

J. THOMAS SULLIVAN/ATTORNEY
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TEACHING HISTORY

Professor Emeritus, Bowen School of Law, UA Little Rock; professor since 1988; subjects taught included: Criminal Law, Arkansas Criminal Trial Practice, Trial Advocacy, Law and Psychiatry, Criminal Procedure (Trial and Post-Trial), Film and Criminal Law (seminar); Jury Selection (interterm course)

Adjunct Professor of Law and Psychiatry, Department of Psychiatry, University of Arkansas for Medical Sciences

UALR Faculty Excellence Award for Research, 1993

UALR Faculty Excellence Award for Service, 1999

UALR Faculty Excellence Award for Research, 2020

Founding Editor, THE JOURNAL OF APPELLATE PRACTICE AND PROCESS; faculty-edited review published by UALR School of Law distributed to all federal and state appellate judges

Director, SMU Appellate Clinic, 1984-86; Texas Criminal Procedure

EDUCATIONAL BACKGROUND

B.A. with Highest Honors, University of Texas at Austin, 1972; elected to membership: Phi Beta Kappa; Phi Kappa Phi

J.D., Southern Methodist University School of Law, 1976; estimated class rank: upper 15%; AmJur Awards: Civil Procedure, Administrative Law

LL.M., Texas, 1983; thesis topic: *Specificity Requirements in Pleading Texas Charging Instruments*, supervised by George Dix

PROFESSIONAL EXPERIENCE

Admitted to practice: Texas, 1976; New Mexico, 1982; Colorado, 1986; Arkansas, 2006; United States Supreme Court, 1981; United States Courts of Appeals for the Fifth, Eighth and Tenth Circuits; United States District Courts: Northern District of Texas; Colorado

Private Practice: Dallas, Texas, 1976-1987: civil and criminal trial and appellate practice, including state and federal death penalty litigation

Appellate Defender, New Mexico Public Defender Department, Santa Fe, 1983-84; Assistant Appellate Defender, 1982-83

PUBLICATIONS

Mass Shootings, Mental "Illness," and Tarasoff, 82 U. PITT. L. REV. 685 (2021).

COVID-19's Complications for Family Law Counsel: Domestic Violence And Threats to the Well-Being of Children, 10 ARK. J. SOC. CHANGE & PUB. SERV. 1 (2020)

Ethical and Aggressive Appellate Advocacy: The Decision to Petition for Certiorari in Criminal Cases, 51 ST. MARY'S L.J. 585 (2020).

A Jurisdictional Skirmish in the Arkansas Appellate Courts: Rule 37 Post-Conviction Appeals and the Importance of Supreme Court Rule 1-2(H), 41 U. ARK. LITTLE ROCK L. REV. 319 (2019).

For Coleen Miller Barger: A Note of Thanks and Best Wishes, 18 JOURNAL OF APPELLATE PRACTICE AND PROCESS 1-6 (2017)

Not Fit for Trial: Due Process and Mentally-Incompetent Criminal Defendants, 39 UNIVERSITY OF ARKANSAS AT LITTLE ROCK LAW REVIEW 155-243 (2017)

Arkansas, Meet Tarasoff: The Question of Expanded Liability to Third Persons for Mental Health Professionals, 69 ARKANSAS LAW REVIEW 987-1053 (2017)

Brady Misconduct Remedies: Prior Jeopardy and Ethical Discipline of Prosecutors, 68 ARKANSAS LAW REVIEW, 1011-1060 (2016)

The Demographic Dilemma in Death Qualification of Capital Jurors, 49 WAKE FOREST LAW REVIEW 1107-1172 (2014)

Defending the Guilty—Lawyer Ethics in the Movies, 79 MISSOURI LAW REVIEW 585-647 (2014)

Brady, Arkansas Rule 17.1, and Disclosure of Scientific Evidence and Expert Opinion, 35 UNIVERSITY OF ARKANSAS AT LITTLE ROCK LAW REVIEW 245-290 (2013)

Furman After Four Decades, 8 UNIVERSITY OF MASSACHUSETTS LAW REVIEW 164-183 (2013)

The Abyss of Racism, included in symposium: *Furman at 40*, 13 JOURNAL OF APPELLATE PRACTICE AND PROCESS 91-117 (2012)

Brady-Based Prosecution Misconduct Claims, Buckley, and the Arkansas Coram Nobis Remedy, 64 ARKANSAS LAW REVIEW 562-649 (2011)

Lethal Discrimination, 26 HARVARD JOURNAL ON RACIAL AND ETHNIC JUSTICE 69-112 (2010)

Lethal Discrimination 2: Repairing the Remedies for Racial Discrimination in the Capital Sentencing Process, 26 HARVARD JOURNAL ON RACIAL AND ETHNIC JUSTICE 113-162 (2010)

Developing a State Constitutional Law Strategy for New Mexico Prosecutions. 39 NEW MEXICO LAW REVIEW 407-484 (2009)

Danforth, *Retroactivity and Federalism*, 63 OKLAHOMA LAW REVIEW 425-502 (2008)

Crawford, *Retroactivity and The Importance of Being Earnest*, 92 MARQUETTE LAW REVIEW 231-306 (2008).

The Honorable George Howard, Jr.—A Life of Courage and Civility in the Law, 30 UNIVERSITY OF ARKANSAS AT LITTLE ROCK LAW REVIEW 245-64 (2008)

Ethical and Effective Representation in Arkansas Capital Trials, 60 ARKANSAS LAW REVIEW 1-184 (2007)

The Clinician as Ethical Role Model in the Criminal Appellate Clinic, 75 MISSISSIPPI LAW JOURNAL (Criminal Appeals Clinical Program Symposium Issue) 741-767 (2006)

The Perils of Online Legal Research: A Caveat for Diligent Counsel, 29 AMERICAN JOURNAL OF TRIAL ADVOCACY, 81-100 (2005)

Ethical and Aggressive Appellate Advocacy: Confronting Adverse Authority, 59 UNIVERSITY OF MIAMI LAW REVIEW 341-382 (2005)

Unpublished Opinions and No Citation Rules in the Trial Courts, 47 ARIZONA LAW REVIEW 419-59 (2005)

Foreword: *An Award . . . and an Announcement*, 5 J. APP. PRAC. & PROCESS v (2003)

Foreword, *Death Row and the Cancer Ward*, 5 JOURNAL OF APPELLATE PRACTICE AND PROCESS No. 1 (Spring 2003)

Twice Grilled, 5 JOURNAL OF APPELLATE PRACTICE AND PROCESS 151-155 (2003) (included in *First Oral Arguments at the Supreme Court of the United States—A Collection of Essays*; permission to reprint granted by JAPP to Gregg Ivers and Jennifer A. Segal, *Inside the Judicial Process* (West 2006))

An Introduction to Imagining the Law: Lawyers and Legal Issues in the Popular Culture, 25 UALR LAW REVIEW 439-441 (2003)

Imagining the Criminal Law: When Client and Lawyer Meet in the Movies, 25 UALR LAW REVIEW 665-680 (2003) (included in Ben J. Altheimer Symposium *Imagining the Law: Lawyers and Legal Issues in the Popular Culture*)

Ethical and Aggressive Appellate Advocacy: The "Ethical" Issue of Issue Selection, 80 DENVER UNIVERSITY LAW REVIEW 155-197 (2002); reprinted in 53 Defense Law Journal 1-50 (2004)

Foreword, *Judge, Scholar and Friend* (Tribute to Hon. Richard S. Arnold on the occasion of the hanging of his portrait in the United States Courthouse), 4 JOURNAL OF APPELLATE PRACTICE AND PROCESS No. 2 (Fall 2002)

Foreword, *Death of a Friend* (Eulogy for Dean Howard Eisenberg, Marquette University Law School), 4 JOURNAL OF APPELLATE PRACTICE AND PROCESS No. 1 (Spring 2002)

Justice White's Principled Passion for Consistency, 4 JOURNAL OF APPELLATE PRACTICE AND PROCESS 79-87 (2002)

Concluding Thoughts on the Practical and Collateral Consequences of Anastasoff, 3 JOURNAL OF APPELLATE PRACTICE AND PROCESS 425-451 (2001)

Foreword: *A National Organization for Appellate Lawyers*, 3 J. APP. PRAC. & PROCESS v (2001)

Foreword: *Tragedy and Due Process*, 3 J. APP. PRAC. & PROCESS (2001).

Foreword, *The Role of Appellate Judges in Intermediate Courts*, 2 J. APP. PRAC. & PROCESS No. 1 (Winter 2000)

The Culpability, or Mens Rea, Defense in Arkansas, 53 ARKANSAS LAW REVIEW 805-884 (2000)

Foreword: *Redefining Rehearing: "Previewing" Decisions On-Line*, 2 JOURNAL OF APPELLATE PRACTICE AND PROCESS 435-454 (2000)

Foreword: *Leaving the Ballpark*, 1 J. APP. PRAC. & PROCESS (1999)

Foreword: *Introduction and Dedication*, 1 J. APP. PRAC. & PROCESS (1999)

Requiem for RFRA: A Political and Philosophical Response, 20 UALR LAW JOURNAL 795-812 (1998)

Prosecutorial Misconduct in Closing Argument in Arkansas Trials, 20 UALR LAW JOURNAL 213-263 (1998)

The Changing "Burden" of Proof in Federal Habeas Actions, 26 U. MEMPHIS LAW REVIEW 205-255 (1995)

Psychiatric Defenses in Arkansas Criminal Trials, 48 ARKANSAS LAW REVIEW 439-509 (1995)

The Arkansas Remedy for Retaliatory Discharge of Workers' Compensation Claimants, 16 UALR LAW JOURNAL 373-447 (1994); reprinted in 18 WORKERS COMP. L. REV. 439-513 (1995-96)

Separation of Powers Conflicts in the "Reform" of Arkansas Workers' Compensation Law, 18 SETON HALL LEGISLATIVE JOURNAL 581-612 (1994)

New Mexico's Summary Calendar for Disposition of Criminal Appeals: An Invitation to Inefficiency, Ineffectiveness and Injustice, 24 NEW MEXICO LAW REVIEW 24-50 (1994)

A Practical Guide to Recent Developments in Federal Habeas Corpus for Practicing Attorneys, 25 ARIZONA STATE LAW JOURNAL 317-347 (1993); reprinted, *A Practitioner's Guide to Recent Developments in Federal Habeas Corpus*, 1 CRIMINAL PRACTICE LAW REPORT No. 11 (Clark Boardman Callaghan, December 1993); reprinted in *Criminal Law Review*, 1993 (Clark Boardman)

"Reforming" Federal Habeas Corpus: The Cost to Federalism; the Burden for Defense Counsel; and the Loss of Innocence, 61 UMKC LAW REVIEW 291-328 (1992)

An Overview of the Law Relating to Jury Selection for Arkansas Criminal Trial Lawyers, 15 UALR LAW JOURNAL 37-69 (1992)

Teaching Appellate Advocacy in an Appellate Clinical Law Program, 22 SETON HALL LAW REVIEW 1277-1307 (1992)

Use of the "Zola Plea" in New Jersey Capital Prosecutions, 21 SETON HALL LAW REVIEW 3-63 (1990)

The Need for a Business or Payroll Records Affidavit for Use in Child Support Matters, 11 UALR LAW JOURNAL 651-667 (1988-89)

Retaliatory Firings: The Remedy Under the Texas Workers' Compensation Act, 19 TEXAS TECH LAW REVIEW 85-148 (1988)

Ethical Duties of Appointed Counsel on Appeal, 5 FIFTH CIRCUIT REPORTER 351-373 (March 1988)

Litigating the Novel Course and Scope of Employment Issue: INA of Texas v. Bryant, 5 REVIEW OF LITIGATION 297-317 (1986)

Unexplained Accidents and Assaults: The Problems and Burdens of Proof Under the Texas Workers' Compensation Statute, 16 TEXAS TECH LAW REVIEW 875-937 (1985)

The Capital Defendant's Right to Make a Personal Plea for Mercy: Common Law Allocution and Constitutional Mitigation, 15 NEW MEXICO LAW REVIEW 41-71 (1985), cited in *State v. Zola*, 112 N.J. 384, 548 A.2d 1021 (1988)

Query: Should Users of the Legal System Pay for Legal Education, 68 JUDICATURE 6 (June/July 1984)

When Death is the Issue: Uses of Pathological Testimony and Autopsy Reports at Trial, 19 WILLAMETTE LAW REVIEW 579-607 (1983)

The Texas Court of Criminal Appeals: A Modest Critique of Appellate Decisionmaking, 10 AMERICAN JOURNAL OF CRIMINAL LAW 113-160 (1982)

The Defense of Necessity in Texas: Legislative Invention Come of Age, 16 HOUSTON LAW REVIEW 333-364 (1979)

SIGNIFICANT LITIGATION

May v. Ryan, No. 17-15603, *appeal pending*, United States Court of Appeals for the Ninth Circuit, counsel for *amicus curiae* National Association for Rational Sexual Offense Laws, supporting Appellee on appeal from the United States District Court for the District of Arizona, No. CV-14-00409-NVW finding Arizona statute unconstitutionally shifted the burden of proving lack of criminal intent to accused.

Millard, et al, v. Rankin, No. 17-1333, *appeal pending*, United States Court of Appeals for the Tenth Circuit, counsel for *amicus curiae* National Association for Rational Sexual Offense Laws, supporting Appellee on appeal from the United States District Court for the District of Colorado, No. 13-cv-02406-RPM, finding Colorado Sexual Offender Registration Act applied unconstitutionally as to plaintiffs.

White v. State of Arkansas, Order [Granting New Trial], No. 2014-668, Pulaski County Circuit Court, Sixth Judicial District, Fourth Division (Dec. 13, 2017) (Petitioner granted new trial on Rule 37.1 post-conviction writ alleging ineffective assistance of trial counsel, vacating conviction and sentence for aggravated robbery)

Kelley v. Hobbs, No. 5:13-cv-00161-JLH/JTR, (June 23, 2014) petition for federal habeas corpus dismissed on joint motion of the parties for Petitioner's immediate release from custody of the Arkansas Department of Correction on Arkansas Attorney General's stipulation to Petitioner's claim of illegal confinement; prior litigation: *Kelley v. Hobbs and Maroney*, 2012 Ark. 456, 2012 WL 6061872; 2012 Ark. 402, 2012 WL 5304080 (Ark.); *Kelley v. Norris*, 2012 Ark. 86, Not Reported in S.W.3d, 2012 WL 664273 (granting mandamus relief based on failure of Arkansas Department of Correction's failure to properly calculate petitioner's sentence)

Whiteside v. Arkansas 2013 Ark. 136, 2013 WL 1773572 (reversing and remanding for resentencing), on remand from United States Supreme Court, *Whiteside v. Arkansas*, 133 S.Ct. 65, *granting cert, vacating judgment in the court below, Whiteside v. State*, 2011 Ark. 371, 2011 WL 4396949 and remanding for reconsideration in light of in light of *Miller v. Alabama*, 567 U.S. — —, 132 S.Ct. 2455 (2012) (remanding to review imposition of mandatory sentence of life without parole on juvenile convicted of capital felony murder).

United States v. Clay, 720 F.3d 1021 (8th Cir. 2013), *rehearing and rehearing en banc denied*, (affirming denial of federal habeas relief based on assertion of *Brady*-based misconduct claim in prosecution's knowing use of false testimony at trial; *Clay v. United States*, 134 S.Ct. 1938 (2014), *cert. denied*).

Neely v. McDaniel, 677 F.3d 948 (8th Cir. 2012), *cert. denied*, 133 S.Ct. 546 (2012) (affirming denial of habeas relief based on facial unconstitutionality challenge to Arkansas Indecency with Child statute)

Arkansas Judicial Discipline and Disciplinary Com'n v. Simes, 2011 Ark. 193, --- S.W.3d ---, 2011 WL 1681672 (of counsel on appeal for JDDC, upholding Commission finding of violations of Code of Judicial Conduct, imposing sanction for misconduct).

Buckley v. State, No. CR-99-13 (Circuit Court of Clark County, Arkansas), Order Granting Petition for Writ of Error *Coram Nobis*, November 1, 2010 (ordering convictions vacated and Petitioner released from custody of Arkansas Department of Corrections based on prosecutorial misconduct in failing to disclose exculpatory or impeachment evidence); *Buckley v. State*, 2010 Ark. 154, 2010 WL 1255763, granting leave to file Motion to Reinvest Circuit Court with Jurisdiction to Consider Petition for Writ of Error *Coram Nobis* ; *Buckley v. State*, 2007 WL 2955980 (Ark) (denying leave to file petition for writ of error *coram nobis*; *Buckley v. State*, 2007 WL 1509323, (Ark.), *cert. denied*, *Buckley v. Arkansas*, 128 S.Ct. 1281 (2008) (upholding denial of post-conviction relief); *Buckley v. State*, Not Reported in S.W.3d, 2005 WL 1411654 (Ark.) (remanding for evidentiary hearing on petition for post-conviction relief); *Buckley v. State*, 349 Ark. 53, 76 S.W.3d 825 (2002), *cert. denied*, *Buckley v. Arkansas*, 537 U.S. 1058, 123 S.Ct. 633 (2002) (affirming sentence imposed after case reversed for sentencing error and remanded for re-sentencing).

Arkansas Judicial Discipline and Disability Commission v. Proctor, 2010 Ark. 38, --- S.W.3d (of counsel on appeal for JDDC, upholding Commission finding of violations of Code of Judicial Conduct and sanction of removal from office).

Judicial Discipline and Disability Commission v. Simes, 2009 Ark. 543, 354 S.W.3d 72 (Ark.) (of counsel on appeal for JDDC, upholding Commission finding of violations of Code of Judicial Conduct, modifying sanction).

Henderson v. State of New Mexico, Fifth Judicial District Court, Hobbs, New Mexico, No. D-506-CR-2003-00283 (February 4, 2010) (post-conviction petition for writ of habeas corpus based on ineffective assistance of trial counsel granted)

Shelton v. State, 2009 Ark. 165, 326 S.W.3d 429 (2009) (reversing trial court's order denying Shelton's plea in bar following grant of mistrial on motion of prosecution after defense opening statement in capital murder trial, and ordering prosecution dismissed)

Steinbuch v. Cutler, et al, 518 F.3d 580 (8th Cir. 2008) (remanding for jurisdictional discovery in Plaintiff's diversity action based on invasion of privacy)

State v. Forbes and Earnest, Real Party in Interest, 119 P.3d 144, 138 N.M. 264, 2005-NMSC-027 (2005), *cert. denied*, 127 S.Ct. 1482 (holding USSCt decision in *Crawford v. Washington*, 541 U.S. 36 (2004) applied retroactively and granting habeas relief to inmate convicted on testimonial statement of co-defendant not subject to cross-examination. Petitioner Earnest was released from

custody after 24 years incarceration upon dismissal of capital murder charges). *New Mexico v. Earnest*, 477 U.S. 648 (1986), *vacating* 103 N.M. 95, 703 P.2d 872 (1985), *opinion on remand* 106 N.M. 411, 744 P.2d 539 (1986); *Earnest v. Dorsey*, 87 F.3d 1123 (10th Cir. 1996), *cert. denied*, 519 U.S. 1016 (1996) (holding that standard for admission of non-testifying accomplice's statement inculpatory accused is reliability of statement, rather than opportunity for cross-examination, under Sixth Amendment)

Henderson v. Norris, 258 F.3d 706 (8th Cir. 2001) Reversing federal habeas court, Eighth Circuit holds that petitioner's life sentence imposed by jury, effectively life without parole under state law, for first offense delivery of less than ¼ gram of cocaine violates Eighth Amendment prohibition of cruel and unusual punishment.

Bragg v. Norris, 128 F.Supp.2d 587 (E.D. Ark. 2000) Federal habeas court set aside state conviction for first offense delivery of less than ¼ gram of cocaine resulting in life sentence upon finding after two day evidentiary hearing that narcotics task force officer fabricated offense and committed perjury in state court trial.

State of Arkansas v. Strother, No. 99-21B, (Circuit Court of Yell County, Arkansas), August 31 through September 14, 2000, co-counsel for Defendant Strother in capital murder trial resulting in acquittal on capital and first degree murder charges, mistrial based on hung jury on second degree murder.

United States v. Kehoe and Lee, No. LR-CR-97-243(1), (United States District Court, Eastern District of Arkansas), March 3, 1999 through May 10, 1999, co-counsel for Defendant Kehoe in Federal capital trial involving RICO and conspiracy counts alleging murder in furtherance of intent to create white, separatist state in Pacific Northwest; engaged in investigation, pre-trial motions practice, conducted capital voir dire examination, direct and cross-examination of witnesses, closing argument on guilt and punishment phases of trial. Jury imposed life sentence upon conviction on capital counts.

Sterling v. Texas, 513 U.S. 996 (1994), *vacating* 26 F.3d 29 (5th Cir. 1994) and remanding for consideration in light of *McFarland v. Scott*, 512 U.S. 849 (1994) (*vacating* Fifth Circuit holding that federal habeas proceeding is not commenced for purpose of appointment of counsel for state inmate sentenced to death until filing of fully-exhausted petition under § 2254).

Fugate v. New Mexico, 470 U.S. 904 (1985), *affirming by equally divided Court*, 101 N.M. 5, 678 P.2d 861 (1984) (upholding application of "jurisdictional exception" to double jeopardy bar in successive New Mexico prosecutions)

Esquivel v. McCotter, 791 F.2d 350 (5th Cir. 1986), *cert. denied*, 476 U.S. 1165 (vacating habeas court's stay of execution in capital case on post-*Batson*, pre-*Allen v. Hardy* claim of discriminatory use of peremptory challenges to strike Hispanic venirepersons)

Fearance v. State, 771 S.W.2d 486 (Tex. Crim. App. 1988), *prior opinion*, 620 S.W.2d 577 (Tex. Crim. App. 1980) (affirming capital murder conviction and sentence of death on retrial after reversal

for *Witherspoon/Adams* violation), *Fearance v. Scott*, 51 F.3d 1041 (5th Cir. 1995), *cert. denied*, 515 U.S. 1138 (1995) and *Fearance v. Texas*, 515 U.S. 1153 (1995).

Griffin v. State, 815 S.W.2d 576 (Tex. Crim. App. 1991), *reversing* 785 S.W.2d 179 (Tex. App.--Dallas 1990), *opinion on remand from* 779 S.W.2d 431 (Tex. Crim. App. 1989), *reversing* 725 S.W.2d 773 (Tex. App.--Dallas 1987) (setting forth correct standard for review of trial error in overruling proper objection to prosecution argument and applying harmless error standard)

King v. State, 816 S.W.2d 447 (Tex. App.—Dallas 1991), *on remand from* 800 S.W.2d 528 (Tex. Crim. App. 1990)(reversing conviction for DWI based on unconstitutional roadblock)

Wicker v. State, 740 S.W.2d 779 (Tex. Crim. App.), *cert. denied*, 485 U.S. 938 (1987) (rejecting argument that confession obtained by child abuse caseworker resulted from functional equivalent of custodial interrogation)

Posey v. State, 738 S.W.2d 321 (Tex. App.—Dallas 1987) (reversing based on denial of cross-examination of officer based on prior use of improper force with stun gun in another case and improper cross-examination of defendant on collateral matters)

Mattias v. State, 731 S.W.2d 936 (Tex. Crim. App.), *cert. denied*, 488 U.S. 831 (1987), *reversing* 683 S.W.2d 789 (Tex. App.--Eastland 1984) (defendant's statement of price in response to query by undercover officer constituted act of making or accepting offer to commit prostitution despite trial court's finding that defendant attempted to use inflated price to escape physically threatening situation)

McElroy v. State, 720 S.W.2d 490 (Tex. Crim. App. 1986), *affirming* 667 S.W.2d 856 (Tex. App.—Dallas 1984) (reversing defendant's conviction for construction fraud for insufficient evidence where evidence failed to establish defendant did not use trust funds for reasonable overhead expenses)

INA of Texas v. Bryant, 686 S.W.2d 614 (Tex. 1985), *affirming* 673 S.W.2d 693 (Tex. App.--Waco 1984) (holding worker who sustained injury while on employer's premises to pick up final paycheck following termination for economic reasons was within course and scope of employment when injured)

Walters v. American States Insurance Company, 654 S.W.2d 423 (Tex. 1983) (affirming jury verdict awarding death benefits under workers' compensation statute/employee and employer both killed by unknown assailant while in course and scope of employment)

Doyle v. State, 661 S.W.2d 726 (Tex. Crim. App. 1984) (reversing for insufficient indictment based on failure to allege sufficient facts concerning how or to whom threat against judge made)

Jackson v. State, 100 N.M. 487, 672 P.2d 660 (1983) (holding trial court's use of superseded uniform jury instruction constitutes fundamental error requiring reversal)

State v. Sinyard, 100 N.M. 694, 675 P.2d 426 (Ct. App. 1983) (recognizing sentencing error as *jurisdictional or fundamental* error in case of first impression)

Fulton v. Texas Farm Bureau Insurance Company, 773 S.W.2d 391 (Tex. App.--Dallas 1989, *writ ref'd*) (refusing to apply uninsured motorist policy coverage to passenger who exited vehicle after initial accident to obtain license plate number of hit-and-run vehicle which then struck him)

Simmons v. State, 741 S.W.2d 595 (Tex. App.--Dallas 1987, *pet. ref'd*) (reversing for denial of requested instruction on Texas law authorizing jury to disregard evidence seized illegally)

OTHER PROFESSIONAL ACTIVITIES

Lecturer, "Counsel's Interaction with Mental Health Professionals," Pulaski County Bar Association Continuing Legal Education program, with Dr. Benjamin Silber, Board Certified Forensic Psychologist, June 21, 2023, UA Little Rock Bowen School of Law,'

Lecturer, "The Arkansas Capital Sentencing Process: Mental State Issues and Psychiatric Evidence," Department of Psychiatry Forensic Didactics, University of Arkansas for Medical Sciences, April 23, 2019

Speaker, "Counsel's Duties to the Mentally-Impaired Criminal Defendant," *Mental Health* symposium sponsored by the Arkansas Journal of Social Change and Public Service, University of Arkansas at Little Rock Bowen School of Law, April 6, 2019

Expert witness, ineffective assistance of counsel in capital proceedings, *Randy William Gay v. State*, December 6-7, 2018, Garland County Circuit Court Rule 37.5 post-conviction hearing. Petition to vacate denied.

Lecturer, "Overview of the Criminal Trial, Evidence, and Expert Testimony at Criminal Trials," Department of Psychiatry Forensic Didactics, University of Arkansas for Medical Sciences, August 22, 2018

Lecturer, "Mass Violence, Dangerous Patients, Confidentiality, and the Duty to Warn," Department of Psychiatry Grand Rounds, University of Arkansas for Medical Sciences, June 8, 2017.

Lecturer, "Role of Mental Health Professionals in Capital Sentencing," Department of Psychiatry Forensic Didactics, University of Arkansas for Medical Sciences, May 24, 2017.

Lecturer, "*Fleming v. Vest*: Recognition of Third Person Liability for Professional Negligence Claims Against Mental Health Providers under Arkansas Law," Department of Psychiatry Forensic Didactics, University of Arkansas for Medical Sciences, April 27, 2016

Lecturer, "Issues in Assessment of Capital Defendant's Competency for Execution," Department of Psychiatry Forensic Didactics, University of Arkansas for Medical Sciences, April 20, 2016

Expert witness, ineffective assistance of counsel, April 6, 2015, called by court -appointed counsel to testify regarding defense counsel's obligation to file a motion to suppress illegally seized evidence in *Laquince Hogan v. Wendy Kelley, Director, Arkansas Department of Correction* in the United States Magistrate Court, Eastern District of Arkansas , Hon. Beth Deere, Magistrate Judge Presiding. Mr. Hogan, the federal habeas petitioner, is serving a 125-year sentence for possession with intent to distribute cocaine.

Speaker and program segment organizer, "Report Writing for Paramedics and Firemen," University of Arkansas for Medical Sciences College of Public Health Paramedic Department Continuing Medical Education program, February 21, 2015, Bryant, Arkansas

Speaker, "Preservation of Error for Appellate Review in Arkansas Capital Trials," Arkansas Criminal Defense Lawyers Association annual continuing legal education program on representation in death penalty cases, November 1, 2014, Rogers, Arkansas.

Speaker and program segment organizer, "Report Writing for Paramedics and Firemen," University of Arkansas for Medical Sciences College of Public Health Paramedic Department Continuing Medical Education program, February 21, 2015, Bryant, Arkansas

Speaker, "Preservation of Error for Appellate Review in Arkansas Capital Trials," Arkansas Criminal Defense Lawyers Association annual continuing legal education program on representation in death penalty cases, November 1, 2014, Rogers, Arkansas

Lecturer, "What About Culpability?" Department of Psychiatry Forensic Didactics, University of Arkansas for Medical Sciences, April 23, 2014

Lecturer, "Murder, Motivation, and the Death Penalty," Department of Psychiatry Forensic Didactics, University of Arkansas for Medical Sciences, January 29, 2014

Lecturer, "Act 1212 and the Threat to Confidentiality for Mental Health Patients and Practitioners," Department of Psychiatry Forensic Didactics, University of Arkansas for Medical Sciences, May 1, 2013

Speaker, "Novel Issues of Federalism in Practice and Teaching," visiting scholar presentation, University of Arkansas School of Law, February 5, 2013, Fayetteville, Arkansas

Lecturer, "Personal Bias and Professional Opinion in Capital Cases," Department of Psychiatry Forensic Didactics, University of Arkansas for Medical Sciences, February 1, 2013

Panelist, "Conflicts in Criminal Cases," Federal Practice program sponsored by Arkansas Bar Association, November 30, 2013, with supporting materials

Speaker, "*Brady*, Arkansas Rule 17.1, and the Duty to Disclose Scientific Evidence and Expert Opinion," Alzheimer Symposium: Lessons in Evidence from the West Memphis 3, UALR School of Law, April 18, 2012.

Lecturer, “The Death Penalty,” Department of Psychiatry Forensic Didactics, University of Arkansas for Medical Sciences, February 3, 2012

Lecturer, “Forensics and Capital Punishment in Arkansas,” Department of Psychiatry Forensic Didactics, University of Arkansas for Medical Sciences, March 7, 2011

Lecturer: “When Law Talks Psychiatry: ‘What We Got Here is. . . Failure to Communicate,’” Department of Psychiatry Grand Rounds, University of Arkansas for Medical Sciences, Little Rock, December 17, 2009

Expert witness, effective assistance of stand-by counsel in capital proceedings, *Robert Robbins v. State*, December 14, 2009, Craighead County Circuit Court Rule 37.5 post-conviction hearing (relief granted by trial judge, December 19, 2010)

Participant, “Service-Learning” Workshop, sponsored by Office of Community Engagement, University of Arkansas at Little Rock, June 1-4, 2009 (developed proposal for creation of multi-clinic *Post-Trial Litigation Project*, including Criminal Appellate Litigation Clinic, Post-Conviction Representation Clinic, and Clemency Project).

Lecturer, “An Aggressive Approach to Litigating State Constitutional Law Issues in New Mexico,” Appellate Defender’s Section, New Mexico Public Defender Department, Santa Fe, May 20, 2009

Lecturer, “Moral Judgments and Clinical Judgments in Capital Cases” Department of Psychiatry Forensic Didactics, University of Arkansas for Medical Sciences, March 20, 2009

Speaker, “Preserving State Constitutional Error in New Mexico,” and “Confrontation and Cross-examination,” New Mexico Public Defender 2008 Annual Conference, Albuquerque, November 13—14, 2008.

Lecturer, “*Kennedy v. Louisiana*: Capital Punishment for Non-Death Crimes,” Department of Psychiatry Forensic Didactics, University of Arkansas for Medical Sciences, February 15, 2008.

Speaker, “Preservation of Federal Constitutional Error for Review on Certiorari and Federal Habeas,” New Mexico Public Defender Department, Albuquerque Trial Division, October 11, 2007, and Appellate Division, Santa Fe, October 18, 2007

Lecturer, “Criminal Law: Proof of Criminal Intent,” Department of Psychiatry Forensic Didactics, University of Arkansas for Medical Sciences, September 7, 2007

Lecturer, “*Clark v. Arizona*, Section 303, and the viability of the Culpability or Mens Rea Defense in Arkansas,” Department of Psychiatry Forensic Didactics, University of Arkansas for Medical Sciences, May 25, 2007

Panelist, “Jail Bait,” discussion of press involvement in internet sting operations directed at adult solicitation of sexual activity with minors, sponsored by Society of Professional Journalists, Little Rock, April 20, 2007

Author, “Support for Judge Griffen,” op-ed essay, *Arkansas Democrat-Gazette*, February 18, 2007, p. 3J, col. 1

Lecturer, “Psychiatric Issues in Capital Punishment,” Department of Psychiatry Forensic Didactics, University of Arkansas for Medical Sciences, February 15, 2007

At large Member, Board of Directors of the Bar Association for the United States Court of Appeals for the Eighth Circuit, December, 2002—2004, Board Member, Eastern District of Arkansas, January, 2005—December, 2005

Speaker, “Ethical and Effective Representation in Arkansas Capital Trials,” at *The Death Penalty in Arkansas: Strategies for the Defense VI*, sponsored by Arkansas Association of Criminal Defense Lawyers and The Arkansas Public Defender Commission, November 17-18, 2006, at Fayetteville.

Lecturer, “Charles Singleton’s Tortured Road to Execution,” Department of Psychiatry Grand Rounds, University of Arkansas for Medical Sciences, April 20, 2006

Co-sponsor, *Eighth Circuit Appellate Practice Institute*, Little Rock, March 10, 2006

Lecturer, “An Overview of the Death Penalty,” Department of Psychiatry Forensic Didactics, University of Arkansas for Medical Sciences, February 2, 2006.

Speaker, “A Primer on Federal Habeas Corpus for New Mexico Appellate Defenders,” and “Ten Novel Tactics for New Mexico Criminal Trial Lawyers,” *New Mexico Public Defender Training Conference*, Albuquerque, October 21-22, 2004

Speaker and program sponsor, “Ethical Challenges Facing Appellate Lawyers,” *Eighth Circuit Appellate Practice Institute*, St. Louis, 2004

Speaker, “Unpublished Opinions and No Citation Rules: Ethical Dilemmas for Arkansas Attorneys,” *Arkansas Criminal Defense Lawyers Association annual program*, Tunica, Ms., May 14, 2004

Organizer and sponsor, *Eighth Circuit Appellate Practice Institute*, St. Louis, April 15, 2003

Speaker, “Technologically-driven Change Confronting Federal Practitioners,” *Federal Practice Institute*, Arkansas Bar Association, Little Rock, December 7, 2002

Amicus Curiae brief on behalf of the American Civil Liberties Union of Arkansas in *Howard v. State*, No. CR 00-803 (Ark. Sup.) *on petition for rehearing*, challenging capital conviction and sentence of death

Speaker and program sponsor, “The Ethical Issue of Issue Selection,” at *Eighth Circuit Appellate Practice Institute*, CLE program sponsored by UALR School of Law and Journal of Appellate Practice and Process, Little Rock, May 2, 2002

Speaker and program sponsor, "Ethical and Aggressive Appellate Advocacy, at *Eighth Circuit Appellate Practice Institute*, CLE program sponsored by UALR School of Law and Journal of Appellate Practice and Process, Little Rock, May 18, 2001

Speaker and program sponsor, "Ethical and Creative Representation in Capital Cases," *Death Penalty '01*, CLE program sponsored by UALR Criminal Law Association, Little Rock, May 4, 2001

Lecturer, "Expert Psychiatric Testimony after *Daubert*," Department of Psychiatry Grand Rounds, University of Arkansas for Medical Sciences, Little Rock, January 11, 2001

Panelist, "Wants, Needs and Legalities: A Case Presentation and Discussion on Intoxication in the ER," Department of Psychiatry, University of Arkansas for Medical Sciences, Little Rock, December 8, 2000

Speaker, "The Notion of Service in the Unholy Trinity of Teaching, Scholarship and Service," and conference participant, *Equal Justice Colloquium* sponsored by AALS and University of Arkansas School of Law, Fayetteville, November 17, 2000

Speaker and program sponsor, "Overlooked Issues in Arkansas Capital Cases" and "Ethical Issues for Defense Counsel in Capital Cases," *Death Penalty 2000*, CLE program sponsored by UALR Criminal Law Association, UALR School of Law, May 26, 2000

Speaker and program sponsor, "Avoiding Common Ethical Pitfalls for Criminal Defense Attorneys," *'99 Fall Criminal Law Update*, sponsored by UALR Criminal Law Association, UALR School of Law, December 11, 1999

Lecturer, "The *Mens Rea* Defense in Criminal Trials," Department of Psychiatry Grand Rounds, University of Arkansas for Medical Sciences, Little Rock, December 4, 1998

Speaker and program sponsor, "Novel Defensive Strategies in Defending Against the War on Drugs," *Defense of Drug Cases*, CLE program sponsored by UALR Criminal Law Association, UALR School of Law, October 23, 1998

Speaker and program sponsor, "Prosecutorial Misconduct in Closing Argument," *Criminal Defense '98* CLE program sponsored by UALR Criminal Law Association, Arkansas Public Defender Commission and American Bar Association Death Penalty Litigation Project, UALR School of Law, May 9, 1998

Lecturer, "Restoring Competency for Execution: Ethical and Due Process Concerns in the Forced Medication of Mentally Ill Death Row Inmates," Department of Psychiatry Grand Rounds, University of Arkansas for Medical Sciences, Little Rock, September 19, 1997

Speaker and program sponsor, "Psychiatric Issues in Capital Trials," *Death Penalty '97* CLE program sponsored by UALR Criminal Law Association, UALR School of Law, May 9, 1997

Speaker, "Scientific Evidence after *Daubert*," *Advanced Forensic Investigation*, UALR Criminal Justice Institute professional program, Little Rock, May 30-31, 1996

Speaker and program sponsor, "*Teague's* Impact on Criminal Defense Counsel's Decisionmaking in the Post-Trial Process," *Death Penalty '96* CLE program sponsored by UALR Criminal Law Association, Little Rock, April 26, 1996

Speaker, "Counsel's Ethical Obligation to Raise Novel Defenses in the Criminal Trial," Pulaski County Public Defender CLE program: *Current Trends in Criminal Defense*, Little Rock, April 18, 1996

Panelist, "Professional Ethics in Mental Health," Arkansas Psychological Association, *An Overview of Sex Offender Evaluation and Treatment*, Little Rock, April 22, 1995

Lecturer, "Psychiatry and the Death Penalty," Department of Psychiatry Grand Rounds, University of Arkansas for Medical Sciences, Little Rock, February 3, 1995

Speaker, and program sponsor "The Danger in Changing the Rules for Child Complainants," *Trials of Child Abuse and Child Sexual Abuse Cases* CLE Seminar/UALR Criminal Law Association, January 28, 1995

Speaker, "*Brecht v. Abrahamson*: The changing burden of proof and role of federal habeas courts," Eighth Circuit Magistrate Judges' Workshop, Sylvan Lake, South Dakota, June 10, 1994

Speaker and workshop leader, "Voir Dire" and "Cross-Examination," *1994 Trial Practice Seminar* sponsored by the Arkansas Bar Association, Hot Springs, March 18-19, 1994

Speaker and program sponsor, "Psychiatric Defenses in Arkansas Criminal Trials," *Psychiatric Issues in Criminal Trials* CLE Seminar sponsored by UALR Criminal Law Association, Little Rock, March 5, 1994

Speaker, "Defense Counsel's Approach to the Testifying Agent" presented to assembled agents of Arkansas Office of the Federal Bureau of Investigation, Little Rock, May 21, 1993

Report, *New Mexico's Summary Disposition of Criminal Appeals: An Invitation for Injustice, Inefficiency and Ineffectiveness*, prepared on behalf of the New Mexico Appellate Defender for submission to the Chief Justice of the Supreme Court of New Mexico, November, 1992, published by the New Mexico Law Review

Speaker, "A Practical Guide to Federal Habeas Corpus for Practicing Attorneys," *Law Across the River* CLE seminar sponsored by Arkansas Institute for Continuing Legal Education, Memphis, September 25, 1992

Speaker, "Reforming Federal Habeas Corpus: The Cost to Federalism; The Burden for Defense Counsel; and the Loss of Innocence," United States Magistrates Section, Eighth Circuit Judicial Conference, Minneapolis, Minnesota, July 22, 1992

Speaker and program sponsor, "An Overview of the Law Relating to Jury Selection for Arkansas Criminal Trial Lawyers," CLE program, *Jury Selection*, sponsored by UALR Criminal Law Association, April 11, 1992

Speaker, "The Search for Truth v. The Search for Justice," Arkansas Psychological Association, November 7, 1991

Speaker, "The Role of Appointed Counsel in Federal District Court and on Appeal," *AICLE Federal Practice Institute*, Little Rock, March 30-31, 1990

Speaker, "Ethical Duties of Appointed Counsel on Appeal," *Fifth Circuit Appellate Practice Seminar*, sponsored by SMU School of Law, New Orleans, September 5-6, 1987