

LENESE C. HERBERT, ESQ.
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TEACHING

**Howard University
School of Law
Washington, DC**

Professor of Law: 2013- present. Tenured.
Visiting Professor: 2008-2009; Spring 2012; 2012-2013.
Courses: Criminal Procedure; Criminal Law; Evidence;
Administrative Law; Social Media and the Law.
Committees: Strategic Planning, Curriculum Subcommittee
(2014-to present); Chair, Self-Study
Technology Subcommittee (2013-2015); Co-
Chair, Taslitz Scholarship Symposium (2014).

**Albany Law School
Albany, NY**

Professor of Law: Tenured. 2006-2013.
Associate Professor: 2003-2006.
Visiting Professor: 2002-2003. Invited to join the faculty.
Courses: Criminal Procedure; Criminal Law; Evidence;
Administrative Law; Advanced Criminal
Procedure Seminar.
Committees: Faculty Affairs (2009-2010); Admissions
(2003-2010); Academic Accommodations
(2003-2007); Academic Standards and Student
Petitions (2003-2007); Faculty Enrichment
(2003-2007); Faculty Appointments (2006-
2007).

**Washington and Lee University
School of Law
Lexington, VA**

Visiting Professor: 2007-2008.
Courses: Criminal Procedure; Criminal
Law; American Public Law Process
(Administrative Law); Legal Writing.

Western New England College
School of Law
Springfield, MA

Associate Professor: 2002-2003.
Assistant Professor: 1999-2002. Promoted to Associate Professor
2002.
Courses: Criminal Procedure; Criminal Law; Evidence;
Administrative Law.
Committees: Academic Standards and Student Petitions
(Chair, 2001-2002; Member, 2000-2001);
Clason Lecture Series Committee (Chair, 2001-
2002); Honor Code Committee (1999-2000).
Award: Edna Mahan Award for Innovative
Leadership of Women in Criminal Justice
(2000).

OF COUNSEL

In the Matter of Josphat Mutua Kimindu, Maryland Board of Nursing Order Lifting and Terminating Summary Suspension of Licensed Practical Nurse License and Certified Nursing Assistant and Medication Technician Certificates and Final Decision and Order of Reprimand of Licensed Practical Nurse License and Certified Nursing Assistant and Medication Technician Certificates, License No. LP48612, Certificate Nos. A00089671, MT0059562 (March 22, 2016): *en banc* reversal of indefinite licensure and certification suspensions under Maryland Nurse Practice Act involving the unfortunate group home death of a medically-fragile foster child.

United States v. Lisa Louise Hayes (Crim. #5:01m404 E.D.N.C. 2005): Post-conviction relief petition to overturn sexual predator conviction of female federal correctional employee's consensual conduct with male inmate, pursuant to 28 USC §1651(a).

United States v. Lcpl. Antoine D. Boykins (Piedmont Judicial Circuit, Camp Lejeune, 2004): Advised and assisted military (U.S. Army JAG Corps) and retained civilian defense counsel during court-martial proceedings, plea negotiations, and sentencing regarding a 32-count criminal indictment that included, *inter alia*, thirteen counts of attempted premeditated murder.

PRACTICE

**Assistant United States Attorney
U.S. Attorney's Office for the District of Columbia
Washington, DC
1994-1999**

Criminal Division:

Prosecuted violations of District of Columbia and federal criminal law statutes. Supervised and conducted grand jury investigations. Litigated detention hearings, plea hearings, motions hearings, trials, sentencing hearings, collateral attack proceedings, probable cause hearings, and probation violation hearings. Investigated criminal matters involving sexual, property, narcotics, and firearms offenses. Researched, authored, and argued trial and appellate briefs before the U.S. Court of Appeals for the District of Columbia Circuit, the District of Columbia Court of Appeals, and the Superior Court of the District of Columbia. Supervised evidence collection via search warrants, undercover operations, confidential informants, grand jury subpoenas, and witness interviews. Interviewed, prepared, and qualified testimony of expert witnesses regarding narcotics, child pornography, pedophilia, forensic documents, computer forensics, and forensic psychology. Negotiated plea agreements. Advised law enforcement on legal and ethical concerns regarding gathering and preserving evidence.

Civil Division:

Defended federal agencies and employees in federal civil matters (Section 1983, Freedom of Information Act, employment discrimination) before the U.S. District Court for the District of Columbia and the U.S. Court of Appeals for the District of Columbia Circuit. Interviewed, prepared, and deposed witnesses. Defended depositions of agency officials and employees. Initiated and challenged pre- and post-trial motions. Negotiated civil settlements and mediation agreements. Drafted agency pleadings and briefs. Reviewed and authorized agency counsel work product in support of litigation. Conducted discovery. Prepared exhibits.

**Trial Attorney
Manipulation and Trade Practice Unit
Division of Enforcement
U.S. Commodity Futures Trading Commission
Washington, DC
1991-1994**

Prosecuted the first administrative regulatory enforcement action against the four largest Sugar 11 commodity futures brokers on the New York Coffee, Sugar, and Cocoa Exchange (leading to registration revocations and \$900,000 in civil penalties, In The Matter Of Stephen F. Reddy, Nicholas DeSalvo, John W. Sorkvist, and Gary R. Bergamo, Comm. Fut. L. Rep. (CCH) p26, 544 (Nov. 2, 1995)). Supervised, investigated, and documented failure to supervise claims against Prudential Bache Securities (leading to

\$725,000 settlement, broker registration revocation, and a ten year trading ban). Investigated improper futures trading practices by commodity futures brokers, supervisors, and brokerage firms on the floors of New York and Chicago commodity futures markets. Challenged commodity futures trader licensing and registration applications. Deposed witnesses. Subpoenaed documents. Drafted memoranda. Prepared witness testimony. Negotiated settlement agreements. Supervised junior trial attorneys.

**Attorney-Advisor
Chief Counsel's Office
U.S. Department of Transportation, Washington, DC
1990-1991**

Drafted legal memoranda. Prepared witness testimony and exhibits for administrative law hearings.

**Law Clerk
Law Offices of George Haley and Associates
Washington, DC
1989**

Drafted legal memoranda in support of federal agency contract bid disputes.

EDUCATION

UCLA School of Law, J.D. (1989)

Executive Director, National Black Law Students Association (1988-1989); Member, National Black Law Journal (1987-1988); President, UCLA Black Law Students Association (1987-1988).

Howard University, B.S., *cum laude* (1985)

M.A.R.C. Honors Program (Psychology, 1983-1985, including Research-in Residence, University of California, Berkeley, Summer 1984); Dean's List (1981-1985); Honors Program, College of Liberal Arts (1981-1983); National Institutes of Health Scholarship (1983-1985); *Psi Chi* Honor Society.

SCHOLARSHIP & PUBLICATIONS

Casebooks/Texts:

SUPPLEMENT TO CONSTITUTIONAL CRIMINAL PROCEDURE
(with Taslitz & Paris; Foundation Press, 2016).

CONSTITUTIONAL CRIMINAL PROCEDURE (with Taslitz & Paris;
Foundation Press, 5th Ed., 2014; 4th Ed., 2010; 3rd Ed.,
2007).

SKILLS AND VALUE: CRIMINAL LAW (with Taslitz & Tinto;
Lexis/Nexis, 2014).

Book Chapter:

When Prosecutorial Discretion Meets Disaster Capitalism,
in RACE TO INJUSTICE: LESSONS LEARNED FROM THE DUKE
UNIVERSITY LACROSSE PLAYERS' RAPE CASE (edited by Michael
L. Seigel, Carolina Academic Press, 2009).

Invited Symposia:

*Policing, Protestors, and Discretion: Why Properly Policing
a Movement Matters* (in Response to Professor Alafair
Burke), in "Urban Policing: The Effects of New Police
Practices on City Life," Fifth Annual Cooper-Walsh
Symposium, 40 Fordham Urb. L. J. 1023 (2013).

*O.P.P.: How Occupy's Race-Based Privilege May Improve
Fourth Amendment Jurisprudence for All*, in "Racial Bias in
the Criminal Justice System" Symposium, 35 Seattle Univ. L.
Rev. 727 (2012).

The "First Family Effect:" Love on Top, in "The State of the
Ordinary Family" Symposium, 55 Howard L.J. 339 (2012).

*On Precedent and Progeny: A Response to Professor
Gabriel J. Chin*, in "Unexplainable On Grounds Of Race:
Doubts About *Yick Wo*" Symposium, 2008 U. Ill. L. Rev.
1415 (2008).

*Othello Error: Facial Profiling, Privacy, and the
Suppression of Dissent*, in "Racial Blindsight: The Absurdity
of Color-Blind Criminal Justice," 5 Ohio St. J. Crim. L. 79,
(Fall 2007; peer-reviewed journal).

Et In Arcadia Ego: A Perspective On Black Prosecutors' Loyalty Within The American Criminal Justice System, in "Loyalty & Criminal Justice" Symposium, 49 Howard L.J. 495 in (50th Anniversary Edition, 2006).

Articles:

Challenging the (Un)Constitutionality of Governmental GPS Surveillance (Vol. 26, No. 2, ABA Section on Criminal Justice Magazine, Summer 2011); **voted 2011 "Best of ABA Sections: Criminal Justice," 29 GPSolo Magazine 64 (2012).**

Plantation Lullabies: How Fourth Amendment Policing Violates the Fourteenth Amendment Right of African Americans to Parent, 19 St. John's Journal of Civil Rights and Economic Development 197 (2005).

Bête Noire: How Race-Based Policing Threatens National Security, 9 Mich. J. Race & Law 149 (2003).

Can't You See What I'm Saying? Making Expressive Conduct a Crime in High-Crime Areas, 9 Geo. J. Poverty Law & Pol'y 135 (2002).

SCHOLARSHIP CITED

In Court Pleadings:

Amicus curiae brief, Owner-Operator Independent Drivers Association, Incorporated, *U.S. v. Jones*, 2011 U.S. S.Ct. Briefs LEXIS 1439 (Oct. 3, 2011).

Amicus curiae brief, The Rutherford Institute and the National Motorists Association, *U.S. v. Jones*, 2010 U.S. S.Ct. Briefs 1489 (Oct. 3, 2011).

Amicus curiae brief, The Constitution Project, *U.S. v. Jones*, 2011 U.S. S.Ct. Briefs LEXIS 1438 (Oct. 3, 2011).

Amicus curiae brief, *Long Beach Police Officers Association v. City of Long Beach*, 2012 CA. S.Ct. Briefs 872, 2012 CA S.Ct. Briefs LEXIS 1403 (Cal. Sept. 17, 2012) (citing with approval, *O.P.P.: How Occupy's Race-Based Privilege May Improve Fourth Amendment Jurisprudence for All*," 35 Seattle Univ. L. Rev. 727 (2012)).

Brief for Appellant, Commonwealth of Pennsylvania v. Tameka Smith, 2004 WL 2921086 (W.D. Pa. May 4, 2004).

Brief for Appellant, *United States v. Bobby Darnell Gwin*, 2003 WL 22430337 (9th Cir. Feb. 12, 2003).

Appellant's Brief, *Commonwealth v. Smith*, 2004 WL 2921086 (W.D. Pa. May 4, 2004) (citing with approval, *Can't You See What I'm Saying? Making Expressive Conduct a Crime in High-Crime Areas*, 9 Geo. J. Poverty Law & Pol'y 135, 136 (2002)).

Appellant's Brief, *United States v. Gwin*, 2003 WL 22430337 (9th Cir. Feb. 12, 2003) (citing with approval, *Can't You See What I'm Saying? Making Expressive Conduct a Crime in High-Crime Areas*, 9 Geo. J. Poverty Law & Pol'y 135, 136 (2002)).

In Court Opinions:

Illinois v. Leggions, 382 Ill. App. 3d 1129, 1137-38, 890 N.E. 2d 700, 709 (App. Ct. of Ill. 4th Dist. 2008) (citing with approval, *Can't You See What I'm Saying? Making Expressive Conduct a Crime in High-Crime Areas*, 9 Geo. J. Poverty Law & Pol'y 135, 136 (2002)).

In Books:

JAMES FORMAN, JR., *LOCKING UP OUR OWN: CRIME AND PUNISHMENT IN BLACK AMERICA* (FARRAR, STRAUS AND GIROUX, 2017).

HOW CAN YOU REPRESENT THOSE PEOPLE? (ABBE SMITH, MONROE H. FREEMEN, EDs., 2013).

JOSHUA DRESSLER AND GEORGE C. THOMAS, *CRIMINAL PROCEDURE: PRINCIPLES, POLICIES AND PERSPECTIVES* (4TH ED. 2010).

IILYA SHAPIRO, *CATO SUPREME COURT REVIEW* (CATO INSTITUTE, 2009).

PAUL BUTLER, *LET'S GET FREE: A HIP-HOP THEORY OF JUSTICE* (2009).

ANGELA J. DAVIS, *ARBITRARY JUSTICE: THE POWER OF THE AMERICAN PROSECUTOR* (2007).

KENNETH J. LONG, *THE TROUBLE WITH AMERICA: FLAWED GOVERNMENT, FAILED SOCIETY* (LEXINGTON BOOKS, 2008).

WAYNE R. LAFAVE, *SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT* (2004).

In Scholarly Publications:

Ronald Turner, *On Neutral and Preferred Principles of Constitutional Law*, 74 U. Pitt. L. Rev. 433 (2013).

Renée McDonald Hutchins, *Stop Terry: Reasonable Suspicion, Race, and a Proposal to Limit Terry Stops*, 16 N.Y.U. J. Legis. & Pub. Pol'y 883 (2013).

Abbe Smith, *Are Prosecutors Born or Made?*, 25 Geo. J. Legal Ethics 943, 952 (2012).

Cynthia Lee, *Reasonableness with Teeth: The Future of Fourth Amendment Reasonableness Analysis*, 81 Miss. L.J. 1133 (2012).

L. Song Richardson, *Cognitive Bias, Police Character, and the Fourth Amendment*, 44 Ariz. St. L.J. 267 (2012).

Andrew Guthrie Ferguson, *Crime Mapping and the Fourth Amendment: Redrawing "High-Crime Areas"*, 63 Hastings L.J. 179 (2011).

Andrew Taslitz, *Police Are People Too: Cognitive Obstacles to, and Opportunities for, Police Getting the Individualized Suspicion Judgment Right*, 8 Ohio St. J. Crim. L. 7 (2010).

Note, *Prosecutorial Power and the Legitimacy Of The Military Justice System*, 123 Harv. L. Rev. 937 (2010).

SERVICE

Panelist, “The Power to Promote Progress: Opportunities and Limits to Prosecutors Seeking Reform Trump Justice” (The American Constitution Society for Law and Policy and the National Bar Association, Washington, DC 2017).

Panelist, “Trump Justice” (American University, Washington College of Law, Washington, DC 2017).

Scholar Coach, Howard University Junior Faculty Writing and Creative Works Summer Academy (2017, 2016).

Instructor, In-Service Training, Criminal Division, Superior Court for the District of Columbia (“4th Amendment: Search and Seizure in the Age of Technology;” December 2, 2016, Washington, DC).

Facilitator, Howard University School of Law, Faculty Scholarship and Development Committee (“Topic Selection & Developing a Research Agenda;” March 24, 2016).

Discussant, 2015 Southeastern Association of Law Schools Annual Conference (“Keeping the Conversation Going on Intractable Problems in the US Criminal Justice System;” Boca Raton, FL 2015).

Discussant, 2015 Southeastern Association of Law Schools Annual Conference (“Eliminating Racial Disparities in the Criminal Justice System – Best Practices and New Ideas;” Boca Raton, FL 2015).

Panelist, Final Report of the President’s Task Force on 21st Century Policing, District of Columbia City Council Roundtable: Technology and Social Media Pillar (Washington, DC 2015).

Panelist, Ferguson Open Forum (“Beyond Ferguson: What’s Next?,” Washington, DC, 2014), video at <http://media.wcl.american.edu/mediasite/play/93899b93fade40d8808a4dd4e4ef52741d> (Washington, DC, 2014).

Lecturer, Innovations in Teaching and Learning Evidence Conference (“Teaching “The Staircase,”” video at <https://www.youtube.com/watch?v=JqKPClOyzkI#t=154> (Columbus, OH, 2014).

Coach, National LGBT Bar Association Lavender Law Conference (“Career Coaching for Young Lawyers” (New York, NY, 2014).

Speaker, Mid-Atlantic People of Color Legal Scholarship Conference, “The Great Society in the Age of Social Media” (Baltimore, MD 2014).

Speaker, “Trayvon Martin’s Legacy: Why the Fight for Justice Must Continue,” located at <https://youtu.be/nFp1-iK32zo?t=35m26s> (Washington, DC 2013).

Panelist, Wiley A. Branton-Howard Law Journal Symposium, “Protest and Polarization: Law and Debate in America 2012” (Washington, DC 2012).

Panelist and Respondent, “Legitimacy and Order: Analyzing Police-Citizen Interactions in the Urban Landscape,” Fifth Annual Cooper-Walsh Colloquium, Fordham University School of Law’s Urban Law Journal (New York, NY, 2012).

Presenter, “The Ten Frisk Commandments: A Houstonian’s Remix,” Howard University School of Law Constitution Week (Washington, DC 2012).

Panelist, “Acing Your Public Defender and Prosecutor Interviews,” Howard University

School of Law (Washington, DC, 2012).

Moderator, “Transitional Justice, Reconciliation, and Victim-Centered Remedies,” Justice Robert H. Jackson Centennial Event, Africa and International Law: Taking Stock and Moving Forward (Albany, NY, 2012).

Symposium Contributor, Racial Bias in the Criminal Justice System, Washington Task Force on Race and the Criminal Justice System, Fred T. Korematsu Center for Law and Equality, Seattle University School of Law (Seattle, WA, 2012).

Small Group Leader and Panelist, Association of American Law Schools Workshop for New Law Teachers, (Washington, DC, 2011).

Moderator, Third National People Of Color Scholarship Conference, Post-Marxism, Post-Racialism, & Other Fables Of the Dispossession-II, University of Rutgers School of Law, (Newark, NJ, 2010).

EXPERT WITNESS

In the Matter of Interstate Realty Management Company, Rowan Associates, LP, and Michael J. Levitt (2011 HUDALJ 11-F-022-CMP-5): Authored report on behalf of respondents in administrative enforcement proceeding for civil monetary penalties regarding recusal obligations of Article III and administrative law judges.

MEDIA

- "Notable Moments In History: Remembering Thurgood Marshall," Office of Public Affairs, United States Courts, located at <http://www.uscourts.gov/news/2017/02/16/moments-history-remembering-thurgood-marshall> (February 2017).
- KYRGYZ TV, U.S. State Department Media Co-op Project (December 2016).
- “Implicit Bias Training Seeks to Counter Hidden Prejudice in Law Enforcement,” The Washington Post, located at https://www.washingtonpost.com/news/powerpost/wp/2016/08/16/implicit-bias-training-seeks-to-counter-hidden-prejudice-in-law-enforcement/?utm_term=.bc36a5f6f96d (August 16, 2016).
- Voice of America News, “US Justice Department to Probe Chicago Police Force,” located at <http://www.voanews.com/content/us-justice-department-to-probe-chicago-police-force-/3092072.html> (December 7, 2015).
- Twitter Chat, 50th Anniversary Of President Lyndon B. Johnson Commencement Address #LBJHU50, located at <http://www2.howard.edu/twitter-chat-50th-anniversary-president-lyndon-b-johnson-commencement-address> (June 4, 2015).
- Al-Jazeera English, “Protests In US Over Chokehold Death Case,” located at

- <http://www.aljazeera.com/news/americas/2014/12/protests-us-chokehold-eric-garner-2014123232954664568.html> (December 4, 2014).
- NBC 4, Washington, DC, “Eric Garner: Chokehold Death” (December 4, 2014).
 - News Channel 8 Washington, DC, “Ferguson Fallout,” located at <https://www.youtube.com/watch?v=gRI2j3B-yw8> (November 24, 2014).
 - WTTG Fox 5 Live Washington, DC, “Stand Your Ground Shooting Verdict” (Feb. 15, 2014), located at <http://www.myfoxdc.com/video?autoStart=true&topVideoCatNo=default&clipId=9846103>
 - The Washington Informer, “Blacks Continue to Fight for Justice A Year After Zimmerman Verdict” (July 16, 2014), located at <http://washingtoninformer.com/news/2014/jul/16/blacks-continue-fight-justice-year-after-zimmerman/> .
 - The Capital News, “Michael Dunn Found Guilty on Four of Five Counts” (Mar. 3, 2014), located at <http://www.thecapitalnews.com/michael-dunn-found-guilty-four-five-counts/> .
 - WHUR 96.3 and SIRIUS XM Channel 141, Washington, DC (The Daily Drum, Insight Segment, “The Legal Roundtable Talks About Law and Race in the Michael Dunn Trial and Verdict,” Feb. 18, 2014), located at <http://www.whur.com/whur/the-daily-drum-florida-loud-music-case-2-18-14/> .
 - Howard University Trayvon Martin Post-Zimmerman Prosecution Program, located at <https://youtu.be/nFp1-iK32zo?t=35m26s> (Sept. 25, 2013).

SOCIAL MEDIA

Curator, Constitutional Criminal Procedure Facebook Fan Page, *located at* <https://www.facebook.com/#!/pages/Constitutional-Criminal-Procedure-Fourth-Edition/134362016580097?sk=wall>

Curator, Constitutional Criminal Procedure on Twitter, *located at* <http://twitter.com/#!/ConstCrimPro4>

ASSOCIATIONS

National Association of Assistant U.S. Attorneys
 SheSource Expert, Women’s Media Center
 AALS Section on Criminal Justice
 AALS Section on Evidence
 American Constitution Society
 The National Black Prosecutors Association
 American Bar Association
 Pennsylvania Bar
 Of Counsel, The Law Offices of Kimberly N. Tarver, P.C.
 Honorary Member, Epsilon Sigma Iota Sorority, Incorporated