

# David McCord

## Professor of Law, Drake University Law School

2621 Carpenter St., Des Moines, IA 50311; david.mccord@drake.edu; (515) 271-2069

### Employment:

Drake University Law School: 1991-present Professor of Law; 1984-91 Associate Professor of Law (visiting at Suffolk Law School 1992-93); Associate Dean 2001-2004 and 2016-2018.

June 2004-August 2006: Served as the Director of the National Jury Center of the American Judicature Society (AJS) (since disbanded), while also maintaining my position as a Professor at Drake Law School. I served through the summer of 2006, at which time I voluntarily stepped down to focus once again full-time on my professorial duties.

1978-84: Legal practice in Phoenix, Arizona as an Assistant Attorney General prosecuting white collar crime, and then as a civil litigation associate at a medium-sized firm.

### Education:

J.D. Harvard Law School, 1978, *cum laude*;  
B.A. Illinois Wesleyan University, 1975, *summa cum laude*.

### Honors/Memberships:

Elected member of the American Law Institute, May, 2006.

Committee on Sections and Annual Meeting, American Association of Law Schools, 2005-2007.

Twice voted Professor of the Year by the graduating students.

Madeleine Levitt Distinguished Community Service Award from Drake University, 2010; Iowa Governor's Public Service Award, 2009.

Member of Board of Directors of the Midwest Legal Immigration Project since its inception more than a decade ago (organization has been dormant since 2013).

### Publications

#### 1. Death Penalty-Related:

##### Book:

Death Penalty Cases, 3<sup>rd</sup> Ed. (2010), co-author with Barry Latzer. (with Teachers' Manual created solely by McCord).

##### Website:

Since 2004 I have located every defendant sentenced to death, by year, researched sources to write a short summary of each case, and posted them all on my website "Death Sentences Today:" <http://deathsentencetoday.wix.com/davidmccord#>

## Articles:

A Statistical Analysis of Predictors Associated With the Dramatic Decline in Death Sentences in the United States in the Last Two Decades (with co-author Dr. Talia Harmon, social scientist at Niagara University), 3 *Journal of Criminal Justice & Law* 1-20 (2019).

Differentiating Higher-Level Homicides: An Empirical Analysis of the Impacts of Legal Definitions in the Real World, Plus an Illumination of the Under-studied Crime of Second-Degree Murder (with co-authors Dr. Michi Matsukura, a social scientist at Drake University, and Dr. Lendie Follett, a statistician at Drake University), 67 *Drake L. Rev.* 679-709 (2019).

Lethal Rejection: An Empirical Analysis of the Astonishing Plunge in Death Sentences in the United States from their Post-Furman Peak (with co-author Dr. Talia Harmon, social scientist at Niagara University), 81 *Albany Law Review* 1-44 (2017-2018) .

The Proposed Capital Penalty Phase Rules of Evidence (with co-author Hon. Mark W. Bennett, Federal District Judge, Northern District of Iowa), 36 *Cardozo L. Rev.* 417-497 (2014).

“Sociology, I’d Like You to Meet the Death Penalty,” Book Review of David Garland’s *Peculiar Institution: America’s Death Penalty in an Age of Abolition*, 32 *Crim. Justice Ethics* 51-66 (2013).

Lethal Connection: The “War on Drugs” and Death Sentencing, 15 *J. Race, Gender & Just.* 1 (2012) (invited symposium paper).

What’s Messing with Texas Death Sentences? 43 *Tex. Tech L. Rev.* 601-613 (2011).

Should Commission of a Contemporaneous Arson, Burglary, Kidnapping, Rape, or Robbery Be Sufficient to Make a Murderer Eligible for a Death Sentence?—An Empirical and Normative Analysis, 49 *Santa Clara L. Rev.* 1-50 (2008).

“Capital Punishment: History and Politics” in the *Encyclopedia of American Civil Liberties*, Paul Finkelman, Ed., (2006), at 238-242.

Editor of *Judicature* magazine symposium issue “The Effects of Capital Punishment on the Administration of Justice (March/April 2006); wrote the Introduction and the Afterword.

Lightning Still Strikes: Evidence from the Popular Press that Death Sentencing Continues to Be Unconstitutionally Arbitrary More than Three Decades after *Furman*, 71 *Brooklyn L. Rev.* 797-927 (2005).

Switching Juries in Mid-Stream: The Perplexities of Penalty Phase-Only Retrials (solicited by this peer-reviewed journal) 2 *Ohio St. J. Crim. L.* 215-259 (2004).

A Year in the Life of Death: Murders and Capital Sentences in South Carolina, 1998, 53 *S. C. L. Rev.* 249-360 (2002)

An Open Letter to Governor George Ryan Concerning How To Fix the Death Penalty System, 32 *Loy. U. Chi. L. J.* 451-469 (2001).

State Death Sentencing For Felony Murder Accomplices Under the *Enmund* and *Tison* Standards, 32 *Ariz. St. L. J.* 843-896 (2000).

Is Death "Different" for Harmless Error Analysis? Should It Be?: An Analysis of United States and Louisiana Supreme Court Case Law, 59 La. L. Rev. 1105-1167 (1999).

Imagining a Retributivist Alternative to Capital Punishment. 50 Fla. L. Rev. 1-143 (1998).

Judging the Effectiveness of the Supreme Court's Death Penalty Jurisprudence According to the Court's Own Goals: Mild Success or Major Failure? 24 Fla. St. L. Rev. 545-603 (1997).

## **2. Other Criminal Law-Related:**

The "Trial"/"Structural" Error Dichotomy: Erroneous, and Not Harmless, 45 U. Kan. L. Rev. 1401-1461 (1997).

Visions of Habeas, 1994 B. Y. U. L. Rev. 735-840.

Supplement to Chapter 44, (Habeas Corpus) Massachusetts Criminal Defenses (1994) (with Eric D. Blumenson).

Moral Reasoning and the Criminal Law: The Example of Self Defense. 30 Am. Crim. L. Rev. 97-160 (1992) (with Sandra K. Lyons).

The English and American History of Voluntary Intoxication to Negate Mens Rea, 11 J. Legal Hist. 372-395 (1990).

Chapter 3 (The Prosecution and Defense of Forcible Sex Crimes) in The Prosecution and Defense of Sex Crimes (1989) (182 pages).

Bargaining with Bad Guys: Is the Government Bound to Fulfill Promises Made to Secure the Release of Hostages? 11 U. Ark. Little Rock L.J. 435-456 (1988-89).

## **3. Evidence-Related:**

"But Perry Mason Made It Look So *Easy!*": The Admissibility of Evidence Offered by a Criminal Defendant To Suggest that Someone Else Is Guilty, 63 Tenn. L. Rev. 917-986 (1996).

A Primer for the Non-Mathematically Inclined on Probabilistic Evidence in Criminal Cases: *People v. Collins* and Beyond, 47 Wash. & Lee L. Rev. 741-817 (1990).

Syndromes, Profiles, and Other Mental Exotica: A New Approach to the Admissibility of Nontraditional Psychological Evidence in Criminal Cases, 66 Or. L. Rev. 19-108 (1987).

Expert Psychological Testimony About Child Complainants in Sexual Abuse Prosecutions: A Foray into the Admissibility of Novel Psychological Evidence, 77 J. Crim. L. and Criminology 1-68 (1986).

The Admissibility of Expert Testimony Regarding Rape Trauma Syndrome in Rape Prosecutions, 26 B.C.L. Rev. 1143-1213 (1985).

## **4. Civil Procedure-Related:**

Why Do We Teach So Much About So Little in the Jurisdictional Component of Civil Procedure? (Or: The *Shoe* Doesn't Fit—We've Been *Railroaded!*). 41 Drake L. Rev. 263-283 (1992).

**5. Property Law-Related:**

Chapter 79F (Eminent Domain) in Powell on Real Property (1991) (176 pages). A portion of this Chapter appears in shorter form as Chapter 17 in The American Law of Real Property (1991) (56 pages).

**6. Other Website Created:**

The Jury Center website for the American Judicature Society (organization has since disbanded).

## Subjects Taught:

The number of times I will have taught each course by the end of the 2017-2018 academic year is in parentheses; courses in my current teaching repertoire are indicated by asterisks:

- \*Criminal Law (37)
- \*Criminal Procedure I (14)
- \*Criminal Procedure II (10)
- \*Death Penalty (21)
- \*Criminal Motions Practicum (4)
- \*Prosecution & Defense (1)
- Evidence (23)
- Post-Conviction Remedies (7)
- Habeas Corpus Practicum (1)
- Trial Advocacy (11)
- Civil Procedure I (4)
- Civil Procedure II (1)
- Property (8)
- Securities Regulation (3)
- Wills and Trusts (2)
- Practical Trial Evidence (2)
- Interviewing and Counseling (2)
- Negotiation and ADR (1)
- Clinic (1)

## Invited Presentations-- Numerous, including:

At the Arizona Public Defenders' Association Annual Meeting in Tempe in June, 2016.

At the 2016 Law & Society Annual Meeting in New Orleans.

Convened and participated in a death penalty panel discussion at Drake University Law School in June, 2014, in conjunction with the Des Moines Metro Opera's production of "Dead Man Walking."

At the Arizona Public Defenders' Association's Annual Meeting in Tempe in June, 2014 (a death penalty session and a Fourth Amendment session).

At a death penalty panel at the Law and Society Annual Meeting in Hawai'i in 2012.

At a symposium sponsored by the Journal of Race, Gender, and Justice at the University of Iowa College of Law in 2012 on the connection between the War on Drugs and death sentencing.

Presenter on death penalty issues at the Annual Meeting of the Arizona Public Defender's Association, in Phoenix, 2007

Panelist at the American Judicature Society's Mid-Year Meeting program "The Jury Re-visited" in New Orleans (also organized the entire day-long program), 2005

Panelist at the National Jury Summit in Las Vegas, co-sponsored by the American Board of Trial Advocates and the Federation of Defense and Corporate Counsel, 2005

Moderator of a panel at the Annual Meeting of the National Association for Court Management in San Francisco on McCord's idea of creating a national organization for jury commissioners, 2005

Acted as advisor to a meeting of about 15 universities interested in undertaking jury system-strengthening initiatives through their students under the auspices of the American Democracy Project of the American Association of State Colleges and Universities, in Portland, Oregon, 2005

Co-presenter at a half-day CLE program for insurance defense lawyers on the new ABA Principles for Juries and Jury Trials in Irvine, California, 2005

Presenter of programs on those Principles as a CLE for Iowa judges, and another for Iowa lawyers, 2005

### **Service to the University:**

Chair of Academic Freedom & Tenure Committee for 2013-2014 (a particularly busy and challenging year)

Member of Levitt Teacher Award selection committee 2013

Two terms on Intercollegiate Athletic Council

### **Service to the Law School:**

Too numerous to specify. I have been intensely involved in the routine faculty governance of the Law School for over thirty years, and have taken a laboring oar as to most of the School's non-routine initiatives.

### **Service to the Community:**

I have been continuously involved in serving the community ever since I have lived in Central Iowa. These efforts are detailed in the materials that led my receiving the Levitt Distinguished Community Service Award in 2010. In the last several years I have been involved in the mission of Lutheran Church of Hope Des Moines campus—a church that is extremely community service-oriented.

Last year I became qualified to be a "Leader of the Pack" to oversee meal packaging for Meals from the Heartland. I oversee such half-day events about once a week.