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*CURRICULUM VITAE*

**The Heritage Foundation**  
**John, Barbara & Victoria Rumpel**  
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*EMPLOYMENT*

**The Heritage Foundation:** *John, Barbara & Victoria Rumpel Senior Legal Research Fellow at the Meese Center of the Heritage Foundation Institute for Constitutional Government, 2018; Senior Legal Research Fellow, 2011-2018; Manager, Overcriminalization Project: 2011-2016*

**Federal Bureau of Investigation:** *Counsel to the Program Director, Office for Victim Assistance: 2011; Special Assistant to the Assistant Director for Professional Responsibility: 2010-2011*

**Federal Trade Commission:** *Office of the General Counsel, Attorney: 2010*

**Verizon Communications Inc.:** *Assistant General Counsel: 2004-2009*

**Environmental Protection Agency, Criminal Investigation Division:** *Acting Director, Criminal Investigation Division: 2003-2004; Special Agent-in-Charge: 2002-2004; Associate Special Agent-in-Charge: 2001-2002; Special Agent: 1998-2001*

**United States Senate Environment & Public Works Committee:** *Majority Fellow: 2000*

**United States Senate Judiciary Committee:** *Counsel to the Senate Judiciary Committee and Chief of the Crime Unit: 1996-1997*

**King & Spalding:** *Of Counsel: 1994-1996*

**Office of the Independent Counsel (Department of Housing & Urban Development Investigation):** *Associate Independent Counsel: 1995-1996*

**Office of the Solicitor General, United States Department of Justice:** *Assistant to the Solicitor General: 1985-1993*

**Organized Crime and Racketeering Section, Criminal Division, U.S. Department of Justice:** *Attorney: 1984-1985*

**Hogan & Hartson (now Hogan Lovells):** *Law firm associate: 1982-1984*

**Law Clerk to the Honorable Robert H. Bork, United States Court of Appeals for the District of Columbia Circuit: 1982**

**Law Clerk to the Honorable Robert A. Ainsworth, Jr., United States Court of Appeals for the Fifth Circuit: 1981-1982**

**Law Clerk to the Honorable Frederick J.R. Heebe**, United States District Court for the Eastern District of Louisiana: 1980-1981

*EDUCATION*

**George Washington University, M.P.P. 2010**

Phi Alpha Alpha Public Policy & Administration Honor Society – 2010  
“Policy Perspectives” – Associate Editor 2007-2008

**Stanford Law School, J.D. 1980**

Stanford Law Review:

Note, *The Eighth Amendment and the Execution of the Presently Incompetent*, 32  
Stan. L. Rev. 765 (1980)

Research Assistant for Professor Anthony G. Amsterdam

**Washington & Lee University, B.A. 1977, Summa cum Laude with Honors in Philosophy**

Phi Beta Kappa (1976)

Omicron Delta Kappa (1977)

Psi Chi Psychology Honor Society (1976)

Phi Eta Sigma Freshman Honor Society (1974)

Virginia English-Speaking Union Scholarship for

Study at Exeter College, Oxford University (1976)

Young Scholarship in Philosophy (1977)

Robinson Award in English Literature, History and Social  
Sciences (1977)

Senior Representative Student Body Executive Committee (1976-1977)

Student Activities Board (1976-1977)

Robert E. Lee Scholarship (1976-1977)

James D. Davidson Memorial Fund Scholarship (1975-1976)

Major Ronald O. Scharnberg Memorial Scholarship (1973-1975)

Varsity Baseball (1973-1975)

**Exeter College, Oxford University, Summer 1976**

## **PUBLICATIONS**

### ***Law & Public Policy Journals***

*Quo Vadis?—The Future of Judicial Deference to Administrative Agencies after Kisor v. Wilkie*, 2018-2019 *Cato Sup. Ct. Rev.* (forthcoming 2019)

*The Future of Presidential Clemency Decisionmaking*, 31 *U. St. Thomas L. Rev.* (forthcoming 2019)

*Opioids, Overdoses, and Cannabis: Is Marijuana an Effective Therapeutic Response to the Opioid Abuse Epidemic?*, 17 *Geo. J.L. & Pub. Pol’y* (forthcoming 2019) (with Bertha Madras)

*Essay: A New Law Enforcement Agenda for a New Attorney General*, 17 *Geo. J.L. & Pub. Pol’y* 231 (2019)

*The Value of Nullifying Agency Guidance Documents via the Congressional Review Act*, *Penn. Regulatory Rev.* (2019)

*The World After Seminole Rock and Auer*, 42 *Harv. J. L. & Pub. Pol’y* 625 (2019) (with Elizabeth H. Slattery)

*Reforming American Medical Licensure*, 42 *Harv. J. L. & Pub. Pol’y* 223 (2019) (with Kevin Dayaratna & John O’Shea)

*Justice Antonin Scalia and Substantive Criminal Law*, 86 *U. Cin. L. Rev.* 743 (2019)

*The Problem of “Driving While Stoned” Demands an Aggressive Public Policy Response*, 11 *J. Drug Pol’y Analysis* 1 (2018)

*Reforming Federal Clemency*, *inFOCUS* 19 (Fall 2018)

*States’ Rights and Federal Wrongs: The Misguided Attempt to Label Marijuana Legalization Efforts as a “States’ Rights” Issue*, 16 *Geo. J.L. & Pub. Pol’y* 495 (2018)

*Marijuana Edibles and “Gummy Bears,”* 66 *Buffalo L. Rev.* 313 (2018)

*Introduction to a Debate—“Marijuana: Legalize, Decriminalize, or Leave the Status Quo in Place?”*, 23 *Berkeley J. Crim. L.* 73 (2018)

*The Trump Administration and the Congressional Review Act*, 16 *Geo. J.L. & Pub. Pol’y* 505 (2018)

*The Folly of Requiring Complete Knowledge of the Criminal Law*, 12 *Liberty U. L. Rev.* 335 (2018)

*Flight, Race, and Terry Stops: Commonwealth v. Warren*, 16 *Geo. J.L. & Pub. Pol’y* 163 (2018) (with David Rosenberg)

*“A Day Late and a Dollar Short”: President Obama’s Clemency Initiative 2014*, 16 *Geo. J.L. & Pub. Pol’y* 147 (2018)

*Reawakening the Congressional Review Act*, 41 Harv. J. L. & Pub. Pol’y 187 (2018)

*Justice Antonin Scalia and Substantive Criminal Law*, 86 U. Cin. L. Rev. 743 (2018) (with Rachel Barkow, Orrin Kerr & Stephanos Bibas)

*The Medical Marijuana Delusion*, Penn. Regulatory Rev. (Dec. 17, 2018)

*Chevron and Federal Criminal Law*, 32 J. L. & Pol. 211 (2017)

*Death Row Dogs, Hard Time Prisoners, and Creative Rehabilitation Strategies: Prisoner-Dog Training Programs*, 66 Catholic U. L. Rev. 543 (2017)

*Mistakes and Justice—Using the Pardon Power to Remedy a Mistake of Law*, 15 Geo. J.L. & Pub. Pol’y 651 (2017)

*Delegating Clemency*, 29 Fed. Sent’g Rptr. 267 (June 2017)

*The Lost Due Process Doctrines*, 66 Cath. U. L. Rev. 293 (2017)

*Essay: A Proposal to Restructure the Clemency Process—The Vice President as Head of a White House Clemency Office*, 40 Harv. J. L. & Pub. Pol’y 237 (2017)

*Professionals, Amateurs, and Rape: How America’s Colleges Are Failing Their Students*, 18 Fed’t Soc. Rev. Issue 1, at 122 (2017)

*The Original Understanding of “Property” in the Constitution*, 100 Marq. L. Rev. 1 (2016)

*The Demise of Capital Clemency*, 73 Wash. & Lee L. Rev. 1295 (2016)

*Revitalizing the Clemency Process*, 39 Harv. J.L. & Pub. Pol’y 833 (2016)

*All Stick and No Carrot: The Yates Memorandum and Corporate Criminal Prosecution*, 46 Stetson L. Rev. 7 (2016) (with John-Michael Seibler)

*Public Choice Theory and Occupational Licensing*, 39 Harv. J.L. & Pub. Pol’y 209 (2016)

*Swift, Certain, and Fair Punishment—24/7 Sobriety and HOPE: Creative Approaches to Alcohol- and Illicit Drug-Using Offenders*, 105 J. of Crim. L. & Criminology 39 (2016)

*The Justice Department’s Third-Party Payment Practice, the Antideficiency Act, and Legal Ethics*, 17 Fed’t Soc. Rev. Issue 3, 28 (Aug. 31, 2016)

*A Tale of Two Cases*, 73 Wash. & Lee L. Rev. 467 (2016),

*Time to Prune: Repeal Unnecessary Criminal Laws*, in FOCUS, Jewish Policy Center (Summer 2016) (with John-Michael Seibler)

*Sturgeon v. Frost: Alaska’s Wild Lands and Wild Laws Prove the Need for a Mistake of Law Defense*, 73 Wash. & Lee L. Rev. Online 376 (2016) (with John-Michael Seibler)

*Domestic Convictions for Foreign Violations*, 17 Fed't Soc. Rev. Issue 1, at 29 (Jan. 14, 2016)

*Medical or Recreational Marijuana and Drugged Driving*, 52 Am. Crim. L. Rev. 453 (2015)

*The Dynamic Incorporation of Foreign Law, and the Constitutional Regulation of Federal Lawmaking*, 38 Harv. J.L. & Pub. Pol'y 337 (2015)

*Revenge Porn, State Law, and Free Speech*, 48 Loyola L.A. L. Rev. 57 (2015)

*Philemon, Marbury, and the Passive-Aggressive Assertion of Legal Authority*, 29 B.Y.U. J. of Pub. L. 241 (2015)

*Strict Liability Offenses, Incarceration, and the Cruel and Unusual Punishments Clause*, 37 Harv. J.L. & Pub. Pol'y 1065 (2014)

*Reviewing the Rationale for Stop-and-Frisk in Debate: Is Stop and Frisk Worth It?*, The Atlantic (Mar. 24, 2014)

*Managing Prisons by the Numbers: Using the Good-Time Laws and Risk-Needs Assessments to Manage the Federal Prison Population*, 1 Harv. J.L. & Pub. Pol'y: Federalist 1 (2014)

*Funding Favored Sons and Daughters: Nonprosecution Agreements and "Extraordinary Restitution" in Environmental Criminal Cases*, 47 Loyola L.A. L. Rev. 1 (2014)

*Crack Cocaine, Congressional Inaction, and Equal Protection*, 37 Harv. J.L. & Pub. Pol'y 241 (2014)

*Regulation, Prohibition, and Overcriminalization: The Proper and Improper Uses of the Criminal Law*, 42 Hofstra L. Rev. 745 (2014)

*Taking Mistakes Seriously*, 28 B.Y.U. J. of Pub. L. 71 (2014)

*Finding Room in the Criminal Law for the Desuetude Principle*, 65 Rutgers L. Rev. Commentaries 1 (2014)

*Oversized Frauds, Undersized Fish, and Deconstruction of the Sarbanes-Oxley Act*, 103 Geo. L.J. Online 17 (2014)

*Stops and Frisks, Race, and the Constitution*, 82 Geo. Wash. L. Rev. Arguendo 1 (2013)

*Public Choice Theory and Overcriminalization*, 36 Harv. J.L. & Pub. Pol'y 715 (2013)

*Parole: Corpse or Phoenix?*, 50 Am. Crim. L. Rev. 303 (2013)

*Clemency, Parole, Good-Time Credits, and Crowded Prisons: Reconsidering Early Release*, 11 Geo. J.L. & Pub. Pol'y 1 (2013)

*A Mistake of Law Defense as a Remedy for Overcriminalization*, 26 A.B.A.J. Criminal Justice 10 (Spring 2013)

*Reconsidering the Mistake of Law Defense*, 102 J. of Crim. L. & Criminology 725 (2012) (with Edwin Meese III)

*Turning Points in Telecommunications History*, 29 John Marshall J. of Comp. & Info. L. 513 (2012)

*The Violence Against Women Act, Federal Criminal Jurisdiction, and Indian Tribal Courts*, 27 B.Y.U. J. of Pub. L. 1 (2012) (with Joseph Luppino-Esposito)

*John Kingdon's "Three Streams" Theory and the Antiterrorism and Effective Death Penalty Act of 1996*, 28 J.L. & Pol. 25 (2012)

*United States v. Nosal: Rebooting the Computer Fraud and Abuse Act*, 8 Seton Hall Cir. Rev. 257 (2012)

Viewpoint, *A Competitive Analysis of the Proposed XM-Sirius Satellite Radio Merger*, eSapience Center for Competition Policy (July 26, 2007), available at <http://www.globalcompetitionpolicy.org/index.php?&id=512&etkbqkgf=etkbqkgf&action=907> (last visited July 26, 2007)

Note, *The Eighth Amendment and the Execution of the Presently Incompetent*, 32 Stan. L. Rev. 365 (1980)

### ***Chapters in Heritage Books***

*Deputizing Federal Law Enforcement Personnel Under State Law*, in THE HERITAGE FOUNDATION, BLUEPRINT FOR REORGANIZATION: PATHWAYS TO REFORM AND CROSS-CUTTING ISSUES 73 (David Muhlhausen ed., June 30, 2017)

*Reorganizing the Federal Clemency Process*, in THE HERITAGE FOUNDATION, BLUEPRINT FOR REORGANIZATION: PATHWAYS TO REFORM AND CROSS-CUTTING ISSUES 85 (David Muhlhausen ed., June 30, 2017)

Paul J. Larkin, Jr., *Reorganizing the Federal Administrative State: The Disutility of Criminal Investigative Programs at Federal Regulatory Agencies*, in THE HERITAGE FOUNDATION, BLUEPRINT FOR REORGANIZATION: PATHWAYS TO REFORM AND CROSS-CUTTING ISSUES 89 (David Muhlhausen ed., June 30, 2017)

Paul J. Larkin, Jr. & John-Michael Seibler, *The President's Reorganization Authority*, in THE HERITAGE FOUNDATION, BLUEPRINT FOR REORGANIZATION: PATHWAYS TO REFORM AND CROSS-CUTTING ISSUES 23 (David Muhlhausen ed., June 30, 2017)

### ***Heritage Publications***

Paul J. Larkin, Jr., *Eliminating State Occupational Licensing Barriers to the Enlistment and Retention and of Servicemembers: The Portable Certification of Spouses Act of 2019*, The Heritage Foun-

dition, Legal Memorandum No. 246, May 21, 2019, <https://www.heritage.org/sites/default/files/2019-05/LM-246.pdf>

Paul J. Larkin, Jr., *Prisoners, Dogs, Training, and Rehabilitation*, The Heritage Foundation, Legal Memorandum No. 234 (Aug. 31, 2018), [https://www.heritage.org/sites/default/files/2018-08/LM-234\\_0.pdf](https://www.heritage.org/sites/default/files/2018-08/LM-234_0.pdf)

Joseph Postell & Paul J. Larkin, Jr., *Not Above the Law: Ending the Misguided Chevron–Auer Deference Regime*, The Heritage Foundation, Legal Memorandum No. 233 (Sept. 7, 2018), <https://www.heritage.org/sites/default/files/2018-09/LM-233.pdf>

*Prisoners, Dogs, Training, and Rehabilitation*, The Heritage Foundation, Legal Memorandum No. 234 (Aug. 31, 2018), [https://www.heritage.org/sites/default/files/2018-08/LM-234\\_0.pdf](https://www.heritage.org/sites/default/files/2018-08/LM-234_0.pdf)

*The Need to Treat Driving under the Influence of Drugs as Seriously as Driving under the Influence of Alcohol*, The Heritage Found., Backgrounder No. 3316 (May 16, 2018), [https://www.heritage.org/sites/default/files/2018-05/BG3316\\_1.pdf](https://www.heritage.org/sites/default/files/2018-05/BG3316_1.pdf) (with Robert L. DuPont & Bertha K. Madras)

*Reconsidering the Constitutionality of Obamacare*, The Heritage Foundation, Legal Memorandum No. 230 (Mar. 20, 2018), <https://www.heritage.org/sites/default/files/2018-03/LM-230.pdf>

*Reconsidering Occupational Licensing in Virginia*, The Heritage Foundation, Legal Memorandum No. 227 (Feb. 23, 2018), <http://www.heritage.org/government-regulation/report/reconsidering-occupational-licensing-virginia>

*Can Captured ISIS Fighters Be Prosecuted for Genocide in an International Tribunal?*, The Heritage Foundation, Legal Memorandum No. 225 (Jan. 22, 2018), <http://www.heritage.org/terrorism/report/can-captured-isis-fighters-be-prosecuted-genocide-international-tribunal>

*The Proper Way to Reconsider Federal Marijuana Policy*, The Heritage Foundation, Issue Brief No. 4806 (Jan. 8, 2018), <http://www.heritage.org/sites/default/files/2018-01/IB4806.pdf>

*Taking Stock of Federal Regulatory Crimes*, The Heritage Foundation, Legal Memorandum No. 2019 (Oct. 3, 2017), <http://www.heritage.org/sites/default/files/2017-10/LM-219.pdf> (with John-Michael Seibler)

*Occupational Licensing Reform: The ALLOW Act*, The Heritage Foundation, Legal Memorandum No. 212 (July 21, 2017), [http://www.heritage.org/sites/default/files/2017-07/LM-212\\_0.pdf](http://www.heritage.org/sites/default/files/2017-07/LM-212_0.pdf)

*The President's Reorganization Authority*, The Heritage Foundation, Legal Memorandum No. 210 (July 12, 2017), [http://www.heritage.org/sites/default/files/2017-07/LM-210\\_0.pdf](http://www.heritage.org/sites/default/files/2017-07/LM-210_0.pdf) (with John-Michael Seibler)

*Deputizing Federal Law Enforcement Personnel Under State Law*, The Heritage Foundation, Legal

Memorandum No. 209 (July 12, 2017), [http://www.heritage.org/sites/default/files/2017-07/LM-209\\_1.pdf](http://www.heritage.org/sites/default/files/2017-07/LM-209_1.pdf)

*Reorganizing the Federal Administrative State: The Disutility of Criminal Investigative Programs at Federal Regulatory Agencies*, The Heritage Foundation, Legal Memorandum No. 208 (July 12, 2017), <http://www.heritage.org/sites/default/files/2017-07/LM-208.pdf>

*The “Waters of the United States” Rule and the Void-for-Vagueness Doctrine*, The Heritage Foundation, Legal Memorandum (June 22, 2017), [http://www.heritage.org/sites/default/files/2017-06/LM-207\\_0.pdf](http://www.heritage.org/sites/default/files/2017-06/LM-207_0.pdf)

*Reorganizing the Federal Clemency Process*, The Heritage Foundation, Legal Memorandum No. 206 (May 31, 2017), <http://www.heritage.org/sites/default/files/2017-05/LM-206.pdf>

*A Public Choice Analysis of Occupational Licensing*, The Heritage Foundation, Legal Memorandum No. 205 (May 30, 2017), <http://www.heritage.org/sites/default/files/2017-05/LM-205.pdf>

*A Brief History of Occupational Licensing*, The Heritage Foundation, Legal Memorandum No. 204 (May 23, 2017), <http://www.heritage.org/sites/default/files/2017-05/LM-204.pdf>

*Judicial Review Under the Congressional Review Act*, The Heritage Foundation, Legal Memorandum No. 202 (Mar. 9, 2017), <http://www.heritage.org/sites/default/files/2017-03/LM-202.pdf>

*Fighting Back Against “Revenge Porn,”* The Heritage Foundation, Legal Memorandum No. 199 (Feb. 23, 2017), <http://www.heritage.org/sites/default/files/2017-02/LM-199.pdf>

*The Reach of the Congressional Review Act*, The Heritage Foundation, Legal Memorandum No. 201 (Feb. 8, 2017), [http://www.heritage.org/sites/default/files/2017-02/LM-201\\_1.pdf](http://www.heritage.org/sites/default/files/2017-02/LM-201_1.pdf)

*Time to Prune the Tree, Part 3: The Need to Reassess the Federal False Statement Laws*, The Heritage Foundation, Legal Memorandum No. 196 (Dec. 16, 2016), <http://thf-reports.s3.amazonaws.com/2016/LM-196.pdf> (with John-Michael Seibler & David L. Rosenthal)

*The Ongoing Lack of EPA Accountability for the Gold King Mine Spill: The EPA’s New “Responder” Theory*, The Heritage Foundation, Legal Memorandum No. 195 (Nov. 30, 2016), <http://thf-reports.s3.amazonaws.com/2016/LM-195.pdf> (with John-Michael Seibler)

*Time to Prune the Tree, Part 2: The Need to Reassess the Federal Fraud Laws*, The Heritage Foundation, Legal Memorandum No. 185 (Oct. 19, 2016), <http://thf-reports.s3.amazonaws.com/2016/LM-185.pdf> (with John-Michael Seibler)

*Miranda at 50*, The Heritage Foundation, Legal Memorandum No. 190 (Sept. 21, 2016), [file:///C:/Users/larkinp/Downloads/LM-190%20\(1\).pdf](file:///C:/Users/larkinp/Downloads/LM-190%20(1).pdf)



*The Regulation of Hydraulic Fracturing on Federal and Indian Land: Wyoming v. Department of the Interior*, The Heritage Foundation, Legal Memorandum No. 188 (Sept. 9, 2016), <http://thf-reports.s3.amazonaws.com/2016/LM-188.pdf> (with Nicolas D. Loris)

*The World After Chevron*, The Heritage Foundation, Legal Memorandum No. 186 (Sept. 8, 2016), <http://thf-reports.s3.amazonaws.com/2016/LM-186.pdf>

Katie Tubb, Nicolas D. Loris & Paul J. Larkin Jr., *The Energy Efficiency Free Market Act: A Step Toward Real Energy Efficiency*, The Heritage Foundation, Backgrounder No. 3144 (Aug. 16, 2016), <file:///Users/Larcorp/Downloads/BG3144.pdf> (with Katie Tubb & Nicolas D. Loris)

*The Mistaken Belief That All Strict Liability Crimes Are Morally Objectionable*, The Heritage Foundation, Legal Memorandum No. 183 (Aug. 4, 2016), <file:///C:/Users/Larkinp/AppData/Local/Temp/LM-183.pdf>

*A New Approach to the Texas v. United States Immigration Case: Discretion, Dispensation, Suspension, and Pardon—The Four Horsemen of Article II*, The Heritage Foundation, Legal Memorandum No. 181 (Apr. 15, 2016), [file:///Users/Larcorp/Downloads/LM-181%20\(1\).pdf](file:///Users/Larcorp/Downloads/LM-181%20(1).pdf)

*The 2015 Report of the Military Justice Review Group: Reasonable Next Steps in the Ongoing Professionalization of the Military Justice System*, The Heritage Foundation, Legal Memorandum No. 178 (Apr. 4, 2016), <file:///Users/Larcorp/Downloads/LM-178.pdf> (with Charles D. Stimson)

*Time to Prune the Tree: The Need to Repeal Unnecessary Criminal Laws*, The Heritage Foundation, Legal Memorandum No. 173 (Feb. 25, 2016), <http://thf-reports.s3.amazonaws.com/2016/LM173.pdf> (with John-Michael Seibler)

*The Supreme Court on Mens Rea: 2008–2015*, The Heritage Foundation, Legal Memorandum No. 171 (Jan. 14, 2016), <file:///Users/Larcorp/Downloads/LM-171.pdf> (with John-Michael Seibler & Jordan Richardson)

*Agencies Not Coming Clean About the EPA’s Responsibility for Poisoning the Animas River*, The Heritage Foundation, Legal Memorandum No. 170 (Dec. 8, 2015), <file:///Users/Larcorp/Downloads/LM-170.pdf> (with John-Michael Seibler)

*Turning the Rule of Lenity into a **Rule** of Lenity*, The Heritage Foundation, Legal Memorandum No. 163 (Nov. 17, 2015), [file:///Users/Larcorp/Downloads/LM163%20\(1\).pdf](file:///Users/Larcorp/Downloads/LM163%20(1).pdf) (with John-Michael Seibler)

*“Sauce for the Goose Should Be Sauce for the Gander” : Should EPA Officials Be Criminally Liable for the Negligent Discharge of Toxic Waste into the Animas River?*, The Heritage Foundation, Legal Memorandum No. 162 (Sept. 10, 2015), [http://thf\\_media.s3.amazonaws.com/2015/pdf/LM162.pdf](http://thf_media.s3.amazonaws.com/2015/pdf/LM162.pdf) (with John-Michael Seibler)

*The Role for Magna Carta in America in 2015*, The Heritage Foundation, Legal Memorandum No. 159 (July 27, 2015), [http://thf\\_media.s3.amazonaws.com/2015/pdf/LM159.pdf](http://thf_media.s3.amazonaws.com/2015/pdf/LM159.pdf)

*Regulatory Crimes and the Mistake of Law Defense*, The Heritage Foundation, Legal Memorandum No. 157 (July 9, 2015), [http://thf\\_media.s3.amazonaws.com/2015/pdf/LM157.pdf](http://thf_media.s3.amazonaws.com/2015/pdf/LM157.pdf)

*Liberalizing Marijuana Use and Improving Driving Safety: Two Contemporary Public Policies on a Collision Course*, The Heritage Foundation, Legal Memorandum No. 156 (June 25, 2015), [http://thf\\_media.s3.amazonaws.com/2015/pdf/LM156.pdf](http://thf_media.s3.amazonaws.com/2015/pdf/LM156.pdf)

*Revisiting Kelo*, The Heritage Foundation, Legal Memorandum No. 155 (June 18, 2015), [http://thf\\_media.s3.amazonaws.com/2015/pdf/LM155.pdf](http://thf_media.s3.amazonaws.com/2015/pdf/LM155.pdf)

*The Constitutional Problems Raised by Domestic Convictions for Foreign Crimes*, The Heritage Foundation, Legal Memorandum No. 152 (Apr. 21, 2015), [http://thf\\_media.s3.amazonaws.com/2015/pdf/LM152.pdf](http://thf_media.s3.amazonaws.com/2015/pdf/LM152.pdf)

*North Carolina Dental Board and the Reform of State-Sponsored Protectionism*, The Heritage Foundation, Legal Memorandum No. 150 (Mar. 30, 2015), [http://thf\\_media.s3.amazonaws.com/2015/pdf/LM150.pdf](http://thf_media.s3.amazonaws.com/2015/pdf/LM150.pdf) (with Alden F. Abbott)

*The Perils of Overcriminalization*, The Heritage Foundation, Legal Memorandum No. 146 (Feb. 12, 2015), [http://thf\\_media.s3.amazonaws.com/2015/pdf/LM146.pdf](http://thf_media.s3.amazonaws.com/2015/pdf/LM146.pdf) (with Michael B. Mukasey)

*True Threats and the Limits of First Amendment Protection*, The Heritage Foundation, Legal Memorandum No. 142 (Dec. 8, 2014), [http://thf\\_media.s3.amazonaws.com/2014/pdf/LM142.pdf](http://thf_media.s3.amazonaws.com/2014/pdf/LM142.pdf) (with Jordan Richardson)

*The Problematic Use of Nonprosecution and Deferred Prosecution Agreements to Benefit Third Parties*, The Heritage Foundation, Legal Memorandum No. 141 (Oct. 23, 2014), <http://www.heritage.org/research/reports/2014/10/the-problematic-use-of-nonprosecution-and-deferred-prosecution-agreements-to-benefit-third-parties>

ECONOMIC LIBERTY AND THE CONSTITUTION: AN INTRODUCTION, THE HERITAGE FOUNDATION SPECIAL REPORT (Paul J. Larkin, Jr., ed., 2014)

*Economic Liberty and the Constitution: An Introduction*, in ECONOMIC LIBERTY AND THE CONSTITUTION: AN INTRODUCTION, THE HERITAGE FOUNDATION SPECIAL REPORT (Paul J. Larkin, Jr. ed., 2014)

*Co-opting the Criminal Justice System to Prevent Competition or Serve Noncompetitive Interests*, Heritage Foundation Legal Memorandum No. 134 (Aug. 21, 2014), [http://thf\\_media.s3.amazonaws.com/2014/pdf/LM134.pdf](http://thf_media.s3.amazonaws.com/2014/pdf/LM134.pdf)

*Is Congress Addressing Our Overcriminalization Problem? Reviewing the Progress of the Overcriminalization Task Force*, The Heritage Foundation, Legal Memorandum (Aug. 12, 2014), [http://thf\\_media.s3.amazonaws.com/2014/pdf/LM131.pdf](http://thf_media.s3.amazonaws.com/2014/pdf/LM131.pdf) (with Evan Bernick & Jordan Richardson)

*Filming the Watchmen: Why the First Amendment Protects Your Right to Film the Police in Public Places*, The Heritage Foundation, Legal Memorandum No. 127 (June 12, 2014), [http://thf\\_media.s3.amazonaws.com/2014/pdf/LM127.pdf](http://thf_media.s3.amazonaws.com/2014/pdf/LM127.pdf) (with Evan Bernick)

*Closing the Door to Foreign Lawsuits: Daimler AG v. Bauman*, The Heritage Foundation, Legal Memorandum No. 126 (June 9, 2014), [http://thf\\_media.s3.amazonaws.com/2014/pdf/LM126.pdf](http://thf_media.s3.amazonaws.com/2014/pdf/LM126.pdf)

*The Extent of the Overcriminalization Problem*, The Heritage Foundation, Legal Memorandum No. 121 (May 9, 2014), [http://thf\\_media.s3.amazonaws.com/2014/pdf/LM121.pdf](http://thf_media.s3.amazonaws.com/2014/pdf/LM121.pdf)

*The Hawaii Opportunity Probation with Enforcement Project: A Potentially Worthwhile Correctional Reform*, The Heritage Foundation, Legal Memorandum No. 116 (Feb. 26, 2014), [http://thf\\_media.s3.amazonaws.com/2014/pdf/LM116.pdf](http://thf_media.s3.amazonaws.com/2014/pdf/LM116.pdf)

*Failing to Protect Women Against Violence in The Violence Against Women Act*, The Heritage Foundation, Legal Memorandum No. 109 (Feb. 19, 2014), [http://thf\\_media.s3.amazonaws.com/2014/pdf/LM109.pdf](http://thf_media.s3.amazonaws.com/2014/pdf/LM109.pdf)

*Supplying the Information Required by Law: Directing the Federal Government to Identify All Federal Criminal Laws*, Heritage Issue Brief No. 4143 (Feb. 10, 2014), available at <http://www.heritage.org/research/reports/2014/02/overcriminalization-and-the-identification-of-all-federal-criminal-laws>

*Reconsidering Mandatory Minimum Sentences: The Arguments For and Against Potential Reforms*, Heritage Legal Memorandum No. 114 (Feb. 10, 2014), <http://www.heritage.org/research/reports/2014/02/reconsidering-mandatory-minimum-sentences-the-arguments-for-and-against-potential-reforms> (with Evan Bernick)

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***TESTIMONY, LECTURES, PRESENTATIONS, SYMPOSIA,  
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Moderator, Heritage & Federalist Society Screening & Discussion: “*To Seek Justice: Defining the Power of the Prosecutor*” (Apr. 11, 2019)

Panelist, National Institute of Justice, *Listening Session on Risk-Needs Assessments* (Apr. 5, 2019)

Panelist, St. Thomas Law School, “*Clemency: A Constitutional Power Moves into the Future*” (Mar. 29, 2019)

Panelist, Adam Smith Society, Georgetown University Business School: “*Debate: Marijuana Legalization*” (Mar. 20, 2019)

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Federalist Society Debate (Ilya Somin, Cato): “*Federal Marijuana Policy*” (Sept. 26, 2018)

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Paul J. Larkin, Jr., *Juvenile Justice Reform in Virginia: 1996*, George Mason School of Law, Criminal Law Ass'n (Arlington, VA Jan. 31, 1996)

Paul J. Larkin, Jr., Panelist, Symposium, *Drugs: A Connection to Violent Crime*, Governor's Forum on Crime (Richmond, VA Oct. 12, 1995)

Paul J. Larkin, Jr., Panelist, Symposium, *The Supreme Court -- October Term, 1994: Criminal Justice Decisions*, Second Annual United States Supreme Court Update, Georgia Institute of Continuing Legal Education (Atlanta, GA Sept. 22, 1995)

Paul J. Larkin, Jr., *Presentation of Recommendations of the Courts and Sentencing Subcommittee*, Meeting of the Governor's Commission on Juvenile Justice Reform (Richmond, VA Aug. 23, 1995) (presentation and written report) (noted at *Tougher Measures Advocated*, Richmond Times-Dispatch, Aug. 24, 1995, at B1, B6)

*Pleading the 10th*, National Journal 1940 (July 29, 1995) (interview)

*Reform Initiatives in Other States*, Meeting of the Governor's Commission on Juvenile Justice Reform (George Mason Univ., VA July 25, 1995) (presentation and written submission)

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*Illegal Evidence May be Allowed By Congress*, Lawyer's Weekly (Mar. 27, 1995) (interview)

Daniel Seligman, *Keeping Up – Dodge City and the Fourth Amendment*, Fortune 142 (Mar. 20, 1995) (interview)

Paul J. Larkin, Jr., *The Jury and the Search for Truth” Hearing on S. 3, the Violent Crime Control and Law Enforcement Improvement Act of 1995, Before the Senate Judiciary Committee*, 104th Cong., 1st Sess. (Mar. 7, 1995) (testimony and prepared statement on Title V of S. 3, Exclusionary Rule Reform)

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Paul J. Larkin, Jr., *Hearing on H.R. 3, the Taking Back Our Streets Act of 1995, Before the Subcomm. On Crime of the House Judiciary Committee*, 104th Cong., 1st Sess. (Jan. 20, 1995) (testimony and prepared statement on Title VI of H.R. 3, Exclusionary Rule Reform)

*Term Limits*, CNBC (Washington, D.C. Nov. 29, 1994) (interview)

*Military Justice*, Legal Notebook, National Empowerment Television (Washington, D.C. Oct. 24, 1994) (interview)

*Litigating Post-Trial Claims of Actual Innocence*, Association of Government Attorneys in Capital Litigation (San Francisco, CA July 29, 1994) (handout co-authored with Hon. Margaret P. Griffey; panel presentation by Ms. Griffey)

Paul J. Larkin, Jr., *Washington Legal Foundation Media Briefing: 1993-94 Supreme Court Term Review* (Russell Senate Office Bldg. Washington, D.C. June 28, 1994)

Paul J. Larkin, Jr., *Drafting Certiorari Petitions and Briefs in Opposition*, Association of Government Attorneys in Capital Litigation (Chicago, IL Aug. 6, 1993)

Paul J. Larkin, Jr., *Review of Controlling Supreme Court Death Penalty Decisions: Appellate Considerations in Death Penalty Cases*, First Federal Death Penalty Conference, U.S. Department of Justice (Washington, D.C. Jan. 27, 1993)

Paul J. Larkin, Jr., *Certiorari Petitions and Responses in the U.S. Supreme Court*, North Carolina Department of Justice, Continuing Legal Education Program (Raleigh, NC Aug. 28, 1992)

Paul J. Larkin, Jr., *Actual Innocence: Retrying Your Capital Case*, Association of Government Attorneys in Capital Litigation (Newport Beach, CA Aug. 9, 1992) (panel discussion)

Paul J. Larkin, Jr., *Military and Federal Death Penalty*, Association of Government Attorneys in Capital Litigation (Orlando, FL Aug. 9, 1991)

Paul J. Larkin, Jr., *Supreme Court Practice*, Joint Service Appellate Workshop (Washington Navy Yard, D.C. Feb. 27, 1991)

Paul J. Larkin, Jr., *The Gods Must Be Crazy Part Three: Recent Court Decisions and Department of Justice Guidelines*, The National Association of Federal Investigators (Washington, D.C. Dec. 6, 1990)

Paul J. Larkin, Jr., Panelist, Symposium, *Oral Appellate Advocacy*, Vermont Law School (Oct. 25, 1990)

Paul J. Larkin, Jr., *Supreme Court Practice*, Joint Service Appellate Workshop (Andrews Air Force Base, MD Jan. 18, 1989)

#### ***PROFESSIONAL HONORS***

The Drs. W. Glenn and Rita Ricardo Campbell Award (2017)

Verizon Communications Inc. Verizon Performance Excellence Award (Apr. 2007)

Federal Executive Center – Graduate (Apr. 2003)

Environmental Protection Agency Award for Excellence in Response: Capitol Hill Anthrax Attack (Feb. 2003)

Environmental Protection Agency Award for Excellence in Response on 9/11/01 at the Pentagon (July 2002)

Department of Justice Commendation for Investigative Work (2002)

Department of Justice Commendation for Investigative Work (2000)

Federal Law Enforcement Training Center, *Criminal Investigator Training Program* (CITP-810), Top Academic Graduate (1998)

Secretary of Defense Medal for Meritorious Civilian Service (March 1994)

William J. Schaffer III Award, Association of Government Attorneys in Capital Litigation (August 1993)

#### ***GOVERNMENT ORGANIZATIONS***

**Jury Commissioner, City of Alexandria, Virginia** (1999-2000)

**Governor-Elect's Public Safety Transition Team** (selected by Governor-elect James Gilmore) (December 1997 to January 1998)

**Governor's Commission on Juvenile Justice Reform** (appointed by Governor George Allen) (March 1995 to December 1995)

Chair, Subcommittee on Courts and Sentencing

**Governor's Commission on Parole Abolition and Sentencing Reform** (appointed by Governor George Allen) (February 1994 to August 1994)

Member, Subcommittee on Implementation

Rules Advisory Committee, United States Court of Appeals for the Armed Forces (July 1993 to September 2005)

#### ***PROFESSIONAL ORGANIZATIONS***

**The Federalist Society, Administrative Law Working Group & Executive Committee**

**The Federalist Society, Civil Service Law Working Group**

**National Chamber of Commerce Litigation Center's Constitutional & Administrative Law Advisory Committee** (2006-2009)

**American Bar Association** (1983 to 1988, 2005-2008)

- Vice-Chair Communications Committee, Antitrust Section (2005-2007)
- Co-Editor, Antitrust Section, Communications Industry Committee Newsletter "*The Party Line*" (August 2006-June 2007)

- Co-Chair Criminal Justice Committee, Individual Rights & Responsibilities Section (1983-1984)

**Association of Government Attorneys in Capital Litigation**, Board of Directors (October 1992 to June 1993)

#### ***BAR MEMBERSHIPS***

Supreme Court of the United States; District of Columbia Bar; United States Courts of Appeals for the First, Fifth, Sixth, Ninth, Eleventh, and District of Columbia Circuits; United States Court of Appeals for the Armed Forces (formerly the United States Court of Military Appeals); United States Court of Federal Claims

#### ***PUBLIC SAFETY TRAINING***

Northern Virginia Community College, *Emergency Medical Technician – Recertification Course* (September to December 2008)

American Heart Association, *Cardio-Pulmonary Resuscitation/Automated External Defibrillator Training for the Professional Rescuer* (September 2008)

Virginia Department of Health, Emergency Medical Services, *Emergency Medical Technician – Basic* (2005)

Northern Virginia Community College, *Emergency Medical Technician – Basic Course* (January to May 2005)

American Red Cross, *Cardio-Pulmonary Resuscitation/Automated External Defibrillator Training for the Professional Rescuer* (Arlington, VA December 2004)

Federal Executive Institute, *Leadership for a Democratic Society* (Charlottesville, VA December 2002, March 2003)

Northern Virginia Criminal Justice Training Academy, *Mental Preparation for Armed Encounters* (NVCJTA Ashburn, VA 2002)

Federal Law Enforcement Training Center & InSight Training Center, *Tactical First Aid* (Glynco, GA February 2002)

U.S. Secret Service, *Small Detail Dignitary Protection Training Level B* (Beltsville, MD October 2001)

EPA, *Clandestine Drug Lab Awareness Class* (Ft. Meade, MD October 1999)

EPA, *Sampling for Hazardous Materials (165.9)* (Edison, NJ February 1999)

Glock, Inc., *Glock Armorer’s School* (Washington, DC December 1998)

Federal Law Enforcement Training Center, *Firearms Instructor Training Program* (FITP-901A) (Artesia, NM October 1998)

Federal Law Enforcement Training Center, *Environmental Investigations: Basic Training Program* (EIB-801) (Glynco, GA July to August 1998)

Federal Law Enforcement Training Center, *Hazardous Materials Incident Response Operations* (Glynco, GA July 1998)

Federal Law Enforcement Training Center, *Criminal Investigator Training Program* (CITP-810) (Glynco, GA January to March 1998)

District of Columbia Metropolitan Police Department -- Department of Public Works, *Environmental Crimes Training* (Washington, DC June 1998)

John Tyler Community College, *Investigating Vehicle Bombs and Car Bombs: Crime Scene Evidence Collection Techniques* (Chester, VA April 1998)

#### **REFERENCES**

Hon. William P. Barr, Former U.S. Attorney General & Former Executive Vice President & General Counsel, Verizon Communications Inc., 1200 Dale View Drive, McLean, VA 22102 (C: 202-841-7925)

Hon. William C. Bryson, United States Court of Appeals for the Federal Circuit, 717 Madison Place, N.W., Washington, D.C. 20439 (O: 202.786.7142)

Thomas M. Buchanan, Winston & Strawn LLP, 1700 K Street, N.W., Washington, D.C. 20006-3817 (O: 202.282.5787)

Senator Orrin G. Hatch, Hart Senate Office Bldg., Washington, DC 20510 (O: 202.224.5251)

Hon. Edwin Meese III, Former U.S. Attorney General, Ronald Reagan Fellow and Director of the Center for Legal and Judicial Policy, Emeritus, The Heritage Foundation, 214 Massachusetts Ave., NE, Washington, DC 20002 (O: 202-546-4400)

Jack White, Former Senior Vice President & General Counsel, Verizon Services, Networks & Technology, 11106 Devereux Station Lane, Fairfax Station, VA 22039 (H: 703-503-9797; C: 703-517-4859)

**CASES HANDLED**  
**IN THE SUPREME COURT OF THE UNITED STATES**  
**(Cases Argued Are Marked With an Asterisk)**

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*Barefoot v. Estelle*, 463 U.S. 880 (1983) (whether the federal courts may adopt expedited procedures for resolving habeas corpus petitions in capital cases)

*Grove City College v. Bell*, 465 U.S. 555 (1984) ((1) whether Grove City College operated an "educational program or activity receiving Federal financial assistance" under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a) (1982); and (2) whether the application of Title IX regulations to Grove City College violated the First Amendment)

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*Hawaii Housing Authority v. Midkiff*, 467 U.S. 229 (1984) (whether the Hawaii Land Reform Act of 1967 violates the Public Use Clause of the Fifth Amendment)

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\* *Hillsborough County v. Automated Medical Laboratories, Inc.*, 471 U.S. 707 (1985) (whether Food and Drug Administration regulations concerning the process of manufacturing blood products pre-empt local health ordinances)

*Maryland v. Macon*, 472 U.S. 463 (1985) (whether a police officer's undercover entry into a bookstore and purchase of a book is a "search" or a "seizure" under the Fourth Amendment)

*Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491 (1985) (whether the definition of "prurient interest" in the Washington obscenity statute was unconstitutionally overbroad)

\* *Delaware v. Van Arsdall*, 475 U.S. 673 (1986) (whether the harmless error doctrine applies to restrictions on defense cross-examination, in violation of the Sixth Amendment Confrontation Clause)

\* *Young v. Community Nutrition Institute*, 476 U.S. 974 (1986) (whether the Food and Drug Administration has the authority to regulate the presence of poisonous or deleterious substances in food through case-by-case adjudication, instead of rulemaking)

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\* *Rose v. Clark*, 478 U.S. 570 (1986) (whether the harmless error doctrine applies to jury instructions containing an erroneous presumption on an essential element of the offense)

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\* *Stringfellow v. Concerned Neighbors in Action*, 480 U.S. 370 (1987) (whether a district court order granting permissive intervention, but denying intervention as of right, is an immediately appealable collateral order)

\* *United States v. Merchant*, 480 U.S. 615 (1987) (whether the reasonable mistake exception to the exclusionary rule adopted in *United States v. Leon*, 468 U.S. 897 (1984), applies to an officer's reliance on a consent-to-search clause in a judgment of probation)

*United States v. John Doe, Inc. I*, 481 U.S. 102 (1987) (whether attorneys involved in a grand jury investigation may use grand jury materials in preparing for a later civil action without first obtaining a court order pursuant to Fed. R. Crim. P. 6(e))

\* *Vermont v. Cox*, 484 U.S. 173 (1987) (whether a probation officer must administer Miranda warnings to a convicted defendant before he is questioned during a presentence interview)

*Meese v. Keene*, 481 U.S. 465 (1987) (whether the Foreign Agents Registration Act of 1938, 22 U.S.C. §§ 611-621 (1982), violates the First Amendment by labeling as "political propaganda" certain expressive material)

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*Solorio v. United States*, 483 U.S. 435 (1987) (whether the armed forces have the authority to prosecute any servicemember for any crime committed while he is in the military in violation of the Uniform Code of Military Justice)

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- \* *Arizona v. Roberson*, 486 U.S. 675 (1988) (whether law enforcement officers may question a suspect once he has asked to speak with a lawyer)
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- Webster v. Doe*, 486 U.S. 592 (1988) (whether the decision of the Director of Central Intelligence to discharge an employee of the Central Intelligence Agency pursuant to Section 102 of the National Security Act of 1947, 50 U.S.C. § 403 (1982), is subject to judicial review under the Administrative Procedure Act, 5 U.S.C. 701-706 (1988))
- Kadrmas v. Dickinson Public Schools*, 487 U.S. 450 (1988) (whether a school bus user fee violates the Equal Protection Clause of the Fourteenth Amendment)
- Mistretta v. United States*, 488 U.S. 361 (1989) (whether the Sentencing Reform Act of 1984 is constitutional)
- \* *United States v. Sokolow*, 490 U.S. 1 (1989) (whether law enforcement officers may rely on the totality of the circumstances in determining whether a person traveling through an airport is in possession of narcotics)
- \* *Frank v. Minnesota Newspaper Ass'n*, 490 U.S. 225 (1989) (whether 18 U.S.C. § 1302 (1988), which prohibits sending through the mails lottery-related advertisements and prize lists, violates the First Amendment)
- Public Citizen v. Department of Justice*, 491 U.S. 440 (1989) ((1) whether the Federal Advisory Committee Act, 5 U.S.C. app. 1 (1988), applies to the President's reliance on the advice of the American Bar Association's Committee on Federal Judiciary about the qualifications of potential nominees to the federal bench; and (2) if so, whether the Act violates the President's Article II power to nominate Officers of the United States)

- \* *Alabama v. Smith*, 490 U.S. 794 (1989) (whether the Due Process Clause prohibits a trial judge from imposing a more severe sentence on a defendant after a trial than after a guilty plea)
- \* *Washington v. Harper*, 494 U.S. 210 (1990) (whether the Due Process Clause prohibits the involuntary medication of a mentally ill and dangerous prisoner)
- Ngiraingas v. Sanchez*, 495 U.S. 182 (1990) (whether a territory and its officers, acting in their official capacities, are subject to suit under 42 U.S.C. § 1983 (1988))
- \* *Commissioner, INS v. Jean*, 496 U.S. 154 (1990) (whether the Equal Access to Justice Act, 28 U.S.C. § 2412(d) (1988), requires the government automatically to pay fees incurred in litigation over attorney's fee awards)
- \* *Illinois v. Perkins*, 496 U.S. 292 (1990) (whether an undercover police officer must give an incarcerated suspect Miranda warnings before asking him questions)
- Hodgson v. Minnesota*, 497 U.S. 417 (1990) (whether the Constitution prohibits a State from adopting a 48-hour waiting period for a minor to have an abortion)
- United States v. France*, 498 U.S. 335 (1991) (whether a defendant is entitled to a reversal of his conviction because a magistrate conducted voir dire if the defendant did not object to that procedure) (reply brief only)
- Ohio v. Huertas*, 498 U.S. 336 (1991) (whether the admission of "victim impact" evidence at the sentencing stage of a capital trial violates the Eighth Amendment)
- \* *Air Courier Conference of America v. American Postal Workers' Union*, 498 U.S. 517 (1990) ((1) whether Postal Service employees, through their unions, can bring suit under the Administrative Procedure Act to challenge a regulation permitting private mail services to engage in international remailing; and (2) whether the Postal Service acted arbitrarily and capriciously in promulgating its international remailing regulation)
- \* *Arizona v. Fulminante*, 499 U.S. 279 (1991) ((1) whether a suspect's confession was coerced because he made the statement in response to an offer by an informant to protect him from other inmates; and (2) whether the admission of a defendant's involuntary confession can be harmless error)
- United States v. Gaubert*, 499 U.S. 315 (1991) (whether supervisory actions taken by federal regulators of financial institutions are within the "discretionary function" exception to the Federal Tort Claims Act, 28 U.S.C. § 2680(a) (1988))
- California v. Hodari D.*, 499 U.S. 621 (1991) ((1) whether a police officer's pursuit of a person who flees at the sight of the officer is a "seizure" under the Fourth Amendment before

that person's flight has been halted; and (2) whether drugs that a suspect abandons during his flight from a police officer must be suppressed as the fruits of an unlawful seizure)

- \* *Chapman v. United States*, 500 U.S. 453 (1991) ((1) whether, in determining the weight of lysergic acid diethylamide (LSD) for sentencing purposes, a district court must consider the combined weight of the LSD and a carrier medium for the drug; and (2) whether the Constitution forbids considering the combined weight of LSD and a carrier medium for sentencing purposes)

*Chisom v. Roemer*, 501 U.S. 380 (1991) (whether the results of Section 2 of the Voting Rights Act of 1965, 42 U.S.C. § 1973, applies to the election of state court judges)

*Houston Lawyers' Ass'n v. Texas Attorney General*, 501 U.S. 419 (1991) ((1) whether the results test of Section 2 of the Voting Rights Act of 1965, 42 U.S.C. § 1973, applies to the election of state court judges; and (2) whether the results test of Section 3 of the Voting Rights Act applies to the election of offices that can be held by only one person)

- \* *United States v. R.L.C.*, 503 U.S. 291 (1992) (whether the Sentencing Guidelines apply to juvenile delinquency proceedings)

- \* *Jacobson v. United States*, 503 U.S. 540 (1992) (whether the defendant was entrapped by the government's undercover efforts to investigate trafficking in child pornography)

*Morales v. Trans World Airline*, 504 U.S. 374 (1992) (whether the Airline Deregulation Act of 1978, 49 U.S.C. § 1035(a)(1) (1988), which pre-empts "any" state laws "relating to rates, routes, or services of any air carrier," pre-empts state regulation of air fare advertising) (brief filed in response to Supreme Court request)

- \* *Sawyer v. Whitley*, 505 U.S. 333 (1992) (whether a federal court may entertain a successive habeas corpus petition challenging a prisoner's sentence where a prisoner cannot make a colorable showing that he is innocent of the crime or the aggravating factors that rendered him eligible to receive that sentence)

*Medina v. California*, 505 U.S. 437 (1992) (whether Due Process Clause prohibits a State from assigning to the defendant in a criminal case the burden of proving that he is incompetent to stand trial)

*Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992) ((1) whether *Roe v. Wade*, 410 U.S. 113 (1973) should be overruled; and (2) whether the Pennsylvania Abortion Control Act is constitutional)

*Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263 (1993) ((1) whether a conspiracy to deter pregnant women from obtaining abortions involves the class-based animus required by

42 U.S.C. 1985(3); and (2) whether obstructing access to a medical facility deprives out-of-state patients of their constitutional right of interstate travel)

- \* *Herrera v. Collins*, 506 U.S. 390 (1993) (whether the Cruel and Unusual Punishments Clause of the Eighth Amendment, or the Due Process Clause of the Fifth and Fourteenth Amendments, entitles a prisoner to obtain judicial relief from a judgment of conviction on the basis of newly-discovered evidence of his innocence, instead of being required to seek executive clemency)

*United States v. Nachtigal*, 507 U.S. 1 (1993) (whether Art. III, Sec. 2, Cl. 3 of the Constitution or the Jury Trial Clause of the Sixth Amendment requires a trial by jury for the offense of driving under the influence of alcohol, where the maximum authorized penalty is six months' imprisonment and a \$5,000 fine) (summary reversal without full briefing or argument)

- \* *United States v. Dunnigan*, 507 U.S. 87 (1993) (whether the Constitution bars a court from enhancing a defendant's sentence under Sentencing Guidelines § 3C1.1 if the court finds that the defendant committed perjury while testifying at trial)

- \* *Stinson v. United States*, 508 U.S. 36 (1993) (whether a district court's failure to follow the Sentencing Commission's commentary on the Sentencing Guidelines constitutes an "incorrect application" of the Sentencing Guidelines under 18 U.S.C. § 3742(f)(1))

- \* *United States v. Edge Broadcasting Co.*, 509 U.S. 418 (1993) (whether 18 U.S.C. §§ 1304 and 1307, which restrict the right of a radio or television licensee to broadcast lottery-related advertisements, violate the First Amendment Free Speech Clause when applied to a licensee operating in a State that prohibits lotteries, but whose broadcasts extend into a State that operates a state lottery)

*Alexander v. United States*, 509 U.S. 544 (1993) ((1) whether the forfeiture provisions of the RICO statute violate the First Amendment when the predicate acts of racketeering are obscenity violations and the forfeited property consists of the assets of a business dealing in magazines and video cassettes; and (2) whether the forfeiture of petitioner's property resulting from his RICO convictions was disproportionate to his crimes, in violation of the Eighth Amendment)

*Weiss v. United States*, 510 U.S. 163 (1994) ((1) whether the Appointments Clause of the Constitution, Art. II, Sec. 2, Cl. 2, prohibits Congress from authorizing the Judge Advocates General to select commissioned officers in the military as court-martial trial judges and judges of the courts of military review; and (2) whether due process requires that military judges have fixed terms of office)

- \* *Ratzlaf v. United States*, 510 U.S. 135 (1994) (in a prosecution for willfully violating the Bank Secrecy Act, 31 U.S.C. § 5324(3), by structuring currency transactions with one or more domestic financial institutions for the purpose of evading the reporting requirements of 31 U.S.C. § 5313(a), whether the government must prove that petitioners knew that structuring for that purpose was unlawful)
- Victor v. Nebraska*, 511 U.S. 1 (1994) (whether the jury instructions on the meaning of the reasonable doubt standard violated the Due Process Clause)
- Arizona v. Evans*, 514 U.S. 1 (1995) (whether the Fourth Amendment exclusionary rule requires the suppression of evidence obtained by law enforcement officers acting in reliance upon a facially-valid radio report that a warrant exists for a suspect's arrest)
- U.S. Term Limits v. Thornton*, 514 U.S. 779 (1995) (whether the Qualifications Clauses of the Constitution, Art. I, § 2, Cl. 2, and § 3, Cl. 3, prohibit a state from limiting the terms served by United States Representatives and Senators)
- Felker v. Turpin*, 518 U.S. 651 (1996) ((1) Whether Title I of the Antiterrorism and Effective Death Penalty Act of 1996 is an unconstitutional restriction on the appellate jurisdiction of the Supreme Court; (2) whether Title I of the Act applies to habeas corpus petitions filed as original matters in the Supreme Court pursuant to 22 U.S.C. § 2241; (3) whether application of Title I of the Act in this case amounts to a suspension of the writ of habeas corpus, in violation of the Suspension Clause of the Constitution, Art. I, § 9, Cl. 2)
- MGM Studios v. Grokster*, 545 U.S. 913 (2005) (whether providers of peer-to-peer file sharing network software can be held secondarily liable for copyright infringement by others)
- Texaco v. Dagher*, 547 U.S. 1 (2006) (whether it is per se illegal concerted action under Section 1 of the Sherman Act for an economically integrated joint venture to set the selling price of its own products)
- Illinois Tool Works v. Independent Ink*, 547 U.S. 28 (2006) (whether existence of a patent itself proves market power for purposes of the Sherman Act)
- Scheidler v. NOW*, 547 U.S. 9 (2006) ((1) whether the Seventh Circuit on remand disregarded the Supreme Court's mandate; (2) whether the Hobbs Act 18 U.S.C. § 1951(a), punishes acts or threats of physical violence against "any person or property" in a manner that "in any way or degree \* \* \* affects commerce," even if such acts or threats of violence are wholly unconnected to either extortion or robbery; and (3) whether injunctive relief is available in a private civil action for treble damages under RICO, 18 U.S.C. § 1964(c))
- Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Co.*, 549 U.S. 312 (2007) (whether "predatory buying" can be proved without established unprofitable purchases and likely recoupment of losses during a later monopoly period)

*Bell Atlantic v. Twombly*, 550 U.S. 544 (2007) (whether a complaint states a claim under Section 1 of the Sherman Act, 15 U.S.C. § 1, if it alleges that the defendants engaged in parallel conduct and adds the assertion that the conduct was a “conspiracy”)

*Leegin Creative Leather Products v. PSKS*, 551 U.S. 877 (2007) (whether the per se rule adopted in *Dr. Miles Medical Co. v. John D. Park & Sons Co.*, 221 U.S. 373 (1911), outlawing as per se illegal vertical minimum resale price maintenance should be reconsidered and overruled)

*Pacific Bell Tel. Co. v. linkLine Communications, Inc.*, 555 U.S. 438 (2009) (whether the allegation that a vertically-integrated firm selling products at a wholesale price and a retail price in a manner that creates a “price squeeze” – viz. one that prevents a competing firm at the retail level from making a profit – state a claim under the Sherman Act) (amicus brief)

*Ashcroft v. Iqbal*, 556 U.S. 662 (2009) ((1) whether a conclusory allegation that a cabinet-level officer or high-ranking official knew of, condoned, or agreed to subject a plaintiff to allegedly unconstitutional acts purportedly committed by subordinate officials is sufficient to state individual-capacity claims against those officials under *Bivens*; (2) whether a cabinet-level officer or high-ranking official may be held personally liable for the allegedly unconstitutional acts committed by subordinate officials on the ground that, as high-level supervisors, they had constructive notice of the discrimination allegedly carried out by such subordinate officials).

**CASES HANDLED IN THE LOWER FEDERAL AND STATE COURTS**  
**(Cases Argued Are Marked With an Asterisk)**

*Pennsylvania Public Utility Comm'n v. United States*, 749 F.2d 841 (D.C. Cir. 1984) (briefed)

*Hughes v. A.H. Robins Co.*, 490 A.2d 1140 (D.C. 1985) (briefed)

\* *United States v. Cascarelli*, 746 F.2d 1480 (6th Cir. 1984) (Table) (briefed and argued)

*United States v. Provenzano*, 747 F.2d 1462 (5th Cir. 1984) (Table) (briefed)

\* *United States v. Tribunella*, 749 F.2d 104 (2d Cir. 1984) (briefed and argued)

\* *Sinito v. United States*, 750 F.2d 512 (6th Cir. 1984) (argued)

\* *In re Application for Appointment of Independent Counsel*, 596 F. Supp. 1465 (E.D.N.Y. 1984), *aff'd*, 766 F.2d 70 (2d Cir. 1985) (briefed and argued in district court)

\* *United States v. Segrera*, 752 F.2d 648 (11th Cir. 1985) (Table) (briefed and argued)

\* *United States v. Notarantonio*, 758 F.2d 777 (1st Cir. 1984) (argued)

- United States v. Bridges*, 760 F.2d 151 (7th Cir. 1984) (briefed)
- United States v. Leo*, 762 F.2d 995 (3d Cir. 1985) (Table) (briefed)
- In re Grand Jury Matter (Antoni Gronowicz)*, 764 F.2d 983 (3d Cir. 1985) (briefed)
- \* *United States v. DiCaro*, 772 F.2d 1314 (7th Cir. 1985) (briefed and argued)
- \* *United States v. Arnold*, 773 F.2d 823 (7th Cir. 1985) (briefed and argued)
- United States v. Fey*, 787 F.2d 598 (9th Cir. 1986) (Table) (briefed)
- \* *United States v. Curtis*, 32 M.J. 252 (C.M.A. 1991) (briefed and argued)
- United States v. Stinson*, 30 F.3d 121 (11th Cir. 1994) (briefed)
- United States v. Wright*, 33 F.3d 1297 (11th Cir. 1994) (briefed)
- United States v. Bruce*, 39 F.3d 323 (11th Cir. 1994) (briefed)
- Coca-Cola Co. v. FTC*, 1995 U.S. App. LEXIS 15183 (D.C. Cir. Dec. 28, 1994) (No. 94-1596) (briefed)
- Owens-Illinois v. Estate of Burt*, 897 S.W.2d 765 (Tex. 1995) (briefed)
- Sofamor Danek Group v. Gaus*, 61 F.3d 929 (D.C. Cir. 1995) (briefed)
- Mattox v. Williams*, 855 F. Supp. 406 (D.D.C. 1994), *aff'd*, 62 F.3d 408 (D.C. Cir. 1995) (briefed in district court)
- Brown & Williamson Tobacco Corp. v. Williams*, 81 F.3d 155 (5th Cir. 1996) (Table) (briefed)
- United States v. Watt*, No. 95-3192 (D.C. Cir. stay application filed Dec. 26, 1995) (withdrawn as moot Jan 2, 1996) (briefed)
- Starling v. Hughston Clinic*, 101 F.3d 709 (11th Cir. 1996) (Table) (briefed)
- Mazda Motor Corp. v. Chudasama*, 123 F.3d 1353 (11th Cir. 1997) (briefed)
- Covad Communications v. Bell Atlantic*, 398 F.3d 666 (D.C. Cir. 2005) (briefed)
- Levine v. BellSouth*, 143 Fed. Appx. 298, 2005 U.S. App. LEXIS 20418, No. 04-10819-D (11th Cir. Apr. 11, 2005) (briefed)
- Law Offices of Curtis V. Trinko v. Verizon*, No. 00 Civ 1910 (SHS) (JCF) (S.D.N.Y. 2004) (briefed)
- Greco v. Verizon*, 2005 U.S. Dist. Lexis 4434, 2005 Trade Cas. (CCH) ¶ 74,738 (S.D.N.Y. 2005) (briefed)

*Verizon Delaware v. Covad Communications*, No. CV-01-20524 (E.D. Cal. argued May 27, 2005) (argued)

*J.B.D.L. v. Wyeth-Ayerst Labs.*, 485 F.3d 880 (6th Cir. 2007) (amicus brief)

*Cascade Health Solutions v. PeaceHealth*, 502 F.3d 895 (9th Cir. 2007) (amicus brief)

*linkLine Communications v. SBC California*, 503 F.3d 876 (9th Cir. 2007) (amicus brief), *rev'd Pacific Bell Tel. Co. v. linkLine Communications, Inc.*, 555 U.S. 438 (2009)

*New Phone Co. v. New York City & Verizon Communications*, 00 Civ. 2007 (JG) (KAM) (E.D.N.Y. Oct. 17, 2006), *aff'd*, No. 06-5276-cv (2d Cir. Dec. 7, 2009) (summary order) (briefed)

*Global Naps, Inc. v. Verizon New England, Inc.*, 603 F.3d 71 (1st Cir. 2010) (briefed)

*FTC v. Watson Pharmaceuticals*, 677 F.3d 1298 (11th Cir. 2012) (briefed), *rev'd sub nom.*, *FTC v. Actavis, Inc.*, 570 U.S. 136 (2013)

## 6.7.19