

# ORIN S. KERR

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## POSITIONS

**University of California, Berkeley School of Law**  
Berkeley, CA  
*William G. Simon Professor*, 2022 to present.  
*Professor*, 2019-2021.

**University of Southern California Gould School of Law**  
Los Angeles, CA  
*Frances R. and John J. Duggan Distinguished Professor*,  
2017-2019.

**George Washington University Law School**  
Washington, DC  
*Fred C. Stevenson Research Professor*, 2012-2017.  
*Professor*, 2007-2012.  
*Associate Professor*, 2001-2007.

## ARTICLES

*Terms of Service and Fourth Amendment Rights*,  
171 UNIVERSITY OF PENNSYLVANIA LAW REVIEW (forthcoming 2023)

*Katz as Originalism*,  
71 DUKE LAW JOURNAL 1047 (2022).

*Focusing the CFAA in Van Buren*,  
2021 SUPREME COURT REVIEW 155 (2022).

*Buying Data and the Fourth Amendment*,  
HOOVER INSTITUTION AEGIS SERIES PAPER NO. 2109 (2021).

*The Fourth Amendment Limits of Internet Content Preservation*,  
65 ST. LOUIS UNIVERSITY LAW JOURNAL 753 (2021) (Childress Lecture).

*Decryption Originalism: The Lessons of Burr*,  
134 HARVARD LAW REVIEW 905 (2021).

*The Questionable Objectivity of Fourth Amendment Law*,  
99 TEXAS LAW REVIEW 447 (2021).

*Line-Drawing*,  
70 JOURNAL OF LEGAL EDUCATION 162 (2020).

*Justice Kennedy and the Counter-Majoritarian Difficulty*,  
70 HASTINGS LAW JOURNAL 1213 (2019) (symposium).

*Compelled Decryption and the Privilege Against Self-Incrimination*,  
96 TEXAS LAW REVIEW 767 (2019).

*Cross-Enforcement of the Fourth Amendment*,  
132 HARVARD LAW REVIEW 471 (2018).

*Encryption Workarounds*,  
106 GEORGETOWN LAW JOURNAL 989 (2018) (with Bruce Schneier).

*Government Hacking to Light the Dark Web:  
What Risks to International Relations and International Law?*,  
70 STANFORD LAW REVIEW ONLINE 58 (2017) (with Sean Murphy).

*The Effect of Legislation on Fourth Amendment Protection*,  
115 MICHIGAN LAW REVIEW 1117 (2017).

*Trespass, Not Fraud:  
The Need for New Sentencing Guidelines for CFAA Offenses*,  
84 GEORGE WASHINGTON LAW REVIEW 1544 (2016) (symposium).

*Norms of Computer Trespass*,  
116 COLUMBIA LAW REVIEW 1143 (2016).

*An Economic Understanding of Search and Seizure Law*,  
164 UNIVERSITY OF PENNSYLVANIA LAW REVIEW 591 (2016).

*Executing Warrants for Digital Evidence:  
The Case for Use Restrictions on Nonresponsive Data*,  
48 TEXAS TECH LAW REVIEW 1 (2015) (symposium keynote).

*Katz Has Only One Step: The Irrelevance of Subjective Expectations*,  
82 UNIVERSITY OF CHICAGO LAW REVIEW 113 (2015) (symposium).

*The Fourth Amendment and the Global Internet*,  
67 STANFORD LAW REVIEW 285 (2015).

*A Rule of Lenity for National Security Surveillance Law*,  
100 VIRGINIA LAW REVIEW 1513 (2014).

*A Next Generation Communications Privacy Act*,  
162 UNIVERSITY OF PENNSYLVANIA LAW REVIEW 373 (2014).

*Foreword: Accounting for Technological Change*,  
36 HARVARD JOURNAL OF LAW AND PUBLIC POLICY 403 (2013) (symposium).

*The Curious History of Fourth Amendment Searches*,  
2012 SUPREME COURT REVIEW 67 (2013).

*The Mosaic Theory of the Fourth Amendment*,  
111 MICHIGAN LAW REVIEW 311 (2012).

*Defending Equilibrium-Adjustment*,  
125 HARVARD LAW REVIEW FORUM 84 (2012).

*Why Courts Should Not Quantify Probable Cause*,  
in *THE POLITICAL HEART OF CRIMINAL PROCEDURE: ESSAYS ON THEMES OF WILLIAM J. STUNTZ*, edited by Michael Klarman, David Skeel, and Carol Steiker, at 131 (Cambridge University Press) (2012).

*An Equilibrium-Adjustment Theory of the Fourth Amendment*,  
125 HARVARD LAW REVIEW 476 (2011).

*Fourth Amendment Remedies and Development of the Law: A Comment on Camreta v. Greene and Davis v. United States*,  
2011 CATO SUPREME COURT REVIEW 237 (2011) (symposium).

*Use Restrictions and the Future of Surveillance Law*,  
THE BROOKINGS INSTITUTION, Future of the Constitution Series, Paper No. 11 (2011) (symposium).

*Good Faith, New Law, and the Scope of the Exclusionary Rule*,  
99 GEORGETOWN LAW JOURNAL 1077 (2011).

*Ex Ante Regulation of Computer Search and Seizure*,  
96 VIRGINIA LAW REVIEW 1241 (2010).

*The Modest Role of the Warrant Clause in National Security Investigations*,  
88 TEXAS LAW REVIEW 1669 (2010) (symposium).

*Vagueness Challenges to the Computer Fraud and Abuse Act*,  
94 MINNESOTA LAW REVIEW 1561 (2010) (symposium).

*Applying the Fourth Amendment to the Internet: A General Approach*,  
62 STANFORD LAW REVIEW 1005 (2010).

*Fourth Amendment Seizures of Computer Data*,  
119 YALE LAW JOURNAL 700 (2010).

*Defending the Third-Party Doctrine: A Response to Epstein and Murphy*,  
24 BERKELEY TECHNOLOGY LAW JOURNAL 1229 (2009).

*The National Surveillance State: A Response to Balkin*,  
93 MINNESOTA LAW REVIEW 2179 (2009).

*Do We Need A New Fourth Amendment?*,  
107 MICHIGAN LAW REVIEW 951 (2009) (book review issue).

*The Case for the Third-Party Doctrine*,  
107 MICHIGAN LAW REVIEW 561 (2009).

*The Limits of Fourth Amendment Injunctions*,  
7 JOURNAL ON TELECOMM. AND HIGH TECH. LAW 127 (2009) (symposium).

*Criminal Law in Virtual Worlds*,  
2008 UNIVERSITY OF CHICAGO LEGAL FORUM 415 (2008) (symposium).

*Updating the Foreign Intelligence Surveillance Act*,  
75 UNIVERSITY OF CHICAGO LAW REVIEW 225 (2008) (symposium).

*Four Models of Fourth Amendment Protection*,  
60 STANFORD LAW REVIEW 503 (2007).

*How to Read a Legal Opinion: A Guide for New Law Students*,  
11 THE GREEN BAG 2D 51 (2007).

*Blogs and the Legal Academy*,  
84 WASHINGTON UNIVERSITY LAW REVIEW 1127 (2007) (symposium).

*Enforcing Law Online*,  
74 UNIVERSITY OF CHICAGO LAW REVIEW 745 (2007) (book review).

*Searches and Seizures in a Digital World*,  
119 HARVARD LAW REVIEW 531 (2005).

Essay, *Digital Evidence and the New Criminal Procedure*,  
105 COLUMBIA LAW REVIEW 279 (2005).

*Congress, the Courts, and New Technologies:  
A Response to Professor Solove*,  
74 FORDHAM LAW REVIEW 779 (2005) (symposium).

*Search Warrants in an Era of Digital Evidence*,  
75 MISSISSIPPI LAW JOURNAL 85 (2005) (symposium).

*Virtual Crime, Virtual Deterrence:  
A Skeptical View of Self-Help, Architectural Solutions, and Civil Liability*,  
1 JOURNAL OF LAW, ECONOMICS, AND POLICY 197 (2005) (symposium).

*Technology, Privacy, and the Courts: A Reply to Colb and Swire*,  
102 MICHIGAN LAW REVIEW 933 (2004).

*The Fourth Amendment and New Technologies:  
Constitutional Myths and the Case for Caution*,  
102 MICHIGAN LAW REVIEW 801 (2004).

*Foreword: The Future of Internet Surveillance Law*,  
72 GEORGE WASHINGTON LAW REVIEW 1139 (2004) (symposium).

*A User's Guide to the Stored Communications Act,  
And A Legislator's Guide to Amending It*,  
72 GEORGE WASHINGTON LAW REVIEW 1208 (2004) (symposium).

*Cybercrime's Scope: Interpreting "Access" and "Authorization"  
in Computer Misuse Statutes*,  
78 NEW YORK UNIVERSITY LAW REVIEW 1596 (2003).

*Internet Surveillance Law After the USA Patriot Act:  
The Big Brother That Isn't,*  
97 NORTHWESTERN UNIVERSITY LAW REVIEW 607 (2003).

*Lifting the "Fog" of Internet Surveillance:  
How A Suppression Remedy Would Change Computer Crime Law,*  
54 HASTINGS LAW JOURNAL 805 (2003) (symposium).

*The Problem of Perspective in Internet Law,*  
91 GEORGETOWN LAW JOURNAL 357 (2003).

*A Lukewarm Defense of the Digital Millennium Copyright Act,*  
in COPY FIGHTS: THE FUTURE OF INTELLECTUAL PROPERTY IN THE  
INFORMATION AGE (Cato Institute 2002).

*Computers and the Patent System: The Problem of the Second Step,*  
28 RUTGERS COMPUTER & TECHNOLOGY LAW JOURNAL 47 (2002)  
(symposium).

*The Fourth Amendment in Cyberspace:  
Can Encryption Create A "Reasonable Expectation of Privacy?,"*  
33 CONNECTICUT LAW REVIEW 503 (2001).

*Rethinking Patent Law in the Administrative State,*  
42 WILLIAM & MARY LAW REVIEW 127 (2000).

*Are We Overprotecting Code? Thoughts on First-Generation Internet Law,*  
57 WASHINGTON & LEE LAW REVIEW 1287 (2000).

*The Decline of the Socratic Method at Harvard,*  
78 NEBRASKA LAW REVIEW 113 (1999).

*Shedding Light on Chevron:  
An Empirical Study of the Chevron Doctrine in the U.S. Courts of Appeals,*  
15 YALE JOURNAL ON REGULATION 1 (1998).

Note, *The Limits of Computer Conversion: United States v. Collins,*  
9 HARVARD JOURNAL OF LAW & TECHNOLOGY 205 (1996).

Recent Case, *Metzl v. Leininger,*  
19 HARVARD JOURNAL OF LAW & PUBLIC POLICY 627 (1996).

## BOOKS

THE DIGITAL FOURTH AMENDMENT  
(under contract with Oxford University Press).

COMPUTER CRIME LAW  
(West Publishers, 1st ed. 2006; 2nd ed. 2009; 3d. ed. 2013; 4th ed 2018; 5th  
ed. 2022).

MODERN CRIMINAL PROCEDURE, BASIC CRIMINAL PROCEDURE, and  
ADVANCED CRIMINAL PROCEDURE (with Kamisar, LaFave, Israel, King &  
Primus) (12th ed. 2008, 13th ed. 2012, 14th ed. 2015, 15<sup>th</sup> ed. 2019).

CRIMINAL PROCEDURE (6-volume treatise) (with LaFave, Israel, & King)  
(3d ed. 2007, 4th ed. 2015)

**ADDITIONAL Library of Congress**

**EXPERIENCE** Washington, DC

*Scholar-in-Residence.* Appointed the inaugural position for the Daniel and  
Florence Guggenheim Foundation Program on Demography, Technology and  
Criminal Justice hosted by the Law Library of Congress.  
2012- 2014

**University of Pennsylvania Law School**

Philadelphia, PA

*Visiting Professor*, Spring 2011.

**Senate Judiciary Committee**

**United States Senate**

Washington, DC

*Special Counsel for Supreme Court Nominations to Senator John Cornyn.*  
Summer 2009, Summer 2010

**University of Chicago Law School**

Chicago, IL

*Visiting Associate Professor*, Fall 2006.

**United States Department of Justice, Criminal Division**

**Computer Crime and Intellectual Property Section**

Washington, DC

*Trial Attorney, Attorney General's Honor Program.*  
1998- 2001

**United States Attorney's Office for the Eastern District of Virginia**

Alexandria, VA

*Special Assistant United States Attorney.*  
January 2000 - July 2000

**CLERKSHIPS** **Associate Justice Anthony M. Kennedy**  
**Supreme Court of the United States**  
Washington, DC  
*Law Clerk.*  
October Term 2003

**Judge Leonard I. Garth**  
**United States Court of Appeals for the Third Circuit**  
Newark, NJ  
*Law Clerk, 1997-1998*

**EDUCATION** **Harvard Law School**, J.D. *magna cum laude*, 1997.  
\* Executive Editor, *Harvard Journal of Law and Public Policy*

**Stanford University**, M.S., Mechanical Engineering, 1994.

**Princeton University**. B.S.E., *magna cum laude*,  
Mechanical and Aerospace Engineering, 1993.  
\* *Phi Beta Kappa*, *Tau Beta Pi* (engineering), *Sigma Xi* (science)  
\* Certificate, School of Public and International Affairs

**PRO BONO** *Van Buren v. United States*, No. 19-783 (U.S. Supreme Court).  
**LITIGATION** Authored amicus brief cited in majority opinion.

*Sievers v. Nebraska*, No. 18-1166 (U.S. Supreme Court).  
Counsel of Record and primary author of certiorari petition and reply brief.

*Carpenter v. United States*, 138 S.Ct. 2206 (2018). Authored amicus brief.

*Facebook v. Power Ventures*, 828 F.3d 1068 (9th Cir. 2016).  
Co-authored petition for rehearing en banc.

*Arzola v. Massachusetts*, No. 14-14027 (U.S. Supreme Court).  
Authored petition for certiorari and reply brief.

*United States v. Auernheimer*, 748 F.3d 525 (3d Cir. 2014).  
Primary author of appellant's merits briefs and presented oral argument.

*In re Application of the United States for Historical Cell Site Data*,  
724 F.3d 600 (5th Cir. 2013).  
Authored amicus brief.

*State v. Friedman*, No. 2011-1328 (Ohio Supreme Court 2012).  
Co-authored petitioner's brief. Respondent dismissed charges pre-argument.

*Davis v. United States*, 131 S.Ct. 2419 (2011).  
Authored merits briefs for petitioner and presented oral argument.

*United States v. Drew*, 259 F.R.D. 449 (C.D. Cal. 2009).  
Briefed and argued successful motion to dismiss.

## SERVICE

Member, United States Judicial Conference Advisory Committee on Criminal Rules, 2013-2019. By appointment of Chief Justice Roberts.

Member, United States Judicial Conference Ad Hoc Committee to Review the Criminal Justice Act, 2015-2017. By appointment of Chief Justice Roberts.

American Law Institute, Adviser, Project on Police Practices, 2016-19.

AALS Criminal Justice Section, Executive Committee, 2015-17.

Electronic Privacy Information Center, Advisory Board, 2012-14.

D.C. Bar, Criminal Law and Individual Rights Steering Committee, 2010-13.

National Research Council, Member of the Committee on Technical and Privacy Dimensions of Information for Terrorism Prevention and Other National Goals, 2006-08.

## HONORS

Most Cited Younger Professors (Born 1970 or Later), Ranked #2, in Fred R. Shapiro, *The Most-Cited Legal Scholars Revisited*, 88 U Chi. L. Rev. 1595 (2021).

Experimental Survey of Law Professors on General Academic Impact, Ranked #5 Nationwide (tied with Catharine MacKinnon and Mark Lemley), reported in Gregory Sisk, et al, *Scholarly Impact of Law School Faculties in 2021: Updating the Leiter Score Ranking for the Top Third* (2021).

High-Impact Faculty, *Leiter Rankings*.

#1 most-cited U.S. law professor in Criminal Law and Procedure from 2016-20 (1160 citations)

#1 most-cited U.S. law professor in Criminal Law and Procedure from 2013-17 (1300 citations)

#1 most-cited U.S. law professor in Criminal Law and Procedure from 2009-13 (1090 citations)



#7 most-cited U.S. law professor in Criminal Law and Procedure from 2005-09 (600 citations)

*ScholarRank Top 250*, HeinOnline's ranking of most influential scholars in American law. Ranked #8 as of February 2023.

2009 GW Law Distinguished Faculty Service Award (the law school's teaching award, selected by the members of the graduating Class of 2009).

LawDragon, "500 Leading Lawyers in America," 2017.

Fastcase 50 Award, recognizing "50 of the smartest, most courageous innovators, techies, visionaries, and leaders in the law," 2014.

Elected Member, American Law Institute, 2009.

Paul M. Bator Prize, 2007 (awarded by the Federalist Society to a professor under forty for "excellence in legal scholarship, a commitment to teaching, a concern for students, and who has made a significant public impact").

First Honorable Mention, 2003 AALS Scholarly Paper Competition.

*Date: February 2023.*