

HARVEY A. SILVERGLATE

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Co-Founder & Member of the Board of Directors:

The Foundation for Individual Rights and Expression ([FIRE](#))

Email has@thefire.org

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PERSONAL

Born 1942, New York City (Brooklyn).

Resides in Cambridge, Massachusetts

Widower of portrait photographer and writer [Elsa Dorfman](#) (1936-2000)

One child, Isaac Dorfman Silverglate, resides in New York City with his wife and two children.

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

1967-1969 Associate, Crane, Inker & Oteri (Boston)
1970-1971 Partner, Flym, Zalkind & Silverglate (Boston)
1972-1973 Partner, Zalkind, Klubock & Silverglate (Boston)
1974 Partner, Zalkind & Silverglate (Boston)
1975-1981 Partner, Silverglate, Shapiro & Gertner (Boston)
1982 Partner, Silverglate & Gertner (Boston)
1983-1984 Partner, Silverglate, Gertner, Baker & Fine (Boston)
1985-1986 Partner, Silverglate, Gertner, Fine, Good & Mizner
1986-1989 Partner, Silverglate, Gertner, Fine & Good (Boston)

1989-2003 Partner, Silvergate & Good (Boston)
2003-2010 Of counsel to Good & Cormier (Boston)
2009-2012 Of counsel to Zalkind, Rodriguez, Lunt & Duncan, LLP (Boston)
2013- Of counsel to Zalkind Duncan & Bernstein LLP (Boston)

Areas of legal specialization:

Academic freedom
Civil liberties
Criminal defense (state and federal, trial and appellate)
Legal ethics
News media rights
Student and faculty rights, especially at the college level

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 Massachusetts (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, newspapers, and online publications, including [The Wall Street Journal](#), [The Boston Globe](#), [The New York Times Book Review](#), [The Boston Herald](#), [The Philadelphia Inquirer](#), [The National Law Journal](#), [Massachusetts Lawyers Weekly](#), [The Harvard Law Review](#), [The Boston Phoenix](#), [Forbes.com](#), [WGBHnews.org in Boston](#), [WBUR-FM Boston](#) ("Cognoscenti"), [Media Studies Journal](#), [REASON](#) magazine, [Slate](#), [Huffington Post](#), and others. A more extensive list is available below, and online.

Books:

Conviction Machine

By Sidney Powell & Harvey A. Silvergate
New York: Encounter Books, 2020

FIRE's Guide to Due Process and Campus Justice

By Harvey A. Silvergate & Josh Gewolb
Philadelphia: Foundation for Individual Rights in Education, updated and re-published 2014

Three Felonies a Day: How the Feds Target the Innocent

By Harvey A. Silvergate

New York: Encounter Books, 2009 (2nd edition, updated, 2011)

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 Free Speech on Campus

By David French, Greg Lukianoff & Harvey A. Silverglate

Philadelphia: Foundation for Individual Rights in Education, 2005; 2nd Edition 2012

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

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

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:

["Our Seemingly Eternal Police Problem,"](#) WGBH News, June 11, 2020

["Boston Calling: Crime? Or Politics as Usual?"](#) WGBH News, August 15, 2019

["The new panic: campus sex assaults,"](#) The Boston Globe, February 2015.

["Harvey Silverglate: Justice Goes After the GOP -- Investigating Chris Christie's administration, indicting another prominent Republican. Is it political?"](#) The Wall Street Journal, January 2014.

["Liberals Are Killing the Liberal Arts -- This is how bad censorship is getting: Discussions of what can't be said come with a 'trigger warning' "](#) The Wall Street Journal, November 2014.

["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 Klaxon (Bogota High School, The Ridgewood (N.J.) News and The Herald News, and The Bergen (NJ) Record.

Selected Columns:

[Contributing columnist](#), Forbes.com (2008-2010)

[Civil liberties and criminal law columnist](#) ("Freedom Watch", formerly "Brief Cases") on a regular basis on legal (criminal justice and civil liberties) subjects for The Real Paper, then The Boston Phoenix (which acquired The Real Paper), and then The Phoenix (which was the next iteration of The Boston Phoenix). (1976-2013).

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

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:

["Who's Afraid of Steve Bannon? Not Errol Morris"](#) WGBH News (February 12, 2019)

"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.

Past cases and clients of particular interest include:

Represented 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).

Represented, in the First Circuit Court of Appeals, Massachusetts high school teachers and students contesting censorship of a 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."

Represented, with Alan Dershowitz, 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, with Alan Dershowitz, Leona M. 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, with Nancy Gertner, Theodore V. Anzalone, aide to former Boston Mayor Kevin H. 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 Expression (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 Silverglate and Professor Robert Reinstein.

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.

Represented college and graduate school students in on-campus forums and in subsequent litigation seeking due process and fair procedures in campus disciplinary tribunals.

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 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 member of the Board of Directors of The Foundation for Individual Rights and Expression ([FIRE](#)), a 501(c)(3) tax-exempt educational foundation headquartered in Philadelphia, with satellite office in Washington, DC, working for academic freedom and due process in higher education and on civil liberties issues more generally.

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

Advisory Committee member, [National Center for Reason and Justice](#), 2002-2023.

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.

Co-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](#); member of 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](#) (formerly the 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 (goal was to place civil liberties topics in high school curricula in Massachusetts).

REPRESENTATIVE LECTURES AND MISCELLANEOUS PROGRAMS

Several addresses to various law school campus chapters of The Federalist Society.

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 for several years commencing in 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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