

**STEPHEN F. SMITH**  
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**Academic and Legal Employment (in reverse-chronological order)**

Notre Dame Law School

Diane & M.O. Miller II Research Professor of Law (2020-present)

Professor of Law (2009-present)

Visiting Professor of Law (Fall 2008)

University of Virginia School of Law

John V. Ray Research Professor (2006-2009)

Professor of Law (2006-2009)

Associate Professor of Law (2000-2006)

Columbus School of Law, Catholic University of America

Visiting Professor of Law (Spring 2007)

George Mason University School of Law

Adjunct Professor (1997-2000)

Sidley & Austin, Washington, D.C.

Associate, Civil, Criminal, and Constitutional Litigation Section (1995-2000)

Jones Day Reavis & Pogue, Washington, D.C.

Associate, Issues and Appeals Section (1994-95)

Interim Associate (Summer 1993)

Supreme Court of the United States

Law Clerk to Justice Clarence Thomas (October 1993 Term)

U.S. Court of Appeals for the D.C. Circuit

Law Clerk to Judge David B. Sentelle (1992-93)

Summer Associate – all in Washington, D.C. except as noted

Williams & Connolly, Skadden Arps Slate Meagher & Flom, Mayer Brown  
& Platt, Hunton & Williams (Richmond, Va.), Mays & Valentine  
(Richmond, Va.)

## Representative Selection of Publications to Date

### Book chapters

“*Criminal Procedure after Rehnquist*,” in THE CONSTITUTIONAL LEGACY OF WILLIAM H. REHNQUIST (WEST 2015) (BRADFORD P WILSON, ED.)

### Articles

*Corporate Criminal Liability: End It, Don't Mend It*, --- J. Corp. Law. --- (2022)

*Federalization's Folly*, 56 San Diego L. Rev. 31 (2019)

“*Innocence*” and the Guilty Mind, 69 Hastings L.J. 1609 (2018)

*Overcoming Overcriminalization*, 102 J. Crim. L. & Crim'y 537 (2012)

*Taking Strickland Claims Seriously*, 93 Marq. L. Rev. 515 (2010) (symposium issue)

*Clarence X?: The Black Nationalist Behind Justice Thomas's Constitutionalism*, 4 N.Y.U. J. L. & Liberty 583 (2009) (symposium issue)

*Proportional Mens Rea*, 46 Am. Crim. L. Rev. 127 (2009)

*The Supreme Court and the Politics of Death*, 94 Va. L. Rev. 283 (2008)

*Proportionality and Federalization*, 91 Va. L. Rev. 879 (2005)

*Activism as Restraint: Lessons from Criminal Procedure*, 80 Tex. L. Rev. 1057 (2002)

### Essays/Book Reviews

*Has The “Machinery of Death” Become A Clunker?*, 49 U. Richmond L. Rev. 845 (2015) (symposium issue)

*Yates v. United States: A Case Study in Overcriminalization*, 163 U. Pa. L. Rev. Online 147 (2014)

*A Judicial Cure for the Disease of Overcriminalization*, 135 Heritage Foundation Leg. Memo. 1 (2014)

*The Criminal Justice System as the Enemy of Liberty* (reviewing WILLIAM J. STUNTZ, *THE COLLAPSE OF AMERICAN CRIMINAL JUSTICE* (HARV. UNIV. PRESS 2011)) (2012)

*Localism and Capital Punishment*, 64 *Vand. L. Rev. En Banc* 105 (2011)

*Response to Michael Sandel*, 1 *J. L., Phil. & Culture* (Spring 2009) (symposium issue)

*Jail for Juvenile Child Pornographers? A Reply to Professor Leary*, 15 *Va. J. Soc. Pol'y & Law* 505 (2009)

*Cultural Change and "Catholic Lawyers,"* 1 *Ave Maria L. Rev.* 31 (2003) (solicited piece for inaugural issue)

*"We the Protestants,"* *First Things: The Journal of Religion in Public Life*, Dec. 2002 issue, at 43 (reviewing *SEPARATION OF CHURCH AND STATE* by Philip Hamburger)

*The Rehnquist Court and Criminal Procedure*, 73 *U. Colo. L. Rev.* 1337 (2002) (symposium)

*Taking Lessons from the Left? Judicial Activism on the Right*, 1 *Geo. J. L. & Pub. Pol'y* 57 (2002) (solicited piece for inaugural issue)

### **Selected Invited Presentations**

Guest Lecture on the role of prosecutorial misconduct in wrongful convictions – Notre Dame Law School's Exoneration Justice Clinic (2022)

Panel on Curbing Prosecutorial Misconduct, Symposium of Notre Dame Law School's Exoneration Justice Clinic (2022)

Constitution Day Lecture regarding the jurisprudence of Justice Clarence Thomas, Louisiana State University (2021)

Panel on abolishing corporate criminal liability – Georgetown Law Center/McDonough School of Business (2021)

Panel on UK Supreme Court's "Second Brexit" decision – Notre Dame Law School's London Global Gateway (2019)

Faculty workshop, Pazmany Peter Law School (Budapest, Hungary) (2018)

Presentation on the “overfederalization” of criminal law – Academy for Justice, sponsored by Arizona State University’s law school (2017)

Conference on White Collar Crime, Journal of Law, Ethics, and Public Policy – Notre Dame Law School (March 2014)

Symposium on Overcriminalization, Journal of Criminal Law and Criminology – Northwestern University School of Law (January 2012)

U.S. House of Representatives, Subcommittee on Crime, Terrorism and Homeland Security (Sept. 28, 2010) – invited testimony at congressional hearing on “Reining in Overcriminalization: Assessing the Problem, Proposing Solutions”

Criminal Appeals Conference, Marquette University School of Law (June 2009)– presentation on claims of ineffective assistance of counsel in criminal cases

The Madison Program, Princeton University–made lead presentation on Chief Justice William Rehnquist’s legacy in constitutional criminal procedure (Feb. 2009)

Sixth Annual William Howard Taft Supreme Court Review (July 2008)–panel discussion along with Professors Martin Lederman, Ronald Rotunda, and Michael Seidman

American Enterprise Institute–panel presentation during conference on “Higher Education Governance: Stewardship or Sham?” (Apr. 2008)

Catholic University of America–delivered comment at international conference (“A Common Morality for the Global Age: In Gratitude for What We Are Given”) on presentation by Harvard Professor Michael Sandel on the ethic of “giftedness” (Mar. 2008)

Symposium, Virginia Journal of Law and Public Policy (Mar. 2008)—panel discussion on using child pornography laws to address “sexting” by minors

American Council of Trustees and Alumni–panel presentation on recent Dartmouth governance issues (Sept. 2007)

Judicial Conference, U.S. Court of Appeals for the Armed Forces–lecture on recent developments in the Supreme Court’s jurisprudence concerning effective assistance of counsel in criminal cases (May 2007)

University of Notre Dame School of Law (Dec. 2006) (presented “*The Supreme Court and the Politics of Death*”)

Columbus School of Law, Catholic University of America—presentation as member of panel on the role of religion in American legal education (Sept. 2006)

University of California (Davis) School of Law (Apr. 2006) (presented “*The Supreme Court and the Politics of Death*”)

Pepperdine University School of Law (presented “*Innocence*” and *the Guilty Mind*) (Feb. 2006)

Columbus School of Law, Catholic University of America (presented “*Innocence*” and *the Guilty Mind*) (Feb. 2006)

University of San Diego School of Law (presented “*Innocence*” and *the Guilty Mind*) (Dec. 2005)

University of Michigan School of Law Legal Theory Workshop (Sept. 2005) (presented *Proportionality and Federalization*)

Second Annual William Howard Taft Supreme Court Review (July 2004)—panel discussion along with Judge Kenneth Starr, General Walter Dellinger, and Professor Michael Seidman

Bill of Rights Institute Conference on the Fourth Amendment—lecture to high school government teachers from across the country (June 2004)

University of Minnesota School of Law Faculty Workshop (March 2004) (presented early version of *Proportionality and Federalization*)

University of St. Thomas School of Law Faculty Workshop (March 2004) (presented *The Guilt/Blame Divide in Federal Criminal Law*)

Georgetown University Law Center Colloquium on Constitutional Law and Theory (Feb. 2004) (presentation regarding race and the Warren Court revolution in criminal procedure)

University of Virginia Faculty Research Conference (Jan. 2004) (presented comment on *Habeas Bargaining* by Professor Anup Malani)

Supreme Court of Virginia Judicial Conference (Aug. 2003)—lecture for General District Court judges from across Virginia regarding major recent cases decided by the U.S. Supreme Court

Bill of Rights Institute Conference for Teachers—lecture to high school

government teachers on constitutional criminal procedure (June 2003)

University of Michigan School of Law Legal Theory Workshop (Feb. 2002)  
(presented *Activism as Restraint: Lessons from Criminal Procedure*)

Ave Maria School of Law Faculty Workshop (Feb. 2002) (presented *Activism as Restraint: Lessons from Criminal Procedure*)

University of Chicago Federalist Society (Jan. 2002) (debate with Prof. Albert Alschuler)

University of Virginia Faculty Retreat (Jan. 2002) (early presentation of *Activism as Restraint: Lessons from Criminal Procedure*)

Conference on Conservative Judicial Activism, Byron R. White Center for the Study of American Constitutional Law, University of Colorado School of Law (Oct. 2001) (presented early version of *The Rehnquist Court and Criminal Procedure*)

### **Student Presentations**

Notre Dame St. Thomas More Society

Notre Dame Federalist Society

Notre Dame Black Law Student Association

UVA American Constitution Society (multiple presentations)

UVA Black Law Student Association (multiple presentations)

UVA Conference on Public Service and the Law (multiple presentations)

UVA Federalist Society (multiple presentations)

UVA Law Christian Fellowship (multiple presentations)

UVA Public Interest Law Association (multiple presentations)

UVA St. Thomas More Society (multiple presentations)

UVA Voz Latina Career Placement Workshop

### **Courses Offered (asterisks indicate 2021-22 offerings)**

Appellate Advocacy

Appellate Litigation: Principles & Practice

Criminal Adjudication (also known as “Bail to Jail” or “Advanced Criminal Procedure”)\*

Criminal Law\*

Federal Criminal Law\*

Race & Policing Seminar\*

Seminar in Ethical Values

## **Institutional Service**

### **Committee Assignments (asterisk indicate current assignment)**

Notre Dame Law School Admissions Committee  
Notre Dame Law School Clerkship Committee  
Notre Dame Law School Promotions Committee\*  
Notre Dame Law School Summer Research Funding Committee  
University of Notre Dame Committee on Faculty Appeals  
UVA Admissions Committee  
UVA Entry-Level Appointments Committee  
UVA Clerkship Committee  
UVA Honor Committee Representative  
UVA Order of the Coif Committee  
UVA Public Service Center Search Committee  
UVA Public Service Committee  
UVA Daniel J. Meador Lecture Committee  
UVA Writing Prize Committee

### **University Institutional Service**

Member, Board of Advisors, Notre Dame Law School Exoneration Justice Clinic  
(2021-present)  
Member, University Committee for Faculty Appeals (2019-21)  
Student-Athlete Mentor, Notre Dame Athletics Department (2009-10)  
Advisor, National Criminal Justice Command College (sponsored by UVA's School  
of Continuing and Professional Education)  
Commonwealth of Virginia Campaign for charity–Law School representative (2004-  
06), Law School Foundation representative (2006), University-wide  
Honorary Chairman (2005)  
UVA Law School Liaison, FBI National Academy, Quantico, VA (2000-2009)  
Member, Faculty Board of Advisors, St. Anselm Institute for Catholic Thought  
(UVA)

### **Government Appointments**

Member, Indiana Criminal Code Evaluation Commission (2009-11) (gubernatorial  
appointment)  
Member, Albemarle County Police Citizens Advisory Committee (2005-09)  
(appointed by County Board of Supervisors; reappointed in 2008)  
Community Representative, Charter School Review Committee, Albemarle County  
School Board (2002-09) (appointed by School Board)

Community Representative, Asst. Superintendent Search Committee, Albemarle County School Board (2002) (appointed by School Board)  
Chairman, Civil Rights Reviewing Authority, U.S. Department of Education (2001-04) (appointed by Education Secretary Rodney Paige)  
Special Counsel, Judicial Review Commission on Foreign Asset Control (2000-01)  
Majority Counsel, House of Representatives Select Subcommittee on U.S. Involvement in Iranian Arms Transfers to Bosnia (1996-97)

### **Community Service (in reverse-chronological order)**

Member, Board of Directors, Tucker Foundation, Dartmouth College (2007-11)  
Member, Board of Trustees, Dartmouth College (2007-11)  
Member, Board of Trustees, Multiple Sclerosis Society of the Blue Ridge (2006-2009)  
Member, Board of Directors, Piedmont Family YMCA (2002-2009)  
Member, Executive Committee, United Way for Thomas Jefferson Area (2002-2009)  
Member, Program Review & Funding Committee, United Way for Thomas Jefferson Area (2002-05)  
Member, Board of Directors, United Way for Thomas Jefferson Area (2001-2009)  
Chairman, Civil Rights Reviewing Authority, U.S. Department of Education (2001-2004)  
Member, Advisory Board, Charlottesville, Va. "I Have a Dream" Foundation (2001-2009)  
Member, Board of Directors, Haiti Healthcare Foundation (2003-07)  
Member, Board of Directors, Haiti Outreach Foundation, Inc. (2007-2010)  
Member, Board of Trustees, Multiple Sclerosis Society of the Blue Ridge (2006-2009)  
Member, Executive Committee, Multiple Sclerosis Society of the Blue Ridge (2007-2009)  
Member, Board of Directors, United Way for Thomas Jefferson Area (2001-2009)  
Member, Executive Committee, United Way for Thomas Jefferson Area (2002-2009)  
Member, Albemarle County Rotary Club (2002-2009)  
Member, Knights of Columbus (1992-2000)  
Member, Order of the Holy Sepulchre (2004-present)  
Member, Program Review & Funding Committee, United Way for Thomas Jefferson Area (2002-05)  
Member, "Excellence in Non-Profit Leadership" Award Selection Committee, United Way of the Thomas Jefferson Area (2008-2009)

### **Education**

Honorary M.A., Dartmouth College (2007)  
J.D., University of Virginia School of Law (1992)  
B.A., History and Philosophy, Dartmouth College (1988)



Gonzaga College High School, Washington, D.C. (1984-88)  
Our Lady of Perpetual Help School, Washington, D.C. (1972-80)

**Bar Admissions and Professional Associations**

Edward Coke Appellate Inn of Court (Washington, D.C.) (until 2009)  
Fourth Circuit Judicial Conference  
U.S. Court of Appeals for the D.C. Circuit  
U.S. Court of Appeals for the Federal Circuit  
U.S. Court of Appeals for the Third Circuit  
U.S. Court of Appeals for the Fourth Circuit  
U.S. Court of Appeals for the Sixth Circuit  
U.S. Court of Appeals for the Ninth Circuit  
U.S. Court of Appeals for the Eleventh Circuit  
Virginia State Bar (admitted in 1995)