

RESUME OF DAVID KAIRYS
(Spring 2010)

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EDUCATION

B.S., 1965, Cornell University; LL.B., 1968, Columbia University; LL.M., 1971, University of Pennsylvania.

EMPLOYMENT

Professor of Law, Temple University (Fall, 1990 to present); James E. Beasley chair (2001 to 2007). Courses taught: Constitutional Law, Political and Civil Rights, Privacy, Law, Science and Technology.

Visiting Professor of Law, University of Miami (Spring, 2010).

Visiting Professor of Law, University of Oregon (Spring, 1999).

Partner and co-founder of Kairys & Rudovsky (now Kairys, Rudovsky, Epstein, Messing, and Feinberg) and Philadelphia counsel for the National Emergency Civil Liberties Committee (Spring, 1971 to Summer, 1990). Principal areas of practice: constitutional law, including free speech and other civil liberties, race and sex discrimination and harassment, and surveillance; government misconduct, including police misconduct, entrapment, and conflict of interest; and representation of public interest, political advocacy, and community groups. See appendix for cases litigated.

Adjunct Professor of Sociology (previously adjunct associate professor and lecturer), University of Pennsylvania (1980 to 1990).

Lecturer in Urban Studies, University of Pennsylvania (1972 to 1979).

Visiting Lecturer in Sociology, University of California, Santa Cruz (Fall, 1975).

Fellow in Community Law and Criminal Litigation, University of Pennsylvania Law

School (Fall, 1968 to Spring, 1971). Duties included supervision of a clinical program for law students, litigation with the public defender and legal services offices, research and writing.

RECENT ACTIVITIES, POSITIONS AND LECTURES

Editor of Oxford University Press's Law and Current Affairs Masters Series.

Editorial Advisory Committee, Law and Society Review.

Contributing editor, JURIST: The Legal Education Network.

Advisory Committee, The New Press.

Advisory Board, Center for Voting and Democracy.

Advisor and of counsel to the Indian Law Resource Center.

Frequent columnist and commentator in legal publications and national and local media. Legal publications include the American Bar Association Journal, National Law Journal, and American Lawyer; national and local media include television news broadcasts and magazines on the major networks, news broadcasts on CNN, MSNBC and Fox, Nightline, Today, National Public Radio, New York Times, Washington Post, Wall Street Journal, Newsweek, Time, Money, Slate, and Philadelphia Inquirer.

Recent major lectures: Caplan Lecture, University of Pittsburgh School of Law (1998); Wiggin & Dana Symposium, University of Connecticut Law School (2000); "Searching for the Rule of Law," Donahue Lecture, Suffolk Law School (2002); "History and Reality of Free Speech in the U.S." and "Theory and Application of Law in the U.S.," Tsinghua University Law School, Beijing, China (2002); "Security and Civil Liberties after 9/11," University of California, Santa Barbara (2003); "Why Guns Are So Easily Available in Urban Areas," School of Urban Affairs and Public Policy, University of Delaware (2005); "Race and the Supreme Court," Penn Institute for Urban Research, University of Pennsylvania (2006); "Philadelphia Freedom," University of Pennsylvania (2008); "Philadelphia Freedom, Memoir of a Civil Rights Lawyer," Ruth Chance Lecture, University of California, Berkeley (2009); Keynote address, Martin Luther King, Jr. Birthday Celebration, University of Pennsylvania (2009).

PUBLICATIONS

(Recent articles available at: <http://ssrn.com/author=359352>)

Books and Chapters

THE JURY SYSTEM: NEW METHODS FOR REDUCING PREJUDICE, A MANUAL FOR LAWYERS, LEGAL WORKERS AND SOCIAL SCIENTISTS (National Jury Project, 1975) (editor and co-author).

THE POLITICS OF LAW, A PROGRESSIVE CRITIQUE (New York: Pantheon 1982), overall editor and author of the Introduction and chapters on Legal Reasoning and Freedom of Speech (available online at <http://ssrn.com/abstract=727903>). Freedom of Speech and Legal Reasoning chapters reprinted in Chinese in Le Buyun, ed., COLLECTED ARTICLES ON CONSTITUTIONAL LAW (Beijing: Nanjing University Press 1996).

Second Edition of THE POLITICS OF LAW, A PROGRESSIVE CRITIQUE (New York: Pantheon 1990), overall editor and author of Preface, Introduction and chapter on Freedom of Speech. Translated and published in Japan; Introduction reprinted in England by Pluto Press; other portions translated and published in several countries.

Jury Composition Challenges, a chapter of JURYWORK, SYSTEMATIC TECHNIQUES (New York: Clark-Boardman, 1983 and updates).

Exporting Freedom of Speech, a chapter of J. Lobel, ed., A LESS THAN PERFECT UNION (New York: Monthly Review Press 1988).

Freedom of Speech, a chapter of Bertell Ollman and Jonathan Birnbaum, eds., THE UNITED STATES CONSTITUTION (New York: N.Y.U. Press 1990).

WITH LIBERTY AND JUSTICE FOR SOME, A CRITIQUE OF THE CONSERVATIVE SUPREME COURT (New York: New Press 1993).

The Law of Clinical Testing with Human Subjects, a chapter of Joseph Kadane, ed., BAYESIAN METHODS AND ETHICS IN A CLINICAL TRIAL DESIGN (New York: John Wiley and Sons 1996) (available online at <http://ssrn.com/abstract=1415743>).

Third edition of THE POLITICS OF LAW, A PROGRESSIVE CRITIQUE (New York: Basic Books 1998), overall editor and author of Preface, Introduction (available online at <http://ssrn.com/abstract=841469>) and chapter on Freedom of Speech (available online at <http://ssrn.com/abstract=728083>). Translated into Chinese and published in the American Law Library collection by the Chinese University of Law and Political Science Press (2008).

Why not democracy?, a chapter of Chester Hartman, ed., CHALLENGES TO EQUALITY: POVERTY AND RACE IN AMERICA (New York: M.E. Sharpe 2001).

Civil Rights, in the INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL AND BEHAVIORAL SCIENCES (London: Elsevier 2001).

Jury Composition Challenges, a chapter of JURYWORK, SYSTEMATIC TECHNIQUES (New York: West 2002) (major revision and update).

The Cities Take the Initiative, Public Nuisance Lawsuits Against Handgun Manufacturers, a chapter of Bernard Harcourt, ed., GUNS, CRIME AND PUNISHMENT IN AMERICA (New York: N.Y.U. Press 2003), available online at <http://ssrn.com/abstract=730843>.

Why Are Handguns So Accessible on Urban Streets?, a chapter of Elijah Anderson, ed., AGAINST THE WALL: POOR, YOUNG, BLACK, AND MALE (Penn Press 2008), <http://ssrn.com/abstract=1376423>.

PHILADELPHIA FREEDOM, MEMOIR OF A CIVIL RIGHTS LAWYER (University of Michigan Press 2008).

Robert T. Coulter, ed., GENERAL PRINCIPLES OF LAW RELATING TO NATIVE LANDS AND NATURAL RESOURCES (Indian Land Tenure Foundation 2009) (contributor mainly on constitutional issues).

Professional Journals

Note, The Bill of Attainder Clauses and Legislative and Administrative Suppression of “Subversives,” 67 Columbia Law Review 1490 (1967).

Juror Selection: The Law, A Mathematical Method of Analysis and a Case Study, 10 American Criminal Law Review 771 (1972).

Jury Representativeness: A Mandate for Multiple Source Lists, 65 California Law Review 776 (1977) (with statisticians Joseph Kadane and John Lehoczky).

Book review of Tigar, Law and the Rise of Capitalism, 126 University of Pennsylvania Law Review 930 (1978).

Fair Numbers of Peremptory Challenges in Jury Trials, Journal of the American Statistical Association, vol. 74, pp. 747-53 (Dec. 1979) (with Joseph Kadane).

Remedies for Private Intelligence Abuses: Legal and Ideological Barriers, 10 N.Y.U. Review of Law and Social Change 233 (1982) (with Julie Shapiro).

Law and Politics, 52 George Washington Law Review 243 (1984).

Conservative Legal Thought Revisited, Book Review of Charles Fried, *Order and Law*, 91 *Columbia Law Review* 1847 (1991).

The Thomas-Hill Sex Harassment Hearings: An Interview, 1 *Temple Political and Civil Rights Law Review* 107 (1992) (from an interview on NPR's Fresh Air).

Race Trilogy, 67 *Temple Law Review* 1 (1994).

Reflections on a Twenty-Fifth Anniversary, 25 *Columbia Human Rights Law Review* 265 (1994).

Symposium participant, The Supreme Court, Racial Politics, and the Right to Vote, 44 *American University Law Review* 1 (1994).

The History and Current Retrenchment of Free Speech, 3 *Temple Political and Civil Rights Law Review* 73 (1995).

Why Not Democracy?, 4 *Poverty and Race* 13 (1995).

Symposium on the Rehnquist Court and the American Dilemma, 45 *American University Law Review* 568-600 (1996) (participant in panel discussion).

Unexplainable on Grounds Other Than Race, 45 *American University Law Review* 729-49 (1996).

Forward to Symposium, Noble Lies and the First Amendment: A Symposium on The Death of Discourse, 64 *Cincinnati Law Review* 1195 (1996).

Reason Worship, review comment on Edward Lazarus, *CLOSED CHAMBERS*, *Books-on-Law, JURIST* (May, 1998), <http://jurist.law.pitt.edu/lawbooks/revmay98.htm#Kairys>, <http://ssrn.com/abstract=1465737>.

Legal Claims of Cities Against the Manufacturers of Handguns, 71 *Temple Law Review* 1 (1998).

Symposium participant, Is There a Constitutional Right to Vote and Be Represented? The Case of the District of Columbia, 48 *American University Law Review* 589 (1999).

Some Concerns About Context and Concentration of Power, 72 *Temple Law Review* 1019 (1999) (comment on the "New Roles, No Rules" symposium).

The Origin and Development of the Governmental Handgun Cases, 32 *Connecticut Law Review* 1163 (2000).

The Governmental Handgun Cases and the Elements and Underlying Policies of Public Nuisance Law, 32 Connecticut Law Review 1175 (2000).

Symposium Dialogue: Guns and Liability in America, 32 Connecticut Law Review 1425 (2000) (lead speaker, participant and moderator of a discussion among leading scholars on firearms litigation issues).

Bush v. Gore Blues, JURIST, at <http://jurist.law.pitt.edu/forum/forumnew23.HTM> (May 2001) and <http://ssrn.com/abstract=726444>.

Public Nuisance Claims of Victims of Handgun Violence, 43 Arizona Law Review 339 (2001).

Searching for the Rule of Law, 36 Suffolk Law Review 307 (2003), available online at <http://ssrn.com/abstract=724341>.

A Philadelphia Story, Legal Affairs (May/June 2003).

More or Less Equal, 13 Temple Political and Civil Rights Law Review 675 (2005), available online at <http://ssrn.com/abstract=715181>.

Legislative Usurpation: The Early Practice and Constitutional Repudiation of Legislative Intervention in Adjudication, 73 Missouri, K.C. Law Review 945 (2005), available online at <http://ssrn.com/abstract=815245>.

A Brief History of Race and the Supreme Court, 79 Temple Law Review 751 (2006), <http://ssrn.com/abstract=920737>, reprinted as the lead article in CIVIL RIGHTS LITIGATION AND ATTORNEY FEES ANNUAL HANDBOOK (Steven Saltzman, ed., Thomson/West 2007).

James B. Jacobs & David Kairys, Debate, Can Handguns Be Effectively Regulated?, 156 U. PA. L. REV. PENNUMBRA 188 (2007), <http://www.pennumbra.com/debates/handgunreg.pdf>, <http://ssrn.com/abstract=1030802>.

Miscellaneous

“The Bail Litigation Project at the University of Pennsylvania Law School,” 50 Journal of the Penna. Prison Society 54 (1970).

POLICE MISCONDUCT LITIGATION MANUAL (1978) (contributor).

“Government-Created Crime and the Entrapment Defense,” 2 Puerto Rican Journal of Human Rights 8 (1978).

“Airplane Safety,” In These Times, Sept. 19-25, 1979, p. 16.

“Civil Liberties and the Fight Over Nuclear Power,” National Law Journal, Dec. 17, 1979, p. 19. Reprinted, Chicago Tribune, Dec. 28, 1979, p. 4.

“Why Precedents Aren’t Treated Equally,” National Law Journal, June 9, 1980, p. 15.

“The Vote Was Hardly a Landslide,” column, Philadelphia Inquirer, Jan. 14, 1981, p. 14-A.

“Roger Baldwin: Founder of the ACLU,” In These Times, Sept. 9, 1981, p. 15.

Review of Leonard W. Levy, EMERGENCE OF A FREE PRESS, In These Times, May 22-28, 1985, p. 19.

“Censorship in Nicaragua,” Washington Post, June 7, 1986, P.A21.

“Arms Reduction Requires Economic Change,” Philadelphia Daily News, December 15, 1986, p. 42.

Advisory Board, ENCYCLOPEDIA OF THE AMERICAN JUDICIAL SYSTEM (Charles Scribner's Sons 1987).

“Free Speech Was No Gift from the Framers,” Newsday, July 20, 1987, p. 57-58.

“Voters Are Saying His Message Is Credible,” Philadelphia Inquirer, April 9, 1988.

“We Need Fewer Prisoners, Not More Prisons,” Philadelphia Inquirer, June 10, 1988, p. 19-A.

“Will There Be More Airliners Shot Down?,” Philadelphia Inquirer, July 13, 1988, p. 11-A.

“Handguns: A Carnage in the Name of Freedom,” Philadelphia Inquirer, Sept. 12, 1988, p. 15-A.

“Freedom Can Be Denied by the Superpatriots,” Philadelphia Inquirer, April 12, 1989, p. 11-A.

“Air Travel Can Be Made Safer by Building Safer Airplanes,” Philadelphia Inquirer, August 2, 1989, p. 11-A.

“Let's Just Say No to the Threats of the 76ers' and Flyers' Owners,” Philadelphia Inquirer, May 12, 1990.

“Of politics and conservative legal thought,” book review of Charles Fried, ORDER AND LAW, Philadelphia Inquirer, April 28, 1991.

“The Evolution of Free Speech,” In These Times, Dec. 18-24, 1991.

“A Supreme Court Ruled by the Right,” book review of David Savage, TURNING RIGHT, Philadelphia Inquirer, May 24, 1992, p. 1-M.

“Prejudicial Restraint: Race and the Supreme Court,” Tikkun, May-June, 1992, p. 37.

“Clinton's chance to bring judicial respect,” Philadelphia Inquirer, June 7, 1993.

“Restrain yourself, Mr. President,” Sunday Pittsburgh Post-Gazette, June 13, 1993.

“Pledged to minority rights, Recalling a Flag Day imbued with special meaning, Sunday Boston Globe, June 13, 1993.

“Activism or Restraint? Pick a Label,” Los Angeles Times, July 30, 1993.

“Ginsburg won't change the court's direction on race,” Sunday Philadelphia Inquirer, October 3, 1993

“Term limits for officeholders favor the rich and unprincipled,” Philadelphia Inquirer, February 24, 1994.

“A plea to make democracy fairer,” book review of Lani Guinier, THE TYRANNY OF THE MAJORITY, Sunday Philadelphia Inquirer, March 27, 1994.

“Reopening the case,” book review of Mayer and Abramson, STRANGE JUSTICE and Danforth, RESURRECTION, Sunday Philadelphia Inquirer, November 13, 1994.

“With only 20 percent of the vote, the Republicans have no mandate,” Philadelphia Inquirer, November 21, 1994.

“McNamara's book: Cynicism at the top,” Philadelphia Inquirer, April 24, 1995.

“But what will happen to the poor if we abandon them?” Philadelphia Inquirer, June 29, 1995.

“The Bomb: There is no excuse,” Philadelphia Inquirer, August 18, 1995.

“Police scandals and reform,” Sunday Philadelphia Inquirer, November 26, 1995.

“You get what you pay for,” book review of Thomas Ferguson, *GOLDEN RULE*, In These Times, February 19, 1996.

“Affirmative Action,” review of Terry Eastland, *ENDING AFFIRMATIVE ACTION*, Sunday Philadelphia Inquirer, April 7, 1996.

“Affirmative action: What are the alternatives?,” Sunday Baltimore Sun, July 28, 1996.

“A black box for passengers,” Philadelphia Inquirer, Aug. 8, 1996.

“Blaming the jury,” book review of Jeffrey Toobin, *THE RUN OF HIS LIFE*, Sunday Newsday, Sept. 15, 1996.

“In a Simpson case redux, facts fare better than jury,” review of Jeffrey Toobin, *THE RUN OF HIS LIFE*, Philadelphia Inquirer, Sept. 29, 1996.

“Criminal profiles are not facts: They can jeopardize civil rights,” Philadelphia Inquirer, Nov. 17, 1996.

“Two endings to the same O.J. story,” Philadelphia Inquirer, Feb. 6, 1997.

“Peco should pay for its mistakes,” Philadelphia Inquirer, May 8, 1997.

“Clinton's Judicial Retreat,” Sunday Washington Post, Sept. 7, 1997; reprinted in the Pittsburgh Post-Gazette and the Sacramento Bee.

“For the good of us all, just focus on yourself,” Philadelphia Inquirer, July 15, 1999.

“Pa. Lawmakers fired errant shot in ban on city lawsuits over guns,” Philadelphia Inquirer, Nov. 28, 1999; reprinted in the Pittsburgh Post-Gazette.

“Two's Company, But Not a Debate,” Sunday Washington Post, July 2, 2000 (widely reprinted).

“The Electoral College: What's the Fix?,” Sunday Washington Post, Nov. 19, 2000 (widely reprinted).

“Questionable Judgment,” review of death-penalty books, Book World, Sunday Washington Post, June 3, 2001.

“One way to fix schools: secede from the state,” Philadelphia Inquirer, November 23, 2001.

“What would we change about the Constitution?,” National Constitution Center Supplement, Sunday Philadelphia Inquirer, June 29, 2003.

“Iraqi constitution needs to be ‘of the people,’” Philadelphia Inquirer, October 19, 2003.

“Violence rising in city full of guns,” Sunday Philadelphia Inquirer, June 13, 2004 (with Elijah Anderson).

“Fire Sale: How the gun industry bought itself immunity from the rule of law,” Slate, November 7, 2005, <http://www.slate.com/id/2129649/>.

“Alito Day 2: Strange Adventures in the Twilight Zone,” Jurist, January 11, 2006, <http://jurist.law.pitt.edu/forumy/2006/01/alito-day-2-strange-adventures-in.php>.

“Legal Technicalities: Weighing the Alito Nomination,” Jurist, January 23, 2006, <http://jurist.law.pitt.edu/forumy/2006/01/legal-technicalities-weighing-alito.php>.

“Alito’s Discrimination Problem,” Jurist, January 28, 2006, <http://jurist.law.pitt.edu/forumy/2006/01/alitos-discrimination-problem.php>, <http://papers.ssrn.com/abstract=1010409>.

“On guns, lawmakers are accountable,” Philadelphia Inquirer, October 17, 2006.

“On judges, some very bad ‘experience,’” Philadelphia Daily News, April 17, 2008.

“New law would ensure right to sue,” Philadelphia Inquirer, Dec. 15, 2008 (with Nan Aron), http://www.philly.com/inquirer/opinion/20081215_New_law_would_ensure_right_to_sue.html

“It’s hard to watch” (Sotomayer nomination hearings), ACSBlog (American Constitution Society), July 16, 2009, <http://www.acslaw.org/node/13775>.

“It’s racism, only less overt,” Philadelphia Inquirer, Aug. 5, 2009, <http://www.philly.com/inquirer/opinion/52497047.html>, republished on the ACSBlog as “Understanding how we think, talk about race,” <http://www.acslaw.org/node/13864>.

“Money Isn’t Speech and Corporations Aren’t People, The misguided theories behind the Supreme Court’s ruling on campaign finance reform,” Slate, Jan. 22, 2010, <http://www.slate.com/id/2242210>.

AWARDS AND PROFILES

Alliance for Justice honor list (called the “Naughty and Nice” list; among the nice) for 2008.

American Association of Law Schools 2007 Deborah Rhode Award for extraordinary contribution to public interest by a law professor.

American Civil Liberties Union of Pennsylvania's Civil Liberties Award.

Poor Richard Club of Philadelphia Pro Bono Award.

Freil-Scanlan Award (best Temple law faculty scholarship).

First James E. Beasley Chair (Temple Law School).

Recently profiled in the *Chronicle of Higher Education*, *Wall Street Journal*, and *Philadelphia Inquirer Sunday Magazine*.

APPENDIX: LITIGATION AND EXPERT TESTIMONY

The following is a list and some summaries of cases in which David Kairys was sole or primary counsel or served as an expert for one or more parties. Major areas and reported cases have been emphasized.

Freedom of Speech, Association and Press

Greer v. Spock, 424 U.S. 828 (1976), 502 F.2d 953 (3d Cir. 1974), 469 F.2d 1047 (3d Cir. 1972), 349 F. Supp. 179 (D.N.J. 1972). Suit aimed at gaining access, for the purposes of electoral campaigning and political speech, to the portions of Fort Dix, New Jersey that were regularly open to the public.

Trotman v. Bd. of Trustees of Lincoln University, 635 F.2d 216 (3d Cir. 1980). Suit by one-quarter of the faculty of Lincoln University successfully challenging violations of free speech by the administration.

Pledge of Resistance v. We The People 200, 665 F. Supp. 414 (E.D.Pa. 1987) (preliminary injunction prohibiting denial of access to bicentennial celebrations based on opposition to government policies).

Texans United v. George W. Bush, Texas Circuit Court, Austin (1999) (challenge to arrests of environmental demonstrators on the sidewalk outside the governor's mansion).

Consumer Party v. Davis, 606 F. Supp. 1008 (E.D.Pa. 1985), 778 F.2d 140 (3d Cir. 1986) (invalidating signature requirement for ballot access).

New Jersey Citizen Action v. Edison Township, 797 F.2d 1250 (3d Cir. 1986) (amicus for Republican City Committee of Philadelphia, et al. on right to canvass door-to-door in evening hours).

Biggin v. Immigration and Naturalization Service, 479 F.2d 569 (3d Cir. 1973) (deportation of a political activist).

U.S. Postal Service v. DiCorcia, 605 F.2d 1199 (3d Cir. 1979) (freedom of association of union members).

Pittsburgh Alliance for Jobs and Energy v. Borough of Munhall, 743 F.2d 182 (3d Cir. 1984) (amicus brief for Citizen/Labor Energy Coalition and Penna. Public Interest Coalition on door-to-door canvassing).

Free Press, Inc. v. Rizzo, U.S.D.C.E.D.Pa. (1970) (community newspaper successfully challenging harassment by local police).

Penna. Public Interest Coalition v. York Township, 569 F. Supp. 1398 (M.D.Pa. 1983) (invalidating ordinance prohibiting door-to-door canvassing after 6:00 P.M.).

June 2 Coalition v. Delaware River Port Auth., U.S.D.C.E.D.Pa. (1984) (counsel fees awarded in settled free-speech case).

Police Misconduct

Spring Garden United Neighbors v. City of Philadelphia, 614 F. Supp. 1350 (E.D.Pa. 1985). Preliminary injunction granted in class action regarding police sweep of a Puerto Rican community after the killing of a police officer.

Cliett, et al. v. City of Philadelphia, U.S.D.C.E.D.Pa. (1985). Consent decree prohibiting citywide police program of sweeps of areas where drugs dealt.

Wilkinson v. Ellis, 484 F.Supp. 1072 (E.D.Pa. 1980). Police and prosecutorial misconduct action regarding wrongful conviction and imprisonment of plaintiff for murder; prosecutor held not to be immune.

Borenstein v. Briggs, 595 F. Supp. 853 (E.D.Pa. 1985) (effect of City ordinance waiving municipal immunity; discovery of police officer's personnel file).

Tataren v. Little, 20 Cr.L. 2483 (Ct. Common Pleas for Philadelphia Co., 1977) (liability of city and police supervisors based on inadequate training and supervision; discovery of prior complaints and disciplinary actions regarding officer).

Marvasi v. Shorty, 70 F.R.D. 14 (E.D.Pa. 1976) (liability of city and city officials for misconduct of police officer).

Lumpkin v. City of Philadelphia, Ct. of Common Pleas for Philadelphia Co. (police assault of epileptic during a seizure).

Kellenbenz v. Dillon, U.S.D.C.E.D.Pa. (1984) (unprovoked shooting by off-duty officer with a history of mental illness; psychiatrist-patient privilege).

Holzer v. City of Philadelphia, Ct. of Common Pleas for Philadelphia Co. (death in police cellroom).

Rivera v. City of Philadelphia, U.S.D.C.E.D.Pa. (1987) (off duty assault by officer with a history of abuse).

Discrimination and Equal Protection

Rochon v. Dept. of Justice, et al. (race harassment of black FBI agent and subsequent discrimination and retaliation), EEOC and DOJ administrative decisions (1987) attached as appendices to *The Glass Ceiling in Federal Agencies, A GAO Survey on Women and Minorities in Federal Agencies*, Hearings before the Committee on Governmental Affairs, U.S. Senate, 102nd Congress, 1st Sess., pages 276-354 (October 23, 1991); 686 F. Supp. 195 (N.D.Ill. 1989); 691 F. Supp. 1548 (D.D.C. 1988); 710 F. Supp. 377 (D.D.C. 1989); 713 F. Supp. 1167 (N.D.Ill. 1989); 734 F. Supp. 543 (D.D.C. 1990); 873 F.2d 170 (7th Cir. 1989). In 2006, the D.C. Circuit upheld Rochon's claim of retaliation for the FBI's not taking the usual safety precautions when it received a credible threat to the life of Rochon from a man in prison, rejecting the government's argument that only a retaliation that is related to the job is cognizable under Title VII of the Civil Rights Act of 1964. Donald Rochon v. Alberto Gonzales, 438 F.3d 1211 (D.C. Cir. 2006) (of counsel with Arnold & Porter). The Supreme Court adopted the same position, citing the Rochon decision in the opinions. Burlington Northern & Santa Fe Railroad v. White, 126 S. Ct. 2405 (2006).

Commonwealth v. Johnson, et al., challenge by Defender Association of Philadelphia to imposition of the death penalty based on the race (1998).

Anderson v. City of Philadelphia, 668 F. Supp. 441 (E.D.Pa. 1987), rev'd., 845 F.2d 1216 (3d Cir. 1988). Challenge to use of polygraph to screen applicants for employment as police officers and prison guards.

Korematsu v. United States, 584 F. Supp. 1406 (N.D.Cal. 1984) (amicus for American Friends Service Committee in support of successful action to overturn 1943 conviction for violating orders interning all persons of Japanese ancestry on the west coast).

Hohri v. United States, U.S. Sup. Ct. (amicus for American Friends Service Comm., Methodist Church and Church of Christ in support of class action for damages on behalf of Japanese Americans interned during World War II).

Cliett v. HUP, Ct. of Common Pleas for Philadelphia Co. (1982) (involuntary sterilization).

Action Alliance of Senior Citizens, et al. v. Southeastern Penna. Transportation Authority, U.S.D.C.E.D.Pa. (racial discrimination in distribution of government subsidy).

Baram v. Sperry Corp., Pa. Human Relations Comm. (1987) (age discrimination).

Jury Challenges

Challenges to jury selection systems based on unrepresentativeness, discrimination or violation of statutory mandates:

United States v. Bearden, 659 F.2d 590 (5th Cir. 1981), 522 F. Supp. 468 (N.D.Ga. 1981), 510 F. Supp. 668 (N.D.Ga. 1981) (race and statutory).

United States v. Maskeny, 609 F.2d 183 (5th Cir. 1980) (race and statutory).

United States v. Gaona, 445 F. Supp. 1237 (W.D.Texas 1978) (underrepresentation of Hispanics in majority-Hispanic county).

Waller v. Butkovich, 593 F. Supp. 946 (M.D.N.C. 1984) (amicus on racial underrepresentation for the Congressional Black Caucus, National Council of Churches, et al.).

United States v. Perez-Hernandez, 672 F.2d 1380 (11th Cir. 1982) (amicus) (race and statutory).

People v. Attica Brothers, 79 Misc.2d 492 (N.Y. Supreme Ct. 1974) (race, gender and statutory).

Commonwealth v. Locke, Ct. of Common Pleas for Philadelphia Co. (1971) (race, ethnicity and statutory).

State v. Ramseur, 197 N.J. Super.565 (Law Div. 1984) (race and statutory).

State v. Long, 204 N.J. Super. 469 (Law Div. 1985) (race and statutory).

State v. Russo, 213 N.J. Super. 219 (Law Div. 1986) (race and statutory).

Commonwealth v. Rosado, Ct. Common Pleas, Philadelphia Co. (1994) (underrepresentation of Hispanics and statutory).

Zolo Azania v. Indiana (see expert testimony cases, below).

Sex Harassment

Borton v. Unisys, U.S.D.C.E.D.Pa. (1990).

Dorfsman v. Kaufman and CBS, U.S.D.C.E.D.Pa. (1985) (sex harassment suit based on sexual assault and retribution by employer).

Davis v. Stolker, Ct. of Common Pleas for Philadelphia Co. (1983) (sex harassment suit based on traditional common law torts).

Academic Freedom

Noble v. MIT, Superior Ct. of Mass., Middlesex Co. (denial of tenure and firing for political reasons).

Ping v. Drexel University (1988) (race and sex discrimination).

Governmental Misconduct

Olson v. CIA (1975). Action for the family of a civilian scientist given LSD by the CIA in 1953 without his consent or knowledge, leading to his death; administrative claim under the Federal Tort Claims Act resolved by passage of a private bill by Congress.

Consumer Educ. and Protective Assoc. v. Schwartz, 432 A.2d 173 (Pa. Supreme Ct. 1981), 428 A.2d 711 (Pa. Commonwealth Ct. 1980). Suit invalidating payraises given by Philadelphia City Council to itself and numerous other City officials based on the state constitution and statutes and common law conflict of interest principles.

Atlee v. Laird, 336 F. Supp. 790 (E.D.Pa. 1972) (denying motion to dismiss President Nixon as a defendant), 339 F. Supp. 1347 (E.D.Pa. 1972) (convening three-judge court), 347 F. Supp. 689 (E.D.Pa. 1973) (constitutionality of Vietnam War in absence of a congressional declaration of war).

Rose v. Bartle, 692 F. Supp. 521 (E.D.Pa. 1988), rev'd., 871 F.2d 331 (3d Cir. 1988) (civil rights and R.I.C.O. claim for deputy sheriff fired and falsely prosecuted as part of a macing scheme).

Weiner v. City of Philadelphia, 550 A.2d 274 (Pa. Commwlth. Ct. 1988) (invalidating real estate transfer tax increase).

Employment Law

Gould, Inc. v. NLRB, 612 F.2d 723 (3d Cir. 1980) (steward singled out for firing among workers participating in a work stoppage).

Hall v. Marshall, 622 F.2d 578 (3d Cir. 1980), 476 F. Supp. 262 (E.D.Pa. 1979) (challenge to international union's invalidation of an election of local union's officers).

Ardron v. Cassidy, U.S.D.C.E.D.Pa. (1978) (challenge to misadministration of union health benefits fund).

Criminal Law

United States v. Anderson, U.S.D.C.N.J. (1973). Acquittal of persons entering and destroying records in a draft board in protest of the Vietnam War. Defenses were based on the provocative actions of a government informant and jury nullification; defendants were granted right to have defense attorneys and represent themselves (as “co-counsel”).

United States v. Russell, 411 U.S. 423 (1973) (amicus brief for the American Civil Liberties Union and National Emergency Civil Liberties Committee on the “Apre-Disposition” requirement in entrapment law).

United States ex rel. Vaughan Booker v. Johnson, 488 F.2d 229 (3d Cir. 1973); Commonwealth v. Booker, 447 Pa. 587 (1972) (voluntariness of guilty plea, inadequate assistance of counsel and diminished responsibility).

Commonwealth v. Wasserman, 466 Pa. 430 (1976) (notice of presentment of indictment).

Commonwealth v. James, 440 Pa. 205 (1970) (right to counsel at hearing on whether to try juvenile defendant as an adult).

Commonwealth ex rel. Hartage v. Hendrick, 439 Pa. 584 (1970); Commonwealth ex rel. Ford v. Hendrick, 215 Pa. Super. 206 (1969) (challenges to the constitutionality of the money bail system).

Firearms Litigation

Conceived and developed the governmental lawsuits against handgun manufacturers, distributors and dealers in 1996 and actively participated as part of litigation teams for most of the over 30 cities, counties and states that have sued, including Chicago, San Francisco, Los Angeles, Camden, New Jersey, and New York state. The underlying public-nuisance theory has become the major basis for a range of challenges to corporate practices that endanger public health or safety.

Ileto v. Glock, 349 F.3d 1191 (9th Cir. 2003), reversing 194 F. Supp. 2d 1040 (C.D. Cal., 2002) (suit against firearms manufacturers, distributors and dealers brought by children shot or shot at in August 1999 at the Jewish Community Center in Los Angeles and by postman killed later the same day; of counsel).

Miscellaneous

Keystone Alliance v. Philadelphia Electric Co., Penna. Public Utility Commission, aff'd., 552 A.2d 342 (Pa. Commwlth. Ct. 1989). Invalidation of ratepayer funding of utility activities that promote nuclear power, including programs for use in schools.

Extradition of James Jiles (1969). Escapee from Georgia chain gang sought on murder conviction 25 years after his successful escape; governor refused to extradite.

Expert Testimony

Consultation and advice as an expert in a range of areas have resulted in expert testimony in the following major areas and cases:

Fassnacht v. City of Philadelphia, U.S.D.C.E.D.Pa. (trial testimony in 1993 as expert on police policies and practices).

Baglini v. Lauletta, Superior Court of New Jersey, Gloucester Co., No. GLO-L-1716-92 (trial testimony in 1998 as expert on freedom of speech and "SLAPP" lawsuits for plaintiffs in a "counter-SLAPP" lawsuit claiming they were sued and deterred by a developer, whose plans for nearby land development they opposed, for their oppositional speech and protected activities).

Zolo Azania v. Indiana, 778 N.E.2d 1253 (2002) (Supreme Ct. of Indiana reversal of death sentence based on race and statutory jury challenge; expert testimony on jury composition, systems and challenges).

Green v. Green, Pennsylvania Court of Common Pleas, Montgomery County (expert testimony in 2005 on constitutional principles and history of openness of court proceedings and records in a divorce case).