

WILLIAM W. BERRY III

Associate Professor of Law

Frank Montague, Jr. Professor of Legal Studies and Professionalism

University of Mississippi School of Law

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ACADEMIC APPOINTMENTS

University of Mississippi, Oxford, Mississippi

Associate Professor of Law with tenure, 2015-present

Frank Montague, Jr. Professor of Legal Studies and Professionalism, 2016-present

Director, Cambridge Summer Abroad Program, 2012-present

Teaching Faculty, Sally McDonnell Barksdale Honors College, 2013-present

Adjunct Professor, Department of Legal Studies, 2013-present

Adjunct Professor, Department of Sport & Recreation, 2017-present

Chair, Academic Discipline Committee, 2016-present

Jessie D. Puckett Lecturer, 2015-16

Beccaria Scholar in Criminal Law, 2013-15

Fellow, Southeastern Conference Academic Leadership Development Program, 2013-14

Assistant Professor of Law, 2009-15

Visiting Associate Professor of Law, 2008-09

University of Cambridge, Cambridge, England

Visiting Scholar, Faculty of Law, Summer 2014, Summer 2015

Visiting Scholar, Institute of Criminology, Summer 2013

Sapienza, University of Rome, Rome, Italy

Visiting Scholar, Criminal Law Department, October 2015

Max Planck Institute for Foreign and International Criminal Law, Freiburg, Germany

Visiting Scholar, September 2015

EDUCATION

University of Oxford, Green Templeton College, Oxford, England

D. Phil., Law (Centre for Criminology), June 2012

Dissertation: *Assessing Proportionality in Capital Cases: A Case Study of Ohio* (Dr. Carolyn Hoyle)

M.Sc., Criminology, May 2007 (first in M.Sc. class)

Dissertation: *Discretion without Guidance* (Dr. Julian Roberts)

Vanderbilt University Law School, Nashville, Tennessee

J.D., May 2000

Vanderbilt Law Review, Honor Council President

University of Virginia, Charlottesville, Virginia

B.A., English, May 1997

University Judiciary Committee Vice-Chair, Omicron Delta Kappa

PUBLICATIONS

Books and Book Chapters

SPORTS AND THE LAW: TEXT, CASES, AND PROBLEMS (West, 6th edition) (with Ross & Balsam) (forthcoming 2018).

ENTERTAINMENT, MEDIA, AND THE LAW (West, 5th edition) (with Weiler and Myers)(2015).

Mitigation in Federal Sentencing in the United States, in *Mitigation and Aggravation at Sentencing* (Julian V. Roberts, ed.), Cambridge University Press (2011).

Law Review Articles and Essays

33. *Unusual Deference*

—68 Florida Law Review __ (forthcoming 2018).

32. *Employee-Athletes, Antitrust, and the Future of College Sports*

—28 Stanford Law & Policy Review 245 (2017)(symposium).

31. *Magnifying Miranda*

—49 Texas Tech Law Review __ (forthcoming 2017)(symposium).

30. *Exploiting “Education”*

—78 Louisiana Law Review __ (forthcoming 2017)(symposium).

29. *Cruel Techniques, Unusual Secrets*

—77 Ohio State Law Journal __ (forthcoming 2017) (with Meghan J. Ryan).

28. *Normative Retroactivity*

—19 University of Pennsylvania Journal of Constitutional Law 485 (2017).

27. *Restorative Innocence*

—68 Florida Law Review 1569 (2016).

- In *Essays on Innocence* (with L. Dervan, V. Beety, G. Gilchrist, R. Leo, and M. Ryan).

26. *Amending Amateurism*

—68 Alabama Law Review 551 (2016).

25. *Remembering Furman’s Comparative Proportionality*

—101 Iowa Law Review Online 65 (2016).

24. *Playoff Profits for Academic Programs*

—5 Mississippi Sports Law Review 1 (2016)(symposium).

23. *The Retroactivity Roadmap*

—10 NYU Journal of Law & Liberty 179 (2016)(symposium).

22. *Implementing Just Mercy*
—94 Texas Law Review 331 (2015).
21. *Eighth Amendment Presumptions*
—89 Southern California Law Review 67 (2015).
20. *Life-with-Hope Sentencing*
—76 Ohio State Law Journal 1051 (2015).
19. *Procedural Proportionality*
—22 George Mason Law Review 259 (2015).
18. *Ending the Death Lottery*
—76 Ohio State Law Journal 67 (2015).
17. *The Mandate of Miller*
—51 American Criminal Law Review 327 (2014).
16. *Criminal Constitutional Avoidance*
—104 Journal of Criminal Law & Criminology 105 (2014).
15. *Educating Athletes*
—81 Tennessee Law Review 795 (2014).
14. *Writing (and re-writing) Federal Criminal Law—in the Classroom*
—11 Ohio State Journal of Criminal Law 767 (2014) (symposium).
13. *Eighth Amendment Differentness*
—78 Missouri Law Review 1053 (2013)(symposium).
12. *Right about Wrongs?*
—44 Connecticut Law Review 1677 (2012)(invited essay).
11. *Practicing Proportionality*
—64 Florida Law Review 687 (2012).
 - Cited by *State v. Pruitt*, 415 S.W. 180 (Tenn. 2013)(Koch, J., dissenting).
10. *Separating Retribution from Proportionality*
—97 Virginia Law Review In Brief 61 (2011).
9. *The European Prescription for Ending the Death Penalty*
—2011 Wisconsin Law Review 1003 (2011).
8. *Promulgating Proportionality*
—46 Georgia Law Review 69 (2011).
 - Cited by *State v. Cox*, 2016 WL 10789 (Ohio Ct. App. 2016)(Gallagher, J., dissenting).

7. *Repudiating Death*
—101 *Journal of Criminal Law & Criminology* 439 (2011).
6. *More Different than Life, Less Different than Death*
—71 *Ohio State Law Journal* 1109 (2010).
 - Cited by *State v. Lyle*, 854 N.W. 2d 378 (Iowa 2014).
5. *Ending Death by Dangerousness*
—52 *Arizona Law Review* 889 (2010).
4. *Extraordinary and Compelling*
—68 *Maryland Law Review* 850 (2009).
 - Cited by *United States v. Maday*, 799 F.3d 776 (7th Cir. 2015).
 - Reprinted in *Parole: Judicial Reflections* (R. Satyanarayana, ed.), Amicus (2010).
3. *American Procedural Exceptionalism*
—17 *Cornell Journal of Law & Public Policy* 481 (2008).
2. *Discretion without Guidance*
—40 *Connecticut Law Review* 631 (2008).
 - Cited by *United States v. Elmore*, 743 F.3d 1068 (6th Cir. 2014).
1. *Following the Yellow Brick Road of the Evolving Standards of Decency*
—28 *Pace Law Review* 15 (2007).
 - Cited by *Connecticut v. Santiago*, No. SC 17413 (Conn. 2015)(Rogers, C.J., dissenting).

Shorter Publications

20. *The Execution Methods Crisis*
—JURIST—Academic Commentary (Apr. 3, 2017), <http://jurist.org/academic/2017/04/william-berry-the-execution-methods-crisis.php>.
19. *Preview of Dean v. United States*
—44 *ABA Supreme Court Preview* 142 (2017).
18. *Preview of Montgomery v. Louisiana*
—43 *ABA Supreme Court Preview* 31 (2015).
17. *Preview of Kansas v. Gleason*
—43 *ABA Supreme Court Preview* 36 (2015).
16. *Humanizing the Condemned: A Review of The Forgotten Men*
—Criminal Law & Criminal Justice Books, <http://clcjbooks.rutgers.edu/> (Aug. 2015).
15. *The Perils of Private Adjudication: A Review of Civil Justice, Privatization, and Democracy*
—24 *International Criminal Justice Review* 411 (2015).

14. *The Myth of Memorization as Education*
—4 E-Mantle Newsletter, Ctr. for Educ., Teaching, & Learning, Univ. of Miss. (Nov. 2015).
13. *Preview of Whitfield v. United States*
—42 ABA Supreme Court Preview 92 (2014).
12. *Preview of Johnson v. United States*
—42 ABA Supreme Court Preview 50 (2014).
11. *Assessing Rough Justice and the ICC’s Quest for Legitimacy*
—24 International Criminal Justice Review 135 (2015).
10. *Preview of Integrity Staffing Solutions v. Beck*
—42 ABA Supreme Court Preview 22 (2014).
9. *How Labor Law Could Save the NCAA*
—Slate.com, March 31, 2014.
8. *The Power of Level Three Thinking*
—2 E-Mantle Newsletter, Ctr. for Educ., Teaching, & Learning, Univ. of Miss. (Mar. 2014).
7. *Preview of Abramski v. United States*
—41 ABA Supreme Court Preview 162 (2014).
6. *Preview of United States v. Castleman*
—41 ABA Supreme Court Preview 166 (2014).
5. *Preview of Peugh v. United States*
—40 ABA Supreme Court Preview 208 (2013).
4. *Preview of McQuiggin v. Perkins*
—40 ABA Supreme Court Preview 205 (2013).
3. *Foreword*
—1 Mississippi Sports Law Review 245 (2012).
2. *Preview of Perry v. New Hampshire*
—39 ABA Supreme Court Preview 80 (2011).
1. *Preview of Walker v. Martin*
—38 ABA Supreme Court Preview 118 (2010).

Works in Progress

Eighth Amendment Theory (book project)
The Student-Athlete Agent (book project)
Evolved Standards, Evolving Justices (law review article)
Undermining Fear-Based Punishment (law review article)
Killing Methods (law review article)
The Unconstitutional Consequences of Hurst v. Florida (law review article)(w/ C. Hessick)

Conferences and Panels Organized

Mississippi Sports Law Review Symposia

- The Future of Sports Gambling (Spring 2017)
- Game Change: The NCAA's New Autonomy Structure (Fall 2015)
- Current Telecommunications Issues and Their Impact on Sports Broadcasting (Fall 2014)
- Amateurism and the Future of the NCAA (Fall 2013)
- The Impact of Concussion Lawsuits on the Future of Football (Fall 2012)
- The Bowl Championship Series and Conference Realignment (Spring 2012)
- Social Media and Intercollegiate Athletics (Fall 2011)

Organizer of Panels at Academic Conferences

- Juveniles, Incarceration, and the Constitution: A Conversation, AALS Conference, Criminal Justice Section (2018)(with C. Drinan)
- Sentencing—10 years after *Booker*, SEALS Conference (2016)(with C. Hessick)
- The Future of Intercollegiate Athletics, SEALS Conference (2015)
- ABA Criminal Justice Fall Institute, Works-in-Progress Panels (2014)(with M. Ryan)
- Mercy and Criminal Justice, SEALS Conference (2014)(with L. Johnston)
- Eighth Amendment Panel, Law & Society Conference (2014)(with M. Ryan)
- Concussions Panel, COIA Conference (2013)
- White Collar Crime Panel, SEALS Conference (2012)
- Cruel and Unusual Punishments Panel, SEALS Conference (2011)

Peer Reviewer

Aspen (Wolters Kluwer)
International Criminal Justice Review
International Journal of Law, Crime and Justice
Justice Quarterly

Selected Media, Panels, and Presentations

American Association of Law Schools Annual Meeting, Criminal Justice Section, San Diego, CA, *Juveniles, Incarceration, and the Constitution: A Conversation*, Co-organizer and Panelist (January 2018).

American Association of Law Schools Mid-Year Meeting, Criminal Justice Section, Washington, DC, *Evolving Democratic Constitutionalism*, Speaker (June 2017).

Stanford University School of Law, Palo Alto, CA, *Sports Law Symposium*, Speaker (May 2017).

Texas Tech University School of Law, Lubbock, TX, *Criminal Law Symposium on Miranda v. Arizona after 50 years*, Speaker (March 2017).

Louisiana State University, Baton Rouge, LA, *Blurring Lines: Emerging Trends and Issues in Sports and Gaming Law*, Speaker, Law Journal Symposium (January 2017).

American Constitution Society, University of Mississippi Chapter, Oxford, MS, *Supreme Court Preview panel*, Speaker (November 2016).

Southeastern Association of Law Schools Conference, Amelia Island, FL, *Criminal Law Discussion Group on ten year anniversary of United States v. Booker*, Speaker and Organizer (August 2016).

Southeastern Association of Law Schools Conference, Amelia Island, FL, *Criminal Law Discussion Group on the Future of Criminal Law*, Speaker (August 2016).

American Inns of Court, William C. Keady Chapter, Oxford, MS, *Current Issues in Sports Law*, Invited Speaker (April 2016).

American Association of Law Schools Conference, New York, NY, *Sports Law Section Panel on Amateurism*, Speaker (January 2016).

American Association of Law Schools Conference, New York, NY, *Criminal Law Symposium on Violence Against Women*, Moderator, Punishment Panel (January 2016).

Bloomberg Law Podcast, Bloomberg Radio, Bloomberg Law: Lethal Injection (discussion of *Foster v. Chapman* oral argument) with June Grasso, Michael Best, and Meghan Ryan (November 2, 2015).

University of Rome, Sapienza Law School, *Eighth Amendment Presumptions* (October 2015).

Southeastern Association of Law Schools Conference, Boca Raton, FL, *Current Issues in Intercollegiate Athletics Discussion Group*, Speaker and Organizer (July 2015).

Southeastern Association of Law Schools Conference, Boca Raton, FL, *Law and Baseball Discussion Group*, Speaker (July 2015).

Southeastern Association of Law Schools Conference, Boca Raton, FL, *Innocence and Criminal Law Discussion Group*, Speaker (July 2015).

Bloomberg Law Podcast, Bloomberg Radio, Bloomberg Law: Lethal Injection (discussion of *Glossip v. Gross* decision) with June Grasso (June 30, 2015).

Intellectual Property Section CLE, Mississippi Bar, Jackson, MS, Intellectual Property, Entertainment, and Sports Law Conference, Sports Law Panel, Speaker and Moderator (May 2015).

Bloomberg Law Podcast, Bloomberg Radio, Bloomberg Law: Lethal Injection (discussion of *Glossip v. Gross* oral argument) with June Grasso and Meghan Ryan (May 1, 2015).

Bloomberg Law Podcast, Bloomberg Radio, Bloomberg Law: Supreme Court on Sentencing Guidelines (discussion of *United States v. Johnson*) with June Grasso, Michael Best, and Douglas Berman (April 21, 2015).

Southeastern Association of Law Schools Conference, Boca Raton, FL, *Current Issues in Intercollegiate Athletics* Discussion Group, *Speaker and Organizer* (July 2015).

Southeastern Association of Law Schools Conference, Boca Raton, FL, *Law and Baseball* Discussion Group, *Speaker* (scheduled for July 2015).

Southeastern Association of Law Schools Conference, Boca Raton, FL, *Innocence and Criminal Law* Discussion Group, *Speaker* (scheduled for July 2015).

Southeastern Association of Law Schools Conference, Amelia Island, FL, *Mercy in the Administration of Criminal Justice* Discussion Group, *Speaker and Organizer* (August 2014).

Law & Society Conference, Minneapolis, MN, *Re-indoctrinating the Eighth Amendment* (May 2014).

Panola County Bar Association, Batesville, MS, *Northwestern and Labor Unions in Intercollegiate Athletics* (May 2014).

University of Mississippi Honors Convocation, Oxford, MS, *Keynote Speaker* (April 2014).

Texas Tech University School of Law, Lubbock, TX, *Moderator*, Intentional Killings Panel, Criminal Law Symposium (April 2014).

Season Pass, Mississippi Public Broadcasting, *Interview re: Northwestern Labor Union Case* (March 2014).

University of Arkansas Law Faculty, Fayetteville, AR, *Procedural Proportionality* (March 2014).

Office of State Public Defender, Deep South Capital Defense Conference, Biloxi, MS, *Overview of Miller and Mississippi Cases* (March 2014).

Southern Methodist University Law School Criminal Justice Conference, Dallas, TX: *Procedural Proportionality* (January 2014)(invited roundtable).

American Bar Association Criminal Justice Section Fall Institute, Washington, D.C., *Procedural Proportionality* (October 2013)(selected paper).

University of Mississippi Sports Law Review Symposium, Oxford, MS: *Intercollegiate Athletics and the Future of Amateurism*, Panel Organizer and Moderator (October 2013).

Southeastern Association of Law Schools Conference, Palm Beach, FL, *Vulnerability and the Criminal Justice System* Discussion Group (August 2013) (invited paper).

Southeastern Association of Law Schools Conference, Palm Beach, FL, *White Collar Crime / Federal Criminal Law Pedagogy* Discussion Group (August 2013) (invited paper).

Law & Society Conference, Boston, MA: *Procedural Proportionality*, Criminal Law Shadow Conference (May 2013).

Continuing Legal Education Seminar, Oxford, MS: *Current Issues in Intercollegiate Athletics*, Law Alumni Weekend (April 2013).

University of Missouri Law Review Symposium, Columbia, MO, *Eighth Amendment Differentness* (March 2013) (invited paper).

University of Mississippi School of Law, Oxford, MS: *Eighth Amendment Differentness*, Faculty Brownbag Lunch Series (February 2013).

Coalition on Intercollegiate Athletics Conference, Tampa, FL: *Current Legal Issues in Intercollegiate Athletics*, Panel Organizer and Moderator (February 2013).

University of Mississippi Sports Law Review Symposium, Oxford, MS: *The Impact of Concussion Lawsuits on the Future of Pro Football*, Panel Organizer and Moderator (November 2012).

American Bar Association Criminal Justice Section Fall Institute, Washington, D.C.: *The Mandate of Miller* (October 2012)(selected paper).

Southeastern Law Scholars Conference, Charleston, SC: *The Mandate of Miller* (September 2012)(selected paper).

Southeastern Association of Law Schools Conference, Amelia Island, FL: *Criminal Constitutional Avoidance*, White Collar Crime Panel (August 2012).

Law & Society Conference, Honolulu, HI: *Remedying the Capital Failures of Comity and Federalism*, Criminal Law Shadow Conference (June 2012).

University of Mississippi Sports Law Review Symposium, Oxford, MS: *Legal and Political Challenges to the Bowl Championship Series and Conference Realignment*, Panel Moderator (March 2012).

Mississippi College School of Law, Jackson, MS: *Practicing Proportionality*, Faculty Exchange Series (March 2012) (invited presentation).

University of Mississippi School of Law, Oxford, MS: *Practicing Proportionality*, Faculty Brownbag Lunch Series (November 2011).

University of Mississippi Sports Law Review Symposium, Oxford, MS: *Social Media and Intercollegiate Athletics*, Panel Moderator (November 2011).

Southeastern Association of Law Schools Conference, Hilton Head, SC: *Promulgating Proportionality*, Eighth Amendment Panel (July 2011).

Law & Society Conference, San Francisco, CA: *Promulgating Proportionality*, Criminal Law Shadow Conference (June 2011).

Southeastern Association of Law Schools Conference, Palm Beach, FL: *More Different than Death, Less Different than Life*, Young Scholars Workshop (July 2010).

Law & Society Conference, Denver, CO: *Promulgating Proportionality*, Criminal Law Shadow Conference (June 2009).

Law & Society Conference, Berlin, Germany: *American Procedural Exceptionalism* (June 2007)

TEACHING

Awards

Elsie M. Hood Award (University-wide teaching award)
HEADWAE award (Outstanding faculty honoree from Ole Miss, Mississippi state legislature)
Outstanding law teacher award (law school teaching award)

Classes

2017-18: Torts, Sports Law I, Criminal Law, Sports Law II

Other law classes taught

Capital Punishment Seminar
Comparative Capital Punishment
Comparative Sentencing
Criminal Procedure II (Adjudication)
Employment Discrimination
Employer-Employee Relations
Entertainment and Sports Law
Federal Criminal Law and White Collar Crime
International Criminal Law
International Sports Law
Labor Law
Negotiation and Contract Drafting
Sentencing
Sentencing Theory Seminar
Torts I
Torts II

Legal studies classes taught

Criminal Law (CJ 210)(online)
Criminal Justice Communication (CJ 322)
Criminal Justice Ethics (CJ 300)(online)
The Death Penalty (CJ 390)(online)
Criminal Procedure (CJ 410)(online)

Criminal Justice Colloquium (CJ 499)(in class and online)
Criminal Justice Administration (CJ 500)

Honors College classes taught

Honors College Freshman Seminar I (Hon 101)
Honors College Freshman Seminar II (Hon 102)

SERVICE

2017-18

Director, Cambridge Summer Abroad Program (2012-present)
Chair, Academic Discipline Committee (University Standing Committee)(2016-present)
Founder and Advisor, Mississippi Sports Law Review (2011-present)
Member, Faculty Committee for Sally McDonnell Barksdale Honors College (2013-present)
Selection Committee for Elsie M. Hood Outstanding Teacher Award (2014-present)
Executive Committee, American Association of Law Schools, Sports Law Section (2016-present)

- Secretary (2017-18)

Mentor Committee, Southeastern Association of Law Schools (SEALS)(2013-present)

- Co-Chair (2017-18)

Advisor, Mississippi Sports Law Society (2010-present)
Faculty Appointments Committee, Law School (2017-18)
Review Committee for Stacey Lantagne (2017-18)

Prior to 2017

Fellow, Southeastern Conference Academic Leadership Development Program (2013-14)
Senator, University of Mississippi Faculty Senate (2010-14)
Board Member, Center for Education, Teaching and Learning (2014-16)
Board Member, Committee on Intercollegiate Athletics (2011-14)
Chair, Selection Committee for Elsie M. Hood Outstanding Teacher Award (2015)
Auctioneer, Public Interest Law Foundation Auction (2009-2016)
Advisor, Public Interest Law Foundation (PILF)(2009-17)
Legal Advisor and Steering Committee Member, Coalition on Intercollegiate Athletics (COIA)(2011-14)
University / Law Search Committees

- Search Committee for Law School Dean (2016-17)
- Search Committee Member, Law Director of Career Services (2016)
- Search Committee Member, University Police Chief (2015)
- Search Committee Member, Provost Fellow for Teaching and Learning (2015)

Curriculum Advisor, Law School Skills Intersession Program (2013)
Other University Committees

- University Thomas F. Frist Student Service Awards Committee
- University Honors Day Committee
- University Faculty Achievement Award Selection Committee

Other Law School Committees

- Faculty Development Advisory Group

- Curriculum and Practices Committee
- Employment and Judicial Clerkship Committee
- Library and Technology Committee
- Speakers Committee
- Faculty Appointments Committee

OTHER PROFESSIONAL EXPERIENCE

Shea & Gardner (now Goodwin Procter), Washington, D.C.
Associate Attorney, 2002-05

Honorable Gilbert S. Merritt, U.S. Court of Appeals for the Sixth Circuit, Nashville, TN
Law Clerk, 2001-02

Honorable Thomas A. Wiseman, U.S. District Court for the Middle District of Tennessee, Nashville, TN
Law Clerk, 2000-01

Honorable George C. Paine, U.S. Bankruptcy Court for the Middle District of Tennessee, Nashville, TN
Judicial Intern, Spring Semester, 2000