

# Jamesa J. Drake

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## Education

**George Washington University Law School, J.D. 2002**

Activities and Honors: Moot Court Board, Executive Board Member  
Project for Older Prisoners, Student Director  
Criminal Law Society, President and Founder  
Judge Albert H. Grenadier Award  
Richard C. Lewis Memorial Award

**Cornell University, B.S. in Industrial & Labor Relations 1999**

## Notable Experience

### **United States Supreme Court**

Arguing Counsel and Counsel of Record:

Kentucky v. King, 131 S.Ct. 1849 (2011) (police-created exigent circumstances)

### **First Circuit Court of Appeals**

Notable Cases, Arguing Counsel and Counsel of Record:

United States v. Kilmartin, 944 F.3d 315 (1st Cir. 2019) (causation, 403)

United States v. Vigio-Aponte, 939 F.3d 16 (1st Cir. 2019) (RICO instructions)

United States v. French, 904 F.3d 111 (1st Cir. 2018) (voir dire, sentencing)

United States v. Favreau, 886 F.3d 27 (1st Cir. 2018) (reasonable suspicion)

United States v. Akanni, 890 F.3d 355 (1st Cir. 2018) (marriage fraud)

United States v. Lopez-Ortiz, 875 F.3d 49 (1st Cir. 2017) (VCR, burdens)

McKenney v. Mangino, 873 F.3d 75 (1st Cir. 2017) (§1983, qualified immunity)

United States v. Bramley, 847 F.3d 1 (1st Cir. 2017) (sentencing)

United States v. Rose, 802 F.3d 114 (1st Cir. 2015) (Title III warrant)

United States v. Jiminez, 19-1509 (search and seizure)

United States v. Bilodeau, 19-2292 (Rohrabacher-Farr amendment)

Arguing Counsel and Counsel of Record for ACLU, ACLU of Maine, Maine Association of Criminal Defense Lawyers:

Filler v. Kellett, 859 F.3d 1478 (1st Cir. 2017) (§1983, prosecutorial misconduct)  
State v. LeMeunier-Fitzgerald, 188 A.3d 183 (Me. 2018) (Fourth Amendment)

### **Second Circuit Court of Appeals**

Notable Cases, Counsel of Record:

United States v. Howell, 778 Fed. App'x 43 (2d Cir. 2019) (appeal waiver)

United States v. Brown, 788 Fed. App'x 34 (2d Cir. 2019) (restitution)

United States v. Ahearn, 767 Fed. App'x 148 (2d Cir. 2019) (conditions of release)

United States v. Yilmaz, 910 F.3d 686 (2d Cir. 2018) (sentencing)

United States v. Harper, 16-754 (sufficiency of plea colloquy, waiver)

United States v. Jabar, 17-3514 (gov't appeal, fraud involving the United Nations)

United States v. Atias, 18-2059 (fraud)

United States v. Chandler, 18-1841 (search and seizure)

United States v. Atuana, 19-1137 (conspiracy, bank and wire fraud)

United States v. Hicks, 19-590 (double jeopardy)

United States v. Bayon, 19-3948 (threats against U.S. Congressman)

United States v. Hamlett, 19-3069 (pornography)

### **Sixth Circuit Court of Appeals**

Notable Cases, Counsel of Record

Willoughby v. White, 786 Fed. App'x 506 (6th Cir. 2019) (§2254, capital case)

Thompson v. White, SCOTUS Dkt. # 17-7504 (§2254, capital case)

### **Maine Supreme Judicial Court**

Notable Cases, Arguing Counsel and Counsel of Record:

State v. Lemeunier-Fitzgerald, 188 A.3d 183 (2018) (implied consent)

State v. Hassan, 179 A.3d 898 (2018) (discovery, duty to investigate)

State v. Annis, 179 A.3d 467 (2018) (Art. I, § 6 Maine Constitution)

State v. Lacourse, 159 A.3d 847 (2017) (statute of limitations)

State v. Brown, 158 A.3d 501 (2017) (negligent homicide)

State v. Thompson, 154 A.3d 614 (2017) (*Franks* hearing irregularity)

State v. Watson, 152 A.3d 152 (2016) (hearsay rule)  
State v. Foster, 149 A.3d 542 (2016) (indictment; due process)  
State v. Hederson, 149 A.3d 539 (2016) (full faith and credit clause)  
State v. Westgate, 148 A.3d 716 (2016) (insufficient evidence)  
State v. Mahmoud, 147 A.3d 833 (2016) (eyewitness misidentification)  
State v. Daluz, 143 A.3d 800 (2016) (improper closing argument)  
Kilborn v. Carey, 140 A.3d 461 (2016) (de facto parentage)  
State v. Dorweiler, 143 A.3d 114 (2016) (statutory construction)  
State v. Violette, 138 A.3d 491 (2016) (reasonable suspicion to seize)  
State v. Kennedy, 136 A.3d 357 (2016) (collateral attack; right to counsel)  
State v. Hodsdon, 135 A.3d 816 (2016) (welfare fraud)  
State v. Retamozzo, 135 A.3d 98 (2016) (comment on incarceration)  
State v. Poulin, 134 A.3d 886 (2016) (corpus delicti)  
State v. Nisbet, 134 A.3d 840 (2016) (right to counsel)  
State v. Murphy, 130 A.3d 401 (2016) (statutory construction)  
State v. Pratt, 130 A.3d 381 (2015) (interrogation; hearsay)  
State v. Wilson, 127 A.3d 1234 (2015) (sufficiency of the evidence in bench trial)  
Manley v. State, 123 A.3d 219 (2015) (legal standard for post-conviction review)  
State v. Hoover, 121 A.3d 1281 (2015) (double jeopardy)  
State v. G.F., 119 A.3d 743 (2015) (jurisdiction stripping)  
State v. Baker, 114 A.3d 214 (2015) (self-defense jury instruction)  
In re E.A., 114 A.3d 207 (2015) (TPR, father's prior conviction)  
State v. Adams, 113 A.3d 583 (2015) (sufficiency; alternative perpetrator)

Counsel for Maine Association of Criminal Defense Lawyers as Amici:

In re Alijah K., 147 A.3d 1159 (2016) (TPR, parental rights)  
James v. State, 121 A.3d 1290 (2015) (mental disease or defect)  
State v. Power, 114 A.3d 662 (2015) (drug court)  
State v. Glover, 89 A.3d 1077 (2014) (invocation of constitutional rights)

### **Kentucky Supreme Court**

Notable Cases, Arguing Counsel and Counsel of Record:

Bowling v. Commonwealth, 2010 WL 3722283 (2010) (DNA testing)  
Jones v. Commonwealth, 319 S.W.3d 295 (Ky. 2010) (separation of powers)  
Cochran v. Commonwealth, 315 S.W.3d 325 (Ky. 2010) (statutory construction)  
King v. Commonwealth, 302 S.W.3d 649 (Ky. 2010) (exigent circumstances)  
Saxton v. Commonwealth, 315 S.W.3d 293 (Ky. 2010) (*mens rea* requirement)

Commonwealth v. Jones, 283 S.W.3d 665 (Ky. 2009) (statutory construction)  
Commonwealth v. Terry, 295 S.W.3d 819 (Ky. 2009) (*Faretta*)  
Seven other cases submitted on briefs without oral argument

### **Oregon Supreme Court**

Notable Cases, Arguing Counsel and Counsel of Record:

State v. Jacob, 180 P.3d 6 (2008) (collateral attacking at sentencing)  
State v. Ramirez, 173 P.3d 817 (2007) (*Blakely*)  
State v. Scott, 166 P.3d 528 (2007) (police interrogation)  
State v. Henderson, 142 P.3d 58 (2006) (search and seizure; probable cause)  
State v. Perez, 131 P.3d 168 (2006) (*Blakely*)  
State v. Gornick, 130 P.3d 780 (2006) (*Blakely*)

### **Intermediate Appellate Courts**

Kentucky Court of Appeals, argued one case and over a dozen cases submitted on briefs without oral argument

Oregon Court of Appeals, argued over three-dozen cases and over 70 cases submitted on briefs without oral argument

Maryland Court of Special Appeals, argued one case

### **Capital Litigation**

Appointed in federal court pursuant to 18 U.S.C. §3599(c)

Post-conviction counsel to three death-sentenced defendants (present)

Post-conviction counsel to seven death-sentenced defendants (2009-2012)

### **Employment**

**Drake Law, LLC**, *owner*  
Auburn, Maine (2012-present)

**American Civil Liberties Union of Maine Foundation**, *Staff Attorney*  
Portland, Maine (July 2016-February 2017)

**Kentucky Department of Public Advocacy**, *Assistant Public Advocate*  
Frankfort, Kentucky; Appellate Division (2008-2009) (direct criminal appeals);  
Capital Post-Conviction Unit (2009-2012)

**Oregon Office of Public Defense Services**, *Deputy Public Defender*  
Salem, Oregon; Deputy II (2003-2007) (direct criminal appeals);  
Deputy I (2002-2003) (direct criminal appeals)

**Cohen, Milstein, Hausfeld & Toll**  
Washington, D.C.; Law Clerk, Summer Associate (2001-2002)

**D.C. Public Defense Services**  
Washington, D.C.; Law Clerk (2000-2001)

## **Professional Affiliations**

Maine State Bar (Bar Number: 005194)  
United States Supreme Court Bar  
Bar of the United States Court of Appeal for the First Circuit  
Bar of the United States Court of Appeal for the Second Circuit  
Bar of the United States Court of Appeal for the Sixth Circuit  
Bar of the United States District Court, District of Maine  
Bar of the United States District Court, Eastern District of Kentucky  
Kentucky State Bar (Bar Number: 92249; voluntary resignation)  
Oregon State Bar (Bar Number: 022970; voluntary resignation)  
Maine Association of Criminal Defense Lawyers, President

## **Publications**

*Reviving Maine's State Constitutional Protection Against Unreasonable Searches and Seizures*, Maine Law Review, 68 Me. L. Rev. 321 (2016)

*Knock and Talk No More*, 67 Me. L. Rev. 25 (2014)

*Kentucky v. King: A New Approach to Consent-Based Police Encounters?* 65 Me. L. Rev. 57 (2012)

*Kentucky v. King: A New Approach to Consent-Based Police Encounters?* Search and Seizure Law Report, Volume 40, No. 7, July 2013

Editor (2007-2011), The Criminal Law Newsletter, Oregon Criminal Defense Lawyers Association

Time to Talk About Article I, section 5 of the Maine Constitution, *The Defender*, MACDL

Secure the Blessings of Liberty, *The Defender*, MACDL

The Good-Faith Exception is Good for Us, *The Advocate*, Dept. Public Advocacy

It's the End of the World As We Know It...And I Feel Fine: *Hudson, Herring*, and the Future of the Exclusionary Rule, *The Advocate*, Dept. Public Advocacy

The Unrecognizable Fourth Amendment, *The Advocate*, Dept. Public Advocacy

The Fourth Amendment and Automobiles, *The Advocate*, Dept. of Public Advocacy

The Second Stage: Defining 'Testimonial' for Confrontation Clause Purposes, Oregon Criminal Defense Lawyers Association Newsletter

Jury Unanimity and *Boots* Instructions, Oregon Criminal Defense Lawyers Association Newsletter

## Working Papers

Guilty Beyond a Vague and Uncertain Doubt: Burdens of Proof Across Communities, with Paul Shea, under review at *Journal of Public Economic Theory*

## Recent Presentations

2019 Maine Association of Criminal Defense Lawyers Annual Seminar, Worth Preserving: Interesting Issues Percolating in State and Federal Courts

2018 Maine Association of Criminal Defense Lawyers Annual Seminar, Worth Preserving: Interesting Issues Percolating in State and Federal Courts

2018 Maine Association of Criminal Defense Lawyers Annual Seminar, Juvenile Law

2017 Symposium on Prosecutorial Abuse and Accountability, Litigating Prosecutorial Misconduct, Berkeley, California

2017 Maine Commission on Indigent Defense Legal Services, State and Federal Habeas Training

2016 Maine Association of Criminal Defense Lawyers Annual Seminar, Worth Preserving: Interesting Issues Percolating in State and Federal Courts

2016 Penobscot County Bar Association

2015 Maine Association of Criminal Defense Lawyers Annual Seminar, State Constitutional Law: Rethinking Everything

2014 Maine Commission Indigent on Defense Legal Services, Advanced Criminal Training, Preserving Issues for Appeal; Fourth Amendment Update

2014 Maine Association of Criminal Defense Lawyers Annual Seminar, SCOTUS Update

2012 Department of Public Advocacy Annual Conference, SCOTUS Update

2011 ABA Appellate Judges Education Institute, SCOTUS Discretionary Review

2009-2011 Permanent Faculty, New Attorney Training, Search and Seizure

2009 Department of Public Advocacy, The Fourth Amendment and Automobiles

2008 Department of Public Advocacy Annual Conference, Statutory Construction

2007 Criminal Law Section, Oregon State Bar, Contemporary Issues in Criminal Justice

2007 Oregon Criminal Defense Lawyers Association Annual Conference

2006 Oregon Criminal Defense Lawyers Association Drug Defenses Seminar

2006 Oregon Criminal Defense Lawyers Association Annual Conference

2006 Criminal Law Section, Oregon State Bar, Contemporary Issues in Criminal Justice

## Service

President, Maine Association of Criminal Defense Lawyers (200+ members)

Adjunct Professor, University of Maine Law School

Courses: Criminal Law (Spring 2021)

Criminal Procedure – Investigation (Fall 2019)

State Constitutional Law (Spring 2018)

Appellate Litigation (Fall 2013, 2014; Spring 2016, 2017, 2019, 2020)

Criminal Law Seminar (Spring, 2015, 2016)

Criminal Procedure – Adjudication (Fall 2015)

Legal Research and Writing II (Spring 2013, 2014)

Appellate Rules Committee, Member, Maine Supreme Judicial Court (present)

Judicial Branch, Maine Justice for Children Task Force, Member (present)

Maine Criminal Defense Lawyers Association, President (present)

Member, Maine ACLU Legal Action Panel, Member (2014-2017)

Member, Intergovernmental Pretrial Justice Reform Task Force (2015)

Member, Task Force to Study Bar Demographics,

Board of Overseers of the Maine Bar (2013-2014)

Eugene Teen Court, Judge (2004-2007)