

# **THE MILITARY COMMISSIONS ACT OF 2009: BACK TO THE FUTURE OR THE FIX FOR A FLAWED SYSTEM?**

In October 2009, President Obama signed the 2010 National Defense Authorization Act, which includes a package of important changes to the Military Commissions Act of 2006. This symposium will address the legal and practical consequences of the revisions and what they mean in light of the recent decision to try several high-profile terror suspects in Article III courts and others by military commission.

The current Military Commissions Act was predicated on the idea of fixing a flawed system, one that betrayed core American values. Questions remain over the constitutionality of the act itself, the costs and benefits of commissions versus courtrooms, and the creation of a two-tier system of justice. Experts from academia, government, private practice, and the judiciary will debate these and other questions in this day-long event. Panels include: A View From the Bench, Perspectives from the Front Line, and The 2009 Military Commissions Act - The Fix for a Flawed System?



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# **THE MILITARY COMMISSIONS ACT OF 2009: BACK TO THE FUTURE OR THE FIX FOR A FLAWED SYSTEM?**

At The Toledo Law Auditorium  
**FRIDAY, FEBRUARY 19, 2010**

SPONSORED BY THE TOLEDO LAW REVIEW

# THE MILITARY COMMISSIONS ACT OF 2009: BACK TO THE FUTURE OR THE FIX FOR A FLAWED SYSTEM?

## SCHEDULE OF EVENTS • FRIDAY, FEBRUARY 19, 2010

- 8:15 – 8:45 a.m. **REGISTRATION**
- 8:45 – 8:50 a.m. **OPENING REMARKS**  
**Douglas E. Ray, Dean**, The University of Toledo College of Law
- 8:50 – 9 a.m. **INTRODUCTION TO THE ISSUE:**  
**James G. Carr**, Chief Judge, Northern District of Ohio
- 9 – 10:15 a.m. **PANEL 1: A VIEW FROM THE BENCH**  
**Moderator: Hon. James G. Carr**, Chief Judge, Northern District of Ohio  
**Panelists: Hon. Gerald E. Rosen**, Chief Judge, Eastern District of Michigan  
**Hon. Marcia G. Cooke**, Judge, Southern District of Florida
- 10:15 – 10:30 a.m. **BREAK**
- 10:30 a.m. – 12:15 p.m. **PANEL 2: PERSPECTIVES FROM THE FRONT LINE**  
**Moderator: Jonathan Witmer-Rich**, Assistant Professor of Law, Cleveland State University  
**Panelists: Justin Herdman**, Asst. U.S. Attorney, U.S. Atty's Office-Cleveland  
**Joshua L. Dratel**, Defense Attorney, Law Offices of Joshua Dratel  
**Darin Thompson**, Asst. Federal Public Defender, Northern District of Ohio  
**Vicki Werneke**, Asst. Federal Public Defender, Northern District of Ohio
- 12:15 – 1:30 p.m. **LUNCH & KEYNOTE SPEAKER**  
**John Q. Barrett**, Professor of Law, St. John's University School of Law
- 1:30 – 3 p.m. **PANEL 3: THE 2009 MCA – THE FIX FOR A FLAWED SYSTEM?**  
**Moderator: Robert N. Strassfeld**, Professor of Law, Case Western University School of Law; Director, Institute for Global Security Law and Policy  
**Panelists: Capt. Glenn M. Sulmasy**, Professor of Law, U.S. Coast Guard Academy  
**Amos Guiora**, Professor of Law, S.J. Quinney College of Law, University of Utah  
**John Rizzo**, former Acting General Counsel, Central Intelligence Agency

“The proposed domestic terror courts resolve two issues—the suspected terrorists’ right to confront his accusers and the right to a trial by a jury of one’s peers—critical to the criminal law paradigm while establishing a paradigm that guarantees a fair trial, admittedly with less rights for the defendant than in Article III Courts.”

- Testimony of Prof. Amos N. Guiora, “Improving Detainee Policy: Handling Terrorism Detainees within the American Justice System,” Senate Judiciary Committee, June 4, 2008

“It seems logical that since we are fighting a hybrid warrior—in a hybrid war—that the best means to detain and adjudicate the detainees is through the use of a hybrid court—a mix of our Article III Courts and the military commissions.”

- Statement of Glenn M. Sulmasy, Before the Subcommittee on International Organizations, Human Rights, and Oversight, Committee on Foreign Affairs, United States House of Representatives, May 20, 2008

“No country with a well functioning judicial system should hide its justice behind military commissions.”

- Former Yale Law School Dean and current U.S. Department of State Legal Advisor, Harold Hongju Koh, *New York Times*, November 23, 2001

“It’s time to better protect the American people and our values by bringing swift and sure justice to terrorists through our courts and our Uniform Code of Military Justice.”

- Statement of Presidential Candidate Barack Obama, in response to the partial Hamdan conviction, August 2008

“Military commissions have a long tradition in the United States. They are appropriate for trying enemies who violate the laws of war, provided that they are properly structured and administered.”

- Statement of President Barack Obama on Military Commissions, May 15, 2009, [www.whitehouse.gov/the\\_press\\_office/Statement-of-President-Barack-Obama-on-Military-Commissions](http://www.whitehouse.gov/the_press_office/Statement-of-President-Barack-Obama-on-Military-Commissions)

“The Constitution is best preserved by reliance on standards tested over time and insulated from the pressures of the moment.”

- Justice Kennedy, Concurrence in *Hamdan v. Rumsfeld*, 548 U.S. 557, 636 (2006)

The University of Toledo College of Law is sincerely grateful to the United States District Court for the Northern District of Ohio for its financial and logistical support for this symposium.

# REGISTRATION INFORMATION & FEES

## Fees:

\$75 for 4.5 Hours of CLE  
(application pending with the Supreme Court of Ohio)  
Students may attend the symposium free of charge  
Lunch available (**limited seating; advance registration required**)  
Lunch sponsored by the Federal Bar Association’s Northern District of Ohio Chapter.

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\$75 for CLE credit  
 Lunch only (no CLE, advance registration required)  
 Free attendance (no CLE, no lunch)

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Register in one of several ways by **Tuesday, February 9, 2010**

- 1) Mail completed registration form to:  
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- 2) Fax completed registration form to the Law Review at 419.530.4629
- 3) Download and complete registration form at [www.law.utoledo.edu/2009MCA](http://www.law.utoledo.edu/2009MCA)
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For directions and other information, please visit [www.law.utoledo.edu/2009MCA](http://www.law.utoledo.edu/2009MCA).