

## LEE KOVARSKY

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### APPOINTMENTS

#### UNIVERSITY OF MARYLAND SCHOOL OF LAW

- Appointments:* Professor of Law (With Tenure), 2015-; Associate Professor, 2013-15; Assistant Professor, 2011-13.
- Notable:* Argued *Ayestas v. Davis* (2018) in U.S. Supreme Court (death penalty case), securing unanimous win
- Awards:* Outstanding Faculty Member of the Year (AY 2014-15)
- Courses Taught:* Capital Punishment, Civil Procedure I; Civil Procedure II; Conflict of Laws; Criminal Procedure; Federal Courts; Habeas Corpus; Introduction to Civil Procedure.
- Committees:* Appointments (AY 2012-13, 2013-14, 2014-15, 2015-16; 2017-18, 2018-19 (Chair), 2019-20); Dean Search (AY 2013-14); Clerkship (AY 2011-12, 2012-13, 2013-14 (Chair), 2014-15 (Co-Chair), 2015-16, 2016-17); Futures (AY 2012-13, 2013-14); Bar Passage (AY 2013-14).
- Faculty Advisor:* Maryland Law Review (AY 2013-14 to current), Asian-Pacific Law Students Association (AY 2012-13 to current).

#### NEW YORK UNIVERSITY SCHOOL OF LAW

- Appointment:* Acting Assistant Professor of Lawyering, 2008-2011.

### PUBLICATIONS

#### BOOKS

- The Death Penalty: Concepts and Insights*  
(Foundation Press 2018) (with Brandon Garrett).
- Federal Habeas Corpus: Executive Detention and Post-Conviction Litigation*  
(Foundation Press 2021, 2<sup>nd</sup> ed.) (with Brandon Garrett) (forthcoming).
- Federal Habeas Corpus: Executive Detention and Post-Conviction Litigation*  
(Foundation Press 2013, 1<sup>st</sup> ed.) (with Brandon Garrett).

#### ARTICLES, ACADEMIC ESSAYS, AND BOOK REVIEWS

- Delay in the Shadow of Death*, 95 NEW YORK UNIVERSITY LAW REVIEW \_\_ (forthcoming 2020).
- Amanda L. Tyler, Habeas Corpus in Wartime: From the Tower of London to Guantanamo Bay*, New York: Oxford University Press, 2017. Pp. 464. \$85.00 hardcover (ISBN 9780199856664), 37 LAW AND HISTORY REV. \_\_ (forthcoming 2020) (invited book review).
- The American Execution Queue*, 71 STANFORD LAW REVIEW 1163 (2019) (article).
- Citizenship, National Security Detention, and the Habeas Remedy*, 107 CALIFORNIA LAW REVIEW 867 (2019) (article).

*Blue State Fantasies and the Death Penalty*, 51 TEXAS TECH LAW REVIEW 125 (2018) (invited symposium piece).

*Structural Change in State Post-Conviction Review*, 93 NOTRE DAME LAW REVIEW 443 (2017) (article).

*Muscle Memory and the Local Concentration of Capital Punishment*, 66 DUKE LAW JOURNAL 259 (2016) (article).

*Preclusion and Criminal Judgment*, 92 NOTRE DAME LAW REVIEW 637 (2016) (article).

*Justice Scalia's Innocence Tetralogy*, 101 MINN. 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 response to Aziz Z. Huq, *Habeas and the Roberts Court*, 81 U. CHI. L. REV. 519 (2014)).

*A Constitutional Theory of Habeas Power*, 98 VIRGINIA LAW REVIEW 753 (2013) (article).

*Custodial and Collateral Process: A Response to Professor Garrett*, 98 CORNELL L. REV. (ONLINE) 1 (2013) (invited response to Brandon L. Garrett, *Habeas Corpus and Due Process*, 98 CORNELL L. REV. 47 (2012)).

*Original Habeas Redux*, 97 VIRGINIA LAW REVIEW 61 (2011) (article).

*Habeas Verité*, 47 TULSA L. REV. 13 (2011) (invited book review).

*Death Ineligibility and Habeas Corpus*, 95 CORNELL LAW REVIEW 329 (2010) (article).

*AEDPA's (Imaginary) Purposes: Comity, Finality, and Federalism*, 82 TULANE LAW REVIEW 443 (2007) (article).

*A Technological Theory of the Arms Race*, 81 INDIANA LAW JOURNAL 917 (2006) (article).

*Tolls on the Information Superhighway: Entitlement Defaults for Clickstream Data*, 89 VIRGINIA LAW REVIEW 1037 (2003) (student note).

#### **BOOK CHAPTERS**

*Habeas as Remedy*, in JUDGING NATIONAL SECURITY (Oxford Univ. Press 2019, 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, SYMPOSIA, & PRESENTATIONS

- 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.

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*, Michigan State 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.

### **SHORT PERIODICAL PIECES**

*Inertia and the Death Penalty*, IN JUSTICE TODAY (Jan. 17, 2017).

*Civil Rights and the White Manel*, IN JUSTICE TODAY (Dec. 20, 2017).

*America Had Fewer Executions In 2017 Than In 23 Of The Last 25 Years*, IN JUSTICE TODAY (Dec. 18, 2017).

*How Tough-on-Crime Laws Became Linked to Anti-Terrorism*, SLATE, Jan. 20, 2016.

*Last Words for the Death Penalty*, THE HUFFINGTON POST, June 30, 2015 (with Brandon L. Garrett)

*Opposing the Death Penalty Is Not About Innocence*, SALON, September 11, 2009.

*United States Supreme Court Update*, THE APPELLATE ADVOCATE (2006-2009) (reporting on Supreme Court for Texas State Bar).

*Mental Illness and Culpability - Legal and Moral Questions*, WALL ST. JOURNAL, Dec. 27, 2006, A9.

*Patent opinions in a Post-Knorr World*, THE IP LITIGATOR, Mar/Apr 2006, at 18, with Sharon A. Israel, Claudia W. Frost, and Jeremy Gaston (short article).

### **EDUCATION**

<i>University of Virginia School of Law</i> , J.D. (2004)	Articles Editor, VIRGINIA LAW REVIEW John M. Olin Law and Economics Scholar (Fall 2002- Spring 2004) John M. Olin Law and Economics Fellow (Summer 2002) Research Assistant to Professor Tim Wu (Fall 2002-Spring 2004) Research Assistant to Professor Peter Low (Summer 2002)
<i>Yale University</i> , B.A., Economics and Political Science (1999)	Award of Academic Distinction, Political Science Award of Academic Distinction, Economics

### **CLERKSHIP**

**UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT**, August 2004 to August 2005.  
Judicial Clerk to Hon. Jerry E. Smith, Circuit Judge

## **ADDITIONAL LEGAL EXPERIENCE**

**PHILLIPS BLACK, A NON-PROFIT LAW PRACTICE**, February 2018 to current  
Principal

*Argued and won *Ayestas v. Davis* (capital case) (9-0) in the United States Supreme Court  
Help lead non-profit law practice devoted to indigent representation in complex and end-stage death penalty cases*

**THE POWELL PROJECT**, April 2017 to January 2018.  
Founder and Managing Director

*Served as counsel of record and consulted on many of capital cases*

**TEXAS DEFENDER SERVICE**, July 2010 to April 2017.  
Post-Conviction Director  
Consulting Attorney

*Served as counsel of record and consulted on many dozens of capital cases*

**PILLSBURY WINTHROP SHAW PITTMAN LLP**, April 2008-July 2011.

Counsel, Appellate Group  
Counsel, Intellectual Property Group

**MAYER BROWN, LLP**, August 2005 to April 2008.  
Associate, Supreme Court and Appellate Group  
Associate Intellectual Property Group

**AQUANTIVE, INC. (NOW MICROSOFT AD SERVING PLATFORM)**, January 2000 to August 2001.  
Senior Data Analytics Associate.

### **BAR ADMISSIONS:**

*State Jurisdictions:* Texas (active), New York (active)

*Federal Jurisdictions:* United States District Court for the Eastern, Southern, and Western Districts of Texas; United States Courts of Appeal for the Fifth and Federal Circuits; United States Supreme Court.

## **SELECTED MEDIA APPEARANCES**

### **TELEVISION/VIDEO**

*Guest, HuffPo Live, *The Sad State of Habeas Corpus*, July 16, 2013—on panel analyzing how habeas is used in modern criminal and military detention cases.*

*Guest, Al-Jazeera, *Inside Story Americas: The Law of Executions*, August 9, 2012—providing opening commentary for segment devoted to how capital sentencing accommodates mental disabilities.*

*Guest, Democracy Now!, August 7, 2012— explaining the execution of Marvin Wilson, a Texas capital offender with intellectual disability.*

### **RADIO/PODCAST**

*Guest, National Constitution Center Weekly Podcast with Jeff Rosen, February 18, 2014— discussing upcoming case *Hall v. Florida* and its implications for capital inmates with mental retardation.*

*Guest, NPR Studio360, July 28, 2013 (air date)—discussing state of capital punishment in Texas, with specific focus on offenders with intellectual disability.*

*Guest*, BBC World News Radio (via NPR), August 7, 2012—appearing to discuss Marvin Wilson execution.

#### **BLOGS**

*Guest Blogger* for The American Constitution Society, *Last Words for the Death Penalty*, July 1, 2015 (with Brandon L. Garrett and cross posted from THE HUFFINGTON POST).

*Guest Blogger* for The American Constitution Society, *Two Gateways to Habeas*, May 30, 2013 (with Brandon L. Garrett).

*Guest Blogger* for Alliance for Justice, *Swimming Upstream: the Execution of Marvin Wilson*, August 10, 2012.

*Guest Blogger* for PrawfsBlawg, Various Entries, October 2011.

*Guest Blogger* for The American Constitution Society, *State Habeas at Center Stage*, March 28, 2012.

*Guest Blogger* for Concurring Opinions, *Martinez and the Roberts Post-Conviction Project*, March 21, 2012.

*Guest Blogger* for Obsidian Wings, *The Davis Tremor*, August 19, 2009.