

## **Eric A. Johnson**

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### **Education**

University of Michigan Law School, Ann Arbor, Michigan, J.D., *cum laude*, 1988.

University of Washington, Seattle, Washington, B.A., *cum laude*, 1984.  
*Honors*: Phi Beta Kappa; Departmental Honors in Philosophy

### **Experience**

Associate Professor of Law, University of Illinois College of Law (2009 to present)

Associate Professor of Law, University of Wyoming College of Law (2007 to 2009); Assistant Professor (2004-2007)

Assistant Solicitor General, New York State Department of Law (2001 to 2004)

Chief Assistant Attorney General, Alaska Department of Law (1996 to 2001); Assistant Attorney General (1990 to 1996)

Associate, Gilmore & Feldman, Anchorage, Alaska (1989 to 1990)

Law Clerk, Justice Allen Compton, Alaska Supreme Court (1988 to 1989)

### **Publications**

*Mens Rea for Sexual Abuse: The Case for Defining the Acceptable Risk*  
99 J. CRIM. L. & CRIMINOLOGY 1 (2009)

*Causal Relevance in the Law of Search and Seizure*  
88 B.U. L. REV. 113 (2008) – reprinted in 35 SEARCH & SEIZURE L. REP. 65 (2008)

*The Crime That Wasn't There: Wyoming's Elusive Second-Degree Murder Statute*  
7 WYO. L. REV. 1 (2007) (invited)

*Beyond Belief: Rethinking the Role of Belief in the Assessment of Culpability*  
3 OHIO ST. J. CRIM. L. 503 (2006)

*Criminal Liability for Loss of a Chance*

91 IOWA L. REV. 59 (2005) – excerpted in KAPLAN, WEISBERG & BINDER, CRIMINAL LAW: CASES AND MATERIALS (6th ed. 2008)

*Habit and Discernment in Abortion Practice: The Partial-Birth Abortion Ban Act of 2003 as Morals Legislation*

36 RUTGERS L. J. 549 (2005)

*Assisted Suicide, Liberal Individualism, and Visceral Jurisprudence: A Reply to Professor Chemerinsky*

20 ALASKA L. REV. 321 (2003)

*Harm to the “Fabric of Society” as a Basis for Regulating Otherwise Harmless Conduct: Notes on a Theme from *Ravin v. State**

27 SEATTLE U. L. REV. 41 (2003)

*An Analysis of the Antiterrorism and Effective Death Penalty Act in Relation to State Administrative Orders: The State Court Judgment as the Genesis of Custody*

29 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 153 (2003)

**Works in Progress**

*Probability and Perspective in Criminal Law and Procedure* (to be submitted for publication in spring 2010)

*What Crimes Are Made of: Toward a Taxonomy of Objective Elements* (to be submitted for publication in spring 2010)

*Empathy and Modesty: Thoughts on the Relative Value of Two Judicial Virtues* (invited contribution to symposium on Justice Souter and Justice Sotomayor, to be published in Ohio State Journal of Criminal Law)

**Recent Presentations**

*What Crimes Are Made of: Toward a Taxonomy of Objective Elements*, to be presented at Northwestern University Law School, winter 2009-10

*What Crimes Are Made of: Toward a Taxonomy of Objective Elements*, to be presented at the University of Minnesota Law School, October 29, 2009

*What Crimes Are Made of: Toward a Taxonomy of Objective Elements*, to be presented at Washington University School of Law, October 23, 2009

*What Crimes Are Made of: Toward a Taxonomy of Objective Elements*, to be presented at University of Illinois College of Law faculty workshop, October 15, 2009

*Probability and Perspective in Criminal Law and Procedure*, presented at University of Illinois College of Law faculty retreat, May 14, 2009

*Problems in the Subjective Assessment of Risk*, presented in Chicago, Illinois as part of conference celebrating release of LARRY ALEXANDER & KIMBERLY FERZAN, CRIME AND CULPABILITY, May 11, 2009

*General Confusion about General Intent*, presented at Wyoming State Bar 2008 Annual Meeting & Judicial Conference, September 11, 2008

*Recent Developments in Wyoming Criminal Law and Procedure*, presented at Wyoming Circuit Court Judges Conference, April 24, 2008

*Criminal Law Update*, presented (with John King and Jason Tangeman) at Wyoming State Bar Annual Meeting and Judicial Conference, August 18, 2006

*Recent Developments in the Law of Evidence*, presented at Wyoming Conference of Municipal Courts Training Seminar, May 18, 2006

*Recent Developments in Wyoming Criminal Law*, presented (with Theodore Lauer) at Wyoming County and Prosecuting Attorneys Conference, November 9, 2005

*Current Issues in Criminal Law*, presented (with Theodore Lauer and Diane Courselle) as part of continuing legal education program at University of Wyoming College of Law, May 18, 2006

### **Other Teaching Experience**

Instructor, National College of District Attorneys, Appellate Advocacy Course, 1999 and 2000. Instructed state prosecutors in annual week-long course on all aspects of appellate advocacy. Instruction included lectures, small-group workshops, and individualized critiques.

Lecturer, Alaska Statewide District Attorney's Conference, 1996 to 2001. Lectured at annual gathering of district attorneys, assistant district attorneys, and municipal prosecutors from around Alaska.

### **Awards**

Inaugural Recipient, Alaska Prosecutor of the Year Award, 2001

### **Professional Activities**

Advisory Committee to the Alaska Supreme Court on Appellate Rules, 1998 to 2001. Participated in standing committee of practitioners and judges charged with recommending changes to Alaska Rules of Appellate Procedure. Appointed by Alaska's chief justice.

Area Discipline Division, Alaska Bar Association, 1997 to 2001. Participated in standing committee of attorneys and lay people charged with conducting hearings on allegations of attorney misconduct. Appointed by Alaska's chief justice.

Indian Law Committee, Alaska Department of Law, 1996 to 2001. Participated in committee of assistant attorneys general charged with monitoring litigation involving issues of Indian law and with formulating Department policy.

Advisory Committee to the Alaska Supreme Court on Criminal Pattern Jury Instructions, 1993 to 2001. Participated in standing committee of practitioners and judges charged with revising and updating criminal pattern jury instructions. Appointed by Alaska's chief justice.

Alaska Law Examiners Committee, 1990 to 1999. Drafted essay questions for Alaska bar exam on criminal law, criminal procedure, constitutional law, and evidence. Participated in committee review of entire essay exam. Appointed by Alaska Bar Association president.

### **Representative Litigation**

Rabuck v. State, 129 P.3d 861 (Wyo. 2006)

- Represented state in appeal by criminal defendant whose surreptitious videotaping of two 17-year-old girls led to his conviction on two counts of taking indecent liberties with a minor. Addressed defendant's claim that the indecent liberties statute was unconstitutionally vague as applied to his conduct. Wyoming Supreme Court affirmed conviction and rejected constitutional challenge.

Swedenburg v. Kelly, 544 U.S. 460 (2005)

- Drafted New York State's brief in response to petition for writ of certiorari. Petition challenged Second Circuit decision upholding New York's statutory prohibition on the direct shipment of alcoholic beverages to New York consumers by out-of-state wineries. Challenge was based on both the dormant commerce clause and the privileges and immunities clause. As state had urged, the Court granted petition. Court eventually reversed court of appeals' decision.

Grotto v. Herbert, 316 F.3d 198 (2d Cir. 2003)

- Represented state in its appeal of federal district court order granting habeas corpus relief to state prisoner who had been convicted of sexually abusing his five-year-old daughter. Second Circuit reversed district court and reinstated conviction.

Aeid v. Bennett, 296 F.3d 58 (2d Cir. 2002)

- Represented state in its appeal of federal district court order granting habeas corpus relief to state prisoner who had been convicted of first-degree sodomy. Second Circuit reversed district court and reinstated conviction.

Smith v. Doe, 538 U.S. 84 (2003)

- Drafted successful petition for writ of certiorari challenging Ninth Circuit's decision in *Doe v. Otte*, 259 F.3d 979 (9th Cir. 2001), which held that Alaska's sex offender registration statutes impose "punishment" and therefore violate the ex post facto clause as applied to sex offenders convicted prior to the statutes' effective date. Supreme Court granted certiorari and eventually reversed. (Draft of petition completed shortly before departure from Alaska Attorney General's office.)

Sampson v. State, 31 P.3d 88 (Alaska 2001)

- Defended Alaska's statutory ban on physician-assisted suicide in civil suit filed by national advocacy group Compassion in Dying, which said it had chosen Alaska for test case "after a lengthy and deliberate examination of the constitutions and case law of each of the 50 states." Superior Court ruled in state's favor and Alaska Supreme Court affirmed.

Rivera v. Pugh, 194 F.3d 1064 (9th Cir. 1999)

- Represented state in habeas corpus appeal by drunk driver who argued that administrative revocation of a driver's license amounts to "punishment" under the double jeopardy clause and so precludes later conviction for drunk driving. Court upheld conviction.

State v. Hazelwood, 946 P.2d 875 (Alaska 1997)

- Represented state in its appeal seeking reinstatement of the conviction of Joseph Hazelwood, captain of the oil tanker Exxon Valdez, for negligent discharge of oil. Court reinstated conviction, and in so doing rewrote Alaska's doctrine of constitutional mens rea.

Turney v. State, 936 P.2d 533 (Alaska 1997)

- Successfully defended Alaska's jury tampering statute in appeal by member of "fully informed jury" movement. State's brief relied on extensively in Erick Haynie, *Populism, Free Speech, and the Rule of Law: The "Fully Informed Jury" Movement and Its Implications*, 88 J. OF CRIM. L. & CRIMINOLOGY 343 (1997).