

**DAVID R. DOW**

University of Houston Law Center  
100 Law Center  
Houston, Texas 77204-6060  
713-743-2171  
[ddow@uh.edu](mailto:ddow@uh.edu)  
[www.davidrdow.com](http://www.davidrdow.com)

**Employment:**

University of Houston Law Center, 1988-present:

Cullen Professor (2010 – present),  
University Distinguished Professor (2003-2010),  
George Butler Research Professor of Law (1999-2001),  
Professor of Law (1996 - present), associate professor (with tenure) (1992-96),  
assistant professor (1988-92).

Rice University:

Rorschach Visiting Professor of Legal History (2011 – present).  
Visiting Professor of History (spring 2005, 2007, 2008, 2011).

Texas Defender Service:

Litigation Director (July 2006 – 2011).

Texas Innocence Network:

Founder and Director (March 2000-present).  
<http://www.law.uh.edu/faculty/ddow2/dpage2/innocence.html>

Dow, Cogburn & Friedman, Of Counsel (1999-2001).

Smyser, Kaplan & Veselka, Of Counsel (1995-present). <http://www.skv.com/>

Nelkin & Nelkin, P.C. (associate, civil rights litigation) (1988).

Susman, Godfrey & McGowan (associate, commercial litigation) (1986-1988).

Law Clerk to Judge Carolyn D. King, United States Court of Appeals, 5th Circuit (1985-1986).

Law Clerk to Judge John R. Brown, United States Court of Appeals, 5th Circuit (Summer 1983).

**Education:**

Yale Law School, J.D., 1985. <http://www.law.yale.edu/>

**Activities and Honors:**

Editor, Yale Law Journal;

Research Assistant to Professor Paul Gewirtz in field of federal jurisdiction;

Assisted Professor Paul Gewirtz in preparation of respondent's brief in *Estate of Thornton v. Caldor, Inc.*, 472 U.S. 703 (1985).

Founder, Co-Director and Treasurer, Students Against Reaganism (a national political action committee).

Yale University, M.A. History, 1982.

Rice University, B.A. History, 1981. <http://www.rice.edu/>

**Activities and Honors:**

Magna Cum Laude;

Phi Beta Kappa;

President's Honor Roll (Dean's List) (every year);

Board of Governors Scholarship (academic merit) (every year);

Teaching Assistant in American history, sociology, political science;

weekly columnist, *The Rice Thresher*.

**Subjects:**

Constitutional Law and Theory, Contracts, Death Penalty, Supreme Court, Federal Jurisdiction, Jurisprudence, Law & Literature. <http://www.law.uh.edu/faculty/ddow2/dpage2/subjects.htm>

**Books, Book Chapters, and Reprinted Materials:**

**The Autobiography of an Execution** (Twelve 2010) (also published in translation in France, Holland, Japan, and Taiwan; and published in Australia and the UK under the title **Killing Time** (Random House 2010)).

**America's Prophets: How Judicial Activism Makes America Great** (Praeger 2009).

**Executed on a Technicality: Lethal Injustice on America's Death Row** (Beacon 2005).

**Contract Law, Texas Practice** (vol. 49 of Texas Practice series) (with C. Smyser) (Thomson-West 2005) (and annual supplements: 2006, 2007, 2008, 2009, 2010).

**Machinery of Death: The Reality of America's Death Penalty Regime** (Routledge 2002) (with M. Dow).

Foreword to Victor Hugo, **The Last Days of a Condemned Man** (New York: Dover ed. 2009).

"*Bell v. Cone*: The Fatal Consequences of Incomplete Failure," in **Capital Punishment Stories** (Jordan Steiker and John Blume, eds.) (Foundation Press 2008).

"The Effect of AEDPA on Capital Post-Conviction Litigation in the Federal Courts" in **Capital Punishment Issues in the Next Generation** (Carolina Academic Press 2007) (with E. Freedman).

“Fictional Documentaries and Truthful Fictions: The Death Penalty in Recent American Film,” reprinted in part in **Law and Popular Culture**, edited by David R. Papke, et al. (LexisNexis 2007).

“*Debs v. United States*”; “Abortion Laws and the Establishment Clause”; in **Encyclopedia of American Civil Liberties** (4 vols.) (Routledge 2006).

“Custom” (addressing the role of local custom in forming ethical outlooks); “Erroneous Convictions” (addressing methods for setting aside convictions on the basis of actual innocence); in **Ethics, Revised Edition** (3 vols.) (Salem Press 2005).

“The Music of Chance”; “Before & After”; “Body & Soul”; “A Lesson Before Dying”; “Jernigan”; “The Second Coming”; “A Thousand Acres”; “The Death of Ivan Ilych”; “The Oresteia”; “Antigone”; in **Law in Literature: An Annotated Bibliography of Law-Related Works** (E. Gemmette, ed. 1998).

“The Plain Meaning of Article V,” in **Responding to Imperfection**, edited by Sanford Levinson (Princeton Univ. Press 1995). <http://pup.princeton.edu/titles/5663.html>

“When Law Bows to Politics,” reprinted in part in **Philosophy of Law**, edited by Joel Feinberg and Hyman Gross, at 713-22 (5th ed. 1995).

### **Journal Publications:**

Is the “Arising Under” Jurisdictional Grant in Article III Self-Executing? (work in progress).

A Tribute to Professor Irene Merker Rosenberg Upon Her Retirement, 46 Hous. L. Rev. 649 (2009).

The Last Execution: Rethinking the Fundamentals of Death Penalty Law (Fifth Annual Yale L. Rosenberg Memorial Lecture), 45 Hous. L. Rev. 967 (2008).

Judicial Activism on the Rehnquist Court: An Empirical Assessment, 23 St. John's J. Leg. Comm 35 (2008) (with C. Jeu and A. Coveny).

Is it Constitutional to Execute Someone Who is Innocent (and if it isn't, how can it be stopped following *House v. Bell*)?, in Symposium: The Death Penalty in America, 42 Tulsa L. Rev. 277 (2007).

The Extraordinary Execution of Billy Vickers, the Banality of Death, and the Demise of Post-Conviction Review, 13 Wm & Mary Bill of Rts. J. 521 (2005) (with Marcus, Moon, Tyler, and Wiercioch).

How Many Spouses Does the Constitution Allow One to Have?, 20 Const. Comm. 571 (2003-04) (essay-review of Sarah Barringer Gordon, **The Mormon Question**) (with J. Maldonado).

Invisible Executions: A Preliminary Analysis of Publication Rates in Death Penalty Cases in Selected Jurisdictions, 8 Tex. Forum on Civ. Libs. & Civ. Rts. 149 (2003) (with B. McNeese).

Our Prophet (In Memoriam: Yale Rosenberg), 39 Hous. L. Rev. 878 (2002).

The End of Religion (essay-review of Ronald Thiemann's **Religion in Public Life**), 16 J. Law & Relig. 877 (2001).

Can Constitutional Error be Harmless?, 2000 Utah L. Rev. 483 (with J. Rytting).

Fictional Documentaries and Truthful Fictions: The Death Penalty in Recent American Film, 17 Const. Comm. 511 (2000).

The Relevance of Legal Scholarship, 37 Hous. L. Rev. 329 (2000).

America's Death Machine, 10 Criminal Law Forum 387 (1999) (essay-review of John C. Tucker, **May God Have Mercy**).

The Moral Failure of the Clear and Present Danger Test, 6 Wm & Mary Bill of Rts. J. 733 (1998).

Rethinking the Clear and Present Danger Test, 73 Ind. L.J. 1217 (1998) (with R. S. Shieldes).  
<http://www.law.indiana.edu/ilj/v73/no4/04.html>

The Equal Protection Clause and the Legislative Redistricting Cases: Some Notes Concerning the Standing of White Plaintiffs, 81 Minn.L.Rev. 1123 (1997).

The Confused State of the Parol Evidence Rule in Texas, 59:7 Texas Bar Journal 616 (July 1996) (revised and expanded version of article of the same title, listed below).

The State, the Death Penalty, and Carl Johnson, 37 B.C.L. Rev. 691 (1996).

On Reading Stephen Carter's The Culture of Disbelief -- A Dissenting Opinion, 11 J. Law & Relig. 417 (1995).

In Memoriam: Gilbert Lee Finnell, Jr., 31 Hous. L. Rev. 1347 (1995).

The Third Dimension of Death Penalty Jurisprudence, in Symposium: The Death Penalty, 22 Amer. J. Crim. L. 151 (1994).

The Death of Fairness: Counsel Competency and Due Process in Death Penalty Cases (panel discussion), 31 Hous. L. Rev. 1105, 1114 (1994).

The Confused State of the Parol Evidence Rule in Texas, 35 S. Tex. L. Rev. 457 (1994).

Gödel and Langdell -- A Reply to Brown and Greenberg's Use of Mathematics in Legal Theory, 44 Hastings L.J. 707 (1993). [Abstract located at

<http://www.uchastings.edu/hlj/abstracts/abstr443.html> .]

Constitutional Midrash: The Rabbis' Solution to Professor Bickel's Problem, 29 Hous. L. Rev. 543 (1992).

When Law Bows to Politics: Explaining Payne v. Tennessee, 26 U.C. Davis L. Rev. 157 (1992).

What We Should Learn from the Hill vs. Thomas Fiasco, in Colloquium: The Judicial Nomination and Confirmation Process, 7 St. John's J. Leg. Comm. 81 (1991) (with R. Westin).

Teague and Death -- The Impact of Current Retroactivity Doctrine on Capital Defendants, 19 Hastings Const. L.Q. 23 (1991).

Law School Feminist Chic and Respect for Persons -- Comments on Contract Theory and Feminism in the Flesh Colored Band-Aid, 28 Hous. L. Rev. 819 (1991).

When Words Mean What We Believe They Say: The Case of Article V, 76 Iowa L. Rev. (1990).

The Establishment Clause Argument for Choice, 20 Golden Gate Univ. L. Rev. 479 (1990).

Advocacy, Truth, Fairness, and Law, 39 J. Legal Educ. 443 (1989).

Individuals, Governments, and Rights, 30 S. Tex. L. Rev. 369 (1989).

Hillel's Dilemma and Wisdom: The Paradigmatic Instance of the Counter-Majoritarian Difficulty and the Judaic Resolution, 4 National Jewish Law Review 59 (1989).

Toward a Theory of the Establishment Clause, 56 UMKC Law Rev. 491 (1988).

Standing and Rights, 36 Emory L. J. 1195 (1987).

### **Editorials, Essays, Book Reviews, & Selected Correspondence:**

“Rick Perry’s Lethal Overconfidence,” in *The Daily Beast* (online), 9 September 2011, available at <http://www.thedailybeast.com/articles/2011/09/09/rick-perry-and-the-death-penalty-executing-innocents.html>

“Death Penalty: Still Racist and Arbitrary,” in *The New York Times*, 9 July 2011, at A19.

Review of *Convicting the Innocent* (by Brandon Garrett), in *Yale Alumni Magazine*, March 2011.

Review of *Capital Punishment on Trial: Furman v. Georgia and the Death Penalty in Modern America* (by David M. Oshinsky), *Journal of Southern History*, vol. 77, no. 4 (November 2011).

“[Justice] Stevens and the Death Penalty,” in *The New York Times*, 3 December 2010, at A24.

“Last Night’s Gruesome Execution” (concerning Utah firing squad’s execution of Ronnie Garner), in *The Daily Beast*, June 18, 2010 (available at <http://www.thedailybeast.com/blogs-and-stories/2010-06-18/ronnie-lee-gardner-execution-by-firing-squad-david-dow/>).

“The Rights of Terrorism Suspects,” in *The New York Times*, 18 May 2010, at A22.

“Obama’s Invocation Choice,” in *The New York Times*, 19 December 2008, at A44.

“The Last Lethal Injection,” in *The Washington Post*, 1 November 2007, at A21.

“The Commutation My Client Did Not Receive from George W. Bush,” in *The Houston Chronicle*, 8 July 2007, at E1.

“Independence Day: The Drama of Bush and Libby,” in *The New York Times*, 4 July 2007, at A18.

“Needle in a Haystack: Is Innocence the Best Argument for Ending the Death Penalty?”, dialogue with Alan Hirsch, in *The Texas Observer*, February 23, 2007, at 12.

“Hanging Saddam Would be Our Low,” in *The Houston Chronicle*, 12 November 2006, at E1.

“Death by Good Intentions,” in *The Washington Post*, 15 October 2006, at B07.

“Will Murderers Kill Again?” (book review of Joan Cheever, *Back from the Dead*), in *The Houston Chronicle*, 6 August 2006, at Zest Magazine 14-16, available at <http://www.chron.com/disp/story.mpl/life/books/reviews/4093082.html> and in *The San Antonio Express-News*, 6 August 2006, at \_\_\_\_.

“Sometimes Innocence is a Distraction,” in *The Houston Chronicle*, 25 June 2006, at E1.

“The End of Innocence,” in *The New York Times*, 16 June 2006, at A27.

“In this case, Congress is overwrought and wrong,” [regarding search of Rep. William Jefferson’s congressional office], in *The Houston Chronicle*, 5 June 2006, at B7.

Book Review, *Religion and the Death Penalty: A Call for Reckoning* (Erik C. Owens, John D. Carlson and Eric P. Elshain, eds. 2004), 21 *J. Law & Relig.* 213 (2005-06).

“The Decisive Question: Is Alito a Prophet?”, in *The Houston Chronicle*, 8 January 2006, at E1.

“Unjust Deportation,” in *The New York Times*, 12 December 2005, at A28.

“Should Texas Ban Same-Sex Marriage?”, in *The Houston Chronicle*, 16 October 2005, at E1. <http://www.chron.com/cs/CDA/ssistory.mpl/editorial/outlook/3398154>.

“Grave Errors in the Anti-Death Movement,” *Christian Networks Journal*, Fall 2005, at 48.

“The Transition in the Court,” in *The New York Times*, 7 September 2005, at A28.

“Is the Death Penalty Constitutional? Does it Matter?”, (exchange with M. Dow), in *New Politics*, vol. X, no. 3, Summer 2005, at 55.

“Falsification of Evidence Can Only be Called Corruption,” (with B. Scheck) in *The Houston Chronicle*, 9 July 2005, at 9.

“A Justice to Keep America from Straying,” in *The Christian Science Monitor*, 8 July 2005, at 9.  
<http://csmonitor.com/2005/0708/p09s01-coop.html>

“How Important is *Roper v. Simmons*?”, 12 April 2005, available at <http://www.mail-archive.com/deathpenalty@lists.washlaw.edu/msg02449.html>

“Yaser Hamdi, U.S. Citizen,” in *The New York Times*, 15 October 2004, at A26.

“Religious Freedom,” in *The New York Times*, 15 May 2004, at A26.

“Can the Military be Trusted to Protect Our Rights?”, *Nthposition.com*, May 2004.  
<http://www.nthposition.com>

“Dying for that Fifth Vote,” *The National Law Journal*, 10 May 2004, at 22.

“Sutton’s Limbo: DA Refuses to Admit Mistake” (with R. Ellis), in *The Houston Chronicle*, 12 March 2004, at 39A.

“On Gay Marriage,” in *The Houston Chronicle*, 23 November 2003, at 1C.

“One Diverse Nation or A Nation Under God?”, in *The Houston Chronicle*, 16 October 2003, at 37A.

“Innocent Until (Sort of) Proven Guilty,” *The Christian Science Monitor*, 7 October 2003, at 9.  
<http://www.christiansciencemonitor.com/2003/1007/p09s02-coop.html>

“Church and State,” in *The New York Times*, 7 July 2003, at A15.

“DA Should Step Back from Inquiry” (with J. Marcus), in *The Houston Chronicle*, 22 June 2003, at 1C.

“Why Augusta Golf Matters to Women,” in *The New York Times*, 16 November 2002, at A26.

“Moral Clarity Replaced by Foggy Ideas About “War,”” in *The Houston Chronicle*, 8 September 2002, at 4C.

“The Special Agent in the Chat Room,” in *The New York Times*, 1 June 2002, at A24.

“Executing Johnny Joe,” in 94:9 *The Texas Observer* 12 (10 May 2002).

“Human Rights In Judaism” (book review), 17 *J. Law & Relig.* 121 (2002).

“Ashcroft, Lindh, and a Charged Case”, in *The New York Times*, 7 February 2002, at A30.

“The Scandal of the State of Texas vs. Andrea Yates,” in *The Houston Chronicle*, 10 January 2002, at 21A

“Bush Should Back His Language on States’ Rights,” in *The Dallas Morning News*, 13 November 2001, at 17A.

“War Leads to the Erosion of Civil Liberties,” in various papers, distributed by the Progressive Media Project, 2 October 2001. <http://www.progressive.org/pmp0701/pmpdo201.html>

“*Lorillard Tobacco Co. v. Reilly*: Another Victory for Tobacco in the Supreme Court,” in 14:1 *Health Law News* 4 (September 2001).

“The Awakened Giant: How Will it Strike Back?”, in *The New York Times*, 24 September 2001, at A30.

“Don’t Betray Our Constitutional Values,” in *The Houston Chronicle*, 18 September 2001, at 21A.

“Volunteers for Death,” in 30:3 *Index on Censorship*, July 2001, at 151.  
<http://www.indexonline.org/news/archives/UNITEDSTATES130701.htm>

“Recorded Executions,” in *The New York Times*, 5 May 2001, at A 24.

“Worst of All Choices in Airing McVeigh Execution,” in *The Houston Chronicle*, 19 April 2001, at 31A.

“States’ Rights Rule” (reviewing developments in constitutional law in 2000), in the *Texas Lawyer*, 18 December 2000, at 27-28.

“Biggest Loser is Supreme Court’s Legitimacy,” in *The Houston Chronicle*, 14 December 2000, at 47A.

“Florida’s Not a Matter for U. S. Supreme Court,” in *The Houston Chronicle*, 23 November 2000, at 61A.

“Santa Fe Prayers Would Mock the Rule of Law,” in *The Houston Chronicle*, 1 September 2000, at 39A.

“Death Penalty Debate,” in *The New York Times*, 8 July 2000, at A24.

“The Death Penalty’s Degrees of Guilt,” in *The Christian Science Monitor*, 26 June 2000.  
<http://www.csmonitor.com/durable/2000/06/26/f-p9s1.shtml>

“The Real Scandal on Death Row in Inept Lawyers,” in *The Houston Chronicle*, 24 February 2000,

at 29A.

“Missing: A Death Penalty Debate,” in *The New York Times*, 23 February 2000, at A24.

“Seeds of Upheaval” (reviewing developments in constitutional law in 1999), in the *Texas Lawyer*, 20 December 1999, at 27-28.

“Their Justice, and Ours” (reviewing Cole, *No Equal Justice*), in 91:15 *The Texas Observer* 34 (23 July 1999).

“At Last, A Better Way to Appoint Lawyers for Indigent,” in *The Houston Chronicle*, 10 June 1999, at 39A.

“Religious Freedom Bill Isn’t Innocuous as it Seems,” in *The Dallas Morning News*, 4 April 1999, at 6J.

“Senate Should Vote to Censure Clinton Without a Trial,” in *The Houston Chronicle*, 21 December 1998, at 31A.

“Don’t Mix Religion and Law School,” in *The New York Times*, 30 November 1998, at A26.

“Clinton Failures Deserve Censure, Not Impeachment,” in *The Houston Chronicle*, 11 September 1998, at 47A.

<http://www.chron.com/cgi-bin/auth/story.mpl/content/chronicle/editorial/98/09/11/dow-9-11.0-1.html>

“[Is] President [a] Grand Jury Witness Like Any Other,” in *The New York Times*, 29 July 1998, at A20.

“How to Stop the Death Machine” (exchange of letters with Michael Mello), in 90:12 *The Texas Observer* 6 (19 June 1998).

“Never Say Die: The Line Between Wisdom and Surrender” (reviewing Mello, *Dead Wrong*), in 90:8 *The Texas Observer* 26 (24 April 1998).

“The Humanity of Karla Faye Tucker,” in 90:3 *The Texas Observer* 4 (13 February 1998).

“Tucker’s Execution Begg Revamping of Texas System,” in *The Houston Chronicle*, 4 February 1998, at 23A.

<http://www.chron.com/cgi-bin/auth/story.mpl/content/chronicle/editorial/98/02/04/dow-2-4.0-1.html>

“Justice Under Pressure” (concerning au pair verdict), in *The New York Times*, 13 November 1997, at A18.

“Tortured Law,” in 89:16 *The Texas Observer* 20 (12 September 1997).

“Lawyers Save Lives,” in *The New York Times*, 1 August 1997, at A18.

“Judge Ruled Correctly” (concerning punishment phase of McVeigh trial), in *The New York Times*, 12 June 1997, at A22.

“Executing McVeigh Would Only Sully Moral Message,” in *The Houston Chronicle*, 4 June 1997, at 29A.

“Did McVeigh Verdict Restore Faith?,” in *The Dallas Morning News*, 4 June 1997, at 27A.

“Dallas News’ Action Mocks First Amendment,” in *The Houston Chronicle*, 5 March 1997, at 23A.

“Those on Death Row Have Few Legal Options,” in *The New York Times*, 9 January 1997, at A14.

“Law and Literature,” 20 *Legal Studies Forum* 429 (reviewing Ernest J. Gaines, *A Lesson Before Dying*) (1996).

“Return of the Blood Feud,” in the *Texas Lawyer*, 11 November 1996, at 26.

Commencement remarks, in 17:1 *Briefcase* 8-9 (Summer 1996).

“Beware of Demagogues” (concerning victims’ rights amendment), in *The New York Times*, 4 July 1996, at A14.

“Feeding the Public’s Fear” (concerning so-called “technical” reversals), in the *Texas Lawyer*, 11 March 1996, at 22.

“Technicality? Not this Time,” in *The Houston Chronicle*, 2 February 1996, at A27.

“Our Jury System May Have Seen Its Day,” in *The New York Times*, 10 November 1995, at A16.

“Constitutional Implications” (of Clinton Administration's Proposed Tobacco Regulations), in 9:2 *Health Law News* 8 (Sept. 1995).

“Free Speech”: exchange of letters with John McGinnis, in 99:2 *Commentary* 14-16 (February 1995).

“Not Veto-Proof” (concerning balanced budget amendment), in *The New York Times*, 22 January 1995, at 14E.

“Justice Black's Constitutional Values,” in *The New York Times Book Review*, 1 January 1995, at 23.

“Balanced Budget Amendment Would be Constitutional Havoc,” in *The Houston Chronicle*, 20 November 1994, at 4C.

“Trial by Jury”: exchange of letters with Walter Berns, in 98:1 *Commentary* 6-7 (July 1994).

“Who Can Imagine Sentencing Rich and Famous to Death?” (concerning O.J. Simpson and the death penalty), in *The Houston Chronicle*, 26 June 1994, at E1.

“Jury's Still Out on Second Amendment,” in *The New York Times*, 24 May 1994, at A14.

“Cannot Favor Flawed System” (concerning federal crime bill and state habeas corpus procedures), in *The Houston Chronicle*, 1 May 1994, at 3E.

“Give Texas Court ... High Mark in Courage” (concerning distinction between substantive and procedural due process), in *The Houston Chronicle*, 26 September 1993, at 5 F.

Review of Aaron Kirschenbaum, *Equity in Jewish Law* (Volumes 1 and 2), in 18 *Religious Studies Review* 341 (October 1992).

“The Los Angeles Riot on the Eve of Law Day” in 11:3 *Briefcase* 24-25 (Summer 1992).

“Justice Brennan & The Court”: exchange of letters with Wallace Mendelson, in 91:6 *Commentary* 4-6 (June 1, 1991).

“Defendants Should be Able to Argue Cases,” letter responding to criticism of “frivolous” death penalty appeals, in *The Houston Chronicle*, 4 April 1991, at 23A.

“An Author's Response,” letter replying to Senator Orrin Hatch's response to my critique of habeas corpus amendments, in 82:19 *The Texas Observer* 2 (28 September 1990).

“Death Row Defenders,” letter responding to prosecutors' criticism of death penalty defense bar, in *Newsweek*, 17 September 1990.

“Rush to Judgment” (concerning proposed habeas corpus legislation), in 82:12 *The Texas Observer* 8-9 (15 June 1990).

“No Need for Texas to Liken the Victims to the Criminals” (concerning so-called victims' rights constitutional amendment), in *The Houston Chronicle*, 22 October 1989.

“Law & Literature”: exchange of letters with Peter Shaw, in 88 *Commentary* 12-15 (September 1989).

“Can Employees be Fired for Refusing to Commit Crimes?” (concerning public policy exception to employment-at-will doctrine), in the *Texas Lawyer*, at 18-19, 24 July 1989.

“Roe Redux” (concerning Supreme Court's abortion decision in *Webster*), in *The Houston Chronicle*, 4 July 1989.

“Frontiers of Justice” (concerning death row inmate Walter Bell), in 80 *The Texas Observer* 9-10 (25 November 1988).

Israel and the Intifada: exchange of letters, in *The Texas Observer*, 30 September and 9 December, 1988.

“Let My People Go”: a nine-part serialized series concerning Soviet Jewry and profiling Refusenik families, in *The Jewish Herald-Voice*, October 1986--January 1987.

Approximately seventy 1,000-word essays, in *The Rice Thresher* (university newspaper), 1978-1981.

Harris County Grand Juries: A Case for Reform, in *Harris County District Attorney's Semi-Annual Report*, January-June 1979.

### **Poetry:**

“The Night Before the Morning,” in 13:1 *The Advocate* 16 (February-March 1999), reprinted in 30 *Legal Studies Forum* 427 (2006).

“Euclidean Mergings,” in XI:2 *Gulf Coast* 80 (summer 1999), reprinted in 30 *Legal Studies Forum* 430 (2006).

“Mourning in Carolina,” in **Anthology: Houston Poetry Fest 2000** (2000), reprinted in 30 *Legal Studies Forum* 429 (2006).

### **Selected Presentations:**

“Is Capital Punishment Inherently Arbitrary?” Keynote address, 7<sup>th</sup> Annual Symposium on Restorative Justice, Utah Valley University, Orem, Utah, 3 November 2011.

“Can Law Eradicate Evil? Lessons from Four Decades of Capital Punishment,” The Harold E. and Margaret H. Rorschach Lecture in Legal History, Rice University, Houston, Texas, 6 April 2011.

“Are Executions Rational?”, Galveston County Bar Association, Galveston, Texas, 24 February 2011, Galveston, Texas.

“Writing ‘*The Autobiography of an Execution*,’” Writer-in-Residence, Texas Tech University, Lubbock, Texas, February 10-11, 2011.

“Extirpating Evil,” lecture in connection with production of *Dead Man Walking*, Houston Grand Opera, Houston, Texas, 2 February 2011.

“Reflections on Two Decades of Representing the Condemned,” Wolfe Lecture, Congregation Beth El, San Antonio, Texas, 29 January 2011.

“The Irony of Relying on Jewish Scripture as Authority for Capital Punishment,” Wolfe Lecture, Congregation Beth El, San Antonio, Texas, 28 January 2011.

“Why Represent Murderers?”, Jewish Book Fair, Houston, Texas, 8 November 2010.

“*Pro Bono* Representation of Death Row Inmates,” University of Tennessee College of Law, Knoxville, Tennessee, 25 October 2010.

“*The Autobiography of an Execution*,” Texas Book Festival, Austin, Texas, October 16, 2010 (with Tom Cahill, Robert Elder, and Jill Patterson), broadcast on C-SPAN and available at <http://www.c-spanarchives.org/program/295989-6>.

Keynote Address (“*The Autobiography of an Execution*”), Annual Meeting of the Michigan Chapter of the American Constitution Society, Detroit, Michigan, September 13, 2010.

“Rethinking the Standard for Ineffective Assistance of Counsel Claims in Capital Cases,” National Public Defense Symposium (co-sponsored by the American Bar Association, the Justice Project, and the University of Tennessee College of Law), Knoxville, Tennessee, May 20-21, 2010.

“The Biblical Roots of Judicial Activism,” Congregation Beth Israel, Houston, Texas, April 20, 2010.

“The Talmudic Roots of Abolitionism,” Jewish Community Center, Houston, Texas, April 20, 2010.

“Debating the Death Penalty” (with Robert Blecker), The Diane Rehm Show, National Public Radio, Washington, D.C., February 18, 2010.

“*The Autobiography of an Execution*,” Fresh Air with Terry Gross, National Public Radio, New York and Philadelphia, February 3, 2010.

“Comparative Perspectives on Capital Punishment: Jewish Versus American Law,” sponsored by Jewish Ethics Institute and Vinson & Elkins, Houston, Texas, November 3, 2009.

“How the Death Penalty is Still Arbitrary: Two Case Studies,” Harris Count Democratic Party, Houston, Texas, October 13, 2009.

“What Is Judicial Activism?”, discussing *America’s Prophets*, Brazos Book Store (co-sponsored by American Constitution Society), Houston, Texas, August 2, 2009.

“Representing Death Row Inmates in Texas,” Communities in Schools Legal Internship Program, Houston, Texas, August 10, 2009.

“Public Interest Law Litigation Opportunities,” address to federal judicial interns and law-clerks, Houston, Texas, August 5, 2009.

“A Review of the Supreme Court’s Recent Death Penalty Cases,” Bill of Rights Seminar, State Bar of Texas, Houston, Texas, May 21, 2009.

“Does the Death Penalty Deter?”, sponsored by the Consul General of France, St. Thomas University, January 20, 2009.

“Contemporary Issues in Church-State Relations,” American Jewish Committee, Houston, Texas, October 16, 2008.

“Equality in Jewish and American Law,” Congregation Beth Israel, Houston, Texas, 17 September 2008.

“Church and State,” Congregation Beth Israel, Houston, Texas, 10 September 2008.

“The Death Penalty in Jewish and American Law,” Congregation Beth Israel, Houston, Texas, 3 September 2008.

“The Status of Capital Punishment Under Jewish Law,” Congregation Beth Israel, Houston, Texas, 23 April 2008.

“The Future of Lethal Injection Litigation,” American Constitution Society (co-sponsored by Federal Public Defender’s office of Tennessee), Nashville, Tennessee, 31 March 2008.

“The Last Execution,” Yale Rosenberg Memorial Lecture, University of Houston Law Center, 28 February 2008.

“A Conversation with David R. Dow,” Ole Miss College of Law, Oxford, Mississippi, 20 February 2008.

“Current Issues in Capital Post-Conviction Litigation,” Habeas Corpus Training, Texas Criminal Defense Lawyers Association, San Antonio, Texas, 8 February 2008.

“Pursuing Futility: The Importance of Lodging Futile Objections and Litigating Futile Claims,” Capital Trial Seminar, Texas Criminal Defense Lawyers Association, San Antonio, Texas, 8 February 2008.

“The Fatal Consequences of Being Incompletely Incompetent,” University of Texas School of Law, November 2-3, 2007.

“Is There Such a Thing as ‘Strict Construction,’ and if There is, What is It?”, American Constitution Society, Houston, Texas, 25 April 2007.

“Three Definitions of ‘Innocence’ in Capital Litigation,” National Innocence Conference, Harvard University Law School, Cambridge, Massachusetts, 24 March 2007.

“Judicial Activism on the Rehnquist Court: An Empirical Assessment,” Boyd School of Law, University of Nevada at Las Vegas, February 27, 2007.

“Do We Still Have a Wall of Separation Between Church and State? Do We Really Need One?”, fourth lecture in a series sponsored by The Boniuk Center for the Study and Advancement of

Religious Tolerance and Congregation Emanu El, Houston, Texas, 8 February 2007.  
<http://webcast.rice.edu/index.php?action=details&event=899>

“Were the Prophets of the Hebrew Bible Judicial Activists?” University of Tulsa College of Law, Tulsa, Oklahoma, 15 November 2006.

“Examining the Impact of AEDPA on Claims for Relief in Capital Cases in the Federal Courts of Appeals,” Capital Punishment Research Initiative, University of Albany, Albany, New York, 7 October 2006.

“Innocence and the Death Penalty,” National Innocence Conference, University of Washington School of Law, Seattle, Washington, 23 March 2006.

“How Reactionary is the New Supreme Court?”, American Constitution Society, Houston, Texas, 15 March 2006.

“The Worst of the Worst, and Other Myths of Delusion,” University of Denver College of Law, March 2, 2006.

“Is Mercy the Enemy of Justice?”, keynote speech, annual meeting, Texas Coalition to Abolish the Death Penalty, San Antonio, Texas, 28 January 2006.

“The Role of Values in Social Justice,” Ethical Leadership and Justice Symposium, sponsored by Leadership Houston, class XXIV, Houston, Texas, 12 January 2006.

“Bill Clinton, the Death Penalty, and the Assault on Habeas Corpus, Symposium: William Jefferson Clinton, The ‘New Democrat’ from Hope,” 11th Presidential Conference, Hofstra University, November 11-13, 2005.

“Executed on a Technicality,” Jewish Book Fair, Houston, Texas, 9 November 2005.

“Executed on a Technicality,” interview on PBS’s “Word on Words,” with John Siegenthaler, Nashville, Tennessee, 4 November 2005.

“Post-Conviction Death Penalty Litigation,” Texas Association of Civil Trial and Appellate Specialists (TACTAS), Houston, Texas, 2 November 2005.

“Using DNA to Establish Innocence in Post-Conviction Death Penalty Litigation,” annual meeting, National Coalition to Abolish the Death Penalty, Austin, Texas, 28 October 2005.

“Raising Actual Innocence in Federal and State Post-Conviction Proceedings,” University of Texas School of Law, 27 October 2005.

“Current Issues in Death Penalty Litigation,” 27th annual conference, National Association of Women Judges, Houston, Texas, 20 October 2005.

Moderator, “Considering Civil Rights in Times of Terror,” (debate between Professors Susan

Estrich and John Yoo), 5th annual Andrews-Kurth Debate, University of Houston Law Center, 19 October 2005.

“Violent Hearts: The Divided Soul of America,” co-sponsored by the Honors College, University of Houston, and the Jung Center of Houston, 1 October 2005.

“Executed on a Technicality,” General Assembly, Unitarian Universalist Association, Fort Worth, Texas, 25 June 2005.

“Ethical Issues in Operating Innocence Projects,” State and Federal Appellate Conference, University of Texas School of Law, 2 June 2005.

“How Should Journalists Cover the Courts and the Death Penalty?,” Law and the Courts seminar, Knight Center for Specialized Journalism, University of Maryland, 19 April 2005.

“Is the Wall of Separation between Church and State Crumbling?,” American Jewish Committee, Houston, Texas, 11 April 2005.

“Litigating Innocence Claims in Post-Conviction Proceedings,” District of Columbia School of Law, National Innocence Conference, 2 April 2005.

“Developments in Death Penalty Law,” Texas Law Center, Austin, Texas, 4 February 2005.

“Federal Habeas Corpus and Actions Under Section 1983,” University of Mississippi School of Law, Oxford, Mississippi, 28 September 2004

“Post-Conviction Relief: The Last Chance for Justice,” National Center for Justice and the Rule of Law, Oxford, Mississippi, 28 September 2004.

“Petitions for Writ of Certiorari,” Appellate Advocacy Training, Texas Criminal Defense Lawyers Association, Houston, Texas, 9 September 2004.

“Federal Habeas Corpus Litigation,” National Association of Criminal Defense Lawyers, San Antonio, Texas, 27 July 2004.

“Investigating and Litigating Claims of Actual Innocence,” Southwest Regional Juvenile Defender Center’s Regional Summit, Houston, Texas, 21 May 2004.

“Pursuing Claims of Actual Innocence in Collateral Litigation and Clemency Proceedings,” National Innocence Conference, Austin, Texas, 24 April 2004.

“Investigative Strategies for Locating Evidence of Actual Innocence,” National Innocence Conference, Austin, Texas 24 April 2004.

“Post-Conviction Death Penalty Litigation,” University of Mississippi College of Law, 16 April 2004.

“Is the Death Penalty Constitutional Yet Immoral?”, Leadership Houston, 8 April 2004.

“Post-Conviction Challenges to Chemical Components in Lethal Injection,” Rice University, 1 April 2004.

“The Ten Most Important Words in the United States Constitution,” The Great Conversation, University of Houston Honors College, 31 March 2004.

“The Death Penalty in Texas,” American Constitution Society, Houston, Texas, 12 February 2004.

“Post-Conviction Use of DNA Testing,” Texas Criminal Defense Lawyers Association, Houston, Texas, 16 January 2004.

“The Relevance of Innocence,” Texas Coalition to Abolish the Death Penalty Annual Meeting, Dallas, Texas, 10 January 2004.

“Post-Conviction Use of DNA Testing,” Genetics and the Law seminar, University of Texas School of Law, 4 November 2003.

“Litigating *Atkins* Claims in State and Federal Post-Conviction Proceedings,” Mississippi Judicial College, Jackson, Mississippi, 22 October 2003.

“Due Process in Death Penalty Appeals: Is the System Broken?”, Texas State Bar Convention, section on Individual Rights, Houston, Texas, 13 June 2003.

“Race, Sex, and Politics at the Supreme Court,” The Great Conversation, University of Houston Honors College, 2 April 2003.

“The ABC’s of Running an Innocence Network,” 2d Annual Innocence Conference, New Orleans, 29 March 2003.

“Publication Rates in Death Penalty Cases in the State and Federal Appellate Courts,” University of Texas Law School, 19 March 2003.

“Machinery of Death,” Jewish Book Fair, Houston, Texas, 15 November 2002.

“Civil Liberties in the Midst of the ‘War’ Against Terrorism,” Civil Rights Committee, Anti-Defamation League Annual Meeting, Houston, Texas, 11 October 2002.

“Did September 11 Destroy the Rule of Law in America?”, The Great Conversation, University of Houston Honors College, 3 April 2002.

“The Five Most Embarrassing Supreme Court Decisions of All Time,” The Great Conversation, University of Houston Honors College, 5 April 2001.

“Texas Exceptionalism, American Exceptionalism: Exploring the Death Penalty Frontiers,” Capital Punishment Symposium Series, University of Texas School of Law, 10 November 2000 (with

Hugo Adam Bedau, Judge Patrick Higginbotham, Carol Steiker, and Jordan Steiker).

“The Death Penalty in Popular Films,” Joint annual meeting of the Popular Culture Association and American Culture Association, New Orleans, Louisiana, 22 April 2000.

“Should Innocence Be All that Matters? Images of the Death Penalty in Recent Film,” The Great Conversation, University of Houston Honors College, 6 April 2000.

“The Relevance of Legal Scholarship” (commentary on keynote address of Judge Alex Kozinski), Fourth Annual Frankel Lecture, University of Houston Law Center, 27 January 2000.

“Poisoning the Web: Internet Bigotry, Extremism, and Violence,” Texas 2000, Anti-Defamation League, 8 December 1999.

“Talk on Trial: Can Oprah (or Anyone Else) Really Slander a Vegetable?,” The Great Conversation, University of Houston Honors College, 2 April 1998.

Moderator, “The Swiss Banking Controversy: A Legal Response to A Moral Dilemma,” sponsored by the University of Houston Law Center and the Anti-Defamation League, 21 October 1997. Remarks reprinted in 18:2 *Briefcase* 12-13 (Winter 1997-98).

“The People versus Larry Flynt,” The Great Conversation, University of Houston Honors College, 3 April 1997.

“Modern Jurisprudence and the Music of Hank Williams,” The Great Conversation, University of Houston Honors College, 10 April 1996.

“Jewish Law and the Republican Contract with America,” American Association of Law Schools Annual Meeting, San Antonio, Texas, 3 January 1996.

“Assisted Suicide in Jewish and American Law,” Beth Yeshurun Adult Learning College, 10 May 1995; and Anti-Defamation League Young Leadership, 19 October 1995.

“The Cartoon Jurisprudence of Calvin & Hobbes,” The Great Conversation, University of Houston Honors College, 4 May 1995.

“The Death of Fairness? Counsel Competence and Due Process in Death Penalty Cases,” American Bar Association Annual Meeting, New Orleans, La., 8 August 1994 (with Anthony Lewis, Ernie Preate, Stephen Bright, Michael Tigar).

“Self-Incrimination in Jewish and American Law,” Beth Yeshurun Adult Learning College, 1 June 1994.

“Recent Developments in Death Penalty Law,” Rotary Club of Houston, 5 May 1994.

“On Stephen Carter's The Culture of Disbelief,” The Great Conversation, University of Houston Honors College, 5 April 1994.

“Is There a Jewish Philosophy -- or a Jewish Seat -- on the Supreme Court?,” Beth Yeshurun Adult Learning College, 16 June 1993.

“Recent Developments in the Law of Church - State Relations,” Southwest Region Board of Directors and Civil Rights Committee, Anti-Defamation League, 30 March 1992.

Panelist, “Truth versus Deception: The Lessons of Nazi Propaganda for Contemporary Society,” Holocaust Education Center, Houston, Texas, 10 December 1991.

“The Application of Judaic Jurisprudence to American Constitutional Theory,” Beth Israel Center for Jewish Enrichment, October 9, 16, 23, and 30, 1990.

“The Use of Mordecai M. Kaplan's notion of *sancta* in American constitutional law,” Houston Reconstructionist Havurah, 1 April 1990.

“The Power of the Judge to Thwart Majority Will: A Comparison of Judaic and American Jurisprudence,” Beth Yeshurun legal studies colloquium, 8 March 1990; and Rice University Judaic Studies Colloquium, 6 December 1990.

“Burning Flags & Wasting Time: Why a Constitutional Amendment is Unwise,” Harris County Democratic Convention, 26 September 1989.

Panelist, “Law and Literature” Conference, Aspen Institute for Humanistic Studies, Wye, Maryland, April 14-16, 1989.

“Jews, the Constitution, and Robert Bork,” Congregation Brith Shalom, 25 September 1987.

### **Professional Service:**

University of Houston Law Center:

Executive Committee, 1992-93, 1994-95, 1999-2000, 2001-02, 2010-11, 2011-12.

Lateral Hiring Committee, 1998-99.

Personnel Committee, 1989-90, 1990-91, 1995-96, 1996-97 (chair), 1997-98 (chair), 2000-01, 2001-02, 2002-03 (chair).

Promotion and Tenure Committee, 1994-95, 1999-2000 (chair), 2010-11, 2011-12.

Dean Search Committee, 1993-94; 2001-02; 2007-08.

Augmented Executive Committee, 1992-93.

Coordinator of Young Scholar Lecture Series, 1992-93, committee member, 1993-94.

Monday Speakers Program, 1992-93 (co-chair), 1995-96 (chair).

Curriculum Committee, 1991-92 (chair), 1992-93 (chair).

Self-Study Committee, 1991-92.

Faculty Advisor, Houston Law Review, 1993-present.

Faculty Advisor, Lex Judaica (Jewish Law Students' Association), 1993-present.

University of Houston:

Provost Search Committee (2003-04).  
Promotion and Tenure Committee, 1998-2002.  
Proposal Referee, Research Initiation Grant Program, 1993-2005.

Other:

Member, Governor's Criminal Justice Advisory Council (appointed by Governor Perry) (2005-present).

State Bar of Texas, Committee of Legal Representation for Those on Death Row, 1989-92.

Manuscript Referee:

**Journal of Law & Religion**, 1992-present;  
Daniel Frank, ed., **On Liberty** (SUNY 1998);  
Randy E. Barnett, **Contract Law: Theory, Doctrine, and Practice** (Little Brown & Co., 1994).

**Other:**

Champion of Justice award, presented by Texas Coalition to Abolish the Death Penalty, 15 September 2011.

Finalist, National Book Critic Circles Award (in autobiography, for *The Autobiography of an Execution*), March 10, 2011.

First Place for Non-fiction, Barnes and Noble 2010 Discover Great New Writers Award (for *The Autobiography of an Execution*), March 2, 2011.

Individual Rights and Responsibilities Section Award, State Bar of Texas, May 21, 2009.

Clarence Darrow Award, presented by Harris County Democratic Lawyers Association, 30 August 2007.

Guest on PBS's "Word on Words," with John Sigenthaler, discussing Executed on a Technicality, Nashville, Tennessee, 4 November 2005.

Member, American Law Institute, elected on 20 October 2005.

Courage Award, presented by Texas Coalition to Abolish the Death Penalty (TCADP), Dallas Texas, January 10, 2004.

Torch of Liberty Leadership Award, presented by Harris County Criminal Lawyers Association, 2002.

Outstanding Service Award, presented by University of Houston Law Center's Equal Justice Initiative, 2002.

Selected as Juried Poet, Houston Poetry Fest, fall 2000.

Faculty Commencement Speaker, 12 May 1996. Remarks reprinted in 17:1 *Briefcase* 8-9 (summer 1996).

Student Bar Association Outstanding Professor of the Year, 1994-95.

Executive Committee, Yale Law School Graduates for Clinton/Gore, 1992.

Houston Law Review Alumni Association's Professional Writing Award, 1992.

Adjunct Professor, Rice University ("Law and Literature"), 1987-88.

Instructor, Beth Yeshurun Hillel High School ("Jewish Texts"), 1987-88.

Instructor, Beth Yeshurun Adult Education ("Shabbat Seder"), 1986-87.

Instructor, Beth Israel Center for Jewish Enrichment ("Jewish Philosophy" and "Talmudic Jurisprudence"), 1988, 1990.

Advisory Board, Southwest Region Anti-Defamation League, 1991 - 1996.

Board of Directors, Southwest Region Anti-Defamation League, 1989 - 1991.

Co-chairman, Israel Singles Mission, Summer 1989.

Board of Directors, Houston Hillel Foundation, 1987 - 1989, 1992 - present.

Co-chairman, Education Committee, Young Professionals Division, American Jewish Federation, 1987 - 1988.

Co-chairman, International Human Rights Day, 1988.

Board of Trustees and Legal Advocacy Director, Houston Action for Soviet Jewry, 1987 - 1989.

Member, Community Relations Council of the American Jewish Federation, 1987 - 1990, 1995 - present.

Member, Soviet Jewry Committee, American Jewish Federation, 1986 - 1989.

Member, Public Relations Committee, Houston Metropolitan Ministries, 1987 - 1988.

**Nov 2011**