the rights of persons deemed "enemy combatants" by the U.S. Government. Strenuous U.S. efforts, at the international and national levels, to combat the financing of international crime have also been controversial. The distinguished participants in this symposium will address these and other issues arising out of the new disorder.

THE PROGRAM

OCTOBER 23, GAREY HALL, ROOM 29, LAW SCHOOL

8:15 a.m. Registration & Continental Breakfast

8:45 a.m. Welcome

9:00 - 10:30 a.m. Panel I
Panelists: John Murphy, Patricia Bellia, David Warner
Moderator: Steven Chanenson

10:30 -10:45 a.m. Break

10:45 - 12:15 Panel II
Panelists: Bruce Zagaris, Herbert Morais, Joy Smallwood
Moderator: Joseph Dellapenna

12:15 - 1:15 Lunch

1:15 - 2:00 Address by Ambassador Holliday, followed by a question and comment period

2:00 - 3:30 Panel III
Panelists: Harvey Rishikof, David Stewart, Sean Murphy
Moderator: Ruth Gordon

THE SPEAKERS

Patricia Bellia

Associate Professor of Law
Notre Dame Law School, Notre Dame, Indiana

Patricia L. Bellia teaches and researches in the areas of internet law, electronic surveillance law, and constitutional law at the Notre Dame Law School. Before joining the faculty in 2000, Professor Bellia worked for three years as an attorney-advisor in the Office of Legal Counsel of the United States Department of Justice, advising components of the Justice Department and other executive branch actors on statutory and constitutional matters, including separation-of-powers and high-tech crime issues. She also clerked for Associate Justice Sandra Day O'Connor of the Supreme Court of the United States and Judge José A. Cabranes of the United States Court of Appeals for the Second Circuit.

Professor Bellia earned her J.D. from the Yale Law School in 1995, where she served as editor-in-chief of the *Yale Law Journal* and executive editor of the *Yale Journal of International Law,* as well as a student director of the Immigration Legal Services Clinic. She earned her A.B. summa cum laude from Harvard University in 1991, where she was elected to membership in Phi Beta Kappa.

The Honorable Stuart W. Holliday

Ambassador and Alternate United States Representative in the United Nations for Special Political Affairs, New York, NY

Stuart W. Holliday was nominated by President Bush and unanimously confirmed by the Senate on December 9, 2003 to serve as Ambassador and Alternate United States Representative in the United Nations for Special Political Affairs. Mr. Holliday's primary duties involve representing the United States on issues in the UN Security Council.

Previously, Ambassador Holliday was Coordinator of the State Department's Bureau of International Information Programs (Assistant Secretary-equivalent) and Principal Deputy Assistant Secretary for Public Affairs (2001-2003).

Ambassador Holliday was Special Assistant to the President and Associate Director of Presidential Personnel at the White House (2000-2001). In this capacity, he advised the President on foreign affairs and defense appointments to the executive branch. Mr. Holliday was a policy advisor to Vice Presidential candidate Dick Cheney during the 2000 Presidential campaign. Ambassador Holliday was Assistant Policy Director to Governor George W. Bush in Texas (1998-2000). He has also served as Executive Director of the Dallas Council on World Affairs (1996-1997) and as Regional Director for North Africa, the Middle East and Turkey at the International Republican Institute (IRI) (1993-1995). Starting in 1988, Ambassador Holliday served on active and reserve duty as an officer in the United States Navy.

Ambassador Holliday obtained his B.S.F.S. from Georgetown University and his M.A. from the London School of Economics and Political Science.

Ambassador Holliday and his wife Gwen have two sons.

Herbert V. Morais, Esq.

International Legal Consultant, Washington, DC

Herbert Morais has been a practicing international lawyer for the past 35 years. He is currently working as an international legal consultant to several foreign governments and international organizations, particularly in the area of anti-money laundering and combating the financing of international terrorism. From 2000-02, he was a Partner and Head of the International Legislative Reform Practice Group in Dewey Ballantine LLP, Washington, D.C. Prior to that, he served for twenty-seven years in senior legal and management positions with three leading international financial institutions: Assistant General Counsel, International Monetary Fund; Chief Counsel, the World Bank; and Assistant General Counsel, Asian Development Bank. Between 1968-73, he taught law at the University of Singapore and also practiced law. Mr. Morais received his LL.B. degree from the University of Singapore in 1966 and then, as a Fulbright Scholar, received his LL.M. and S.J.D. degrees from the Harvard Law School. He has published numerous articles on international law subjects in various law reviews here and abroad.

Sean B. Murphy

Professor of Law
George Washington University Law School, Washington, DC

Before joining the George Washington Law School faculty in 1998, Professor Murphy served as legal counselor at the U.S. Embassy in The Hague, arguing several cases before the International Court of Justice and representing the U.S. government in matters before the International Criminal Tribunal for the former Yugoslavia, the Permanent Court of Arbitration, and The Hague Conference on Private International Law. He also served as U.S. agent to the Iran-U.S. Claims Tribunal, arguing cases on behalf of the U.S. government and providing advice to U.S. nationals appearing before that tribunal. Between 1987 and 1995 he served in the U.S. Department of State Office of the Legal Adviser, primarily advising on matters relating to international environmental law, international claims, and politico-military affairs. Professor Murphy has published numerous articles on international law; his article on international environmental liability won the *American Journal of International Law* 1994 Déak Prize for best scholarship by a younger author. His book *Humanitarian Intervention: The United Nations in an Evolving World Order* won the American Society of International Law 1997 Certificate for Preeminent Contribution to Creative Scholarship. Professor Murphy is a member of the board of editors of the *American Journal of International Law* and serves on the executive council of the American Society of International Law. His most recent books are *United States Practice in International Law,* Volume 1: 1999-2001 (2002) and *Public International Law in a Nutshell* (3d ed. 2002) (with Buergenthal).

Professor Murphy received a B.A. from Catholic University, J.D. from Columbia University, LL.M. from Cambridge University, and S.J.D. from University of Virginia.

John F. Murphy

Professor of Law
Villanova University School of Law, Villanova, PA

Professor Murphy has taught at universities in Aix-en-Provence, London, Mexico City, Paris and Haifa, as well as in the United States. Additionally, he did administrative work with the Government of India as a fellow in the Afro-Asian Public Service Fellowship Program, which was a program sponsored by Syracuse University and the Ford Foundation.

Professor Murphy is involved with several professional organizations. He is the ABA's Alternate Observer at the United States Mission to the United Nations, was on the Council of the ABA's Section of International Law and Practice from 1994-96 and is currently the Section's International Legal Scholar, in which capacity he serves on the Section's Council. In addition, he was on the Executive Council of the American Society of International Law from 1989-92 and is a vice-president of the American Branch of the International Law Association. He has served as consultant to the Council for International Exchange of Scholars; the U.S. Department of Justice; the United Nations Crime Prevention Unit, Vienna, Austria; the ABA Standing Committee on Law and National Security; the U.S. Department of State; the United Nations Association of the United States of America; the Commission on the Organization of the Government for the Conduct of Foreign Policy; the International Task Force on Prevention of Nuclear Terrorism; and University Microfilms International. He is a member of the Editorial Advisory Board of *The International Lawyer,* the Editorial Board of *Terrorism and Political Violence,* and the Editorial Board of Transnational Publishers. Professor Murphy was a Co-editor (w/Jay Vogelson) of the *World Order Under Law Reporter.*

Professor Murphy received his B.A. from Cornell University and his LL.B. with specialization in international affairs from Cornell Law School. At Cornell, he was a member of the Cornell Law Review. He was an associate at Winthrop, Stimson, Putnam & Roberts in New York and Kirkland, Ellis, Hodson, Chaffertz & Masters in Washington, D.C., and an attorney adviser in the Legal Adviser's Office of the United States Department of State. Before joining the faculty at Villanova Law School in 1983 as a Visiting Professor, he was a Professor and an Associate Dean at the University of Kansas School of Law, a Visiting Professor at Cornell law School, and the Charles H. Stockton Professor of International Law at the Naval War College.

Joy Smallwood, Esq.

International Monetary Fund, Washington, DC

Ms. Smallwood joined the International Monetary Fund Legal Department in September 2002 as Consulting Counsel where she specializes in legal issues relating to anti-money laundering and combating the financing of terrorism. A lawyer in England, Canada, and New York, Ms. Smallwood has specialized in international financial matters. She has worked as a financial markets regulator in both Canada and the UK, focusing on both policy issues as well as enforcement matters. Prior to joining the IMF, she worked in both brokerage houses and fund management firms as corporate counsel and compliance officer where she drafted and implemented a range of policies and procedures, including those regarding anti-money laundering, know your customer and internal controls. Ms. Smallwood has also worked on the recent IMF publication, Suppressing the Financing of Terrorism: A Handbook for Legislative Drafting.

Earlier in her career she worked in the Commercial Crime Unit of the Commonwealth Secretariat on money laundering, financial fraud and financial market matters.

She holds a B.A. in English literature and a law degree from the University of British Columbia, Canada, and a LL.M. with distinction from the London School of Economics in International Business Law.

David P. Stewart, Esq.

Assistant Legal Adviser for Diplomatic Law and Litigation
United States Department of State, Washington, DC

Mr. Stewart is the Assistant Legal Adviser for Diplomatic Law and Litigation in the Office on the Legal Adviser of the U.S. Department of State. He has previously served as the Assistant Legal Adviser for African Affairs (1998-2001), Human Rights and Refugees (1989-1996), Law Enforcement and Intelligence (1986-88), and International Claims and Investment Disputes (1984-86). A graduate of Princeton University and the Yale Law School, Mr. Stewart received an LL.M. in International Legal Studies from New York University as well as an M.A. in International Relations from the Yale Graduate School. Before joining the government, Mr. Stewart practiced with Donovan Leisure Newton & Irvine in New York City in general commercial and international litigation. He has been Adjunct Professor of Law in the Graduate (LL.M.) Program in International and Comparative Law at the Georgetown Law Center since 1984, teaching International Commercial Arbitration, International Criminal Law, International Human Rights Law and International Civil Litigation. He also currently teaches human rights at the School of Advanced International Studies at Johns Hopkins University. He co-edits the *Digest of U.S. Practice in International Law,* is co-author of the current *Nutshell on International Human Rights* (3rd ed.) and has published a number of articles in various topics of international law. He spends his free time as Scoutmaster of Troop 1515 in Alexandria, VA.

Harvey Rishikof

Professor of Law
National Defense University, National War College, Washington, DC

Harvey Rishikof, Visiting Professor of Law and National Security Studies at the National War College in Washington, DC, specializes in the areas of national security, civil and military courts, military theory, civil liberties, and the U.S. Constitution. Mr. Rishikof's career includes experience in both teaching and public service.

As Legal Counsel to the Deputy Director of the FBI (1997-99), Rishikof focused on FBI policies concerning national security and terrorism, and served as liaison to the Office of the Attorney General at the Department of Justice. Rishikof was a participant in the creation of the long-range plan for the FBI under Director Louis Freeh with particular emphasis on internal restructuring. He worked on developing a prototype program, NIBIN, to integrate the FBI and the Alcohol, Tobacco, and Firearms Agency (Department of Treasury), and was involved in the drafting of Presidential Decision Directives in the national security area. As Administrative Assistant to the Chief Justice of the Supreme Court (1994-96), Rishikof served as chief of staff for the Chief Justice and was involved in general policy issues concerning the federal court system. In this capacity, he acted as liaison to the Executive Branch, Congress, the Federal Judicial Center, and the Administrative Office of the United States Court.

Mr. Rishikof holds a J.D. from New York University School of Law, an M.A. from Brandeis University, and a B.A. from McGill University. He clerked for the Honorable Judge Leonard I. Garth, U.S. Circuit Judge for the Third Circuit. As a U.S. Supreme Court Judicial Fellow at the Administrative Office of the U.S. Courts in Washington, DC, Rishikof assisted in the drafting of the Long Range Plan for the Federal Courts. He practiced law at Hale and Dorr in Boston, MA, and holds bar memberships in Massachusetts, New York, the U.S. Third Circuit, and the United States Supreme Court. His most recent committee appointments include participation in the Center for Strategic and International Security National Security Group, the American Bar Association "Out of the Box" Committee on the Future of Legal Education, and as a Trustee of the Supreme Court Historical Society.

David Warner, Esq.

Office of International Affairs
United States Department of Justice, Washington, DC

Mr. Warner has been with the U.S. Department of Justice since 1993. He currently works within the Criminal Division of the U.S. Department of Justice as a senior trial attorney within the Office of International Affairs. Along with responsibility for multilateral law enforcement initiatives between the U.S. and the Western Hemisphere, he has primary responsibility for U.S. bilateral cooperation efforts throughout the Middle East and North and East Africa. He clerked for the U.S. Immigration

Court in Chicago, Illinois, served as an Attorney-Adviser to the U.S. Board of Immigration Appeals, in Falls Church, Virginia, and completed a prosecution detail in the U.S. Attorney's Office for the Southern District of California. Mr. Warner holds a joint degree in law and international affairs (JD/MA) from the American University. He received a B.A. in International Studies from the Ohio State University and a Diploma in Hispanic Studies from the Complutense University of Madrid. Mr. Warner also studied at the Hague Academy of International Law. Mr. Warner has been recognized by numerous law enforcement agencies for his efforts to advance cooperation to combat transnational crime, and he has presented at multiple national and international conferences and seminars to address international law enforcement issues.

Bruce Zagaris, Esq.

Berliner, Corcoran & Rowe, Washington, DC

Bruce Zagaris received his B.A., J.D., and LL.M. (tax) from George Washington University, his LL.M. (comparative) from Stockholm University, Sweden, and his LL.M. (international) from the Free University, Brussels. He did legal work in Europe and Africa for two years, including as a U.N. consultant in West Africa. He practiced customs law in San Francisco, and taught at the Law Faculty of the University of the West Indies before practicing law in Washington since 1978, currently as a partner with the law firm of Berliner, Corcoran & Rowe LLP. His practice includes counseling and defending white collar criminal cases with significant international elements. His work has a large focus on international tax law, including advising and negotiating agreements and serving as counsel in criminal tax litigation, especially involving requests for information and mutual assistance. He has also done a lot of work in the money laundering area (including serving as an expert witness in federal district court cases and arbitrations), counseling financial institutions and professionals, consulting in litigation, representing clients in mutual assistance cases, and consulting for governments. He has represented many governments and international organizations.

He has been an adjunct professor (e.g., the Washington College of Law, American University in Washington, Fordham Law School, New York City, John Marshall College of Law, Chicago, and the University of Montana). He is founder and editor-in-chief of the *International Enforcement Law Reporter.* He is founder and former chair, Committee on International Criminal Law, Criminal Justice Section, American Bar Association and chair, American Bar Association; board, U.S. branch, International Penal Law Association; and chair, Committee on International Criminal Law & National Security, Section of International Law, D.C. Bar Association; and chair, International Enforcement Subcommittee, Criminal and Civil Penalties Committee, Tax Section, ABA. He has authored and edited six books and hundreds of articles.

THE MODERATORS

Steven Chanenson

Associate Professor of Law
Villanova University School of Law, Villanova, PA

Professor Chanenson received his B.A. magna cum laude in economics from the University of Pennsylvania. He received his M.S. magna cum laude in criminology from the University of Pennsylvania. While at the University of Pennsylvania, Professor Chanenson was selected as a Harry S. Truman Scholar.

Professor Chanenson earned his J.D. with honors from the University of Chicago Law School. While in law school, he was a comment editor of the *University of Chicago Law Review.* Professor Chanenson also was a recipient of the Joseph Henry Beale Prize for Outstanding Legal Research and Writing. Following law school, Professor Chanenson clerked for the Honorable Phyllis A. Kravitch of the United States Court of Appeals for the Eleventh Circuit. He then worked as an associate at Jenner & Block in Chicago, before clerking for U.S. Supreme Court Justice William J. Brennan, Jr. While at the Supreme Court, he also participated as a law clerk in the Chambers of Justice David H. Souter. He subsequently worked as an Assistant U.S. Attorney in Chicago, prosecuting federal crimes in the U.S. District Court and the Seventh Circuit. His publications include: Consistently Inconsistent: Circuit Rulings on the Guidelines in 1994, 7 *Fed. Sent. R.* 224 (1995); and Book Review, 9 Am. J. Police 180 (1990) (reviewing Informal Justice (Roger Matthews ed. 1988)).

Ruth E. Gordon

Professor of Law
Villanova University School of Law, Villanova, PA

Professor Gordon's scholarly interests focus on international law. She is the author of several articles on the various roles the United Nations plays in developing countries, including: Saving Failed States: Sometimes a Neocolonialist Notion, 12 *Am. U. J. Int'l & Pol'y* 903 (1997); Intervention by the United Nations: Iraq, Somalia, and Haiti, 31 *Tex. Int'l L.J.* 43 (1996); Some Legal Problems with Trusteeship, 28 *Cornell Int'l L.J.* 301, 306 (1995); United Nations Intervention in Internal Conflicts: Iraq, Somalia, and Beyond, 15 *Mich. J. Int'l L.* 519 (1994). Her latest article, Growing Constitutions, was published in the *University of Pennsylvania Journal of Constitutional Law.*

Professor Gordon has represented the island nation of Vanuatu at the United Nations and served as the legal adviser to the island's Permanent Mission to the United Nations. She also co-authored the United Nations Council for Namibia's study addressing Namibia's violations of U.N. decrees and resolutions.

Professor Gordon received her J.D. from New York University School of Law, and her LL.M. from the London School of Economics and Political Sciences. She was a Riesenfeld Fellow in Public International Law at the University of California at Berkeley. She was also a Revson Fellowship Scholar at The City College of the City University of New York Center for Legal Education & Urban Policy, where she developed and taught a two-semester course on international economic law from the perspective of developing countries.

Professor Gordon was a member of the Board of Directors of the American Society of International Law and the American Bar Association International Law and Practice Section. She is also a member of the American Bar Association Committee on World Order Under Law.

Joseph Dellapenna

Professor of Law
Villanova University School of Law, Villanova, PA

Professor Dellapenna's scholarly interests focus on water management and on international and comparative law. His books include: *Sueing Foreign Governments and Their Corporations* (2nd ed. 2002; 1st ed. 1988); *Waters and Water Rights* (2001)(Co-author); *Water Rights in the Eastern United States* (1998) (co-author); *Natural Resources Law Manual* (1997) (co-author); and *Abortion and the Constitution* (1987) (co-author). *Waters and Water Rights* is the standard reference work on water law in the United States. Professor Dellapenna also has written many scholarly articles on a broad range of constitutional, environmental and international subjects, and he has made public presentations at numerous national and international meetings.

Professor Dellapenna has taught and held positions at several universities both here and abroad. He is the only person ever to be a Fulbright Senior Lecturer in Law in both the People's Republic of China (at Jilin University, 1987-88) and the Republic of China (Taiwan) (at National Chengchi University, 1978-79). He was also a Fulbright Senior Researcher in Law at the Directory-General of Natural Resources, Republic of Portugal (1990). Professor Dellapenna has lectured widely at other foreign universities, and was previously a member of the faculty at Willamette University College of Law and at the University of Cincinnati College of Law. He has been a member of the faculty at Villanova University since 1976.

Professor Dellapenna is the Rapporteur for the Water Resources Committee of the International Law Association with the charge to redraft the Helsinki Rules on transboundary water management in light of developments in international water law and international environmental law over the 35 years since the original Helsinki Rules were approved. He has been an active member for more than ten years of the Task Committee of the American Society of Civil Engineers (ASCE) for drafting two Model Water Codes and chaired the working group that drafted the Regulated Riparian Model Water Code. He ascended in 1995 to the chair of the Water Regulatory Standards Committee of ASCE to direct completion of the Model Water Codes and the follow up standards, and also supervises the working group for the drafting of a Model Interstate Water Compact. He has also represented persons and groups in water litigation and consulted with governmental and private bodies on drafting water laws and regulations.

Professor Dellapenna has served as consultant to numerous private parties and foreign governments, including o the Water Sector of the National Assessment of the Potential Consequences of Climate Variability and Change of the United States Government, to the Water Commission of the World Humanities Action Trust, Joint Management of Shared Aquifers Project of the Palestine Consultancy Group and of the Harry S. Truman Research Institute for the Advancement of Peace of the Hebrew University of Jerusalem, the Associates for Middle East Research, Inc., the People's Republic of China, the Republic of China. Among the honors he has received, he is an elected member of the American Law Institute and the American Bar Foundation.

Villanova University School of Law

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Villanova University School of Law is a Catholic and Augustinian institution that seeks to reflect the spirit of St. Augustine by the cultivation of knowledge, by respect for individual differences and by adherence to the principle that mutual love and respect should animate every aspect of the law school's life.