

# **Adam M. Gershowitz**

William & Mary Law School  
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## **William & Mary Law School**

### Faculty Positions

James D. & Pamela J. Penny Research Professor, 2023-26  
Hugh & Nolie Haynes Professor of Law, 2019-present  
Kelly Professor of Teaching Excellence, 2014-2016  
Professor of Law, 2012-present

### Administrative Positions

Vice Dean, 2022-23  
Associate Dean for Academic Affairs, 2021-22  
Associate Dean for Research and Faculty Development, 2015-2019

## **PREVIOUS EMPLOYMENT**

University of Houston Law Center, Associate Professor of Law, 2009-2012  
South Texas College of Law, Assistant Professor of Law, 2005-2009  
Covington & Burling, Litigation Associate, 2002-2005  
Hon. Robert B. King, U.S. Fourth Circuit Court of Appeals, Law Clerk, 2001-2002

## **TEACHING AND RESEARCH AWARDS**

Walter Williams, Jr. Memorial Teaching Award, W&M Law School (2022)  
McGlothlin Teaching Award, W&M Law School (2021)  
1L Professor of the Year, W&M Law School (2019)  
Walter Williams, Jr. Memorial Teaching Award, W&M Law School (2015)  
Plumeri Award for Faculty Excellence, College of William & Mary (2015)  
All University Teaching Award, Univ. of Houston (2012)  
Student Bar Association Professor of the Year, Univ. of Houston (2011)  
Order of the Barons Professor of the Year, Univ. of Houston (2010)  
All Faculty Teaching Award, South Texas College of Law (2008)  
All Faculty Advising Award, South Texas College of Law (2007)

Best New Professor Award, South Texas College of Law (2006)

## **BOOKS**

CRIMINAL PROCEDURE: THE INVESTIGATION PROCESS (2023) (with J. Bellin)

CRIMINAL LAW: CASES AND COMMENTS (Foundation Press 11<sup>th</sup> ed. 2022) (lead author)  
(previous editions: 10<sup>th</sup> ed. 2017; 9<sup>th</sup> ed. 2013)

CRIM PRO 360: THE INVESTIGATION PROCESS (Carolina Academic Press 2021)

CRIMINAL PROCEDURE: THE ADJUDICATION PROCESS (2020) (with J. Bellin)

THE WIRE: CRIME, LAW, AND POLICY (Carolina Academic Press 2013)

## **LAW REVIEW ARTICLES**

*Mercy for the Masses: A Default Rule of Automatically Triggered Commutations*, \_\_ TEX. L. REV. \_\_ (forthcoming 2024) (symposium)

*The Brady Database*, 114 J. CRIM. L. & CRIMINOLOGY \_\_\_\_ (forthcoming 2024) (with Brandon L. Garrett & Jennifer Teitcher)

*Laundering Police Lies*, 2023 WIS. L. REV. 1187 (2023) (with Caroline Lewis)

*The Tesla Meets the Fourth Amendment*, 48 BYU L. REV. 1135 (2023)

*The Myth of the All-Powerful Federal Prosecutor at Sentencing*, 95 ST. JOHN'S L. REV. 581 (2022)

*The Race to the Top to Reduce Prosecutorial Misconduct*, 89 FORDHAM L. REV. 1179 (2021) (symposium)

*The Opioid Doctors: Is Losing Your License a Sufficient Penalty for Dealing Drugs?* 72 HASTINGS L.J. 871 (2021)

*Old Age as the Hidden Sentencing Factor*, 29 ELDER L.J. 249 (2021)

*Punishing Pill Mill Doctors: Inconsistent Sentences in the Opioid Epidemic*, 54 U.C. DAVIS L. REV. 1053 (2020)

*Justice on the Line: Prosecutorial Screening Before Arrest*, 2019 U. ILL. L. REV. 833

*Criminal Justice Apps*, 105 VA. L. REV. ONLINE 37 (2019)

*The Challenge of Convincing Ethical Prosecutors That Their Profession Has a Brady Problem*, 16 OHIO ST. J. CRIM. L. 307 (2019) (solicited)

*Prosecutorial Dismissals as Teachable Moments (and Databases) for the Police*, 86 GEO. WASH. L. REV. 1525 (2018) (symposium)

*The Post-Riley Search Warrant: Search Protocols and Particularity in Cell Phone Searches*, 69 VAND. L. REV. 585 (2016)

*Post-Trial Plea Bargaining in Capital Cases: Using Conditional Commutations To Remove Weak Cases From Death Row*, 73 WASH & LEE L. REV. 1359 (2016) (symposium)

*Consolidating Local Criminal Justice: Should Prosecutors Control the Jails?* 51 WAKE FOREST L. REV. 677 (2016) (symposium)

*Google Glass While Driving*, 47 ARIZ. ST. L.J. 755 (2015)

*Rethinking the Timing of Capital Clemency*, 113 MICH. L. REV. 1 (2014)

*An NTSB for Capital Punishment*, 47 TEX. TECH L. REV. 151 (2014) (symposium)

*The Wire as a Gap-Filling Class on Criminal Law and Procedure* 64 J. LEGAL EDUCATION 117 (2014)

*Why Arizona v. Gant is the Wrong Solution to the Warrantless Cell Phone Search Problem*, 94 B.U. L. REV. ANNEX 9 (2014) (solicited)

*Seizing a Cell Phone Incident to Arrest: Data Extraction Devices, Faraday Bags, or Aluminum Foil as a Solution to the Warrantless Cell Phone Search Problem*, 22 WM. & MARY B. RTS. J. 601 (2013)

*Texting While Driving Meets the Fourth Amendment, A Proposal to Deter Texting and Warrantless Cell Phone Searches*, 54 ARIZ. L. REV. 577 (2012)

*Is Texas Tough on Crime But Soft on Criminal Procedure?* 49 AM. CRIM. L. REV. 31 (2012)

*The State (Never) Rests: How Excessive Prosecutor Caseloads Harm Criminal Defendants*, 105 NW. U. L. REV. 261 (2011) (with L. Killinger)

*Password Protected? Can a Password Save Your Cell Phone From a Search Incident to Arrest?* 96 IOWA L. REV. 1125 (2011)

*12 Unnecessary Men: The Case for Eliminating Jury Trials in Drunk Driving Cases*, 2011 U. ILLINOIS L. REV. 961

*Statewide Capital Punishment: The Case for Eliminating Counties' Role in the Death Penalty*, 63 VAND. L. REV. 307 (2010)

*Imputed Liability for Supervising Prosecutors: Applying the Military Doctrine of Command Responsibility To Reduce Prosecutorial Misconduct*, 14 BERKELEY J. CRIM. L. 395 (2009) (with G. Corn)

*Prosecutorial Shaming: Naming Attorneys To Reduce Prosecutorial Misconduct*, 42 U.C. DAVIS L. REV. 1059 (2009)

*The iPhone Meets the Fourth Amendment*, 56 UCLA L. REV. 27 (2008)

*Get in the Game or Get Out of the Way: Fixing the Politics of Death*, 94 VA. L. REV. IN BRIEF 56 (2008) (solicited)

*An Informational Approach to the Mass Imprisonment Problem*, 40 ARIZ. ST. L.J. 47 (2008)

*Raise the Proof: A Default Rule for Indigent Defense*, 40 CONN. L. REV. 85 (2007)

*Imposing a Cap on Capital Punishment*, 72 MO. L. REV. 73 (2007)

*Pay Now, Execute Later: Why Counties Should Be Required to Post a Bond to Seek the Death Penalty*, 41 U. RICH. L. REV. 861 (2007) (solicited)

*The Invisible Pillar of Gideon*, 80 IND. L.J. 571 (2005)

*The Diffusion of Responsibility in Capital Clemency*, 17 J. L. POL. 669 (2001), reprinted in revised form in CAPITAL PUNISHMENT: A BALANCED EXAMINATION (2004)

Note, *The Supreme Court's Backwards Proportionality Jurisprudence: Comparing Judicial Review of Excessive Criminal Punishments and Excessive Punitive Damages Awards*, 86 VA. L. REV. 1249 (2000)

*Delaware's Capital Jury Selection: Inadequate Voir Dire and the Problem of Automatic Death-Penalty Jurors*, 2 DEL. L. REV. 235 (1999)

## **SHORTER PUBLICATIONS**

*The One Trap Every Trump Prosecutor Needs to Avoid*, SLATE.COM, Aug. 25, 2023

*The Big Flaw With the Law That Prevents Trump From Getting a Georgia Pardon*, SLATE.COM, Aug. 17, 2023

*Prescribing Opioids Without Fear of Prosecution*, RICHMOND TIMES-DISPATCH, Feb. 25, 2022

*The Post-Riley Search Warrant*, 43 SEARCH & SEIZURE L. REP. 53 (2017)

*Symposium on Riley v. California: Surprising Unanimity, Even More Surprising Clarity*, SCOTUSblog, June 26, 2014, available at <http://www.scotusblog.com/2014/06/symposium-surprising-unanimity-even-more-surprising-clarity/>

*Can a Password Stop Police From Searching Your Cell Phone Incident to Arrest?* 38 SEARCH & SEIZURE L. REP. 81 (2012)

*Prosecutorial Misconduct and Supervisory Responsibility*, 13 LOYOLA J. PUB. INTEREST L. 331 (2012) (invited lecture)

*Can Police Search Your Cell Phone, and Even Break Your Password, During an Arrest?* 35 CHAMPION 16 (Nov. 2011)

*Judge's Ill-Timed Ruling Invites Irrationality in Public's Views About Capital Punishment*, HOUS. CHRON., March 21, 2010, at B10

*Searching Cell Phones Incident to Arrest: Can Courts and Legislatures Impose Limits on a Bright Line Rule?*, 36 SEARCH & SEIZURE L. REP. 9 (2009)

*The Death Penalty for Child Rape: Why Texas May Help Louisiana*, JURIST (May 2, 2007)

*Supreme Court Nominees and the Fourth Circuit Curse*, FINDLAW (March 2003)

### **AMICUS CURIAE AND EXPERT TESTIMONY**

"Amicus Curiae Brief of Criminal Law Professors in Support of Petitioner Riley and Respondent Wurie" (cited by the Supreme Court in *Riley v. California*, 134 S. Ct. 2473 (2014)).

"The American Law Institute Abandons Its Model Capital Punishment Statute," *State v. Thuesen*, April 5, 2010 (expert testimony in capital murder trial in Brazos County, Texas).

“The Financial Cost of Capital Punishment,” Testimony to the Capital Punishment Subcommittee of the Texas House of Representatives, March 12, 2009.

### **MEDIA APPEARANCES**

Quoted in more than 400 news stories, including:

The New York Times, Wall Street Journal, Washington Post, NPR, ABC News, Los Angeles Times, Houston Chronicle, Associated Press, USA Today, Atlanta Journal & Constitution, BusinessWeek, CNET, ABA Journal

### **Courses Taught**

Criminal Law

Criminal Procedure: The Investigation Process

Criminal Procedure: The Adjudication Process

Capital Punishment and the Law

The Wire: Crime, Law, and Policy

Health, Crime, and the Opioid Crisis

Law and: Exploring the Relationship Between Law and Other Disciplines

Texas Criminal Procedure

Deposition Skills

Constitutional Law

Property

Contracts

### **SELECTED SERVICE**

William & Mary

Vice Dean (2022-23)

Associate Dean for Academic Affairs (2021-22)

*Responsibilities included:* Overseeing the curriculum of the Law School and all managerial activities related to developing, delivering, and staffing the curriculum; overseeing the Associate Dean for Graduate Programs, the Associate Dean for Externships, the Director of Clinical Programs and the Registrar; hiring and supervision of over eighty adjunct faculty

Associate Dean for Research and Faculty Development (2015-2019)

*Responsibilities included:* Course scheduling, hiring and supervision of over seventy adjunct faculty, mentoring of junior faculty, coordinating faculty

speakers and enrichment programming, supervising the summer research grant program, faculty media promotion, administering faculty travel pool

Academic Advisory Committee (Chair, 2021-23)  
Ad Hoc Committee on Teaching Assessment (2021-22)  
Appointments Committee (2013-2015, 2017-19, 2020-22; Chair 2014-2015)  
Assessment Steering Committee (University) (2021-23)  
Clerkship Committee (2017-18)  
Clinical Director Search Committee (2021)  
Curriculum Committee  
(2012-2014, 2015-2023; Chair, 2012-2014 & 2017-20; ex officio 2021-2023)  
Dean Search Committee (2019-20)  
Dean of Students Search Committee (2018 and 2022)  
Enrichment Committee (Chair, 2016-2019)  
Faculty Assembly (2020-2022) (Executive Committee 2021-22) (University)  
Institutional Change Committee (University) (2021-23)  
LLM Director Search Committee (Chair, 2022)  
McGlothlin Teaching Award Committee (2016-2019; 2021-2023)  
Status Committee (2019-20)  
Student Conduct and Honors Appeals Committee (University) (2021-2023)  
Vice Provost for Academic Affairs Search Committee (University) (2022)

#### University of Houston

Appointments Committee (2009-2010, 2011-2012)  
Executive Committee (elected by faculty, 2011-2012)  
Honor Court (elected by students, 2010-2012)  
Faculty Scholarship Committee (2010-2012)

#### South Texas College of Law

Appointments Committee (2006-2008)  
Fred Parks Distinguished Professor Search Committee (2006-2009)  
Student Faculty Committee (2007-2009, Chair 2008-2009)  
Student Awards Committee (2007-2009)  
Curriculum Committee (2008-2009)  
Financial Aid Committee (2006-2007)  
Library Committee (2005-2006)

#### **SELECTED PRESENTATIONS AND LECTURES**

“The Brady Database,” Criminal Justice Ethics Schmooze, Fordham Law School, June 8, 2023

"The Brady Database," CrimFest, July 19, 2021

"Old Age as the Hidden Sentencing Factor," University of Kentucky College of Law, Apr. 22, 2021

"The Race to the Top to Reduce Prosecutorial Misconduct," Fordham Law School, Oct. 9, 2020

"Are Federal Prosecutors (Sometimes) Less Powerful Than We Think?" South Texas College of Law, September 25, 2020

"Police Reform Versus Defunding the Police," College of William & Mary, July 13, 2020.

"Criminal Justice Apps," Digital Democracy Symposium, University of Virginia School of Law, January 25, 2019.

Justice on the Line: Prosecutorial Screening Before Arrest, Neighborhood Criminal Justice Roundtable, University of Richmond School of Law, May 14, 2018.

"The Intake Prosecutor: Prosecutorial Screening of Warrantless Arrests," ABA-AALS Criminal Justice Conference, Washington, D.C., Nov. 2, 2017.

"Dismissals as Teachable Moments (and Databases) for Police," George Washington University Law School, Oct. 26, 2017.

"The Supreme Court's 2016-2017 Criminal Procedure Term," Virginia Supreme Court, Richmond, Va., Aug.. 22, 2017.

"Consolidating Local Criminal Justice: Should Prosecutors Control the Jails?" Wake Forest Law School, Apr. 1, 2016.

"Warrant and Warrantless Searches of Digital Devices," North Carolina Judicial College, University of North Carolina, Chapel Hill, N.C., Nov. 6, 2015.

"The Supreme Court's 2014-2015 Criminal Procedure Term," Virginia Supreme Court, Richmond, Va., Sept. 1, 2015.

"The Law of Constructive Possession, Drug Quantity, and Intent to Distribute in the United States, University of Delaware, Newark, De., Nov. 6, 2014.



“Cell Phone Searches and the Aftermath of *Riley v. California*, Inn of Court,”  
Williamsburg, Va., Oct. 7, 2014.

“The Supreme Court’s 2013-2014 Criminal Procedure Term,” Virginia Court of  
Appeals, Richmond, Va., Aug. 19, 2014.

“Big Data and the Fourth Amendment,” ABA Criminal Justice Meeting, Washington,  
D.C., Nov. 1, 2013.

“The Supreme Court and the Fourth Amendment,” Virginia Court of Appeals,  
Richmond, Va., Aug. 27, 2013.

“Teaching *The Wire*: Fiction as Pedagogical Tool”, Southeastern Association of Law  
Schools Annual Meeting, Palm Beach, Fla., Aug. 10, 2013.

Summarizing and Commenting on the Evidence in American Versus Canadian  
Courts, William & Mary Law School, Feb. 7, 2013.

“Harmonizing Clinical and Doctrinal Teaching in Criminal Law, SALT Teaching  
Conference, Baltimore, Md., Oct. 5, 2012.

“Electronic Privacy and Criminal Procedure,” Public Privacy Workshop, William &  
Mary Law School, Sept. 6, 2012.

“A Brief Overview of the Law of Bail in Texas,” ABA Pretrial Justice Conference,  
Austin, TX, March 30, 2012.

“Prosecutorial Misconduct and Supervisory Responsibility,” Loyola University New  
Orleans College of Law, Nov. 3, 2011.

“The Supreme Court and the Fourth Amendment,” Symposium on Lifelong Learning,  
Jewish Community Center, Houston, TX, Oct. 12, 2011.

“Trading a Confession for a Search: A Proposal to Deter Texting While Driving and  
Warrantless Cell Phone Searches,” William & Mary Law School, Oct. 4, 2011.

“The Constitutionality of Gang Injunctions,” ACLU Panel, University of Houston Law  
Center, March 2, 2011.

“Password Protected? Can a Password Save Your Cell Phone From the Search  
Incident to Arrest Doctrine?” Stetson University College of Law, Feb. 3, 2011.

"The Fourth Amendment and Technology: Future Supreme Court Decisions on GPS Monitoring and Cell Phone Searches," American Constitution Society, University of Houston Law Center, Oct. 19, 2010.

"Password Protected? Can a Password Save Your Cell Phone From the Search Incident to Arrest Doctrine?" Florida State University College of Law, Sept. 24, 2010.

"Warrantless Searches of Cell Phones," Harris County Judicial Education Conference, Houston, TX, Aug. 11, 2010.

"Is Texas Tough on Crime But Soft on Criminal Procedure?" Southeastern Association of Law Schools Annual Meeting, Palm Beach, Fla., Aug. 4, 2010.

"12 Unnecessary Men: The Case for Eliminating Jury Trials in Drunk Driving Cases," Law and Society Association Annual Meeting, Chicago, Ill., May 29, 2010.

"So You Want To Be a Law Professor," University of Houston Law Center, May 22, 2010.

"Capital Punishment Is Bad Public Policy," Emerson Unitarian Church, Houston, TX, May 9, 2010.

"12 Unnecessary Men: The Case for Eliminating Jury Trials in Drunk Driving Cases," Arizona State University College of Law, Southwestern Junior Scholars Conference, March 15, 2010.

"Panel Discussion on Capital Punishment," University of Houston Honors College, Feb. 17, 2010.

"Capital Punishment Is Not Morally Justified: A Response to Professor Stephanos Bibas," University of Houston Law Center, Feb. 3, 2010.

"The Case for Eliminating Jury Trials in Misdemeanor DWI Cases," Faculty Workshop, University of Houston Law Center, Oct. 1, 2009.

"Prosecutorial Shaming," Faculty Workshop, South Texas College of Law, Oct. 29, 2008.

"The iPhone Meets the Fourth Amendment," Faculty Workshop, University of Houston Law Center, Oct. 27, 2008.

"The Death Penalty: New Age Questions in an Age Old Debate," Southeastern Association of Law Schools Annual Meeting, Aug. 1, 2008.

“The iPhone Meets the Fourth Amendment,” Faculty Workshop, South Texas College of Law, Feb. 13, 2008.

“Cell Phone Searches and the Fourth Amendment,” Garland Walker Inns of Court, Houston, TX, Dec. 11, 2007.

Keynote Speaker, University of Delaware Undergraduate Research Symposium, “Legal Research Inside and Outside the University,” May 5, 2007.

“The Sentencing of Enron’s Jeffrey Skilling,” Houston Chronicle Podcast, Oct. 23, 2006.

“Imposing a Cap on Capital Punishment,” Southeastern Association of Law Schools Annual Meeting, July 21, 2006.

“The Invisible Pillar of Gideon,” Florida State University College of Law, Faculty Workshop, Jan. 5, 2005.

“The Invisible Pillar of Gideon,” South Texas College of Law, Faculty Workshop, Nov. 9, 2004.

## EDUCATION

**UNIVERSITY OF VIRGINIA SCHOOL OF LAW**, Charlottesville, Virginia  
Juris Doctor, 2001

Roger and Madeleine Traynor Prize for Best Paper by a Graduating Student  
Order of the Coif  
*Virginia Law Review*, Articles Development Editor

**UNIVERSITY OF DELAWARE**, Newark, Delaware  
B.A. with Distinction in Political Science and Criminal Justice, *summa cum laude*, 1998

Best Paper Award, University of Delaware Legal Studies Colloquium  
Phi Beta Kappa  
Len Perfetti Award for Outstanding Criminal Justice Major

## ADMITTED TO PRACTICE

Texas (2011-2021)

District of Columbia (2002-present) (inactive)

Virginia (2001-present) (inactive)