William W. Berry III

University of Mississippi School of Law

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**SSRN:** [http://papers.ssrn.com/sol3/cf\_dev/AbsByAuth.cfm?per\_id=878450](http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=878450" \t "_blank)

Academic appointments

University of Mississippi, University, MS

Associate Professor of Law with tenure, 2015-present

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

Research & teaching interests

Criminal law  Death penalty  Eighth Amendment  Sentencing  Sports & Entertainment law

Administrative leadership roles

Director, Cambridge Summer Abroad Program, 2012-present

Chair, University Academic Discipline Committee, 2016-present

Honors and awards

Elsie M. Hood Award (University-wide award for outstanding teacher), 2012-13

HEADWAE award (Outstanding faculty honoree from Ole Miss, Mississippi state legislature), 2013

Fellow, SEC-U Academic Leadership Development Program, 2013-14

Outstanding law teacher award (law school teaching award), 2008-09

Education

D.Phil. (Law), University of Oxford, 2012

M.Sc. (Criminology), University of Oxford, 2007

J.D., Vanderbilt University School of Law, 2000

B.A. (English), University of Virginia, 1997

Other Employment

Shea & Gardner (now Goodwin Procter), Washington, DC, 2002-05

The Honorable Gilbert S. Merritt, U.S. Court of Appeals, Sixth Circuit, 2001-02

The Honorable Thomas A. Wiseman, U.S. District Court, M.D. Tenn., 2000-01

Scholarship

**Books and book chapters**

Criminal Law, 9th ed. **forthcoming 2020**

Carolina Academic Press (with P. Marcus, L. Malone, & C. Drinan)

Sports and the Law: Text, Cases, and Problems, **forthcoming 2019**

West Academic, 6th Ed. (with S. Ross, J. Balsam & M. Harper)

5th ed. Supplement to Entertainment, Media, and the Law, 2018

West Academic (with P. Weiler & G. Myers)

Entertainment, Media, and the Law, 2015

West Academic, 5th Ed. (with P. Weiler & G. Myers)

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

**Law Review articles and essays:**

*Sixth Amendment Sentencing After* Hurst

66 UCLA L. Rev. \_\_ (forthcoming 2019)(with C.B. Hessick)

*Individualized Sentencing*

76 Wash. & Lee L. Rev. \_\_ (forthcoming 2019)

*Individualized Executions*

52 U.C. Davis L. Rev. \_\_ (forthcoming 2019)

*Evolved Standards, Evolving Justices?*

96 Wash. U. L. Rev. 104 (2018)

*The Transfer Litmus Test*

18 Va. Sports & Ent. L. J. \_\_ (forthcoming 2018)

*Unusual Deference*

70 Fla. L. Rev. 315 (2018)

*Cruel Techniques, Unusual Secrets*

77 Ohio St. L. J. 403 (2017) (with M. Ryan)

*Normative Retroactivity*

19 U. Pa. J. Const. L. 485 (2017).

*Amending Amateurism*

68 Ala. L. Rev. 551 (2016).

*Remembering* Furman’*s Comparative Proportionality*

101 Iowa L. Rev. Online 65 (2016).

*Restorative Innocence* (part of *Essays on Innocence* with L. Dervan, et al.)

68 Fla. L. Rev. 1569 (2016).

*Implementing* Just Mercy

94 Texas L. Rev. 331 (2015).

*Eighth Amendment Presumptions*

89 S. Cal. L. Rev. 67 (2015).

*Life-with-Hope Sentencing*

76 Ohio St. L. J. 1051 (2015).

*Procedural Proportionality*

22 Geo. Mason L. Rev. 259 (2015).

*Ending the Death Lottery*

76 Ohio St. L. J. 67 (2015).

*The Mandate of Miller*

51 Am. Crim. L. Rev. 327 (2014).

*Criminal Constitutional Avoidance*

104 J. Crim. L. & Criminology 105 (2014).

*Educating Athletes*

81 Tenn. L. Rev. 795 (2014).

*Practicing Proportionality*

64 Fla. L. Rev. 687 (2012).

* Cited by *State v. Pruitt*, 415 S.W. 180 (Tenn. 2013)(Koch, J., dissenting).

*Separating Retribution from Proportionality*

97 Va. L. Rev. In Brief 61 (2011).

*The European Prescription for Ending the Death Penalty*

2011 Wisc. L. Rev. 1003 (2011).

*Promulgating Proportionality*

46 Ga. L. Rev. 69 (2011).

* Cited by *State v. Cox*, 2016 WL 10789 (Ohio Ct. App. 2016)(Gallagher, J., dissenting).

*Repudiating Death*

101 J. Crim. L. & Criminology 439 (2011).

*More Different than Life, Less Different than Death*

71 Ohio St. L. J. 1109 (2010).

* Cited by *State v. Lyle*, 854 N.W. 2d 378 (Iowa 2014).

*Ending Death by Dangerousness*

52 Ariz. L. Rev. 889 (2010).

*Extraordinary and Compelling,* 68 Md. L. Rev. 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).

*American Procedural Exceptionalism*

17 Cornell J. L. & Pub. Pol’y 481 (2008).

*Discretion without Guidance*

40 Conn. L. Rev. 631 (2008).

* Cited by *United States v. Elmore*, 743 F.3d 1068 (6th Cir. 2014).

*Following the Yellow Brick Road of the Evolving Standards of Decency,* 28 Pace L. Rev. 15 (2007).

* Cited by *Connecticut v. Santiago*, No. SC 17413 (Conn. 2015)(Rogers, C.J., dissenting).

**Symposium articles and Invited contributions:**

*Three-Pointers for FARs*

8 Miss. Sports L. Rev. \_\_ (2018)(symposium).

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

28 Stan. L. & Pol’y Rev. 245 (2017)(symposium).

*Magnifying Miranda*

50 Tx. Tech L. Rev. 97 (2017)(symposium).

*Exploiting “Education”*

78 La. L. Rev. 1165 (2017)(symposium).

*Playoff Profits for Academic Programs*

5 Miss. Sports L. Rev. 1 (2016)(symposium).

*The Retroactivity Roadmap*

10 N.Y.U. J. L. & Liberty 179 (2016)(symposium).

*Writing (and re-writing) Federal Criminal Law—in the Classroom*

11 Ohio St. J. Crim. L. 767 (2014) (symposium).

*Eighth Amendment Differentness*

78 Mo. L. Rev. 1053 (2013)(symposium).

*Right about Wrongs?*

44 Conn. L. Rev. 1677 (2012)(invited essay).

**shorter publications:**

*Rethinking Capital Felony Murder*, Jotwell (February 12, 2018) (reviewing Guyora Binder, Brenner Fissell, & Robert Weisberg, Capital Punishment of Unintentional Felony Murder, 92 Notre Dame L. Rev. 1142 (2017)), <https://crim.jotwell.com/rethinking-capital-felony-murder/>.

*Preview of* Currier v. Virginia, 45 ABA Sup. Ct. Preview 142 (2018).

*Preview of* City of Hays, Kansas v. Vogt, 45 ABA Sup. Ct. Preview 146 (2018).

*Preview of* Dahda v. United States*,* 45 ABA Sup. Ct. Preview 149 (2018).

*The Execution Methods Crisis,* Jurist—Academic Commentary (Apr. 3, 2017),

<http://jurist.org/academic/2017/04/william-berry-the-execution-methods-crisis.php>.

*Preview of* Dean v. United States, 44 ABA Sup. Ct. Preview 142 (2017).

*Preview of* Montgomery v. Louisiana, 43 ABA Sup. Ct. Preview 31 (2015).

*Preview of* Kansas v. Gleason, 43 ABA Sup. Ct. Preview 36 (2015).

*Humanizing the Condemned: A Review of The Forgotten Men*, Criminal Law & Criminal Justice Books, http://clcjbooks.rutgers.edu/ (Aug. 2015).

*The Perils of Private Adjudication: A Review of Civil Justice, Privatization, and Democracy*, 24 Int’l Crim. J. Rev. 411 (2015).

*The Myth of Memorization as Education*, 4 E-Mantle Newsletter, Ctr. for Educ., Teaching, & Learning, Univ. of Miss. (Nov. 2015).

*Preview of* Whitfield v. United States, 42 ABA Sup. Ct. Preview 92 (2014).

*Preview of* Johnson v. United States, 42 ABA Sup. Ct. Preview 50 (2014).

*Assessing Rough Justice and the ICC’s Quest for Legitimacy*­, 24 Int’l Crim. J. Rev. 135 (2015).

*Preview of* Integrity Staffing Solutions v. Beck, 42 ABA Sup. Ct. Preview 22 (2014).

*How Labor Law Could Save the NCAA*, Slate.com, March 31, 2014.

*The Power of Level Three Thinking*, 2 E-Mantle Newsletter, Ctr. for Educ., Teaching, & Learning, Univ. of Miss. (Mar. 2014).

*Preview of* Abramski v. United States, 41 ABA Sup. Ct. Preview 162 (2014).

*Preview of* United States v. Castleman, 41 ABA Sup. Ct. Preview 166 (2014).

*Preview of* Peugh v. United States, 40 ABA Sup. Ct. Preview 208 (2013).

*Preview of* McQuiggin v. Perkins, 40 ABA Sup. Ct. Preview 205 (2013).

*Foreword*, 1 Miss. Sports L. Rev. 245 (2012).

*Preview of* Perry v. New Hampshire, 39 ABA Sup. Ct. Preview 80 (2011).

*Preview of* Walker v. Martin, 38 ABA Sup. Ct. Preview 118 (2010).

**Selected media, panels, and presentations :**

American Association of Law Schools Annual Meeting, Sports Law Section / Criminal Justice Section Panel, New Orleans, LA, *The Crime of Amateurism* (January 2019).

Southeastern Association of Law Schools Conference, Fort Lauderdale, FL, *The Eighth Amendment and its Future in a New Age of Punishment*, Co-organizer, Moderator, and Panelist(August 2018).

Southeastern Association of Law Schools Conference, Fort Lauderdale, FL, *College Sports and the Role of Academics Discussion Group*, Panelist (August 2018).

Southeastern Association of Law Schools Conference, Fort Lauderdale, FL, *The Future of the Death Penalty and Capital Litigation Discussion Group,* Panelist (August 2018).

Mississippi Sports Law Review Symposium, Oxford, MS, *Collegiate Recruiting and the Changing Definition of Amateurism*, Moderator and Organizer (March 2018).

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 Bar Association Criminal Justice Fall Institute, Washington, DC, AALS / ABA Faculty Roundtable, *Evolved Standards, Evolving Justices* Paper Presentation (November 2017).

University of Mississippi Center for Teaching and Learning Luncheon, Oxford, MS, *The Future of Academic Cheating*, Panelist (October 2017).

Sports Law Review, University of Mississippi School of Law, Oxford, MS, *A Conversation with Jack Ford on the Future of Intercollegiate Athletics*, Organizer and Moderator (October 2017).

American Association of Law Schools Mid-Year Meeting, Criminal Justice Section, Washington, DC, *Evolved Standards, Evolving Justices*,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 law

2018-19: Criminal Law, Death Penalty Seminar, Sports Law I (College), Sports Law II (Professional)

Summer 2019: International Sports Law

Other law courses taught: 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, Labor Law, Negotiation and Contract Drafting, Sentencing, Sentencing Theory Seminar, Sports Law, Torts I, Torts II

Undergraduate teaching appointments

Sally McDonnell Barksdale Honors College Faculty (Honors 101 and 102 series), 2013-present

Department of Legal Studies, Adjunct faculty, 2013-present

Service

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)

* + Chair (2019)
  + Chair-Elect (2018)
  + Secretary (2017)

Advisor, Mississippi Sports Law Society (2010-present)

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)

Mentor Committee, Southeastern Association of Law Schools (SEALS)(2013-18)

Auctioneer, Public Interest Law Foundation Auction (2009-2016, 2018)

Advisor, Public Interest Law Foundation (PILF)(2009-17)

AALS Cambridge Site Visit (2015)

University / Law Search Committees

 Search Committee, Dean of the Graduate School (2018-19)

 Search Committee Member, 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)

Course Design Review Evaluator, Online Education and Outreach (2015-16)

Other University Committees

 University Thomas F. Frist Student Service Awards Committee (2014)

 University Honors Day Committee (2014)

 University Faculty Achievement Award Selection Committee (2014)

Other Law School Committees

 Speakers Committee (2012-13, 2018-19)

 Faculty Appointments Committee (2010-11), (2017-18)

 Review Committee for Stacey Lantagne (2017-18)

 Curriculum and Practices Committee (2012-13)

 Employment and Judicial Clerkship Committee (2011-12)

 Library and Technology Committee (2012-13)

 Faculty Development Advisory Group (2013-14)