

# LEE KOVARSKY

M (434) 466-8257

E [lee.kovarsky@law.utexas.edu](mailto:lee.kovarsky@law.utexas.edu)

URL [law.utexas.edu/faculty/lee-kovarsky/](http://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 ETC.: Appointments (2021-22 to 2023-24, Lateral Appointments Chair 2024-25), Promotion & Tenure (2020-21), Hargarve Society Advisor (2022-24)

NOTABLE: Elected to American Law Institute (July 2020)

**HARVARD LAW SCHOOL (Cambridge, MA)** Fall 2025

**Visiting Professor of Law**

COURSE: Capital Punishment

**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

*The Victims' Rights Mismatch*, 123 MICHIGAN L. REV. \_\_ (forthcoming 2025) (article).

*The New Negative Habeas Equity*, 137 HARVARD L. REV. 2222 (2024) (article).

*Suffering Before Execution*, 109 VIRGINIA L. REV. 1429 (2023) (article).

*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).

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

*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).

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

- Habeas Privilege Origination and DHS v. Thuraissigiam*, 121 COLUMBIA L. REV. FORUM 23 (2021) (article).
- Delay in the Shadow of Death*, 95 NEW YORK UNIVERSITY 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).
- 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 2024, 2<sup>nd</sup> ed., with Brandon Garrett).
- FEDERAL HABEAS CORPUS: EXECUTIVE DETENTION AND POST-CONVICTION LITIGATION (Found. Press 2013, 1<sup>st</sup> ed., with Brandon Garrett).

## BOOK CHAPTERS

- 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

- Conference Organizer, *The Death Penalty and Religion*, University of Texas School of Law, Apr. 4-5, 2025.
- Panelist, End-Stage Practices in DP Cases, Texas Habeas Assistance and Training Conference, Dec. 13, 2024.
- Paper Presenter, *The Victims' Rights Mismatch*, University of Maryland Faculty Colloquium, Nov. 14, 2024.
- Moderator, *The Pardon Power*, Book People (Austin), Nov. 2, 2024.
- Presenter, Scholarship Update, National Habeas Assistance and Training Conference, Aug. 9, 2024.
- Paper Presenter, *The Victims' Rights Mismatch*, CrimFest (Cardozo), July 16, 2024.
- Paper Presenter, *The Victims' Rights Mismatch*, Criminal Law Roundtable (Duke), Apr. 30, 2024.
- Moderator, *Misdemeanor Declination with Alexandra Natapoff*, Texas Law Review, Apr. 11, 2024.

## CONFERENCES, PANELS, AND PRESENTATIONS (cont'd)

Panelist, *Afrofuturism and the Law: Policing*, University of Texas TMLS Symposium, Feb. 10, 2024.

Organizer and Host, *Mercy* (Symposium), Texas Law Review, January 18-20, 2024.

Panelist, *The Trump Indictments*, Texas Law Review and Federalist Society, Jan. 22, 2024.

Featured Speaker, *A Moral Duty or a Grave Injustice? Should the Death Penalty be Abolished?*, Texas Federalist Society, Nov. 16, 2023.

Panelist, Alabama Chapters Conference of the Federalist Society, *Post-Conviction Relief: The Proper Roles of State and Federal Courts*, Sept. 8, 2023.

Paper Presenter, *Habeas Myths*, National Habeas Assistance and Training Conference, Aug. 11, 2023.

Paper Presenter, *Originalist and Textualist Arguments for Habeas Petitioners*, Jul. 28, 2023.

Commenter, Criminal Law Roundtable (William and Mary), May 16, 2023.

Paper Presenter, *Suffering Before Execution*, William and Mary Faculty Workshop, Jan. 26, 2023.

Paper 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.

Paper Presenter, *Outcome Sensitivity and Criminal Procedure*, Criminal Law Roundtable (Virginia), May 16, 2022.

Presenter, *Habeas Corpus Overview*, Utah Appellate Court Conference, Apr. 22, 2022.

Moderator, *Death Row Incarceration: Evaluative Frameworks*, University of Texas School of Law, Apr. 8, 2022.

Conference Organizer, *Death Row Incarceration*, University of Texas School of Law, Apr. 8-9, 2022.

Panelist, *Conference on Race, Class, Gender, and Ethnicity*, North Carolina School of Law, Apr. 1, 2022.

Paper Presenter, *Outcome Sensitivity and Criminal Procedure*, Virtual Criminal Law Workshop, Mar. 9, 2022.

Panelist, *AEDPA and the PLRA After 25 Years*, Case Western Law Review Symposium, Nov. 12, 2021.

Panelist, *Rethinking the American Way of Punishment*, John Jay College of Criminal Justice, Nov. 4, 2021.

Paper Presenter, *The Trump Executions*, CrimFest, Jul. 19, 2021.

Presenter, *COVID-19 Class Litigation*, June 10, 2021.

Paper Presenter, *Outcome Sensitivity in Criminal Law*, University of Texas Faculty Colloquium, Mar. 25, 2021.

Presenter, *Litigating Statutory Rights to Death Penalty Representation Under 18 U.S.C. § 3599*, May 21, 2021.

Paper Presenter, *Viral Injustice*, Villanova School of Law Workshop, Jan. 26, 2021.

Paper Presenter, *Prosecutor Mercy*, New Criminal Law Review Authors' Workshop, Jan. 22, 2021.

Presenter, *Developing and Litigating Intellectual Disability Claims After Moore v. Texas*, Oct. 16, 2020.

Moderator, *What Do We Want Law Enforcement To Do*, University of Texas Federalist Society, Oct 15, 2020.

Panelist, *COVID-19 in Prisons/Jails: Seeking Pandemic-Related Group Habeas Relief for Prisoners*, June 5, 2020.

Conference Organizer, Criminal Law Roundtable (Maryland), May 4-5, 2020.

Paper Presenter, *Delay in the Shadow of Death*, Duke Criminal Law Workshop, Apr. 13, 2020.

Panelist, *Just Mercy: Screening and Discussion* (Baltimore), Jan. 23, 2020.

Panelist, *New Frontiers in State Post-Conviction Litigation*, AALS Annual Meeting (Washington, DC), Jan. 2, 2020.

Paper Presenter, *The American Execution Queue*, The University of Texas Law School, Oct. 22, 2019.

Conference Presenter, *Teague Bars*, Twenty-Fourth Annual National Federal Habeas Corpus Seminar, Aug. 9, 2019.

Paper Presenter, *Prosecutor Mercy*, Brooklyn Law School (Crimfest), July 15, 2019.

Paper Presenter, *Prosecutor Mercy*, Criminal Law Roundtable (North Carolina), May 13, 2019.

Panelist, *Why Has Texas Led the Nation in Executions*, Texas Capital Punishment Symposium, Apr. 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, Oct. 18, 2018.

## CONFERENCES, PANELS, AND PRESENTATIONS (cont'd)

- Panelist, *The Supreme Court*, University of Maryland Carey Law Constitution Day, Sept. 17, 2018.
- Conference Presenter, *Ayestas and Investigative Services*, Twenty-Third Annual National Federal Habeas Corpus Seminar, Aug. 10, 2018.
- Panelist, *Will the Supreme Court Strike Down the Death Penalty*, Texas Tech Criminal Law Symposium, Apr. 13, 2018.
- Paper Presenter, *Execution Selection*, University of Maryland Legal Theory Workshop, Feb. 8, 2018.
- Paper Presenter, *Execution Selection*, Criminal Law Roundtable (Virginia), May 8-9, 2017.
- Paper Presenter, *Structural Change in State Post-Conviction Process*, Maryland Legal Theory Workshop, Feb. 9, 2017.
- Panelist, *Meet the Author: Carol and Jordan Steiker's Courting Death*, UM Carey Law School, Jan. 26, 2017.
- Faculty Presenter, *Learning at Lunch: Capital Punishment*, UM Carey Law School, Jan. 23, 2017.
- Moderator, *Bulk Data Collection and Personal Privacy*, Journal of Business and Technology Law Symposium at the UM Carey Law School, Apr. 1, 2016.
- Faculty Workshop Presenter, *Judgment, Recognition, and the New Habeas Exceptionalism*, DC-Area Criminal Professors Conference, Apr. 17, 2015.
- Faculty Presenter, *Learning at Lunch: Habeas Corpus*, UM Carey Law School, Oct. 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, Sept. 23, 2014.
- Conference Panelist and Moderator, 35th Annual Capital Punishment Training Conference (LDF), Jul. 17-20, 2014.
- Faculty Workshop Presenter, *Differentiating Death is Different*, Maryland Junior Faculty Workshop, Mar. 25, 2014.
- Faculty Workshop Presenter, *Prisoners and Habeas Privileges Under the Fourteenth Amendment*, Michigan State Junior Scholars Workshop, Nov. 1, 2013.
- Symposium Panelist, University of Maryland Journal of Race, Religion, Gender and Class, *The Future of the Fourth Amendment*, Oct. 25, 2013.
- Faculty Workshop Presenter, *Prisoners and Habeas Privileges Under the Fourteenth Amendment*, National Junior Federal Courts Workshop, Oct. 4, 2013.
- Faculty Workshop Presenter, *Prisoners and Habeas Privileges Under the Fourteenth Amendment*, Maryland Junior Faculty Workshop, Sept. 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*, Feb. 28, 2013.
- Faculty Workshop Presenter, *A Constitutional Theory of Habeas Power*, William and Mary School of Law, Feb. 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, Jul. 11, 2012.
- Invited Panelist, *U.S. v. Jones: Warrantless GPS Tracking*, American Constitutional Society (MD Chapter), Feb. 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, Mar. 25, 2011.

## CONFERENCES, PANELS, AND PRESENTATIONS (cont'd)

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.*

<b>PILLSBURY WITHROP SHAW PITTMAN LLP</b>	2008-2011	2008-2011
<b>Consulting Counsel, Appellate Group</b>		
<b>MAYER BROWN LLP</b>		2005-2008
<b>Associate, Supreme Court and Appellate Practice Group</b>		
<b>UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT</b>		2004-2005
<b>Judicial Clerk to the Hon. Jerry E. Smith, Circuit Judge</b>		

## 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