

LENESE C. HERBERT
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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.

**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).

EDUCATION

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

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

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

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

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.

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.

OF COUNSEL

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.

SCHOLARSHIP & PUBLICATIONS

Casebooks/Texts:

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

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

SUPPLEMENT TO CONSTITUTIONAL CRIMINAL PROCEDURE (with Taslitz & Paris; Foundation Press, annually, 2006 to present).

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).

SELECTED CITATIONS

In Legal Proceedings:

Amicus 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)).

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

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

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

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 and Scholarly Publications:

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).

Erik Luna, *Criminal Law: Hydraulic Pressures and Slight Deviations*, Cato Institute Supreme Court Review (2008-2009).

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

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).

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

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

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

Andrew G. Ferguson and Damien Bernache, *The "High-Crime Area" Question: Requiring Verifiable and Quantifiable Evidence for Fourth Amendment Reasonable Suspicion Analysis*, 57 Am. U.L. Rev. 1587 (2008).

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

Craig S. Lerner, *Judges Policing Hunches*, 4 J.L. Econ. & Pol'y 25 (2007).

Timothy M. Ravich, *Is Airline Passenger Profiling Necessary?*, 62 U. Miami L. Rev. 1 (2007).

Craig S. Lerner, *Reasonable Suspicion and Mere Hunches*, 59 Vand. L. Rev. 407 (2006).

Ryan J. Sydejko, *International Influence on Democracy: How Terrorism Exploited a Deteriorating Fourth Amendment*, 7 Journal of Law in Society 220 (2006).

Chris Hutton, *The Landscape of Search and Seizure: Observations on Recent Decisions from the United States Court of Appeals for the Eighth Circuit*, 8 Buff. Crim. L.R. 653 (2006).

Lawrence Rosenthal, *Relearning Brown: Applying the Lessons of Brown to the Challenges of the Twenty-First Century: The Crime Drop and the Fourth Amendment: Toward an Empirical Jurisprudence of Search and Seizure*, 29 N.Y.U. Rev. L. & Soc. Change 641 (2005).

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

Frank Rudy Cooper, *The Un-Balanced Fourth Amendment: A Cultural Study of the Drug War, Racial Profiling and Arvizu*, 47 Villanova Law Review 851 (2002).

SERVICE

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,” (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).

Keynote Speaker, “On Line, Crossing The Line: Cyberbullying, Cyberhate, Cybercrime,” Interfaith Community Of Schenectady and the Community Relations Council, United Jewish Federation of Northeastern New York Annual Human Rights Day Dinner (Albany, NY, 2009).

Panelist, Opening Plenary, “Class and Class Struggle in 2009,” Northeast People of Color Conference, SUNY at Buffalo School of Law (Buffalo, NY, 2009).

Discussant: Law and Society Association Annual Meeting, "Comparative Perspectives on Constitutional Interpretation and Judicial Review" (Denver, CO, 2009).

Moderator: Wiley A. Branton-Howard Law Journal Symposium, “Thurgood Marshall: His Life, His Work, His Legacy,” Howard University School of Law (Washington, DC, 2008).

Panelist, The Public Defender Service Deborah T. Creek Criminal Practice Institute Conference (Washington, DC, 2006).

Speaker, “40 Acres and a Mule: Affirmative Action Now,” Boston College Law School Black Alumni Network Reunion Symposium (Boston, MA, 2006).

Lecturer, Capital Region Education Council Summer Institute for American Politics, “Your Freedom From Government: Civil Liberties,” St. Joseph College (Hartford, CT, 2002-2004, 2006-2008).

Faculty, ALI-ABA Committee for Continuing Legal Education, “Internet Law for the Practical Lawyer: Cyber-Crimes and Hacking Issues” (Washington, DC, 2005).

Panelist, The Association of American Law Schools Mid-Year Meeting, “Racial Justice in a New Millennium: From *Brown* to *Grutter*: Methods to Achieve Non-Discrimination and Comparable Racial Equality” (Portland, OR, 2004).

Lecturer, “From Slavery to the Cellblock: Race and Racism in the American Criminal Justice System,” American Constitution for Law & Policy, Boston College Law School

(Boston, MA, 2004).

Speaker, Second National People of Color Legal Scholarship Conference International Law Plenary Presentation: Federal Sentencing Guidelines Mandatory Minimum Sentences Panel, The George Washington University School of Law (Washington, DC, 2004).

Panelist, “Post 9/11 Race & War! A Civil Rights Symposium,” St. John’s University School of Law (Queens, NY., 2003).

Lecturer, Albany Citizens’ Police Review Board & Albany Law School Governmental Law Institute (Anti-)Racial Profiling Training, Albany Law School (Albany, NY, 2003).

Lecturer, Supreme Court Review Conference, Western New England College School of Law, “One, Two, Three . . . Whither Goes The Four(th)?” (Springfield, MA, 2001).

Lecturer, U.S. Department of Justice Association of Black Attorneys, “Entering the Academy” (Washington, DC, 2001).

Keynote Speaker, National Corrections Employees Union, 2000 Women in Criminal Justice Conference, “Peacemaking in the Millennium” (Springfield, MA, 2000).

Speaker, Supreme Court Review Conference, Western New England College School of Law, “Search, Seizure, and the *Miranda* Warning” (Springfield, MA, 2000).

MEDIA

- 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>
- 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/>
- Springfield Union News (“‘Reb Shot Me,’ Five Year-Old Tells Court At Murder Trial,” Feb. 14, 2001)
- Prelaw Insider (“Crime Draws Students Into Courtroom,” Winter 2004)
- Times Union (“Drug Dealer To Get New Murder Trial,” May 15, 2003)
- St. Paul Pioneer Press, MN (“Courts-Martial Differ From Civilian Trials,” May 15, 2004)
- Times Union (“Cameras Find Hidden Clues In Life’s Ordinary Moments,” Jan. 26, 2005)
- Times Union (“Coming To Real Terms With The Cost Of Slavery,” Feb. 9, 2006)
- WHYN 590 AM (Springfield, MA)
- WNEK-FM 105.4 (Springfield, MA)

SOCIAL MEDIA

Social Media and the Law, Howard University School of Law
Curator, Constitutional Criminal Procedure Facebook Fan Page, *located at*
<https://www.facebook.com/#!/pages/Constitutional-Criminal-Procedure-Fourth-Edition/134362016580097?sk=wall>

Content Manager, Links and Resources Webpage, Constitutional Criminal Procedure,
located at <http://www.constitutionalcriminalprocedure.com/links.asp>
Curator, Constitutional Criminal Procedure on Twitter, *located at*
<http://twitter.com/#!/ConstCrimPro4>

ASSOCIATIONS

National Association of Assistant U.S. Attorneys
AALS Section on Criminal Justice
AALS Section on Evidence
The National Black Prosecutors Association
The Law and Society Association
The Society of American Law Teachers
American Bar Association
Pennsylvania Bar
Of Counsel, The Law Offices of Kimberly N. Tarver, P.C.
Board Member, Ann Thomas Coaching and Consulting, LLC