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## HARVEY A. SILVERGLATE

### Lawyer & Writer

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### Of counsel:

[Zalkind, Rodriguez, Lunt & Duncan, LLP](#)  
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Boston, Massachusetts 02110  
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### Co-Founder & Chairman of the Board of Directors:

The Foundation for Individual Rights in Education ([FIRE](#))  
Email [has@thefire.org](mailto:has@thefire.org)  
[www.thefire.org](http://www.thefire.org)

## PERSONAL

Born 1942, New York City (Brooklyn)

Resides in Cambridge, MA, with wife Elsa Dorfman, portrait photographer  
[www.elsadorfman.com](http://www.elsadorfman.com)

One child, Isaac Dorfman Silverglate, resides in San Francisco.

## EDUCATION

Bogota High School, Bogota, New Jersey, 1960.  
A.B., *cum laude* (history), Princeton University, 1964.  
LL.B., Harvard Law School, 1967.

## LEGAL EXPERIENCE/FIRM AFFILIATIONS

1967-69	Associate, Crane, Inker & Oteri (Boston)
1970-71	Partner, Flym, Zalkind & Silverglate (Boston)
1972-73	Partner, Zalkind, Klubock & Silverglate (Boston)
1974	Partner, Zalkind & Silverglate (Boston)
1975-81	Partner, Silverglate, Shapiro & Gertner (Boston)
1982	Partner, Silverglate & Gertner (Boston)
1983-84	Partner, Silverglate, Gertner, Baker & Fine (Boston)
1985-86	Partner, Silverglate, Gertner, Fine, Good & Mizner
1986-89	Partner, Silverglate, Gertner, Fine & Good (Boston)

1989-2003 Partner, Silverglate & Good (Boston)  
2003-2010 Of counsel to Good & Cormier (Boston)  
2009- Of counsel to Zalkind, Rodriguez, Lunt & Duncan, LLP (Boston)

Areas of legal specialization:

Academic freedom  
Civil liberties  
Computer crime  
Criminal defense (state and federal, trial and appellate)  
Internet privacy  
Legal ethics  
News media rights  
Student and faculty rights

**BAR ADMISSIONS**

Supreme Judicial Court of Massachusetts (1967)  
United States Supreme Court (1971)  
United States Court of Military Appeals (1970)  
United States Courts of Appeals for the:

First Circuit (1969)  
Second Circuit (1972)  
Third Circuit (1981)  
Fourth Circuit (1991)  
Fifth Circuit (1980)  
Eleventh Circuit (1991)  
Federal Circuit (1993)

United States District Court for the District of Mass. (1967)

**SELECTED MAJOR PUBLICATIONS**

Published widely on legal matters: numerous articles, op-ed columns, and book reviews, in various media such as academic journals, magazines, and newspapers, including The Wall Street Journal, The Boston Globe, The New York Times Book Review, The Boston Herald, The Philadelphia Inquirer, Massachusetts Lawyers Weekly, Forbes.com, The Harvard Law Review, The Boston Phoenix, and others. A more extensive list is available below, and [online](#).

**Books:**

**Three Felonies a Day: How the Feds Target the Innocent**

By Harvey A. Silverglate  
New York: Encounter Books, 2009  
[www.threefeloniesaday.com](http://www.threefeloniesaday.com)

**In the Name of Justice: Leading Experts Reexamine the Classic Article "The Aims of the Criminal Law"** (Timothy Lynch, editor)

**CHAPTER** "Federal Criminal Law: Punishing Benign Intentions - A Betrayal of Professor Hart's Admonition to Prosecute Only the Blameworthy," by Harvey A.

Silverglate  
Washington, DC: Cato Institute, 2009

**FIRE's Guide to First-Year Orientation and Thought Reform on Campus**

By Jordan Lorence & Harvey A. Silverglate  
Philadelphia: Foundation for Individual Rights in Education, 2005

**FIRE's Guide to Free Speech on Campus**

By David French, Greg Lukianoff, & Harvey A. Silverglate  
Philadelphia: Foundation for Individual Rights in Education, 2005

**FIRE's Guide to Due Process and Fair Procedure on Campus**

By Harvey A. Silverglate & Josh Gewolb  
Philadelphia: Foundation for Individual Rights in Education, 2003

**The Shadow University: The Betrayal of Liberty on America's Campuses**

By Alan Charles Kors & Harvey A. Silverglate  
Hardcover: New York: The Free Press, 1998  
Softcover: New York: HarperPerennial, 1999 (still in print)  
[www.shadowuniv.com](http://www.shadowuniv.com)

**Journalism Awards:**

2009 - Second Place for Right-to-Know Reporting

Awarded by the New England Newspaper & Press Association (NENPA) for Boston Phoenix "Muzzle Awards" (with Dan Kennedy).

2008 - Third Place for Political Reporting

Awarded by the New England Press Association (NEPA) for two Boston Phoenix columns, part of "Freedom Watch" series.

2005 - First Place for Political Reporting

Awarded by the Association of Alternative Newsweeklies (AAN) for three Boston Phoenix columns (on the government's unlawful treatment of "enemy combatants," its prosecutorial tactics in the "war on terror," and Boston's unconstitutional harassment of street performers).

**Selected Magazine & Newspaper Articles:**

"Civil Liberties and Enemy Combatants: Why the Supreme Court's Widely Praised Rulings Are Bad For America," REASON magazine, January 2005.

"Illegal Thoughts: Hate speech, hate crime and the First Amendment," Media Studies Journal (Fall 2000).

"Starr Teachers: Think independent counsels use dirty tricks? Check out the Justice Department's regular prosecutors" (with Andrew Good), REASON magazine, May 1999.

Numerous by-lined articles during high school, college, and law school, for The Ridgewood (N.J.) Newspapers and The Bergen (N.J.) Record.

### **Selected Columns:**

Contributing columnist, Forbes.com (2008-present)

Civil liberties and criminal law columnist ("Freedom Watch", formerly "Brief Cases") on a regular basis on legal (particularly criminal justice and civil liberties) subjects for The Real Paper, and then (currently) The Boston Phoenix (which acquired The Real Paper) (1976-present).

Civil Liberties "Forum" columnist, The National Law Journal (regularly 1994-2002, with occasional columns to the present).

Regular Columnist, INC Technology Magazine (1999-2001)

### **Academic Journals and Book Chapters:**

"The Degradation of the 'Void for Vagueness' Doctrine: Reversing Convictions While Saving the Unfathomable 'Honest Services Fraud' Statute" with Monica R. Shah, Cato Supreme Court Review (2010).

Board of Editors, Criminal Law Advocacy Reporter (Matthew Bender & Co., New York), requiring two articles contributed annually (1990-1994).

Chapter and lecture - "Criminal Aspects of Securities Litigation" in New Dimensions in Securities Litigation: Planning and Strategies (ALI-ABA, 1982).

Co-author, "Brady Problems" in Revised Criminal Defense Techniques (Matthew Bender & Co.) (1978).

"The JDL Informer and the Bizarre Bombing Case," with Alan M. Dershowitz and Jeanne Baker, The Civil Liberties Review (April/May 1976).

"Legislative Privilege and the Separation of Powers," with Robert J. Reinstein, 86 Harvard Law Review 1748 (1971).

"The 1970s: A Decade of Repression?" in With Justice for Some, ed. Bruce Wasserstein and Mark J. Green (Boston: Beacon Press, 1970).

Co-author, "Eavesdropping and Electronic Surveillance" in Cipes, Criminal Defense Techniques.

"In the Marketplace of Free Ideas: A Look at the Passage of the Marihuana Tax Act" in J. L. Simmons (ed.), Marihuana: Myths & Realities (Brandon House, 1967).

### **Book & Movie Reviews:**

"Graham: The Self-Inflicted Wound," 84 Harvard Law Review 1948 (1971).

Co-author, "Justice in the Lower Criminal Courts," 6 Harvard Civil Rights-Civil Liberties Law Review 631 (1971).

"Sects and Drugs," The New York Times Sunday Book Review (April 25, 2001).

"The New Thought Police," The Wilson Quarterly (Spring 2002).

Co-author, "Mistrial: *The Capturing the Friedmans DVD* sheds new light on the case," Slate Online Magazine (February 27, 2004).

"After Innocence," Boston Phoenix (February 2, 2006).

"Setting a noble precedent" The Boston Globe (September 20, 2009).

## **LITIGATION EXPERIENCE**

Has handled trials and appeals in cases involving criminal indictments (state, federal, and military), student rights, academic freedom, free speech, and free press.

### **Selected noteworthy current cases and clients of interest:**

Representing, in the First Circuit Court of Appeals, Massachusetts high school teachers and students contesting censorship of state Curricular Guide resulting from removal by state education department, under political pressure, of materials and readings offering a dissenting view on the accuracy of the label "Armenian Genocide."

Representing in various capacities over time Dr. Jeffrey R. MacDonald (in the so-called "Fatal Vision" or "Green Beret" murder case), in post-conviction proceedings attacking a conviction for a 1970 murder at Fort Bragg (NC), the subject of dueling books (Joe McGinniss' "Fatal Vision", and Jerry Potter and Fred Bost's "Fatal Justice") (DNA testing was done, per order of the U.S. Court of Appeals for the Fourth Circuit, and the defendant is seeking habeas corpus relief or an evidentiary hearing).

### **Past cases and clients of particular interest include:**

Represented Michael Milken in post-conviction matters, dealing largely with the question of whether the defendant's conduct in fact constituted a violation of law;

Represented Leona Helmsley in appeal of her federal tax conviction, and her New York state tax indictment (dismissed);

Represented Louise Woodward in the Boston so-called "nanny case" (successful on appeal);

Represented Prof. Alfred Zehe in an espionage prosecution resulting, eventually, in an East-West spy trade discussed by *New York Times* diplomatic correspondent Craig R. Whitney in his 1993 book *Spy Trader*;

Represented Theodore V. Anzalone, aide to former Boston Mayor Kevin White, indicted and tried in two trials for alleged extortion and money laundering (client acquitted by jury in extortion case and by the Court of Appeals in the money laundering case);

Participated in numerous cases attacking college and university speech codes, some of which are described on the Website of The Foundation for Individual Rights in Education (FIRE);

Represented newspaper reporters in grand jury investigations;

Represented Sen. Mike Gravel (D. Alaska) in the "Pentagon Papers" case in which Sen. Gravel's aide was subpoenaed by a federal grand jury - the case made it to the U. S. Supreme Court and was the subject of a Harvard Law Review article co-authored by me;

Represented *The Boston Phoenix* and its subsidiary, Tele-Publishing, Inc., in successful lawsuit against telephone company for threatening to terminate telephone service used by newspaper's readers to respond to "personal" advertisements - case won on novel ground that state constitutional free speech provision prohibited regulated communications company from engaging in content-based censorship of customers (Boston Phoenix, Inc. v. New England Tel. & Tel. Co., 5 Mass. L. Rptr. 547, 1996 WL 473998 (Mass. Super. 1996);

Represented the Church of Scientology in First Amendment "religious fraud" litigation.

## **ACADEMIC EXPERIENCE**

Appointment as Lecturer-in-Law at Harvard Law School to teach a course in Professional Responsibility and Criminal Defense Strategy in the Spring Semester of 1987.

Harvard Law School course (with Prof. Alan Dershowitz) (1973)  
"The Actual Administration of Justice in the Lower Criminal Courts."

For several years in the late 1970s and the 1980s, guest teacher, along with Professor Alan M. Dershowitz, of "Professional Responsibility," a Harvard Law School course dealing with ethical issues primarily in criminal cases.

Lecturer and article author, Program on "Federal Enforcement 1987: Representing Corporations, Their Officers, Directors and Employees," speaker and author on "Ethical Issues Surrounding Corporate Criminal Investigation" (sponsored by District of Columbia Bar & Georgetown U. Law Center), April 1987. Repeated in 1988, 1989, 1990, 1991, 1992, 1994, and 1996 (subject of computer crime) programs.

Formerly instructor of law at the University of Massachusetts at Boston, College III Program.

## **COMMUNITY AND LEGAL SERVICE**

Co-founder (with Alan Charles Kors) and currently chairman of the Board of Directors of The Foundation for Individual Rights in Education ([FIRE](#)), a 501(c)(3) tax-exempt educational foundation headquartered in Philadelphia, with satellite offices in New York and Cambridge, working for academic freedom and due process in higher education.

[Adjunct Scholar](#), Cato Institute, 2008-present

Advisory Committee member, [National Center for Reason and Justice](#), 2002-Present.

Chair, Independent Privacy Board, Predictive Networks, Inc., Cambridge, MA (with authority to review the company's Internet privacy policies and practices), 2000-2002.

Former Special Litigation Counsel, [Electronic Frontier Foundation](#) (formerly of Cambridge, MA, now of San Francisco, CA).

Chairperson, Long Range Planning Committee of the Martin Luther King, Jr., Open School, Cambridge, MA, 1982-1985.

Founder and former Chairperson of the [Massachusetts Association of Criminal Defense Lawyers](#).

Former Chair, Standing Advisory Committee on Legal Ethics, Massachusetts Association of Criminal Defense Lawyers.

Member, [National Association of Criminal Defense Lawyers](#) Ethics Advisory Board (1991 - 1996)

Served terms as Counsel, President of the Board of Directors (1986-88), and member of the Board of Directors of the [American Civil Liberties Union of Massachusetts](#) (with most recent Board term having expired at the end of 2010); also served on ACLUM Nominating, Legal, and Advisory Committees, and as member of ACLUM Ad Hoc Committee on Academic Freedom, Campus Chapters Program Advisory Committee, Drug Policy Task Force, and Bill of Rights Education Project of the ACLUM Foundation (seeks to place civil liberties topics in high school curricula in Massachusetts).

## **REPRESENTATIVE LECTURES AND MISCELLANEOUS PROGRAMS**

Several addresses annually to various law school campus chapters of The Federalist Society, and Semi-annual law discussions at Dunster House, Harvard College.

Debated Harvard Law School Professor Alan Dershowitz on the use of torture and "torture warrants" in an age of terrorism, at Boston's Ford Hall Forum, on February 12, 2002. (A recording of the debate is available [here](#).)

Participated annually since 2001 in "Shakespeare and the Law" program co-sponsored by the Federalist Society of Boston/Lawyers Division and the Commonwealth Shakespeare Company, consisting of performance of a Shakespeare play followed by a panel discussion on a legal issue raised by the play.

Presented half-day seminar to all teachers and administrators of the Athol-Royalston Consolidated School District, on the subject of "Free speech, academic freedom and due process rights of students, teachers and administrators," January 22, 2007.

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