

# Alafair S. Burke

Hofstra Law School  
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## Academic Positions

### Hofstra Law School

Hempstead, NY

*Professor of Law*, 2007 – present (awarded tenure on earliest eligibility)

*Associate Dean of Faculty Research*, 2008 - 2010

*Associate Professor of Law*, 2001- 2007

- **Courses:** Criminal Law, Criminal Procedure I & II, Federal Criminal Law/ White Collar, Crime and Communities
- **Honors:** Teacher of the Year (elected by students, 2009-10); University Distinguished Faculty Lecturer (2015, 2006); Graduation Awards Presenter (2009, 2007, 2006) (elected by students); two-time winner of university-wide Stessin Prize for Outstanding Scholarship (2004, 2003).
- **Significant Activities:** Member, Dean's Advisory Committee (2007-2009) (elected); Dean Search Committee (2011-12, 2007-08, 2004-05) (elected); Faculty Appointments Committee (Chair, 2008-09; Member, 2005-06, 2002-03); Member, Strategic Planning Committee (2011-13, 2006-08, 2003-04); Member, Student Life Committee (2003-07); Minority Affairs Committee (Chair, 2006-2008; Member, 2003-06); Chair, U.S. News & World Report Committee (2007).

### Brooklyn Law School

New York, NY

*Visiting Professor of Law*, 2014-15

### Fordham Law School

New York, NY

*Visiting Professor of Law*, Fall 2009

## Education

**Stanford Law School**, J.D. with distinction, 1994

Palo Alto, CA

- Order of the Coif
- *Stanford Law and Public Policy Journal*, Article Editor
- *Stanford Journal of International Law*
- Hilmer Oehlmann, Jr. Award for outstanding research and writing
- Other activities: Kirkwood Moot Court Board, Vice President; Asian American Law Students Association; Women of Stanford Law

**Reed College**, B.A., 1991

Portland, OR

- *Phi Beta Kappa*

- Senior Thesis: The Effects of Emotion on Memory, funded in part by PEW grant

## Clerkship

**The Honorable Betty B. Fletcher, Ninth Circuit Court of Appeals**, *Judicial Clerk*, 1994-1995

**Other Legal  
Experience**

**Phillips Lytle LLP**

Buffalo, NY

**Associate**, 1999-2001

- Defended large insurance company against claims brought under the Racketeer Influenced and Corrupt Organizations Act (RICO).
- Coordinated expert witness testimony, including retaining and preparing expert witnesses and litigating *Daubert* motions, for nationwide pharmaceutical litigation.

**Multnomah County District Attorney's Office**

Portland, OR

**Deputy District Attorney**, 1995-1999

- Tried more than thirty criminal cases
- Managed high-volume caseloads in domestic violence, child support enforcement, and general trial units, including cooperation with law enforcement during pre-indictment investigations, presentation of evidence to grand juries, motion practice, plea negotiations, and trials
- Worked as a member of the Neighborhood District Attorney unit, a national model for community-based, order maintenance prosecution, regarding such issues as community and peer courts, diversion / deferred sentencing programs, collaboration and improved relations between citizens and police, domestic violence education and prevention, reduction of juvenile crime, and prevention and deterrence of so-called "quality of life" offenses
- Provided training to members of local law enforcement agencies regarding state and federal criminal procedure

**United States Attorney's Office**

Portland, OR

**Extern**, District of Oregon, Fall 1993

- Researched and wrote legal memoranda for attorneys in civil and criminal divisions
- Drafted multiple appellate briefs filed in the Ninth Circuit
- Managed non-felony criminal docket

**Publications**

*Got a Warrant?: Breaking Bad and the Fourth Amendment*, \_\_\_ Ohio St. J. Crim. L. \_\_\_ (2015).

*Consent Searches and Fourth Amendment Reasonableness*, 67 Fl. L. Rev. 509 (2015).

*Review: Prosecution (is) Complex*, 10 Ohio St. J. Crim. L. 703 (2013).

*Policing, Protestors, and Discretion*, 40 Fordham Urb. L.J. 999 (2013) (symposium).

*The Community Prosecutor: Questions of Professional Discretion*, 47 WAKE FOREST L. REV. 285 (2012) (with Bruce A. Green) (symposium).

*I Got the Shotgun: Reflections on The Wire, Prosecutors, and Omar Little*, 8 Ohio St. J. Crim. L. 447 (2011) (symposium).

*When Family Matters*, 119 YALE L. J. 1210 (2010) (features essay).

*Prosecutorial Agnosticism*, 8 OHIO ST. J. CRIM. L. 79 (2010) (symposium).

*Talking About Prosecutors*, 31 CARDOZO L. REV. 2119 (2010) (symposium).

*Classroom Storytelling*, 78 UMKC L. REV. 1031 (2010) (symposium).

*Domestic Violence Misdemeanor Prosecutions and the New Policing*, in CRIMINAL LAW CONVERSATIONS (Robinson, Ferzan, and Garvey eds.) (Oxford University Press, 2009).

*Revisiting Prosecutorial Disclosure*, 84 INDIANA LAW J. 481 (2009).

Comment, *Brady's Brainteaser: The Accidental Prosecutor and Cognitive Bias*, 57 CASE W. RES. L. REV. 575 (2007) (symposium).

*Prosecutorial Passion, Cognitive Bias, and Plea Bargaining*, 91 MARQUETTE L. REV. 183 (2007) (symposium).

*Neutralizing Cognitive Bias: An Invitation to Prosecutors*, 2 N.Y.U. LAW & LIBERTY 512 (2007) (symposium).

*Domestic Violence as a Crime of Pattern and Intent: An Alternative Reconceptualization*, 75 GEORGE WASHINGTON L. REV. 552 (2007).

*Celebrity Justice: What We (and Our Students) Learn from Hollywood Stars' Run-ins with the Law*, FINDLAW'S WRIT, AUG. 20, 2007 (with Joanna Grossman).

*Lawless Neptune*, in NEPTUNE NOIR (Rob Thomas, ed., 2007) (discussing the depiction of law in the popular television show *Veronica Mars*).

*Improving Prosecutorial Decision Making: Some Lessons of Cognitive Science*, 47 WILLIAM & MARY L. REV. 1587 (2006).

"Administrative Searches," "Arrest Without Warrant," and "Board of Education v. Earls," in THE ENCYCLOPEDIA OF AMERICAN CIVIL LIBERTIES (2006).

Review: *Murder and the Reasonable Man: Passion and Fear in the Criminal Courtroom*, 103 MICH. L. REV. 1043 (2005).

*Unpacking New Policing: Confessions of a Former Neighborhood District Attorney*, 78 WASH. L. REV. 985 (2003).

*The New, New Federalism? A Supreme Court Case to be Decided this Term Tests Whether Congress Can Use the Spending Power to Create a Broad Federal Crime*, FINDLAW'S WRIT, Dec. 11, 2003.

*An Alternative Way to Secure Iraq: Lessons from Community Policing*, FINDLAW'S WRIT, Nov. 6, 2003.

*Rational Actors, Self-Defense, and Duress: Making Sense, Not Syndromes, Out of the Battered Woman*, 81 N.C. L. REV. 211 (2002), excerpts reprinted in KAPLAN, WEISBERG & BINDER, CRIMINAL LAW: CASES AND MATERIALS (6<sup>th</sup> ed., Aspen, 2008).

*A Few Straight Men: Homosexuals in the Military and Equal Protection*, 6 STAN. LAW & POL. REV. 109 (1994).

Note, *Reconciling Professional Ethics and Prosecutorial Power: The No Contact Rule Debate*, 46 STAN. L. REV. 1635 (1994), cited in STEPHEN GILLERS, REGULATION OF LAWYERS: PROBLEMS OF LAW AND ETHICS (7<sup>th</sup> ed., Aspen, 2005).

*Remembering Emotional Events*, 20 MEMORY & COGNITION 277 (1992) (with co-authors F. Heuer & D. Reisberg).

## **Selected Presentations**

*Why Good Prosecutors Might Do Bad Things*, Gates Public Service Law Speaker Series, University of Washington Law School, Seattle, WA, February 9, 2014.

Instructor, "The Effects of Cognitive Heuristics on Prosecutorial Discretion" at "Discovery Bootcamp for New Prosecutors," Department of Justice, National Advocacy Center, Columbia, SC, December 4, 2014.

Presenter, "Consent Searches and Fourth Amendment Reasonableness," Brooklyn Law School, November 13, 2014.

Lecturer, "The Effect of Heuristics on Prosecutorial Discretion," New York County District Attorney's Office, May 7, 2014.

Instructor, National Advocacy Center, Columbia, SC, May 13-14, 2013 (provided training on prosecutorial disclosure for Department of Justice).

Presenter, "Consent Searches and Fourth Amendment Reasonableness," Lewis & Clark Law School, Portland, Oregon, April 4, 2014.

Presenter, "Consent Searches and Fourth Amendment Reasonableness," Lewis & Clark Law School, University of Denver Sturm College of Law, Feb. 20, 2014.

Lecturer, "Cognition and Prosecution," Louisiana District Attorneys Association, New Orleans, Nov. 22, 2013.

Lecturer, Prosecutors and Disclosure to the Defense, Best Practices Committee, New York District Attorney Association, Nov. 15, 2013.

Keynote Lecturer, Texas Elected District Attorney Conference, Austin, Dec. 5, 2012 (discussing sources of wrongful convictions).

Presenter, "Cognitive Bias and the Ethical Prosecutor," Accuracy and Error in Decision Making in the Criminal Process Conference, Duke Law School, Dec. 1, 2012.

Presenter, "Why Community Prosecutors Need Community Defense Lawyers," Community Prosecution and Community Defense Conference, Wake Forest Law School, Nov. 4, 2012.

Moderator, "New Proposals to Regulate Brady Disclosure: A Panel Discussion," New York City Bar Association, April 18, 2012.

Presenter, United States Attorney's Office, Washington, D.C., Feb. 10, 2011.

Panelist, "And All the Pieces Matter...Thoughts on 'The Wire,'" Law and Society

Association, Chicago, May 27, 2010.

Panelist, "Neuroscience, Cognitive Psychology and the Criminal Justice System." Criminal Justice Section, American Association of Law Schools, New Orleans (paper selected for presentation based on blind peer review), January 8, 2010.

Invited Discussant, "New Perspectives on Brady and Other Disclosure Obligations: What Really Works?," Cardozo Law School, November 15-16, 2009.

Presenter, "Prosecutorial Agnosticism," Northeast People of Color Conference, University of Buffalo Law School, October 24, 2009.

Panelist, "Law in Contemporary Fiction," Twelfth Annual Conference for the Association of the Study of Law, Culture, and the Humanities, Suffolk University Law School, April 4, 2009.

Presenter, "Revisiting Prosecutorial Disclosure," Northeast People of Color Conference, Boston University Law School, September 12, 2008.

Faculty Workshop, "Revisiting Brady," Hofstra Law School, June 4, 2008.

Chair and Discussant, "Crime and Emotion: Emotion and Traditional Common Law Crimes," Law and Society Association, Quebec, May 29, 2008.

Faculty Workshop, "Revisiting the Prosecutor's Duty to Disclose," Touro Law Center, March 3, 2008.

Conference Commentator, *Lawyering at the Edge: Unpopular Clients, Difficult Cases, Zealous Advocates*, Hofstra Law School, October 14-16, 2007.

Commentator, *Works in Progress*, Northeast People of Color Conference, Southern New England School of Law, September 15, 2007.

Invited Presenter, "Prosecutorial Passion and Plea Bargaining," Conference on Plea Bargaining: Understanding and Improving Dispute Resolution in Criminal Law, Marquette Law School, April 14, 2007.

Faculty Workshop, "Plea Bargaining and the Boundedly Rational Prosecutor," St. John's Law School, March 12, 2007.

Invited Presenter, "Brady's Brainteaser: The Accidental Prosecutor and Cognitive Bias," Symposium: Prosecutorial Ethics and the Right to a Fair Trial: The Role of the Brady Rule in the Modern Criminal Justice System, Case Western Law School, January 26, 2007.

Invited Presenter, "Neutralizing Cognitive Bias: An Invitation to Prosecutors," Symposium: Behavioral Law & Economics' Challenge to the Classic Liberal Program, NYU Law School, October 13, 2006.

Commentator, *Works in Progress*, Northeast People of Color Conference, Nassau, Bahamas, July 8, 2006.

Presenter, "Redefining Domestic Violence: A Separate Crime Defined by Pattern and Intent," Northeast People of Color Conference, Nassau, Bahamas, July 7, 2006.

Faculty Workshop, "Reconceptualizing the Crime of Domestic Violence," Hofstra Law School, June 27, 2006.

Visiting Lecturer, "Non-Searches: Investigating Below the Fourth Amendment

Threshold," European American Consortium for Legal Education (EACLE), University of Helsinki, May 31, 2006.

Faculty and Student Workshop, "American Prosecutorial Discretion and Cognitive Bias," European American Consortium for Legal Education (EACLE), University of Helsinki, May 30, 2006.

Distinguished Lecturer, "The Ethical but Cognitively Biased Prosecutor: A New Explanation for Wrongful Criminal Convictions?," Hofstra University, April 26, 2006.

Invited Lecturer, "Lessons from the Courthouse, Taken to the Law School," American Association of Law Enforcement Professionals, Long Island, New York, Jan. 18, 2006.

Invited Lecturer, "High-Profile Trials, the Lawyers Who Try Them, and the Reporters Who Cover Them: Finding Common Ground," Judges/Journalists Workshop, National Center for Courts and Media in the National Judicial College, Cambridge, Massachusetts, November 15, 2005.

Faculty Workshop, "Prosecutorial Decision Making: Bad Ethics or Cognitive Bias?," Villanova Law School, Sept. 21, 2005.

Faculty Workshop, "Improving Prosecutorial Decision Making: Some Lessons of Cognitive Science," Hofstra Law School, June 15, 2005.

Commentator, Work in Progress, "Agency: The Challenge of Motivation in Narcotics Prosecutions," by Elaine Chiu, Northeast People of Color Conference, University of Connecticut School of Law, April 3, 2004.

"The Importance of Post-Conviction Review" (with James Liebman and Robin Maher), Strengthening the Guiding Hand of Counsel: Reforming Capital Defense Systems?, a Conference on the American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, Hofstra Law School, Oct. 24, 2003.

Invited Lecturer, Words by Women Series, Wichita State University's Center for Women's Studies, Nov. 9, 2003.

Invited Lecturer, "Rational Actors, Self-Defense, and Duress: Making Sense, Not Syndromes, Out of the Battered Woman," University of North Carolina Law School, Mar. 19, 2003.

Panelist, "Making It," Northeast People of Color Conference, St. John's Law School, April 4, 2003.

Book Commentator, *Murder and the Reasonable Man: Passion and Fear in the Criminal Courtroom*, by Cynthia Lee, Northeast People of Color Conference, Barbados, summer 2002.

## **Selected Media**

Huffington Post, ongoing.

"Who Are the Dewey Secret Seven?," New York Times, March 19, 2014.

"The Florida Movie Theater Shooting and Stand Your Ground," National Review Online, Jan. 14, 2014.

Marc Steiner Show, National Public Radio, Aug. 29, 2013 (discussing jury instructions in trial of George Zimmerman).

National Public Radio, "The Diane Rehm Show," Aug. 27, 2012.

News 12, March 27, 2009 (prosecuting domestic violence cases without victim testimony)

“Turning Point for Long Island Victim,” Newsday, March 18, 2009.

“Is Justice Always Served for the Rich and Famous,” Christian Science Monitor, June 19, 2007.

“Trash Law is Meant to Deter Identity Theft,” New York Times, Dec. 3, 2006.

“Court: Trash is not Private,” Newsday, Nov. 11, 2006.

“Fourth Jury in Slay Case,” Daily News, April 30, 2006.

“Slay Jury Back after Odd Break for Vacation,” Daily News, Feb. 22, 2006.

FOX News Live, November 27, 2005 (clemency hearing granted to Stanley “Tookie” Williams).

CNN Headline News, June 22, 2005 (verdict against Edgar Ray Killen).

“Jackson Walks,” Newsday, June 14, 2005.

WHUR-DC, April 7, 2005 (Michael Jackson).

Good Day New York, WNYW-TV, Mar. 17, 2005 (Michael Jackson, Scott Peterson)

Court TV, “Catherine Crier Live,” Mar. 1, 2005 (arrest of Dennis Rader).

Good Day New York, WNYW-TV, Dec. 14, 2004 (Scott Peterson and Daniel Pelosi trials).

“Experts Say Testimony Hurt,” Newsday, Dec. 14, 2004 (Daniel Pelosi trial).

Court TV, “Catherine Crier Live,” August 6, 2004 (Scott Peterson trial).

National Public Radio, “All Things Considered,” June 13, 2004 (featured writer in summer reading series).

BBC Radio, Jan. 13, 2004 (interview).

“Not the Kindest Cut: Nassau Needs Enough Cops to Prevent, Not Just Stop, Crime,” Newsday, Nov. 23, 2003 (Invited Op/Ed article).

Court TV, “Catherine Crier Live,” Sept. 16, 2004 (trial coverage).

Leonard Lopate Show, WNYC, July 23, 2003 (interview).

## **Law and Fiction**

ALL DAY AND A NIGHT (Harper Collins, 2014).

IF YOU WERE HERE (Harper Collins, 2013).

NEVER TELL (Harper Collins, 2012).

LONG GONE (Harper Collins, 2011).

212 (Harper Collins, 2010).

ANGEL’S TIP (HarperCollins, 2008).

DEAD CONNECTION (Henry Holt, 2007).

CLOSE CASE (Henry Holt, 2005).

MISSING JUSTICE (Henry Holt, 2004).

JUDGMENT CALLS (Henry Holt, 2003).

**Bar**

New York and Oregon

**Admissions****Professional  
Activities**

American Bar Association, Criminal Justice Section, Ethics, Gideon and Professionalism Committee (2007-present)

Northeast People of Color Conference, Planning Committee (2002- 2009)

Women's Bar Association of the State of New York

Oregon Uniform Criminal Jury Instructions Committee (Member, 1996-98; Secretary, 1998-99)