

Eric A. Johnson

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Education

University of Michigan Law School, J.D., *cum laude*, 1988

University of Washington, Seattle, B.A., *cum laude*, 1984
Honors: Phi Beta Kappa; Departmental Honors in Philosophy

Employment

Professor of Law (2010-present); Associate Dean for Academic Affairs (2017-2018); Associate Professor (2009-2010)

Associate Professor of Law, University of Wyoming College of Law (2007 to 2009); Assistant Professor (2004-2007)

Assistant Solicitor General, New York State Department of Law (2001 to 2004)

Chief Assistant Attorney General, Alaska Department of Law (1996 to 2001); Assistant Attorney General (1990 to 1996)

Associate, Gilmore & Feldman, Anchorage, Alaska (1989 to 1990)

Law Clerk, Justice Allen T. Compton, Alaska Supreme Court (1988 to 1989)

Publications

Habit, Crime, and Culpability
113 J. CRIM. L. & CRIMINOLOGY 35 (2023)

When Provocation Is No Excuse: Making Gun Owners Bear the Risks of Carrying in Public
69 BUFF. L. REV. 943 (2021)

Dividing Risks: Toward a Determinate Test of Proximate Cause
2021 U. ILL. L. REV. 925 (2021)

Two Kinds of Coincidence: Why Courts Distinguish Dependent from Independent Intervening Causes
25 GEO. MASON L. REV. 77 (2017)

Cause-in-Fact After Burrage v. United States
68 FLA. L. REV. 1727 (2016)

Self-Mediated Risk in Criminal Law
35 L. & PHIL. 537 (2016)

Understanding General and Specific Intent: Eight Things I Know For Sure
13 OHIO ST. J. CRIM. L. 521 (2016)

Dynamic Incorporation of the General Part: Criminal Law's Missing (Hyper)Link
48 U.C. DAVIS L. REV. 1831 (2015)

- Winner of the University of Illinois College of Law's 2016 Carroll P. Hurd Award for Excellence in Faculty Scholarship

Wrongful-Aspect Overdetermination: The Scope-of-the-Risk Requirement in Drunk-Driving Homicide
46 CONN. L. REV. 601 (2013)

- Winner of the University of Illinois College of Law's 2014 Carroll P. Hurd Award for Excellence in Faculty Scholarship

Rethinking the Presumption of Mens Rea
47 WAKE FOREST L. REV. 769 (2012)

Review of Hyman Gross, *Crime and Punishment: A Concise Moral Critique*
NOTRE DAME PHILOSOPHICAL REVIEWS (2012)

Knowledge, Risk, and Wrongdoing: The Model Penal Code's Forgotten Answer to the Riddle of Objective Probability
59 BUFF. L. REV. 507 (2011)

Does Criminal Law Matter? Thoughts on Dean v. United States and Flores-Figueroa v. United States
8 OHIO ST. J. CRIM. L. 123 (2010) (invited)

Is the Idea of Objective Probability Incoherent?
29 L. & PHIL. 419 (2010)

Mens Rea for Sexual Abuse: The Case for Defining the Acceptable Risk
99 J. CRIM. L. & CRIMINOLOGY 1 (2009)

Causal Relevance in the Law of Search and Seizure
88 B.U. L. REV. 113 (2008)

- Reprinted in 35 SEARCH & SEIZURE L. REP. 65 (2008)

The Crime That Wasn't There: Wyoming's Elusive Second-Degree Murder Statute
7 WYO. L. REV. 1 (2007) (invited)

Beyond Belief: Rethinking the Role of Belief in the Assessment of Culpability

3 OHIO ST. J. CRIM. L. 503 (2006)

- Excerpted in WAYNE LAFAVE, MODERN CRIMINAL LAW: CASES, COMMENTS AND QUESTIONS 199-200 (6th ed. 2017)

Criminal Liability for Loss of a Chance

91 IOWA L. REV. 59 (2005)

- Excerpted in KAPLAN, WEISBERG & BINDER, CRIMINAL LAW: CASES AND MATERIALS 775 (10th ed. 2021)
- Excerpted in WAYNE LAFAVE, MODERN CRIMINAL LAW: CASES, COMMENTS AND QUESTIONS 838 (6th ed. 2017)

Habit and Discernment in Abortion Practice: The Partial-Birth Abortion Ban Act of 2003 as Morals Legislation

36 RUTGERS L. J. 549 (2005)

Assisted Suicide, Liberal Individualism, and Visceral Jurisprudence: A Reply to Professor Chemerinsky

20 ALASKA L. REV. 321 (2003)

*Harm to the “Fabric of Society” as a Basis for Regulating Otherwise Harmless Conduct: Notes on a Theme from *Ravin v. State**

27 SEATTLE U. L. REV. 41 (2003)

An Analysis of the Antiterrorism and Effective Death Penalty Act in Relation to State Administrative Orders: The State Court Judgment as the Genesis of Custody

29 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 153 (2003)

Honors and Awards

Carroll P. Hurd Award for Excellence in Faculty Scholarship, University of Illinois College of Law, 2014, 2016

Elected Convocation Hooder, University of Illinois College of Law, 2014, 2016, 2018, 2019, 2021, 2022, 2023

2L Professor of the Year, University of Illinois College of Law, 2013

Prosecutor of the Year, Alaska Department of Law, 2001 (inaugural recipient)

Recent Presentations

Genomics and the Fourth Amendment. Presented as part of the *Genomics for Police*[™] program at the Carl Woese Institute for Genomic Biology, University of Illinois Urbana-Champaign, October 16, 2017.

The Intersection of Law and Science from the Legal Point of View. Presented as part of the 2015 Illinois Advanced Judicial Academy, Champaign, Illinois, June 8, 2015.

Recent Developments in the Law of Causation. Presented as part of the Federal Defender's Spring 2015 CJA Seminar, University of Illinois Urbana-Champaign, April 17, 2015.

Admissibility of Scientific Evidence in the Courts. Presented as part of the *Genomics for Prosecutors*TM program at the Carl Woese Institute for Genomic Biology, University of Illinois Urbana-Champaign, November 21, 2014.

Causal-Overdetermination Roundtable. Multi-disciplinary conference on causation co-organized with philosopher Jonathan Livengood. University of Illinois Urbana-Champaign, November 14-15, 2013.

Self-Prediction in Criminal Law. Presented at the New York City Criminal Theory Colloquium, January 28, 2013

The Mens Rea Requirement as an Actus Reus Requirement. Presented at Chicago-Kent College of Law, November 12, 2010

Probability and Perspective in Criminal Law and Procedure. Presented at New Voices in Legal Theory Roundtable, St. Louis University Law School, April 23, 2010

Probability and Perspective in Criminal Law and Procedure. Presented at Northwestern University Law School, Chicago, Illinois, November 5, 2009

Probability and Perspective in Criminal Law and Procedure. Presented at the University of Minnesota Law School, Minneapolis, Minnesota, October 29, 2009

Probability and Perspective in Criminal Law and Procedure. Presented at Washington University School of Law, St. Louis, Missouri, October 23, 2009

What Crimes Are Made of: Toward a Taxonomy of Objective Elements. Presented at University of Illinois College of Law faculty workshop, Champaign, Illinois, October 15, 2009

Probability and Perspective in Criminal Law and Procedure. Presented at University of Illinois College of Law faculty retreat, Champaign, Illinois, May 14, 2009

Problems in the Subjective Assessment of Risk. Presented in Chicago, Illinois as part of conference celebrating release of LARRY ALEXANDER & KIMBERLY FERZAN, *CRIME AND CULPABILITY*, May 11, 2009

General Confusion about General Intent. Presented at Wyoming State Bar 2008 Annual Meeting & Judicial Conference, Cheyenne, Wyoming, September 11, 2008

Recent Developments in Wyoming Criminal Law and Procedure. Presented at Wyoming Circuit Court Judges Conference, Ucross, Wyoming, April 24, 2008

Criminal Law Update. Presented (with John King and Jason Tangeman) at Wyoming State Bar Annual Meeting and Judicial Conference, Laramie, Wyoming, August 18, 2006

Recent Developments in the Law of Evidence. Presented at Wyoming Conference of Municipal Courts Training Seminar, Cheyenne, Wyoming, May 18, 2006

Recent Developments in Wyoming Criminal Law. Presented (with Theodore Lauer) at Wyoming County and Prosecuting Attorneys Conference, Casper, Wyoming, November 9, 2005

Current Issues in Criminal Law. Presented (with Theodore Lauer and Diane Courselle) as part of continuing legal education program at University of Wyoming College of Law, Laramie, Wyoming, May 18, 2006

Other Teaching Experience

Instructor, National College of District Attorneys, Columbia, South Carolina, 1999 and 2000. Instructed state prosecutors in annual week-long course on all aspects of appellate advocacy. Instruction included lectures, small-group workshops, and individualized critiques.

Lecturer, Alaska Statewide District Attorney's Conference, Girdwood, Alaska, 1996 to 2001. Lectured at annual gathering of district attorneys, assistant district attorneys, and municipal prosecutors from around Alaska.

Professional Activities

UIUC Committee on Academic Freedom and Tenure, 2012 to 2014. Served as chair of campus-wide committee responsible for (1) conducting hearings in faculty-dismissal proceedings; and (2) investigating alleged violations of academic freedom. Appointed by faculty senate.

Advisory Committee to the Alaska Supreme Court on Appellate Rules, 1998 to 2001. Participated in standing committee of practitioners and judges charged with recommending changes to Alaska Rules of Appellate Procedure. Appointed by Alaska's chief justice.

Area Discipline Division, Alaska Bar Association, 1997 to 2001. Participated in standing committee of attorneys and lay people charged with conducting hearings on allegations of attorney misconduct. Appointed by Alaska's chief justice.

Indian Law Committee, Alaska Department of Law, 1996 to 2001. Participated in committee of assistant attorneys general charged with monitoring litigation involving issues of Indian law and with formulating Department policy.

Advisory Committee to the Alaska Supreme Court on Criminal Pattern Jury Instructions, 1993 to 2001. Participated in standing committee of practitioners and judges charged with

revising and updating criminal pattern jury instructions. Appointed by Alaska's chief justice.

Alaska Law Examiners Committee, 1990 to 1999. Drafted essay questions for Alaska bar exam on criminal law, criminal procedure, constitutional law, and evidence. Participated in committee review of entire essay exam. Appointed by Alaska Bar Association president.

Representative Litigation

Burrage v. United States, 134 S.Ct. 881 (2014)

- Filed an amicus brief on behalf of nine state attorneys general – and in support of the respondent United States – urging the Supreme Court to hold that a criminal defendant's conduct counts as a factual cause of a proscribed result if it makes a positive incremental contribution to the causal mechanism underlying the result. Supreme Court rejected this position and reversed defendant Marcus Burrage's conviction.

Rabuck v. State, 129 P.3d 861 (Wyo. 2006)

- Represented state in appeal by criminal defendant whose surreptitious videotaping of two 17-year-old girls led to his conviction on two counts of taking indecent liberties with a minor. Addressed defendant's claim that the indecent liberties statute was unconstitutionally vague as applied to his conduct. Wyoming Supreme Court affirmed conviction and rejected constitutional challenge.

Swedenburg v. Kelly, 544 U.S. 460 (2005)

- Wrote New York State's brief in response to petition for writ of certiorari. Petition challenged Second Circuit decision upholding New York's statutory prohibition on the direct shipment of alcoholic beverages to New York consumers by out-of-state wineries. Challenge was based on both the dormant commerce clause and the privileges and immunities clause. As the state had urged, the Court granted petition. Court eventually reversed court of appeals' decision.

Grotto v. Herbert, 316 F.3d 198 (2d Cir. 2003)

- Represented state in its appeal of federal district court order granting habeas corpus relief to state prisoner who had been convicted of sexually abusing his five-year-old daughter. Second Circuit reversed district court and reinstated conviction.

Aeid v. Bennett, 296 F.3d 58 (2d Cir. 2002)

- Represented state in its appeal of federal district court order granting habeas corpus relief to state prisoner who had been convicted of first-degree sodomy. Second Circuit reversed district court and reinstated conviction.

Smith v. Doe, 538 U.S. 84 (2003)

- Drafted successful petition for writ of certiorari challenging Ninth Circuit's decision in *Doe v. Otte*, 259 F.3d 979 (9th Cir. 2001), which held that Alaska's sex offender registration statutes impose "punishment" and therefore violate the ex post facto clause as applied to sex offenders convicted prior to the statutes' effective date. Supreme Court granted certiorari and eventually reversed. (Draft of petition completed shortly before departure from Alaska Attorney General's office.)

Sampson v. State, 31 P.3d 88 (Alaska 2001)

- Defended Alaska's statutory ban on physician-assisted suicide in civil suit filed by national advocacy group Compassion in Dying, which said it had chosen Alaska for test case "after a lengthy and deliberate examination of the constitutions and case law of each of the 50 states." Superior Court ruled in state's favor and Alaska Supreme Court affirmed.

Rivera v. Pugh, 194 F.3d 1064 (9th Cir. 1999)

- Represented state in habeas corpus appeal by drunk driver who argued that administrative revocation of a driver's license amounts to "punishment" under the double jeopardy clause and so precludes later conviction for drunk driving. Court upheld conviction.

State v. Hazelwood, 946 P.2d 875 (Alaska 1997)

- Represented state in its appeal seeking reinstatement of the conviction of Joseph Hazelwood, captain of the oil tanker Exxon Valdez, for negligent discharge of oil. Court reinstated conviction, and in so doing rewrote Alaska's doctrine of constitutional mens rea.

Turney v. State, 936 P.2d 533 (Alaska 1997)

- Successfully defended Alaska's jury tampering statute against constitutional challenge by member of "fully informed jury" movement. State's brief relied on extensively in Erick Haynie, *Populism, Free Speech, and the Rule of Law: The "Fully Informed Jury" Movement and Its Implications*, 88 J. OF CRIM. L. & CRIMINOLOGY 343 (1997).