

LEE KOVARSKY

M (434) 466-8257
E lee.kovarsky@law.utexas.edu
URL law.utexas.edu/faculty/lee-kovarsky/

APPOINTMENTS

UNIVERSITY OF TEXAS SCHOOL OF LAW (Austin, TX) 2020-Present

Bryant Smith Chair in Law and Co-Director, Capital Punishment Center

COURSES: Civil Procedure, Criminal Procedure, Federal Courts, Capital Punishment, Mercy (seminar)

COMMITTEES: Appointments (2021-22 to 2022-23), Promotion & Tenure (2020-21)

NOTABLE: Elected to American Law Institute (July 2020)

UNIVERSITY OF MARYLAND SCHOOL OF LAW (Baltimore, MD) 2011-2020

Professor of Law (with tenure) | Associate Professor of Law | Assistant Professor of Law

COURSES: Civil Procedure I & II; Conflict of Laws; Criminal Procedure; Death Penalty; Federal Courts; Habeas Corpus

COMMITTEES: Appointments (Chair 2018-19); Dean Search; Clerkship (Chair 2013-14, 2014-15); Bar Passage

ADVISOR: Maryland Law Review (AY 2013-14 to 2019-20), Asian-Pacific-American L.S.A. (AY 2012-13 to 2019-20)

AWARDS: Outstanding Faculty Member of the Year (AY 2014-15) (student vote)

NOTABLE: Argued *Ayestas v. Davis* (2018) in U.S. Supreme Court (death penalty case), securing unanimous win

NEW YORK UNIVERSITY SCHOOL OF LAW (New York, NY) 2008-2011

Acting Assistant Professor of Lawyering

EDUCATION

UNIVERSITY OF VIRGINIA SCHOOL OF LAW, Juris Doctor 2004

Articles Editor, VIRGINIA LAW REVIEW

Olin Law and Economics: Scholar (Fall 2002- Spring 2004), Fellow (Summer 2002)

Research Assistant to Professors Tim Wu and Peter Low

YALE UNIVERSITY, Bachelor of Arts 1999

Awards of Academic Distinction: Political Science, Economics

PUBLICATIONS

ARTICLES, ESSAYS, AND BOOK REVIEWS

Habeas Myths, Past and Present, 101 TEX. L. REV. 219 (2022) (online) (response essay).

Outcome Sensitivity in Criminal Procedure, 98 INDIANA L. J. 429 (2023) (article).

The Trump Executions, 100 TEXAS L. REV. 621 (2022) (article)

Viral Injustice, 110 CALIFORNIA L. REV. 117 (2022) (with Brandon Garrett) (article).

Asymmetric Specification, Professional Norms, And Abstention, BALKINIZATION (Feb. 11 2022) (invited book review of Aziz Huq, *The Collapse of Constitutional Remedies* (Oxford University Press, 2021)).

Prosecutor Mercy, 24 NEW CRIMINAL L. REV. 326 (2021) (invited article).

Habeas Privilege Origination and DHS v. Thuraissigiam, 121 COLUMBIA L. REV. FORUM 23 (2021) (article).

Delay in the Shadow of Death, 95 NYU L. REV. 1319 (2020) (article).

Pandemics, Risks, and Remedies, 106 VIRGINIA L. REV. ONLINE 21 (2020) (article).

Amanda L. Tyler, Habeas Corpus in Wartime: From the Tower of London to Guantanamo Bay, New York: Oxford University Press, 2017, 38 LAW AND HISTORY REV. 297 (2020) (invited book review).

The American Execution Queue, 71 STANFORD L. REV. 1163 (2019) (article).

Citizenship, National Security Detention, and the Habeas Remedy, 107 CALIFORNIA L. REV. 867 (2019) (article).

ARTICLES, ESSAYS, AND BOOK REVIEWS (cont'd)

- Blue State Fantasies and the Death Penalty*, 51 TEXAS TECH L. REV. 125 (2018) (invited symposium piece).
- Structural Change in State Post-Conviction Review*, 93 NOTRE DAME L. REV. 443 (2017) (article).
- Muscle Memory and the Local Concentration of Capital Punishment*, 66 DUKE L. J. 259 (2016) (article).
- Preclusion and Criminal Judgment*, 92 NOTRE DAME L. REV. 637 (2016) (article).
- Justice Scalia's Innocence Tetralogy*, 101 MINNESOTA L. REV. HEADNOTES 94 (2016) (invited symposium piece).
- Prisoners and Habeas Privileges Under the Fourteenth Amendment*, 607 VANDERBILT L. REV. 69 (2014) (article).
- The Habeas Optimist*, 81 U. CHICAGO L. REV. DIALOGUE 108 (2014) (invited essay).
- A Constitutional Theory of Habeas Power*, 98 VIRGINIA L. REV. 753 (2013) (article).
- Custodial & Collateral Process: A Response to Professor Garrett*, 98 CORNELL L. REV. ONLINE 1 (2013) (invited essay).
- Original Habeas Redux*, 97 VIRGINIA L. REV. 61 (2011) (article).
- Habeas Verité*, 47 TULSA L. REV. 13 (2011) (invited book review).
- Death Ineligibility and Habeas Corpus*, 95 CORNELL L. REV. 329 (2010) (article).
- AEDPA's Wrecks: Comity, Finality, and Federalism*, 82 TULANE L. REV. 443 (2007) (article).
- A Technological Theory of the Arms Race*, 81 INDIANA L. J. 917 (2006) (article).
- Tolls on the Information Superhighway*, 89 VIRGINIA L. REV. 1037 (2003) (note).

BOOKS

- THE DEATH PENALTY: CONCEPTS AND INSIGHTS (Foundation Press 2018, with Brandon Garrett).
- FEDERAL HABEAS CORPUS: EXECUTIVE DETENTION AND POST-CONVICTION LITIGATION (forthcoming 2022, 2nd ed., with Brandon Garrett).
- FEDERAL HABEAS CORPUS: EXECUTIVE DETENTION AND POST-CONVICTION LITIGATION (Found. Press 2013, 1st ed., with Brandon Garrett).

BOOK CHAPTERS

- Habeas as Remedy*, in JUDGING NATIONAL SECURITY (Oxford Univ. Press forthcoming 2022, Robert Chesney and Stephen Vladeck, eds.).
- Federal Circuit Practice*, in FEDERAL APPELLATE PRACTICE (Bureau of National Affairs 2009), with Claudia W. Frost, Sharon A. Israel, and Donald M. Falk.
- Beyond Consent: Applying Alter Ego And Arbitration Doctrines To Bind Sovereign Parents*, in MULTIPLE PARTY ACTIONS IN INVESTMENT ARBITRATION (Oxford University Press 2009), with Rebecca K. Stewart and Timothy J. Tyler.

CONFERENCES, PANELS, AND PRESENTATIONS

- Presenter, *Suffering Before Execution*, William and Mary Faculty Workshop, January 26, 2023.
- Presenter, *Habeas Myths, Past and Present*, University of Chicago Constitutional Law Institute, Oct. 24, 2022.
- Presenter, *AEDPA Primer III: Shinn v. Ramirez*, National Habeas Institute, June 28, 2022.
- Presenter, *Supreme Court Jurisdiction*, Anthony G. Amsterdam Supreme Court Institute, June 10, 2022.
- Presenter, *Outcome Sensitivity and Criminal Procedure*, University of Virginia Criminal Law Roundtable, May 16, 2022.
- Presenter, *Habeas Corpus Overview*, Utah Appellate Court Conference, April 22, 2022.
- Moderator, *Death Row Incarceration: Evaluative Frameworks*, University of Texas School of Law, April 8, 2022
- Conference Organizer, *Death Row Incarceration*, University of Texas School of Law, April 8-9, 2022
- Panelist, *Conference on Race, Class, Gender, and Ethnicity*, North Carolina School of Law, April 1, 2022.
- Presenter, *Outcome Sensitivity and Criminal Procedure*, Virtual Criminal Law Workshop, March 9, 2022.
- Panelist, *AEDPA and the PLRA After 25 Years*, Case Western Law Review Symposium, November 12, 2021.
- Panelist, *Rethinking the American Way of Punishment*, John Jay College of Criminal Justice, November 4, 2021.
- Presenter, *The Trump Executions*, CrimFest, July 19, 2021.

CONFERENCES, PANELS, AND PRESENTATIONS (cont'd)

- Presenter, *COVID-19 Class Litigation*, June 10, 2021.
- Presenter, *Outcome Sensitivity in Criminal Law*, University of Texas School of Law Faculty Colloquium, March 25, 2021.
- Presenter, *Litigating Statutory Rights to Death Penalty Representation Under 18 U.S.C. § 3599*, May 21, 2021.
- Presenter, *Viral Injustice*, Villanova School of Law Workshop, January 26, 2021.
- Presenter, *Prosecutor Mercy*, New Criminal Law Review Authors' Workshop, January 22, 2021.
- Presenter, *Developing and Litigating Intellectual Disability Claims After Moore v. Texas*, October 16, 2020.
- Moderator, *What Do We Want Law Enforcement To Do*, University of Texas Federalist Society, October 15, 2020.
- Panelist, *COVID-19 in Prisons/Jails: Seeking Pandemic-Related Group Habeas Relief for Prisoners*, June 5, 2020.
- Conference Organizer, University of Maryland Criminal Justice Roundtable (Baltimore, MD), May 4-5, 2020.
- Presenter, *Delay in the Shadow of Death*, Duke Criminal Law Workshop, April 13, 2020.
- Presenter, *The American Execution Queue*, The University of Texas Law School, October 22, 2019.
- Panelist, *Just Mercy: Screening and Discussion* (Baltimore), January 23, 2020.
- Panelist, *New Frontiers in State Post-Conviction Litigation*, AALS Annual Meeting (Washington, DC), January 2, 2020.
- Conference Presenter, *Teague Bars*, Twenty-Fourth Annual National Federal Habeas Corpus Seminar, August 9, 2019.
- Faculty Workshop Presenter, *Prosecutor Mercy*, Brooklyn Law School (Crimfest), July 15, 2019.
- Faculty Workshop Presenter, *Prosecutor Mercy*, University of North Carolina Criminal Justice Roundtable, May 13, 2019.
- Panelist, *Why Has Texas Led the Nation in Executions*, University of Texas Capital Punishment Symposium, April 5, 2019.
- Panelist, *Our Federal Court System Today*, Catholic University Law Review Symposium, Feb. 1, 2019.
- Faculty Workshop Presenter, *Citizenship, National Security Detention, and the Habeas Remedy*, University of Maryland Legal Theory Workshop, October 18, 2018.
- Panelist, *The Supreme Court*, University of Maryland Carey Law Constitution Day, September 17, 2018.
- Conference Presenter, *Ayestas and Investigative Services*, Twenty-Third Annual National Federal Habeas Corpus Seminar, August 10, 2018.
- Panelist, *Will the Supreme Court Strike Down the Death Penalty*, Texas Tech Criminal Law Symposium, April 13, 2018.
- Faculty Workshop Presenter, *Execution Selection*, University of Maryland Legal Theory Workshop, February 8, 2018.
- Faculty Workshop Presenter, *Execution Selection*, University of Virginia Law School Neighborhood Criminal Justice Roundtable, May 8-9, 2017.
- Faculty Workshop Presenter, *Structural Change in State Post-Conviction Process*, Maryland Legal Theory Workshop, February 9, 2017.
- Panelist, *Meet the Author: Carol and Jordan Steiker's Courting Death*, UM Carey Law School, January 26, 2017.
- Faculty Presenter, *Learning at Lunch: Capital Punishment*, UM Carey Law School, January 23, 2017.
- Moderator, *Bulk Data Collection and Personal Privacy*, Journal of Business and Technology Law Symposium at the UM Carey Law School, April 1, 2016.
- Faculty Workshop Presenter, *Judgment, Recognition, and the New Habeas Exceptionalism*, DC-Area Criminal Professors Conference, April 17, 2015.
- Faculty Presenter, *Learning at Lunch: Habeas Corpus*, UM Carey Law School, October 20, 2014.
- Faculty Workshop Presenter, *Habeas Corpus: Relitigation or Review*, National Junior Federal Courts Workshop, October 10-11, 2014.
- Faculty Workshop Presenter, *The Habeas Optimist*, Maryland Junior Faculty Workshop, September 23, 2014.
- Conference Panelist and Moderator, 35th Annual Capital Punishment Training Conference (LDF), July 17-20, 2014.
- Faculty Workshop Presenter, *Differentiating Death is Different*, Maryland Junior Faculty Workshop, March 25, 2014.

CONFERENCES, PANELS, AND PRESENTATIONS (cont'd)

- Faculty Workshop Presenter, *Prisoners and Habeas Privileges Under the Fourteenth Amendment*, Michigan State Junior Scholars Workshop, November 1, 2013.
- Symposium Panelist, University of Maryland Journal of Race, Religion, Gender and Class, *The Future of the Fourth Amendment*, October 25, 2013.
- Faculty Workshop Presenter, *Prisoners and Habeas Privileges Under the Fourteenth Amendment*, National Junior Federal Courts Workshop, October 4, 2013.
- Faculty Workshop Presenter, *Prisoners and Habeas Privileges Under the Fourteenth Amendment*, Maryland Junior Faculty Workshop, September 24, 2013.
- Faculty Workshop Presenter, *Prisoners and Habeas Privileges Under the Fourteenth Amendment*, Brooklyn Junior Workshop, Summer 2013.
- Faculty Workshop Presenter, *Prisoners and Habeas Privileges Under the Fourteenth Amendment*, Maryland Faculty Lunch Series, Summer 2013.
- Moderator, University of Maryland Journal of Race, Religion, and Gender Luncheon Series: *Maryland v. King*, February 28, 2013.
- Faculty Workshop Presenter, *A Constitutional Theory of Habeas Power*, William and Mary School of Law, February 20, 2013.
- Faculty Workshop Presenter, *Federal Habeas Corpus: Executive Detention and Post-Conviction Litigation*, Maryland Faculty Lunch Series, Summer 2012.
- Opening Speaker, *Capital Punishment and Post-Conviction Law*, The Bar Association of New York—Capital Punishment Section, July 11, 2012.
- Invited Panelist, *U.S. v. Jones: Warrantless GPS Tracking*, American Constitutional Society (MD Chapter), February 1, 2012.
- Faculty Workshop Presenter, *A Constitutional Theory of Habeas Power*, Maryland Junior Faculty Workshop, Fall 2011.
- Faculty Workshop Presenter, *A Constitutional Theory of Habeas Power*, Mich. St. Junior Faculty Conference, Fall 2011.
- Invited Panelist, *Habeas Corpus: Law and Legitimacy in Times of Crisis*, Institute for the American Constitutional Heritage at the University of Oklahoma, March 25, 2011.
- Faculty Workshop Presenter, *Death Ineligibility and Habeas Corpus*, NYU Lawyering Scholarship Colloquium, Fall 2009.
- Invited Speaker, *Intellectual Property Practice Before the United States International Trade Commission*, May 19, 2009.
- Invited Panelist, *Intellectual Property Licensing After MedImmune v. Genentech*, LICENSING EXECUTIVES SOCIETY (International Chapter), October 2007.

OTHER LEGAL EXPERIENCE

Across the positions listed below, I have worked on many dozens of death penalty matters across levels of the United States and Texas judiciaries. In many matters I have been lead counsel, in others I have supervised lead counsel, and in still others I have been involved as a formal or informal consultant. I have also drafted many amicus briefs, usually for certiorari or merits-phase proceedings before the U.S. Supreme Court.

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| TEXAS DEFENDER SERVICE | 2010-2017 |
| Post-Conviction Litigation Director, Consulting Attorney | |
| | 2008-2011 |
| PILLSBURY WITHROP SHAW PITTMAN LLP | |
| Consulting Counsel, Appellate Group | |
| | |
| MAYER BROWN LLP | 2005-2008 |
| Associate, Supreme Court and Appellate Practice Group | |

OTHER LEGAL EXPERIENCE (cont'd)

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT
Judicial Clerk to the Hon. Jerry E. Smith, Circuit Judge

MEMBERSHIPS, AFFILIATIONS, AND LICENSES

MEMBERSHIPS

Elected Member, American Law Institute

BAR ADMISSIONS

STATE: New York, Texas

FEDERAL: U.S. Supreme Court; Fifth and Federal Circuits; Eastern, Southern, and Western Districts of Texas

REVIEWER & REFEREE (Select)

BOOK PUBLISHERS: New York University Press, Oxford University Press, Palgrave MacMillan

JOURNAL PUBLISHERS: Columbia Law Review, Stanford Law Review, Yale J. of Bio. & Med.

AWARDS

LIGHT OF JUSTICE AWARD (2018): Awarded by Texas Defender Service for Supreme Court work on Texas Death Penalty Cases

OUTSTANDING PROFESSOR OF THE YEAR (2015): Awarded by Student Bar Association and Voted by University of Maryland School of Law students