

Report on the capacity of the Kansas State Board of Indigents' Defense to guarantee effective representation to persons facing the death penalty.

March 4, 2022

The authors of this report were asked by the counsel for Cornell McNeal to study the procedures and mechanisms for providing legal representation to individuals facing capital punishment in the State of Kansas, and assess whether the system as currently designed and constituted can guarantee effective legal representation to all persons in danger of execution. We reviewed the statutes, regulations, procedures, and mechanisms for providing legal representation to persons facing imposition or execution of sentences of death, interviewed administrators, lawyers, investigators, and mitigation specialists, and examined portions of the litigation record in some cases. Based on our assessment, in spite of the competent lawyers and professional staff presently in the system, we find that the system cannot guarantee effective representation to every person who may face capital charges and sentences in the future. In the absence of such a guarantee, the Kansas system for administering capital punishment will inevitably produce arbitrary and unreliable death sentences.

I. Qualifications.

This study was undertaken by Professor Sean O'Brien, University of Missouri, Kansas City School of Law, and Marc Bookman, Executive Director of the Atlantic Center for Capital Representation. Their CVs are attached, and their qualifications are briefly summarized here.

Professor O'Brien has nearly four decades of capital defense experience in Missouri, Kansas, and other jurisdictions across the United States. He was the Public Defender in Jackson County, Missouri, in the late 1980's, and from 1990 through 2005, he was Executive Director of the Missouri Capital Punishment Resource Center, later known as the Death Penalty Litigation Clinic, from 1990 through 2005, when he joined the faculty of UMKC School of Law, where he teaches Criminal Law, Criminal Procedure, Postconviction Remedies, and supervises clinic students working on wrongful convictions and death penalty cases. He has been admitted pro hac vice to represent indigent persons facing the death penalty in state and federal trial, appeal, postconviction, and federal habeas corpus proceedings in numerous jurisdictions, including Kansas. Prof. O'Brien was the lead researcher and author of the *Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases, Introduction*, 36 HOFSTRA L.

REV. 677, 678 (2008) (hereafter “*Supplementary Guidelines*”), and he has qualified as an expert witness on issues regarding quality of capital defense counsel in state or federal courts in Alabama, Georgia, Idaho, Iowa, Kansas, Louisiana, Missouri, Pennsylvania, Wyoming and in the United States Court of Military Justice. He has also testified as an expert on capital punishment issues before the Kansas, Missouri and Nebraska Legislatures, and served as an expert consultant to indigent defense governing boards in Illinois, Kansas, Missouri, North Carolina and Oregon. He has received numerous awards recognizing his work on behalf of indigent defendants, including an honorary degree in Humane Letters from Benedictine College in Atchison, Kansas.

Marc Bookman has decades of successful experience as a capital trial lawyer in the Homicide Unit of the Defender Association of Philadelphia, Pennsylvania before he founded the Atlantic Center for Capital Representation, where he serves as Executive Director. He has taught at countless death penalty conferences and hands-on trainings across the nation, including those sponsored by the Defender Association, the National Legal Aid Association, the National Association for Criminal Defense Lawyers, the NAACP Legal Defense Fund, the Bureau of Justice Assistance, the National Institute of Trial Advocacy, and the annual Bring-Your-Own-Case trainings coordinated by ACCR. Mr. Bookman is also an avid writer who has published essays in *The Atlantic*, *Mother Jones*, *VICE* and *Slate* on various aspects of capital jurisprudence, and is a nationally recognized expert in the field of capital litigation.

Both Mr. Bookman and Prof. O’Brien are frequent lecturers at capital defense training programs throughout the United States.

The authors reviewed documents and materials describing the structure and operation of the Kansas Board of Indigents’ Defense, including *A Report on the Status of Public Defense in Kansas*, THE BOARD OF INDIGENT DEFENSE SERVICES, September, 2020, and appendices; *Report of the Judicial Council Death Penalty Advisory Committee*, February 13, 2014; *Report of the Judicial Council Death Penalty Advisory Committee*, December 4, 2009; *Report of the Judicial Council Death Penalty Advisory Committee*, January 29, 2004; KANSAS LEGISLATOR BRIEFING BOOK, I-3, *Board of Indigents’ Defense Services*, KANSAS LEGISLATIVE RESEARCH DEPARTMENT (2012); *State of Kansas Board of Indigents’ Defense Services Permanent Administrative Regulations*, KAR § 105-1-1 et seq., and Kansas Statutes affecting the death penalty regarding homicide (K.S.A. § 21-5401

et seq.), Sentencing (K.S.A. § 21-6617 et seq.), Execution of Death Sentences (K.S.A. § 22-4001 et seq.), Habeas Corpus (K.S.A. § 60-1507), and Indigent Defense Services Act (K.S.A. § 22-4501 et seq.). As active capital litigators, the authors have some previous familiarity with Kansas capital litigation in which juries imposed or rejected the death penalty, and Kansas capital cases that resulted in negotiated pleas. In addition, the authors requested and obtained additional information from the Kansas State Board of Indigents' Defense Services.

The authors also interviewed attorneys, investigators, mitigation specialists, and administrators knowledgeable about the structure and operation of the system for providing legal representation and related resources to individuals potentially facing the death penalty in the State of Kansas. We considered all the information we learned in addressing the questions we were asked to address.

II. Post-Furman representation in Kansas death penalty cases.

A. The Kansas Death Penalty System.

Kansas has had an uneasy relationship with capital punishment since the turn of the Twentieth Century. Kansas has not executed a prisoner for more than half a century, and has actively used the death penalty for only fifteen of the last 115 years.

A brief history is in order. The Kansas legislature abolished the death penalty on January 30, 1907, and it remained so until it was reinstated by the legislature in 1935. Between 1944 and 1954, ten men were executed; Governor George Docking declared a moratorium on executions during his administration from 1957 until 1960, after which there were five executions between 1962 and 1965 (Lowell Lee Andrews, executed November 30, 1962, Richard Hickock and Perry Smith, executed April 14, 1965, and George York and James Latham, executed on June 22, 1965). Kansas's death penalty statute was invalidated in 1972, this time by the United States Supreme Court's decision in *Furman v. Georgia*, 408 U.S. 238 (1972). Of all the death penalty states that reinstated the death penalty following *Furman*, Kansas was the last to do so; it did not pass another death penalty statute until 1994—more than twenty years after *Furman*.¹ No one has been executed in Kansas since the death penalty was reinstated.

¹ New York reinstated the death penalty in 1995, a year after Kansas. However, New York's highest court found the death penalty statute unconstitutional in *People v. LaValle*, 3 N.Y. 88, 817 N.E. 341 (2004). In 2007, remaining death sentences were reduced to life imprisonment, all execution equipment has been removed, and New York has not reenacted a new death penalty statute. New York has executed no one since the execution of Eddie Mays in

The result of this historical experience is that when Kansas reinstated the death penalty, a dedicated death penalty defense bar had not existed in the State of Kansas in living memory. No licensed attorney in the State of Kansas has ever litigated a postconviction death penalty case through its completion, and only one Kansas lawyer has previous experience representing death-sentenced clients in postconviction appeals—outside the State of Kansas. In other words, Kansas never has been, and likely never will be, Texas.²

The death penalty statute currently in effect in Kansas allows for the death penalty for Capital Murder, which is defined as the “intentional and premeditated killing” of a person in one of seven enumerated circumstances which include kidnapping, contract homicide, homicides committed by prisoners, homicides in commission or rape or sodomy, the killing of a police officer, the killing of more than one person, or the killing of a child under the age of 14 in the commission of a kidnapping or aggravated kidnapping with the intent to commit a sex offense. K.S.A. § 21-5401(a). The decision to seek the death penalty is in the sole discretion of the county or district attorney prosecuting the case, or the attorney general in a case in which the county or district attorney has a conflict of interest. K.S.A. § 21-6617(s). The death penalty process is triggered when the prosecuting attorney within ten days of arraignment files with the court and opposing counsel a notice of intent to seek the death penalty. *Id.* There is no set time interval between the initial arrest and arraignment; it is not unusual for the arraignment to occur more than a year after the defendant has been taken into custody on a capital charge. We found no guidelines and no process for review of a prosecutor’s decision to seek death, and we found no provision in Kansas law for judicial review of the sufficiency of the evidence to support a decision to seek the death penalty.

When a person is found guilty of capital murder, “the court, upon motion of the prosecuting attorney, shall conduct a separate sentencing proceeding to determine whether the defendant shall be sentenced to death.” K.S.A. § 21-6617(b). The penalty phase of the proceedings “shall be conducted by the trial judge before the trial jury as soon as practicable.” *Id.* The defendant may waive a jury, in which case “the sentencing proceeding shall be conducted by the court.” *Id.* At the sentencing hearing, the prosecuting attorney may present “[o]nly such evidence of aggravating circumstances as the state has made known to the

1963. New York: History of the Death Penalty, Death Penalty Information Center, <https://deathpenaltyinfo.org/state-and-federal-info/state-by-state/new-york>.

² Law professor David Dow, himself a seasoned capital defense lawyer, points out that much of the death penalty process involves “a foreign language even to most practicing attorneys.” David R. Dow, *Why Texas is So Good at the Death Penalty*, Politico, May 15, 2014.

defendant prior to the sentencing proceeding shall be admissible evidence of aggravating circumstances.” K.S.A. § 21-6617(c). Aggravating circumstances are enumerated by statute:

Aggravating circumstances shall be limited to the following:

- (a) The defendant was previously convicted of a felony in which the defendant inflicted great bodily harm, disfigurement, dismemberment or death on another.
- (b) The defendant knowingly or purposely killed or created a great risk of death to more than one person.
- (c) The defendant committed the crime for the defendant’s self or another for the purpose of receiving money or any other thing of monetary value.
- (d) The defendant authorized or employed another person to commit the crime.
- (e) The defendant committed the crime in order to avoid or prevent a lawful arrest or prosecution.
- (f) The defendant committed the crime in an especially heinous, atrocious or cruel manner. A finding that the victim was aware of such victim’s fate or had conscious pain and suffering as a result of the physical trauma that resulted in the victim’s death is not necessary to find that the manner in which the defendant killed the victim was especially heinous, atrocious or cruel. Conduct which is heinous, atrocious or cruel may include, but is not limited to:
 - (1) Prior stalking of or criminal threats to the victim;

- (2) preparation or planning, indicating an intention that the killing was meant to be especially heinous, atrocious or cruel;
 - (3) Infliction of mental anguish or physical abuse before the victim's death;
 - (4) torture of the victim;
 - (5) continuous acts of violence begun before or continuing after the killing;
 - (6) desecration of the victim's body in a manner indicating a particular depravity of mind, either during or following the killing; or
 - (7) any other conduct the trier of fact expressly finds is especially heinous.
- (g) The defendant committed the crime while serving a sentence of imprisonment on conviction of a felony.
- (h) The victim was killed while engaging in, or because of the victim's performance or prospective performance of, the victim's duties as a witness in a criminal proceeding.

K.S.A. § 21-6624.

The defense may present evidence of mitigating circumstances, only some of which are defined by statute:

- (a) Mitigating circumstances shall include, but are not limited to, the following:
- (1) The defendant has no significant history of prior criminal activity.
 - (2) The crime was committed while the defendant was under the influence of extreme mental or emotional disturbances.

- (3) The victim was a participant in or consented to the defendant's conduct.
 - (4) The defendant was an accomplice in the crime committed by another person, and the defendant's participation was relatively minor.
 - (5) The defendant acted under extreme distress or under the substantial domination of another person.
 - (6) The capacity of the defendant to appreciate the criminality of the defendant's conduct or to conform the defendant's conduct to the requirements of law was substantially impaired.
 - (7) The age of the defendant at the time of the crime.
 - (8) At the time of the crime, the defendant was suffering from posttraumatic stress syndrome caused by violence or abuse by the victim.
- (b) Pursuant to hearing under K.S.A. 2013 Supp. 21-6617, and amendments thereto, mitigating circumstances shall include circumstances where a term of imprisonment is found to be sufficient to defend and protect the people's safety from the defendant.

K.S.A. § 21-6625.

In addition to the statute defining mitigating circumstances, the Cruel and Unusual Punishment Clause of the 8th Amendment to the Constitution requires that the sentencer be allowed to consider and give mitigating effect to any aspect of the defendant's background and character tendered in mitigation of the sentence. *Lockett v. Ohio*, 438 U.S. 536 (1978). *Furman* and *Lockett* together fundamentally altered the landscape of capital litigation in America. Cases since *Lockett* have strictly applied its principle to overturn death sentences where statutes, jury instructions and rules of evidence precluded juries from considering specific matters in mitigation of punishment. See, e.g., *Skipper v. South Carolina*, 476 U.S. 1 (1986) (exclusion of evidence that the defendant was a well-behaved, good prisoner violated the Eighth

Amendment); *Green v. Georgia*, 442 U.S. 95 (1979) (exclusion of reliable mitigating evidence based on Georgia's hearsay rule violated the Eighth Amendment); *Eddings v. Oklahoma*, 455 U.S. 104 (1982) (sentencing statute precluding the trial judge's consideration of the defendant's turbulent family history violated the Eighth Amendment); *Mills v. Maryland*, 486 S. Ct. 367 (1988) (jury instruction precluding consideration of mitigating factors not unanimously found by the jury violated Eighth Amendment). The Constitution requires the court to allow the sentencer to consider and give effect to mitigating evidence and circumstances even if they are outside the statute; "give effect to" mitigating evidence means that the sentencer must be empowered to assess a life sentence based on any such circumstance it finds to exist. *Penry v. Johnson*, 532 U.S. 782 (2001). Mitigation evidence need not "explain" the crime or even have any causal connection of "nexus" to the crime; the jury must be allowed to consider any aspect of the defendant's background, character, mental health or culture that might humanize him in their eyes. *Tennard v. Dretke*, 542 U.S. 274 (2004). Justice Kennedy described the scope of mitigating evidence and circumstances as "potentially infinite." *Ayers v. Belmonte*, 549 U.S. 7, 21 (2006). All the foregoing cases guide counsel's preparation and presentation of the penalty phase of the trial. The defense lawyer is the only participant in the criminal justice system who is obligated to investigate and present evidence in mitigation of punishment. This is why the Supreme Court places on defense counsel the duty "to discover all reasonably available mitigating evidence and evidence to rebut any aggravating evidence that may be introduced by the prosecutor." *Wiggins v. Smith*, 539 U.S. 510, 524-25 (2003), quoting ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases 11.4.1(C), p. 93 (1989). This duty of diligence continues through appellate, postconviction and federal habeas corpus representation. *McCleskey v. Zant*, 499 U.S. 467, 498 (1991) ("petitioner must conduct a reasonable and diligent investigation aimed at including all relevant claims and grounds for relief").

After hearing evidence in aggravation and mitigation of punishment, to impose a sentence of death, a jury must unanimously "find[] beyond a reasonable doubt that one or more of the aggravating circumstances enumerated in K.S.A. 2014 Supp. 21-6624, and amendments thereto, exist and, further, that the existence of such aggravating circumstances is not outweighed by any mitigating circumstances which are found to exist." K.S.A. § 21-6617(e). If the jury does not so find unanimously, "the defendant shall be sentenced to life without the possibility of parole." *Id.* "A judgment of conviction resulting in a sentence of death shall be subject to automatic review by and appeal to the supreme court of Kansas," K.S.A. § 21-6619(a), which shall "shall consider the question of sentence as well as any errors asserted in the

review and appeal.” K.S.A. § 21-6619(a) & (b). Upon reviewing a sentence of death, that court must determine:

- (1) Whether the sentence of death was imposed under the influence of passion, prejudice or any other arbitrary factor; and
- (2) whether the evidence supports the findings that an aggravating circumstance or circumstances existed and that any mitigating circumstances were insufficient to outweigh the aggravating circumstances.

K.S.A. § 21-6619(c).

A prisoner whose conviction and sentence of death are affirmed on appeal may move to vacate, set aside, or correct the conviction and or sentence in the court which imposed the sentence. K.S.A. § 60-1507(a). Since reenacting the death penalty, the legislature has amended § 1507 to impose time limitations:

- (1) Any action under this section must be brought within one year of:
 - (A) The final order of the last appellate court in this state to exercise jurisdiction on a direct appeal or the termination of such appellate jurisdiction; or
 - (B) the denial of a petition for writ of certiorari to the United States supreme court or issuance of such court’s final order following granting such petition.
- (2) The time limitation herein may be extended by the court only to prevent a manifest injustice.
 - (A) For purposes of finding manifest injustice under this section, the court’s inquiry shall be limited to determining why the prisoner failed to file the motion within the one-year time limitation or whether the prisoner makes a colorable claim of actual innocence. As used herein, the term actual innocence requires the prisoner to show it is more likely

than not that no reasonable juror would have convicted the prisoner in light of new evidence.

(B) If the court makes a manifest-injustice finding, it must state the factual and legal basis for such finding in writing with service to the parties.

(3) If the court, upon its own inspection of the motions, files and records of the case, determines the time limitations under this section have been exceeded and that the dismissal of the motion would not equate with manifest injustice, the district court must dismiss the motion as untimely filed.

K.S.A. § 60-1507. The time limits and the limitations on expanding the time limits exponentially increases the complexity of an already complicated case, and adds significantly to counsel’s burden of delivering competent legal representation to a client under sentence of death.

Postconviction review has a “unique role to play in the capital process.” ABA Guideline 1.1 (2003), commentary. Because of “the general tendency of evidence of innocence to emerge only at a relatively late stage in capital proceedings,’ jurisdictions that retain capital punishment must provide representation in accordance with the standards of these Guidelines, as outlined in Subsection B, ‘*at all stages of the case.*’” ABA Guideline 1.1 (2003), commentary (emphasis added). Specifically, postconviction counsel “must be prepared to thoroughly reinvestigate the entire case to ensure that the client was neither actually innocent nor convicted or sentenced to death in violation of either state or federal law.” *Id.* This is emphasized multiple times:

Like trial counsel, counsel handling state collateral proceedings must undertake a thorough investigation into the facts surrounding all phases of the case. It is counsel’s obligation to make an independent examination of all of the available evidence—both that which the jury heard and that which it did not—to determine whether the decisionmaker at trial made a fully informed resolution of the issues of both guilt and punishment.

Id. As of this writing, 186 men and women convicted and sentenced to death in the United States have been exonerated through postconviction investigation.

Postconviction review is so critical to the fairness and reliability of a death penalty sentencing scheme that at least one state has expressly codified that death-sentenced prisoners are entitled to “effective assistance of [post-conviction] counsel.” *Grayson v. State*, 118 So. 3d 118, 126 (Miss. 2013). The United States Supreme Court, too, has recognized that “[w]ithout the help of an adequate attorney,” death-sentenced prisoners will face substantial difficulties in vindicating certain post-conviction claims. *Martinez v. Ryan*, 566 U.S. 1, 11 (2012). The Court explained:

A prisoner's inability to present a claim of trial error is of particular concern when the claim is one of ineffective assistance of counsel. The right to the effective assistance of counsel at trial is a bedrock principle in our justice system. It is deemed as an “obvious truth” the idea that “any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.” *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963). Indeed, the right to counsel is the foundation for our adversary system. Defense counsel tests the prosecution's case to ensure that the proceedings serve the function of adjudicating guilt or innocence, while protecting the rights of the person charged. See, e.g., *Powell v. Alabama*, 287 U.S. 45, 68-69 (1932) (“[The defendant] requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence”). Effective trial counsel preserves claims to be considered on appeal, see, e.g., Fed. Rule Crim. Proc. 52(b), and in federal habeas proceedings, *Edwards v. Carpenter*, 529 U.S. 446, (2000).

Martinez v. Ryan, at 12.

As of the time of writing this report, one case has advanced to hearing under K.S.A. § 60-1507, and another is on appeal from the denial of postconviction relief in the trial court. One additional state habeas corpus petition has been filed. The remaining men on death row are pending on direct appeal or in the investigation stage of state habeas corpus proceedings. None has entered federal habeas corpus proceedings and there is no formal plan to facilitate transition to new counsel at

that time, even though some clients will have only weeks remaining on their federal statute of limitations period within which to file a federal petition.

B. Kansas indigent defense generally

A person charged with any felony in the State of Kansas “is entitled to have the assistance of counsel at every stage of the proceedings against such defendant and a defendant in an extradition proceeding, or a habeas corpus proceeding pursuant to K.S.A. § 22-2710, and amendments thereto, is entitled to have assistance of counsel at such proceeding.” K.S.A. § 22-4503(a). The system for representing indigent people charged with criminal offenses in Kansas state courts is administered through the Kansas State Board of Indigent Defense Services (BIDS), which provides representation to 85% of adults charged with crimes in Kansas state courts. BIDS Executive Director Heather Cessna, *A Report On The Status of Public Defense*, September, 2020, p. 10 (hereafter “*Status Report*”). Indigent representation is provided by public defenders who are full-time state employees stationed in seventeen offices around the state, or by private counsel, who are compensated at a rate of \$65 to \$80 an hour.³ KANSAS LEGISLATOR BRIEFING BOOK, 2019, p. 2 (hereafter *Briefing Book*). This program consists of two groups: contract counsel, who accept assignments from BIDS for an agreed-upon rate, and non-contract counsel who are appointed by the courts and paid the statutory rate of \$80 per hour. Contract counsel are typically private attorneys or firms that contract with the Board to accept appointed cases at rates reduced from market value where the public defender has a conflict or is unable to otherwise handle the case, or where there is no public defender office in place. Neither contract nor non-contract assigned counsel are directly supervised by BIDS. Instead, BIDS audits assigned counsel claim forms when submitted and facilitates payments to those counsel for cases handled after the case has been completed.

In counties with full time defenders, sometimes potential conflicts of interest preclude the public defender from representing two or more defendants charged in the same crime. Sparsely populated areas of the state are typically served by private appointed counsel. It appears that the primary criteria used by BIDS to

³ The hourly rate for counsel has fluctuated over the years, and had been higher in the past. In 1988, the Kansas legislature raised the statutory rate of compensation from \$30 per hour to \$50 per hour in response to a Kansas Supreme Court ruling. In 2006, the Legislature approved an increase in compensation rates from \$50 per hour to \$80 per hour for assigned counsel beginning in FY 2007, but in 2007, the \$80 minimum per hour compensation rate was repealed after BIDS was able to negotiate a rate of \$62 per hour with some lawyers. The Executive Director’s September, 2020 report puts non-contract counsel compensation at \$80 per hour. The *Briefing Book* did not discuss hourly compensation for private counsel in death penalty cases, though the authors have reliable anecdotal information that the hourly rate for private counsel had been \$110 per hour when Kansas revived the death penalty in 1994, and since BIDS has offered private counsel between \$60 per hour and \$150 per hour to represent clients facing the death penalty.

determine whether an area will be served by private appointed lawyers or by full time public defender officers is cost per case. Where private lawyers deliver cheaper cost-per case services, the system uses private lawyers. Where public defenders deliver cheaper cost-per-case services, the system uses public defenders. BIDS is required to monitor cost per case of the private appointed bar and public defenders. *Briefing Book*, p. 2. We saw no indication that quality of representation was considered at any point.

The *Briefing Book* describes offices established to represent indigent persons facing the death penalty:

Death Penalty Defense Unit

The Death Penalty Defense Unit was established after the reinstatement of the death penalty. BIDS determined it was more cost effective to establish an office with attorneys specializing in the defense of capital cases rather than relying on contract or assigned counsel. The Unit has its main office in Topeka and a branch office in Wichita.

Capital Appeals and Conflicts Office

The primary function of the Capital Appeals and Conflicts Office is to handle representation throughout the long and complex appellate process that follows the imposition of a death sentence. The Office also handles noncapital cases from the Appellate Defenders Office, as time allows. This office is located in Topeka.

Capital Appeals Office

The Capital Appeals Office was established in 2003 to handle additional capital appeals. Specifically, the office was created to handle the appeals of Reginald and Jonathan Carr, who were both convicted of murder in Sedgwick County and sentenced to death. Due to conflict-of-interest rules, the existing Capital Appeals and Conflicts Office could only represent one of the two men. The establishment of the Capital Appeals Office resolved that conflict.

State Habeas Office

The State Habeas Office was established in FY 2015 to handle death penalty defense after a death sentence is upheld by the Kansas Supreme Court and petition for a writ of certiorari has been unsuccessful for the defense.

Another 11 regional trial-level public defender offices represent indigent clients in noncapital cases; they generally do not provide representation in death penalty cases, although Darryl Stallings was defended at his capital trial by the Johnson County Regional Public Defender Office. Also, most of the lawyers assigned to death penalty units informed us that they are also handling cases that do not involve the death penalty because of system wide caseloads and staffing shortages.

The legislator briefing book indicates that there are “caps,” i.e., maximum dollar amounts of compensation for services, that limit what lawyers can be paid for various kinds of representation. It does not indicate whether the system uses caps for attorney compensation in death penalty cases.

C. BIDS Funding and Staffing Problems.

The *Status Report* identifies pressing issues of funding and staffing that threatens the quality of legal representation in Kansas criminal cases. In FY 2020, BIDS handled a grand total of 26,237 cases: 11,456 through the public defender system, and 14,781 through the assigned counsel program. *Id.*, p. 11. In a nutshell, Director Cessna cites high employee turnover, retention and recruitment problems stemming from low pay, “and chronically high and ethically concerning caseloads.” *Id.*, p. 11.

Turnover & recruitment/retention problems. In the spring of 2019, the turnover rate for public defenders was as high as 25%, and since has hovered around 15%, which, according to Director Cessna, “represents a significant impact on our ability to consistently keep our public defender offices fully staffed with highly experienced attorneys and support staff. When asked to name the single biggest issue negatively impacting their work, the top three responses were workload (24.7%), poor pay and/or lack of raises/promotions (22.3%), and compassion fatigue and/or burnout (15.2%).” *Status Report*, p. 12. The survey also found that 55% of respondents had “considered leaving their public defender offices *within the past year.*” *Status Report*, p. 13 (emphasis in original). Again, the same three concerns—pay, workload, and burnout—were the primary reasons given for considering leaving. *Id.* Of defenders responding to the Well-Being Survey, 87% were unsure or did not see themselves working in a Kansas public defender office in ten years. *Id.*, pp. 13-14. Not surprisingly, respondents attributed this to the same three factors.

Caseloads. Caseload-per-attorney far exceeds the 1973 National Advisory Commission on Criminal Justice Standards, which set goals at “no more than 150 felonies per year, no more than 400 misdemeanors per year, and no more than 25

appeals per year.” *Status Report*, p. 15, citing NAC Standard 13.12.⁴ On average, system-wide, each lawyer handled 205 felony cases in fiscal year 2020. *Id.*, p. 20. In Sedgwick County, that average was 278 felony cases handled per lawyer. Only three offices are at or near the outdated NAC maximum caseload standard of 150 felony cases per year. *Id.* A lawyer working full time and taking no vacation would only have about 7.5 hours to devote to a single felony case. *Id.*, p. 21. A 2017 study of Louisiana Public Defender Caseloads found that a lawyer should spend about 22 hours on a low-level felony, and 200 hours on a felony case potentially punishable by life imprisonment. *Id.* One BIDS employee said, “I want to do high-quality work. I have too many cases to meet that goal in every case.” *Status Report*, p. 18. Another employee reported that “Investigators get no training, when I asked previously I was denied.” *Id.*, Appendix, p. 24.

Kansas public defenders may refuse to accept new court appointments “when it is determined jointly by the public defender and the director that the current active caseload would preclude the public defender from providing adequate representation to new clients.” K.A.R. § 105-21-3(b). There were 26 such shutdowns in FY 2020. *Status Report*, p. 22. Offices in Topeka, Salina, and Wichita each shut down multiple times due to turnover and overwhelming caseloads. *Id.* When this occurs, the cases must go to private attorneys in the assigned counsel program at a substantially higher cost-per-case, adding additional stress to an already over-stressed budget. *Id.*, p. 23.

Assigned counsel, while more expensive than full-time attorneys on a cost-per-case basis, are not adequately compensated at the BIDS \$80 per hour rate, which represents only 36% of the market rate for private counsel. *Status Report*, at 25.⁵ The system faces a looming crisis of attrition among private appointed counsel. *Id.*, p. 26.

Director Cessna’s *Status Report* describes an indigent defense system staffed by people who want to do good work for their clients, but are unable to do so because of a combination of workload, staff turnover, and resources. Undoubtedly, good work is being done, but there is also no doubt that good work is not being done for every client, and that as current problems persist, a growing portion of the agency’s clients are in danger of receiving substandard, ineffective representation. Although the *Status Report* does not specifically address death penalty offices and staff, it clearly did not exclude them. In the BIDS Well-Being Survey Report,

⁴ The NAC Standards have not been updated in 50 years, and overestimate the number of cases a lawyer in contemporary times can competently defend due to harsher sentences, increased complexity of criminal law, and advances in information technology and forensic science which add to counsel’s workload.

⁵ Even at the time the compensate rate was adopted in 2006, it represented only 53% of the market rate for lawyer fees in Kansas at that time. *Status Report*, p. 25.

August, 2020, one respondent asked for caseload caps for DPDU [Death Penalty Defense Unit] attorneys. *Status Report*, Appendix, p. 27. Workload issues also came up during the authors' interviews with death penalty representation unit staff. In fact, several of the death penalty representation staff we spoke with indicated that they were working on noncapital cases, and noncapital defender offices often represent potentially capital clients for a year or more before the cases become eligible for assignment to qualified counsel in the capital representation division. It is impossible to say that the death penalty defense unit is isolated or protected from the general caseload crises, and there is no doubt that clients facing the death penalty are adversely affected by attorney workloads.

III. Death Penalty Defense Capabilities

A. Additional demands for death penalty cases

Death penalty representation is a skilled specialty requiring expertise, time, and resources above and beyond that required for a typical non-capital case. As previously discussed, the Supreme Court held that “in capital cases the fundamental respect for humanity underlying the Eighth Amendment . . . requires consideration of the character and record of the individual offender and the circumstances of the particular offense as a constitutionally indispensable part of the process of inflicting the penalty of death.” *Woodson v. North Carolina*, 428 U.S. 280, 304 (1976). The Court’s conclusion that a capital case decision-maker must be allowed to consider any aspect of the defendant’s background and character,

. . . rests squarely on the predicate that the penalty of death is qualitatively different from a sentence of imprisonment, however long. Death, in its finality, differs more from life imprisonment than a 100-year prison term differs from one of only a year or two. Because of that qualitative difference, there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case.

Id. at 305. Therefore, in capital cases, “the [sentencer’s] ‘possession of the fullest information possible concerning the defendant’s life and characteristics’ is ‘[h]ighly relevant—if not essential—[to the] selection of an appropriate sentence.’” *Lockett v. Ohio*, 438 U.S. at 602-03.

Justice William Brennan foreshadowed the impact that the Supreme Court's death penalty jurisprudence would have on the duties of capital defense lawyers in his concurring opinion in *Furman v. Georgia*:

In the United States, as in other nations of the western world, "the struggle about [the death penalty] has been one between ancient and deeply rooted beliefs in retribution, atonement or vengeance on the one hand, and, on the other, beliefs in the personal value and dignity of the common man that were born of the democratic movement of the eighteenth century, as well as beliefs in the scientific approach to an understanding of the motive forces of human conduct, which are the result of the growth of the sciences of behavior during the nineteenth and twentieth centuries."

Furman v. Georgia, 408 U.S. 238, 297 (1972) (Brennan, J., concurring), quoting T. Sellin, *The Death Penalty, A Report for the Model Penal Code Project of the American Law Institute* 15 (1959). Justice Brennan's observations regarding the influences on American society's movement away from extreme punishment also guide counsel's approach to investigating and developing a case in mitigation of an individual client's punishment. An effective case in mitigation of punishment will include stories from the defendant's life that reveal his "personal value and dignity," coupled with a scientific "understanding of the motive forces" of the client's conduct and life trajectory. However, the unfettered constitutional right to offer mitigating evidence "does nothing to fulfill its purpose unless it is understood to presuppose *the defense lawyer* will unearth, develop, present and insist on consideration of those 'compassionate or mitigating factors stemming from the diverse frailties of humankind.'" Louis D. Bilonis & Richard A. Rosen, *Lawyers, Arbitrariness and the Eighth Amendment*, 75 TEX. L. REV. 1301, 1316-17 (1997), quoting *Woodson v. North Carolina*, *supra*, at 304 (emphasis added). Therefore, "[t]he duty to investigate, develop and pursue avenues relevant to mitigation of the offense or penalty, and to effectively communicate the fruits of those efforts to the decision-makers, rests upon defense counsel." *Supplementary Guidelines*, 36 HOFSTRA L. REV. at 678.

1. Mental Health

A Department of Justice report published in 2006 found that in mid-2005, “more than half of all prison and jail inmates had a mental health problem.” Doris J. James & Lauren E. Glaze, *Mental Health Problems of Prison and Jail Inmates*, Bureau of Justice Statistics Special Report, p. 1 (September, 2006), online at <https://bjs.ojp.gov/content/pub/pdf/mhppji.pdf> (Hereafter *BJS Report*).⁶ “These estimates represented 56% of State prisoners, 45% of Federal prisoners, and 64% of jail inmates.” *Id.* Because state prison and jail inmates with mental health problems were more likely than prisoners without mental health problems to have current or past violent offenses, *id.*, p. 7, mental health problems are likely even more prevalent among prison and jail inmates charged or convicted of capital murder. Effective capital defense lawyers know that “the prevalence of mental illness and impaired reasoning is so high in the capital defendant population that ‘[i]t must be assumed that the client is emotionally and intellectually impaired.’” *ABA Guidelines*, at Guideline 10.5, commentary (quoting Rick Kammen & Lee Norton, *Plea Agreements: Working with Capital Defendants*, *ADVOCATE* (Ky.), Mar. 2000, at 31.

A capital client’s mental health impairments never affect just one discrete aspect of the case. Confinement on a capital charge is a significant stressor that often increases the client’s predisposition to symptoms such as avoidance and paranoia. For this reason, “[t]he quality of the client’s cooperation may depend significantly on counsel’s skill and sensitivity in developing a human and emotional relationship with him.” Gary Goodpaster, *The Trial for Life: Effective Assistance of Counsel in Death Penalty Cases*, 58 N.Y.U. L. REV. 299, 322 (1983). Just as in the mental health field, defense counsel “must consciously work to establish the special rapport with the client that will be necessary for a productive professional relationship over an extended period of stress.” *ABA Guideline 1.1*, commentary. Rapport describes a dynamic relationship between the interviewer and the subject, in which “patients [clients] feel accepted with both their assets and liabilities.” BENJAMIN JAMES SADOCK & VIRGINIA ALCOTT SADOCK, *KAPLAN & SADOCK’S SYNOPSIS OF PSYCHIATRY 1* (9th ed. 2003) (Hereafter “*Synopsis of Psychiatry*”). In law as in medicine, rapport is “a relationship between the [client

⁶ “Mental health problems were defined by two measures: a recent history or symptoms of a mental health problem. They must have occurred in the 12 months prior to the interview. A recent history of mental health problems included a clinical diagnosis or treatment by a mental health professional. Symptoms of a mental disorder were based on criteria specified in the Diagnostic and Statistical Manual of Mental Disorders, fourth edition (DSM-IV).” *BJS Report*, p. 1.

or witness] and [the defense team] that reflects warmth, genuine concern, and mutual trust.” *Id.*, at 2. In addition to facilitating investigation and overcoming barriers to disclosure, “rapport can be the key to persuading a client to accept a plea that avoids the death penalty.” ABA Guideline 4.1, commentary. A federal judicial study commission found that client rapport and communication is “vastly more time consuming and demanding in a death penalty case.” COMM. ON DEFENDER SERVS., JUDICIAL CONFERENCE OF THE U.S., FEDERAL DEATH PENALTY CASES: RECOMMENDATIONS CONCERNING THE COST AND QUALITY OF DEFENSE REPRESENTATION (1998), <http://www.uscourts.gov/dpenalty/4REPORT.htm> [hereinafter *Spencer Report*]. Because of “the enormous stress that the risk of a death sentence imposes on both the client and the lawyer,” the committee urged that “special care must be taken in order to avoid a rupture of the professional relationship that would force counsel to withdraw, delaying the trial.” *Id.*

2. *Specialized skills, multidisciplinary teams, experts*

The focal point of counsel’s investigation in the post-Furman era of capital litigation is the client’s life history. The commentary to ABA Guideline 10.7 makes it clear that counsel’s duty to investigate includes “extensive and generally unparalleled investigation into personal and family history.” *ABA Guidelines*, at Guideline 10.7(A), commentary (quoting Russell Stetler, *Mitigation Evidence in Death Penalty Cases*, CHAMPION, Jan.-Feb. 1999, at 35). This indispensable investigation cannot be conducted competently without a multidisciplinary team. See, e.g., Cessie Alfonso & Katharine Baur, *Enhancing Capital Defense: The Role of the Forensic Social Worker*, CHAMPION, June 1986, at 26; Dennis N. Balske, *The Penalty-Phase Trial: A Practical Guide*, CHAMPION, Mar. 1984, at 42; James Hudson, Jane Core & Susan Schorr, *Using the Mitigation Specialist and the Team Approach*, CHAMPION, June 1987, at 33; Kevin McNally, *Death is Different: Your Approach to a Capital Case Must Be Different, Too*, CHAMPION, Mar. 1984, at 12-13; Russell Stetler & Kathy Wayland, *Dimensions of Mitigation*, CHAMPION, June 2004, at 31.

This careful investigative approach is an integral aspect of the standards articulated in the Supplementary Guidelines:

The defense team must conduct an ongoing, exhaustive and independent investigation of every aspect of the client’s character, history, record and any circumstances

of the offense, or other factors, which may provide a basis for a sentence less than death. The investigation into a client's life history must survey a broad set of sources and includes, but is not limited to: medical history; complete prenatal, pediatric and adult health information; exposure to harmful substances in utero and in the environment; substance abuse history; mental health history; history of maltreatment and neglect; trauma history; educational history; employment and training history; military experience; multi-generational family history, genetic disorders and vulnerabilities, as well as multi-generational patterns of behavior; prior adult and juvenile correctional experience; religious, gender, sexual orientation, ethnic, racial, cultural and community influences; socioeconomic, historical, and political factors.

Supplementary Guidelines, at Guideline 10.11(B). Obviously, such an investigation is significantly different from the kinds of investigation lawyers typically conduct in the vast majority of noncapital criminal defense cases, and it requires specialized training, knowledge, and expertise.

The client's life history will reveal many events that are independently mitigating, but will also provide valuable data for experts and jurors who strive to understand the defendant and his vulnerabilities. Traumatic or stressful conditions and events in his early life can help them better understand him. *Synopsis of Psychiatry* at 6. See also Kathleen Wayland, *The Importance of Recognizing Trauma Throughout Capital Mitigation Investigations and Presentations*, 36 HOFSTRA L. REV. 923, 925 (2008). It has long been recognized that a competent mitigation investigation must include the family history going back at least three generations, and must document genetic history, patterns, and effects of familial medical conditions. Lee Norton, *Capital Cases: Mitigation Investigations*, CHAMPION, May 1992, at 45; Richard G. Dudley, Jr. & Pamela Blume Leonard, *Getting It Right: Life History Investigation as the Foundation for a Reliable Mental Health Assessment*, 36 HOFSTRA L. REV. 963, 974-77 (2008). Daniel J. Wattendorf & Donald W. Hadley, *Family History: The Three-Generation Pedigree*, 72 AM. FAM. PHYSICIAN 441, 447 (2005). This is a time consuming, painstaking process that cannot be done using traditional investigators, who simply lack the knowledge to understand what is relevant and skill to conduct an

appropriate interview or record search. “Both tasks require special knowledge and expertise which the attorney may not (and probably does not) possess. Therefore, one of the first steps in the preparation of any capital case is securing the assistance of an individual with the skills that make him or her competent to conduct the life history investigation.” *Norton, Mitigation Investigations*, at 43. Mental health experts recognize that “[f]amily members, friends, and spouses can provide critical data such as past psychiatric history, responses to medication, and precipitating stresses that patients may not be able to describe themselves.” *Synopsis of Psychiatry*, at 5. Such evidence will be lost or overlooked if counsel does not employ a qualified, multidisciplinary team.

A significant misconception among people not experienced in capital defense is that a traditional investigator and a mental health expert together can cover the ground necessary to develop an adequate understanding of the client. That is absolutely not the case. One mitigation specialist observed:

[A] significant legal blind spot existed between the roles played by the private investigator and the psychiatrist, the two standard information getters in the trial process. Neither one was suited to the task at hand here—namely discovering and then communicating the complex human reality of the defendant’s personality in a sympathetic way.

But if getting this human and sometimes intangible information is important enough to warrant a specialist, the question is: what specialist? This is the dilemma [counsel] faced. [A]nd he ended up deciding that the intelligent application of a journalist’s skills in an interdisciplinary process might solve his problem.

Lacey Fosburgh, *The Nelson Case: A Model for a New Approach to Capital Trials*, CAL. DEATH PENALTY MANUAL, N6-N10, at N7 (Cal. State Pub. Def. Supp. July, 1982). Put simply, traditional investigators lack the skills, training, and understanding of mental health issues, and mental health experts do not gather records or travel extensively and interview potential witnesses in their homes. Even if they were willing to, at standard expert witness rates, it would be cost-prohibitive.

Because it had long since become routine for capital defense teams to include a mitigation specialist, the ABA Guidelines were revised in 2003 in part to recognize the absolute necessity of a defense team that includes “no fewer than two attorneys qualified in accordance with ABA Guideline 5.1, an investigator, and a mitigation specialist.” ABA Guideline, at Guideline 4.1.A.1. Mitigation specialists have been described as “human service experts working on capital defense teams represent[ing] the disciplines of social work, psychology, and counseling,” and who “demonstrate both sound clinical skills for interviewing and assessment and a thorough working knowledge of the court system.” Hudson et al., *The Team Approach*, at 33.

One area of concern with respect to the staffing of mitigation experts in the death penalty defense offices is the ratio of mitigation specialists to attorneys. The Topeka and Wichita trial offices share two mitigation specialists, which means each mitigation specialist is responsible for six cases and responding to the needs of twelve or more lawyers. The DPDU has contracted with outside mitigation specialists in two cases, but the workload remains heavy. One mitigation specialist told us, “There needs to be two of me.” We were also unable to confirm whether all of the mitigation staff are adequately trained and have the requisite expertise. The authors identified and interviewed one mitigation specialist who had a Master’s Degree in psychology. The other mitigation specialists who were described to us were people who have a J.D. degrees and their training in mental health, witness interviewing, investigation, and record gathering was unclear.

3. *Costs, Resources, and Time Constraints*

Death penalty defense work is complex and expensive. In addition to the gravity and complexity of it, the sheer volume of the work is compounded by the fact that the prosecution is nearly always represented by well-funded and skilled specialists. The defense team must not only prepare an affirmative case for life, but must also investigate and prepare to meet the prosecution’s case for death. A committee of federal judges reported that prosecution resources are a significant factor driving the need for fully staffed defense teams:

Judges generally reported that prosecution resources in death penalty cases seemed unlimited. Typically, at least two and often three lawyers appeared for the prosecution in federal death penalty cases, who were assisted in court by one or more “case agents” assigned by a law

enforcement agency. Investigative work and the preparation of prosecution exhibits for trial, including charts, video and audiotapes, is generally performed by law enforcement personnel. Law enforcement agencies also performed scientific examinations and provided expert witnesses at no direct cost to the prosecution. In some cases, which arose from joint state and federal investigations, state law enforcement agencies contributed resources to the prosecution effort.

Spencer Report. Kansas has no statutory or regulatory provision to ensure parity of resources between prosecution or defense.

Many of the problems identified in the BIDS *Status Report* reflect a system that is underfunded. Low hourly rates for private counsel may drive away some of the best candidates for capital representation. Inadequate funding for staff leads to high caseloads. Low salaries lead to low morale, turnover, and discontinuity of representation. There are many other ways that funding pressures affect the quality of representation that clients receive, and we saw some of those cost-cutting measures in place in the Kansas system. In noncapital offices, BIDS is declining appointments, turnover is high, and morale is low.

While the individuals who were interviewed for this report suggested that funding the capital offices is a priority for BIDS, there are clear signs that the capital defense offices are also affected by funding and resource issues. It was common for personnel assigned to capital defense offices to report that they were handling some noncapital cases in addition to their capital caseloads. Clients charged with death eligible crimes are sometimes represented by noncapital trial offices until the prosecution formally files notice of intent to seek the death penalty. The delay in the appointment of qualified counsel by more than a year at the trial level, and additional delay at the postconviction level, creates potential for substantial prejudice to the client. Mitigating witnesses or settlement opportunities may be lost, and the staffing cannot ensure adequately monitoring of client's mental health and well-being during times before a qualified, fully staffed team is assigned to the case. In addition, this delay in appointment of capital qualified counsel weakens or eliminates the defense's ability to convince the prosecution not to death notice a case. Without a mitigation specialist and the other resources that should be devoted to a capital case, the defense is at a significant disadvantage in any efforts to convince the prosecution not to issue a death notice.

IV. BIDS' Capital Defense Delivery System Risks Arbitrary Executions.

The authors interviewed staff attorneys, unit directors, and professional support staff on January 5 and 6, 2022, to learn about the operation of the capital division. All of the individuals interviewed seemed dedicated to capital defense. The lawyers we interviewed had the necessary qualifications for their positions. The authors' investigation left the authors with the firm impression that the lawyers and staff we interviewed appeared to be dedicated professionals who seek to do good work for their clients. All had positive words for BIDS Executive Director Heather Cessna, the first director to have a public defender background. While they support Director Cessna, there was broad skepticism about the ability to get the legislature to fund the needs of indigent defense in Kansas. The attorneys interviewed chose death penalty representation out of a sense of duty; for many, it is a calling more than a profession. One staff attorney said, "the salary and benefits aren't what make me want to be here."

In spite of the dedication and professionalism of the staff, it is equally clear that the system is at the edge of its capacity, if not beyond its ability, to deliver consistent, high-quality representation to persons facing the death penalty. The system needs more lawyers, more money, more support staff, and more time. One rogue prosecutor deciding to seek death in any case in which there was an arguable aggravating circumstance could disrupt the entire system. The private capital defense bar that is willing to take capital appointments (and that is capable of doing them well) is thin. There is often substantial delay before qualified trial and postconviction counsel are assigned to cases, and there are unrealistic, inflexible deadlines for filing postconviction claims, putting clients at substantial risk of prejudice. The authors also have concerns about BIDS's independence, and its insulation from political influences on its advocacy and funding. Finally, there is substantial evidence of substandard representation in the cases of people already sentenced to death in Kansas in cases decided by the Kansas Supreme Court.

A. Staffing and funding.

Every staff attorney, mitigation specialist, investigator, and office director we interviewed reported that caseloads are too high, there are not enough offices to handle all the cases, and salaries are too low. Two attorneys reported that they took pay cuts to join the DPDU.

DPDU Director Mark Manna advised that he hopes to achieve a caseload of two pending trial cases per lawyer. This is a reasonable objective if the goal is to

enable counsel to perform in accordance with prevailing standards. However, every lawyer we interviewed is responsible for twice that workload, some had even more. Manna himself carries five active trial cases in addition to his duties as Director. He reported that the number of pending cases is in the double digits, and two more appointments would force him to contemplate a shut down. Most attorneys have twice the number of death penalty cases that Director Manna would consider manageable, in addition to noncapital cases for which some lawyers are responsible.

Interviews with DPDU counsel show that even these caseload numbers are misleading because of the need for lawyers to step in and assist other lawyers who are overwhelmed on their own cases. One seasoned trial attorney who transferred to Kansas from another state reported that he was lead counsel on three cases, and co-counsel on two additional cases. This experienced lawyer described himself as striving to be effective, but “on the verge of workload overload,” worried about things falling through the cracks.

Other lawyers echoed these concerns. One lawyer reported, “I’m on five cases right now. It feels heavy.” He has three capital trials scheduled in the next year. In order to meet with each client about once a month, it requires a lot of driving time. [In comparison, the authors both do substantial death penalty defense training around the country, and encourage weekly client contact by the defense team, and during stressful periods, daily if possible.] This lawyer said that not many people want to transfer into the capital unit because “the salary and caseload is a turn off.” He reported that the salary gap between him and his counterparts in district attorneys’ offices is about \$20,000.

Although the authors did not travel to Wichita to interview DPDU staff, both assisted lawyers in that office with time and resource issues in a pending trial case with a trial date for which these lawyers could not be prepared. One staff attorney told the authors that the Wichita office “is getting hammered right now.” That office has only two lawyers, but Sedgwick County has pursued the death penalty at trial more than any other county, and it has increased the rate of filing death notices.⁷ To help with the pressure, every lawyer in the Wichita office has had to

⁷ In the first 19 years of the death penalty in Kansas, between 1994 and 2012, Sedgwick County prosecutors filed death notices in a total of 13 cases, less than one per year. Under Sedgwick County District Attorney Marc Bennett’s tenure, the office filed death notices in eight cases between 2013 and 2020. Five of those eight cases remain pending.

join as co-counsel in at least one Wichita case to prop that office up. At least two more lawyers are needed in Wichita.

One lawyer who has been with BIDS for many years succinctly described the consequence of the understaffing and excessive caseloads: “there were too many cases assigned to too few lawyers, and that led to no supervision of investigation or expert assistance.”

B. Unbridled Prosecutorial Discretion.

DPDU Director Manna described a defense delivery system that is at the edge of its capacity or beyond, only two cases away from having to shut the office down for new appointments. New death penalty case filings are higher than they have ever been. They have gone up across the state overall in the last six years. He reported that some prosecutors are motivated to file death notices for the sole purpose of leveraging guilty pleas, which significantly adds to caseload and workloads. A 2003 legislative audit in Kansas found that the estimated cost of a death penalty case was 70 percent higher than the cost of a comparable non-death penalty case.⁸ A 2014 study revealed that the average cost to BIDS in a death penalty case that ended in a guilty plea cost \$130,595, while the average jury trial in a case in which the death penalty was never sought cost BIDS substantially less, \$98,963. *Report of the Judicial Council Death Penalty Advisory Committee* at 7, Approved by the Judicial Council February 13, 2014.

Several attorneys interviewed identified prosecutorial discretion as a barrier to providing consistent and effective representation to defendants facing the death penalty. There are 105 prosecutors with the authority to decide to seek death. Nothing discourages them from filing capital charges; even in counties with fewer prosecutors, on request the Attorney General will step in with lawyers and resources. DPDU attorneys can’t discern what motivates prosecutors to invite the Attorney General to step in, or whether the Attorney General has any criteria for agreeing to such requests. The other common problem is that prosecutors do not always announce their intention to seek the death penalty before filing a formal notice after arraignment, which may delay the DPDU assignment to the case or appointment of qualified capital counsel for more than a year. This delays capital expertise and resources for the client during the initial phase of case preparation,

⁸ *Costs Incurred for Death Penalty Cases: A K-GOAL Audit of the Department of Corrections*, STATE OF KAN. LEGISLATIVE DIV. OF POST AUDIT (Dec. 2003), <https://www.kslpa.org/wp-content/uploads/2019/08/r-04-03.pdf>.

which can make the difference between life and death for the client. Another concern, noted above, is that a rogue prosecutor filing death notices in any conceivably death eligible case could overwhelm the BIDS capital defense capabilities. As Director Manna said, without the addition of more attorneys, the DPDU is two appointments away from declining new appointments.

C. Qualified Private Lawyers Are Too Few.

The private capital defense bar that is willing to take capital appointments (and do them well) is thin. The authors were able to identify few attorneys in the pool of private appointed counsel who are qualified to do the work. The authors are aware of other qualified lawyers who would accept appointments, but decline to participate in the system because the hourly rates will not sustain their law practices. One Kansas lawyer with death penalty trial experience told us that assigning death penalty cases to the private bar “would be catastrophic” because there are “less than a handful of lawyers who could do a death penalty case and not [mess] it up.”

These observations are consistent with our interviews with DPDU lawyers. DPDU attorneys noted that while some private counsel are familiar with the ABA Guidelines, most are not; and those in active cases are underfunded and undertrained. In one case, second chair is a private attorney whom DPDU counsel described as “not the kind of person you or I would want to file a capital case with because he has little familiarity with the [ABA] Guidelines.” Private lawyers do not always engage a mitigation specialist at the outset of the case, which is contrary to prevailing performance standards.⁹ In another case that is likely to be death noticed, appointed counsel has not requested co-counsel. According to DPDU counsel, defendants represented by private appointed counsel may be “materially at a detriment on resources, counsel, training.” Private appointed counsel may not request resources because they don’t know what to ask for, and those lacking in experience do not look at issues as an experienced capital defense lawyer would. Private counsel’s working relationship with prosecutors in one case “breathes of punch pulling.” One DPDU lawyer summarized the problem as “some hack lawyers doing very poor work,” especially in counties where BIDS has no offices.

⁹ “[I]t is imperative that counsel begin investigating mitigating evidence and assembling the defense team as early as possible—well before the prosecution has actually determined that the death penalty will be sought.” ABA Guideline 1.1, commentary.

There are no formal processes to make sure that the people hired to do these cases know what they're doing or have the time to do justice to the case. The attorney selection process was not well thought out at the very beginning, there is no oversight, and there are not enough specialized capital defense attorneys to keep up with the pace of new cases coming through the system. When asked about defense counsel compliance with performance standards set out in the ABA Guidelines, a former BIDS Capital Conflicts Office lawyer said that while some BIDS regulations make reference to the ABA Guidelines, with respect to some "we're not doing that and we haven't done that," and she is even more worried about what private counsel are doing. Even Director Cessna, who reviews funding requests by some private appointed counsel, speculates that these lawyers either don't know what to ask for, or have been trained by previous administrations that the answer will be no.

D. Systemic Delays in Appointing Qualified Trial Counsel

There is often substantial delay before qualified trial counsel are assigned to cases. BIDS lawyers revealed that DPDU counsel may not be appointed until more than a year after the client is arrested, during which time representation is provided by a noncapital office or private appointed counsel. A defense team that is not adequately trained or tuned in to this special obligation of capital teams puts the client at substantial risk, especially early in the case when the prosecutor may not have made up his mind about seeking the death penalty, or when the client may have an opportunity to avoid the death penalty by providing information or assisting the prosecution. This is important because the BIDS system of appointing counsel exposes virtually every capital client to this risk.

All responders reported substantial delays in assigning cases to capital qualified lawyers. At the trial level, for example, potentially capital cases are not always assigned to the capital unit until after arraignment, and after the prosecution files the statutory notice of intent to seek the death penalty. In Kansas, the preliminary hearing in a capital case often takes place more than a year after the client's arrest, the arraignment may take place weeks later, and the prosecution has a ten-day time period beyond that to elect whether to issue a death notice. As a result, clients who face the death penalty may be without qualified counsel for a substantial period of time during which crucial decisions are made and important relationships are formed. In many cases, opportunities to avoid the death penalty through early plea discussions with the prosecution will be lost. In all cases with

delayed appointments of capital counsel, the investigation into death penalty sentencing issues will be delayed, premature and uninformed decisions regarding competence and mental health defenses may be made, and the defendant is deprived of qualified representation on the issue of whether the prosecution will seek the death penalty, contrary to ABA Guidelines. Because “effective advocacy by defense counsel . . . may persuade the prosecution not to seek the death penalty[;] . . . it is imperative that counsel begin investigating mitigating evidence and assembling the defense team as early as possible—well before the prosecution has actually determined that the death penalty will be sought.” *ABA Guidelines*, Guideline 1.1, History of Guideline.

The substantial delay in assigning counsel to defendants facing the death penalty in some cases injects a high potential for arbitrary decision-making in the imposition of the death penalty.

E. Delays in Appointing Qualified Postconviction Counsel.

The State Habeas Office was created by BIDS more than twenty years after Kansas reinstated the death penalty. Our investigation into appellate representation established that appellate counsel focus on the trial record and legal issues, and spend no time whatsoever on continuing the fact development in the case. One former capital appellate lawyer told us that appellate counsel may speak to clients once a month on the telephone, and that they needed to try to make it to the prison two or three times a year, but could not always make that. She described client visits as “more maintenance” than mitigation development. There was no attempt to work on the clients’ defense or mitigation cases during the direct appeal process. The appellate division employs no investigators or mitigation specialists and does not have a budget for any form of fact development. The support staff is one paralegal who answered the phones and formatted briefs.

The State Habeas Office was created in 2015 at the urging of appellate and conflicts office lawyers who urged the administration to do something to prepare for the movement of cases into state postconviction proceedings. One appellate lawyer found a room filled with unattended boxes of disorganized trial files and realized that they represented a brewing crisis. Staff counsel exchanged alarmed e-mails with BIDS management about the need to get started on postconviction investigation as soon as possible. One lawyer reported that the requests to create postconviction investigation and representation capacities “met with push-back,” and to this day the delay in resourcing postconviction cases “could go on a lot

longer than what they [the lawyers] were comfortable with.” Attorneys described the development of the current system of postconviction representation services as the product of “bottom-up management.” The administration was brought along reluctantly, and still has not agreed to entry of postconviction lawyers into the case at the earliest possible time. This presents a substantial risk to the clients, who face one-year statutes of limitations for filing state and federal habeas corpus actions that are ticking away in tandem. The risk of forfeiting constitutional claims on procedural technicalities remains unacceptably high. Attorney Julia Spainhour agreed to accept the position as Director of the State Habeas Office in 2017. Director Spainhour said, “We had such horrendous boxes of crap that we got dumped on us, there was no method to preserve trial records.”

Prompt appointment of qualified postconviction is important because Kansas statute imposes a one-year statute of limitations on §1507 motions that begins at the finality of the opinion on direct appeal. Once a petition is filed, it cannot be amended without a court order allowing it, based on a finding of good cause or just cause. There are also rules about amending the petition so that it relates back to the original filing. A former Capital Conflicts Office attorney described the “just cause” or “good cause” standard as subjective. In practice, she said, the ability to show good cause to amend a petition for relief “depends on where your judge is and what he had for breakfast that morning.” The unrealistic, inflexible deadlines for filing postconviction claims put clients at substantial risk of prejudice.

Julia Spainhour, the Director of the State Habeas Office, reported that her office has great difficulty obtaining the files her office needs to do its job properly in the limited time available to investigate and prepare time-limited petitions for habeas corpus. There is no uniform system for maintaining or digitizing files within BIDS, and the process of rounding up disorganized boxes of paper files is a significant obstacle to timely investigation. Her office has two petitions on file and in active litigation, three cases which are still under investigation, and they are assisting private counsel on one additional case. The State Habeas Office has four other lawyers, two of whom have attended training specific to mitigation work and are being used as life history investigators, gathering records, and developing mental health narratives. That office has no psychologists or social workers on staff, and no clerical support staff. Director Spainhour has not contracted with outside mitigation specialists; everything is being done in house.

When asked what she would suggest to improve the BIDS system for delivering representation to persons facing the death penalty, she replied, “Other than just revamping the entire system, I don’t know what I could suggest. We’ve been focused on picking up the pieces.”

F. Concerns About Professional Independence and Insulation from Political Influences

The authors also have concerns about BIDS’s independence, and its insulation from political influences on its advocacy and funding. Until recently, the Executive Director of BIDS was always a political appointee, never someone with a grounding in indigent defense work. Heather Cessna, appointed Executive Director in October, 2019, is the first director with experience as a Kansas public defender, and everyone we spoke to is pleased with her expertise and management to date. One unit director told us that it is much less difficult to make a case for budget needs with Ms. Cessna; her predecessor required extensive education on operational concerns. However, although funding requests start off on more optimistic footing internally, new funding has not magically appeared.

The Kansas indigent defense management structure is controlled by the Board of Indigent Defense, made up of nine non-salaried members appointed by the Governor and confirmed by the legislature for three-year terms. Five of the members must be attorney members, one from the 1st Congressional District, and one each from the four counties exceeding 100,000 in population (Johnson, Sedgwick, Shawnee, and Wyandotte). The remaining four positions are filled by non-lawyer public members, one each from the four Congressional Districts in Kansas. The Executive Director is an employee-at-will of the Board. Only one current board member is a defense attorney with capital representation experience.

Director Cessna and DPDU Director Mark Manna are both employees at will, and either could be removed by the Board or even by the Governor. Directors Cessna and Manna have positively influenced the delivery of indigent defense services, but there are no structures in place to insulate from pressure by politicians to cut funding or otherwise temper their advocacy for BIDS clients. The authors prepared a detailed questionnaire for the BIDS administration inquiring about structural protections against political interference with the funding or legitimate functions of indigent defense offices, but responses have not been received at the time of this report.

G. Evidence of Concerns in Existing Death Sentences.

Finally, there is substantial evidence of substandard representation in the cases of people already sentenced to death in Kansas. One case that demonstrates how easy it is for a client facing the death penalty to fall through the cracks is the incompetent defense of Phillip Cheatham, Jr., by private lawyer Dennis Hawver, who had never previously defended a capital case. Hawver had never even read the ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases. Hawver did no investigation, requested no resources, did not engage co-counsel, did not look into his client's alibi, and at Mr. Cheatham's death penalty trial called him a "professional drug dealer" and "shooter of people." Hawver admitted startling ignorance of the Kansas death penalty statute and procedure, and his ignorance of constitutional limitations on the death penalty. The Kansas Supreme Court disbarred him for incompetence, stating:

But in this court's view the essentially uncontroverted findings and conclusions regarding Hawver's previous disciplinary history, his refusal to accept publicly financed resources to aid in his client's defense, and his inexplicable incompetence in handling Cheatham's case in the guilt and penalty phases of the trial are more than sufficient to require disbarment. See ABA Standard 4.51 (disbarment generally appropriate when a lawyer's course of conduct demonstrates "the lawyer does not understand the most fundamental legal doctrines or procedures, and the lawyer's conduct causes injury or potential injury to a client"). We hold that disbarment is the appropriate discipline.

In re Hawver, 300 Kan. 1023, 1056, 339 P.3d 573, 597 (2014). Hawver was not a public defender or a private appointed counsel, but his prejudicial performance on behalf of his capital client reflects the absence of systemic protections for clients against incompetent defense lawyers. There is no structure in place to prevent what happened to Mr. Cheatham from happening to other persons in danger of execution. It could happen again.

Another case in which BIDS was involved raises similar concerns about the absence of structural protections for defendants needing legal representation in cases involving the death penalty. In *State v. James Kahler*, the BIDS Executive

Director ordered the DPDU to move to withdraw on the grounds of non-indigence, without attempting to establish what his defense would cost and whether he truly had the resources to fund a death penalty defense involving a quadruple homicide. The Director gave the client a list of lawyers to hire to defend him. Mr. Kahler ended up going to trial with retained counsel who had no previous capital experience. He received a death sentence without the benefit of qualified death penalty counsel.

There were also problems reported within the BIDS system that are red flags for substandard representation. More than one lawyer who was interviewed referred to the level of practice under Ron Evans, the previous DPDU Director, as “The Dark Days.” In the case of Sidney Gleason, Mr. Evans declined the trial court’s offer of individual voir dire, and he delegated the presentation of the penalty phase of Mr. Gleason’s trial to his inexperienced co-counsel the night before the penalty phase commenced. One lawyer advised that the § 1507 motion for death row prisoner Gary Kleypas was written and filed by private appointed counsel after doing little or no investigation. Although Mr. Kleypas is now represented by BIDS counsel on appeal from the denial of that motion, his current counsel are frustrated by the lack of investigation in the case and are looking for ways to reopen the record in the case in the face of daunting procedural obstacles.

It was not the authors’ intention to comb through case records to look for evidence of deficient lawyer performance. The problems that are discussed in the previous portions of the report will be reflected in the litigation that follows in state and federal habeas corpus proceedings. But based on reports by the qualified lawyers whom the authors interviewed, there are cases in which trial lawyers allowed mentally ill clients to restrict the scope of their investigation, cases in which lawyers simply hired expert witnesses and turned the case over to them for investigation, and multiple cases reflecting a tendency for trial lawyers to repeatedly rely on the same psychological experts to do competency and neuropsychological evaluations, without putting context around the case for the expert so they know what to look for. One seasoned postconviction lawyer reported:

Many of the cases I’ve worked on highlight a complete abandonment of any real investigation, not only social or family history but criminal involvement with social services. . . There's just been an abandonment of the

accepted ways of developing a defense in a criminal case. Several instances where experts were hired and met with clients in the jail, did some testing, then the expert wasn't contacted until two months before the trial, at the last minute where there was no cohesion through the penalty to the guilt phase. . . . there were too many cases assigned to too few lawyers and that led to no supervision of investigation or expert assistance.

Conclusion

Our investigation revealed a system that is at or beyond capacity to provide consistently effective representation to all persons facing the death penalty in Kansas. In spite of the existing dedicated staff in the death penalty representation offices funded through BIDS, there are already clients who have not received the kind of representation that is essential to avoid arbitrary and capricious infliction of the punishment of death. Caseloads are too heavy to guarantee adequate investigation and preparation in every case. Low salaries dampen morale, contribute to turn-over, and impede recruitment of capable capital defense attorneys. Staffing needs to increase at all levels, including paralegals, investigators and mitigation specialists in addition to lawyers. The lack of structural protections against political influence hinders the implementation of effective, permanent solutions. All these factors together prevent BIDS from performing the role that is necessary to prevent the arbitrary and capricious infliction of capital punishment in the State of Kansas. Without substantial increase in resources and structural reform to the system for providing indigent defense, the death penalty in the State of Kansas cannot be administered with fairness and reliability.



Sean D. O'Brien



Marc Bookman

MARC BOOKMAN

Atlantic Center for Capital Representation

1315 Walnut Street, Suite 905

Philadelphia, PA 19107

(215) 732-2227

MBookman@atlanticcenter.org

MarcBookman12@gmail.com

EDUCATIONAL BACKGROUND

University of North Carolina at Chapel Hill

Juris Doctorate (May 1982)

University of Pennsylvania

Bachelor of Arts, English (May 1978), Magna Cum Laude

EMPLOYMENT HISTORY

Atlantic Center for Capital Representation

Executive Director (July 2010 to present)

The Atlantic Center for Capital Representation is a non-profit resource center for capital trial teams in Pennsylvania and nationally: the Center conducts direct representation, litigates systemic issues relevant to capital representation, consults with trial teams, provides training for capital lawyers, mitigation specialists, and investigators, and works on legislation to level the playing field for capital defense.

Mexican Capital Legal Assistance Program (MCLAP)

Attorney (January 2011 to present)

MCLAP attorneys aid Mexican nationals facing possible death sentences or executions at trial and post-conviction.

Federal Death Penalty Resource Counsel Project

Attorney (January 2020 to present)

The Project monitors all federal death penalty cases and consults with counsel in areas ranging from the DOJ authorization process to developing mitigation and working with experts.

Defender Association, Philadelphia, PA

Assistant Defender (1983 to July 2010)

Member of the Homicide Unit since 1993: responsible for capital and non-capital murder cases from initial arraignment through trial and sentencing. Litigated: broader pre-trial and victim impact discovery practice, right to quash aggravating circumstances, constitutional limitation of felony murder aggravator, limitations on use of juvenile death penalty prior to Roper v. Simmons. Previously completed several rotations in the Special Defense Unit, handling high profile, specialized cases. Tried dozens of jury and bench trials.

SELECTED CAPITAL TRAINING EXPERIENCE - FACULTY

Habeas Assistance And Training, New York City, Austin, Knoxville, Atlanta, Los Angeles, Orlando, New Orleans, Durham and Philadelphia, 1999 to Present

Conducted training sessions with practicing capital trial and post-conviction attorneys in courtroom, interview and investigative techniques relevant to capital representation.

Boulder Capital Voir Dire Conference 2016 to Present

Taught Morgan Method voir dire to practicing capital trial lawyers.

NAACP Legal Defense Fund, Airlie, VA, 1996 to 2018

Conducted training sessions and offered lectures on various aspects of capital representation at the annual, national Airlie Conference.

Pennsylvania Association of Criminal Defense Lawyers, Carlisle, Harrisburg, Pittsburgh and King Of Prussia, PA, 1995 to Present

Presented numerous lectures, individual consultations and training sessions regarding all aspects of capital trial representation.

Representing The Accused In A Capital Trial, Chapel Hill, Durham, Philadelphia, Houston, 1998 to Present

Conducted individual training sessions and consultations sponsored by the National Institute of Trial Advocacy on all aspects of a Capital Trial.

Making The Case For Life, Oklahoma City, September, 2005; Las Vegas, September, 2006 and 2007, Charlotte 2014, Las Vegas 2017, 2019

Lectured on Youth as Mitigation, Juvenile Development, and Resolution of Difficult Cases.

Capital Case Defense Seminar, Monterey and San Diego, 2006 to Present

Lectured on Limitation of Victim Impact Evidence, Pre-Trial Litigation, Closing Arguments, and Resolution Of Capital Cases.

National Consortium For Capital Defense Training, Philadelphia, 2006

Lectured on The Proper Use of A.B.A. Guidelines in capital trial defense.

The Persuasion Institute, 2003- 2008, 2014, 2016, 2018

Provided individual consultation and training on persuasive writing for capital practitioners.

National Seminar On The Development And Integration Of Mitigation Evidence, New Orleans, Washington D.C. and Philadelphia 2004 to Present

Lectured on resolution of capital cases through use of mitigation.

American Bar Association Annual Meeting, Chicago, 2001

Participated in panel discussion on judicial and prosecutorial misconduct in capital cases.

UMKC School Of Law, April 2009

Lectured on the art of storytelling in the defense of capital cases

Bring Your Own Case Capital Trainings, 2010 to Present

Capital defense teams across Pennsylvania brought specific capital cases to trainings in Philadelphia.

Lectured on Various Aspects of Capital and Criminal Defense Litigation at Yale, Harvard, Temple, Georgetown and University Of Pennsylvania Law Schools – 2004 to Present

SELECTED PUBLICATIONS

***Smoke*, 77 UMKC Law Review 1051 (2008-2009)**

***The Confessions of Innocent Men*, The Atlantic, August 2013**

***How Crazy Is Too Crazy To Be Executed*, Mother Jones, February 2013**

***When A Kid Kills His Longtime Abuser, Who's The Victim?* Mother Jones, November 2015**

Does An Innocent Man Have The Right To Be Exonerated?

The Atlantic, December 2014

***The 14-Year-Old Who Grew Up In Prison*, VICE July 2016**

***Three Murders In Philadelphia*, Slate May 2017**

A Descending Spiral: Exposing the Death Penalty in 12

Essays, The New Press, May 2021

SEAN D. O'BRIEN
Professor
University of Missouri-Kansas City School of Law
500 E. 52nd Street
Kansas City, Missouri 64110
(816) 235-1644

BAR MEMBERSHIP:

Missouri; United States Court of Appeals, Sixth, Eighth and Tenth Circuits; United States Supreme Court

EDUCATION:

University of Missouri-Kansas City, J.D., 1980
Alumni Achievement Award, 2002.

Northwest Missouri State University, B.A., *magna cum laude*, 1977.
Major, English; Minor, Speech Communications
Distinguished Alumni Award, 2006

Benedictine College, Humane Letters (Honorary), 2005

ACADEMIC POSITIONS:

Professor, UMKC School of Law, Criminal Law, Criminal Procedure, Problems and Issues in the Death Penalty, Post-conviction Remedies, Legal Investigation (Adjunct, 1995-2005; Visiting Professor, 2005-2007, Associate Professor, Sept. 1, 2007; Tenure awarded September 1, 2009); Professor, Sept. 1, 2016

Member, University of Missouri-Kansas City Doctoral Faculty

Adjunct Professor of Law, Washburn University School of Law, Death Penalty Seminar (2004-2005)

Advocate in Residence, Washburn University School of Law (April, 2005)

Director, UMKC School of Law Death Penalty Representation Clinic (1989-present)

Director, Capital Defense Internships, Center for Capital Punishment Studies, Westminster University, London (1994-2005)

Director, UMKC School of Law Public Defender Trial Clinic (1985-1989)

Director, UMKC School of Law Public Defender Appeal Clinic (1983-1985)

The Persuasion Institute, Cornell Law School, Faculty member (2003-Present)

The Supreme Court Advocacy Institute, New York University, Faculty member (2009-present)

The Anthony G. Amsterdam Capital Post-Conviction Skills Seminar, National Institute of Trial Advocacy, Faculty Member (2002-present)

PROFESSIONAL POSITIONS:

Member, ABA Task Force on Postconviction Remedies (2009-present)

Regional Resource Counsel, Administrative Office of the United States Courts, Defender Services Division. As part of the Habeas Assistance and Training Counsel Project, I assist with training lawyers appointed under the Criminal Justice Act to represent indigent habeas corpus petitioners under sentence of death (2002-present)

President/Executive Director, Public Interest Litigation Clinic (Formerly the Missouri Capital Punishment Resource Center). The Clinic represents death row inmates, produces specialized training programs for lawyers defending death cases, supervises clinical law students, and consults on criminal justice issues. PILC also publishes a bi-monthly newsletter and an annually supplemented capital case defense manual. (1989–2007; Board Member, 1989-2010)

Public Defender, Jackson County, Missouri. I was responsible for operation of an urban public defender office, and directed or assisted the defense of many capital cases. (January, 1985--September, 1989)

Assistant Public Defender, Jackson County, Kansas City, Missouri. I defended poor people in felony cases, including capital cases, in trial, appeal and post-conviction proceedings. Chief Appellate Counsel, June, 1983, to December, 1984. (March, 1981--December, 1984).

Member, National Association of Criminal Defense Lawyers (1990-present)

President, Missouri Association of Criminal Defense Lawyers (1992-93)

Chairman, Missouri Bar Criminal Law Committee (1989 - 1992)

Expert Witness on Standards of Performance: I have qualified to testify as an expert witness on standards of performance for defense counsel in state or federal courts in Alabama, Arkansas, Georgia, Idaho, Iowa, Kansas, Louisiana, Missouri, Nebraska, Pennsylvania, Wyoming and U.S. Court of Military Justice, in the Kansas, Missouri and Nebraska legislatures, and the Oregon Public Defender Commission.

PROFESSIONAL AWARDS:

Class of 2018 *Outstanding Professor*, UMKC Law School, 2018

Missouri Bar Foundation *Spurgeon Smithson Award*, 2016

UMKC Elmer Pierson *Outstanding Teacher Award*, 2012

Daniel L. Brenner *Faculty Writing Award*, 2010

National Association of Sentencing Advocates and Mitigation Specialists *Sentencing Project Award*, 2009

Northwest Missouri State University *Distinguished Alumni Award*, 2006

Kansas City Metropolitan Bar Association *Lifetime Achievement Award*, December, 2005

Jackson County Record Kansas City *Legal Leaders Award*, 2005

The Lawyers Association of Kansas City, *Justice Charles Whittaker Award*, 2004

Missouri Lawyer Weekly *Lawyer of the Year*, 2003

ACLU *Civil Liberties Award*, 2003

University of Missouri-Kansas City *Alumni Achievement Award*, 2002

National Coalition to Abolish the Death Penalty, *Legal Service Award*, 1998.

Missouri Association for Social Welfare, *Annual Recognition Award*, 1994

Missouri Coalition to Abolish the Death Penalty *Annual Recognition Award*, 1994

Missouri Association of Criminal Defense Lawyers *Annual Recognition Award*, 1994

National Lawyers Guild *Social and Economic Justice Award*, 1993

UMKC Law Foundation *Don Quixote Award*, 1987

PUBLICATIONS:

SSRN author page:

https://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=850294

Sean D. O'Brien, Dana Cook, & Quinn C. O'Brien, *In-Person and Face-to-Face: Criminal Defense Standard for Investigation*, (in progress), accepted for publication, 49 Hofstra L. Rev. ____ (2021).

Sean D. O'Brien, Elizabeth Vartkessian & Marla Sandys, *Psychological Defenses and Mitigation of Punishment*, in FORENSIC SCIENCE REFORM: THE PSYCHOLOGY AND SOCIOLOGY OF WRONGFUL CONVICTIONS (Wendy J. Koen & C. Michael Bowers, Elsevier, 2019), ISBN: 978-0-12-802655-7

Sean D. O'Brien & Quinn C. O'Brien, *I Know What You Did Last Summer: A User's Guide for Internet Investigations*, THE CHAMPION, p. 18 (June, 2017)

Strange Justice for Victims of the Missouri Public Defender Funding Crisis: Punishing the Innocent, 61 ST. LOUIS U. L. J. 725 (2017)

Sean D. O'Brien & Kenneth Ferguson, *Symposium: Traumatic Brain Injury and the Law: Introduction*, 84 UMKC L. REV. 287 (2016)

Sean D. O'Brien & Kathleen Wayland, Ph.D., *Implicit Bias and Capital Decision-Making: Using Narrative to Counter Prejudicial Psychiatric Labels*, 43 HOFSTRA L. REV. 751 (2015).

Kathleen Wayland & Sean D. O'Brien, *Deconstructing Antisocial Personality Disorder and Psychopathy: A Guideline-Based Approach to Prejudicial Psychiatric Labels*, 42 HOFSTRA L. REV. 519 (2014).

Sean D. O'Brien & Mary Kay Kisthardt, *Symposium: Mental Health, Psychology and the Law: Introduction*, 82.2 UMKC L. REV. 1 (2014).

Furman v. Georgia and Roper v. Simmons, in READINGS IN PERSUASION: BRIEFS THAT CHANGED THE WORLD (Linda H. Edwards, Aspen 2012) ISBN-13: 978-0735587755

Punishment, in LAW AND POPULAR CULTURE: TEXT, NOTES, AND QUESTIONS (David Ray Papke, 2nd Ed. LexisNexis 2012)

Sean O'Brien, Penny White, Bradley MacClean, Mary Ann Green, Ann Shorts, *Unique Ethical Dilemmas in Capital Representation*, 7 TENN. J. L. & POL. 203 (2010)

The Missouri Public Defender Crisis: Shouldering the Burden Alone, 75 MO. L. REV. 853 (summer, 2010)

Death Penalty Stories: Lessons in Life-Saving Narratives, 77 UMKC L. REV. 831 (2009).

Mothers and Sons: The Lloyd Schlup Story, 77 UMKC L. REV. 1021 (2009)

When Life Depends on It: Supplementary Guidelines for the Mitigation Function of Capital Defense Teams, 36 HOFSTRA L. REV. 693 (Spring 2008). (Selected for Daniel L. Brenner Faculty Writing Award [Related presentations at Oklahoma Criminal Defense Lawyers' Association (Oklahoma City, April 23, 2009); Death Penalty Seminar, Tennessee Association of Criminal Defense Attorneys, (Murfreesboro, TN, April, 2009); Life in the Balance, the National Legal Aid and Defender Association (New Orleans, LA, March, 2009); Death Penalty Defense Seminar, Florida Association of Criminal Defense Lawyers (Orlando, FL, March, 2009); California Attorneys for Criminal Justice Death Penalty Seminar (Monterey, CA, February, 2009); Capital Punishment Training Conference sponsored by the NAACP Legal Defense & Education Fund (Warrenton, VA, July, 2006 & 2007); Annual Meeting, National Association of Sentencing Advocates and Mitigation Specialists (Baltimore, MD, June, 2006); Making the Case for Life, the National Association of Criminal Defense Lawyers (Oklahoma City, OK, October, 2005, and Las Vegas, NV, 2006); National Habeas Corpus Seminar, the Administrative Office of the U.S. Courts (Pittsburgh, PA, August, 2005 and 2006, and Nashville, TN, August, 2007); National Seminar on the Development and Integration of Mitigation Evidence, the Habeas Assistance and Training Counsel Project (Salt Lake City, UT, April, 2005; Washington, DC, March, 2006 and 2007).]

Capital Defense Lawyers: The Good, the Bad and the Ugly, 105 MICH. L. REV. 1 (March, 2007).

Presumed Guilty: Innocence and the Death Penalty, Address to the Miscarriages of Justice Conference, Current Perspectives (February 20, 2007), in 7 J. INST. JUST. & INT'L STUD. 14 (2007).

Kansas v. Marsh: Putting the Guesswork Back Into Capital Sentencing, 105 MICH. L. REV. FIRST IMPRESSIONS 90 (Oct. 2006), <http://students.law.umich.edu/mlr/firstimpressions/vol105/obrien.pdf>.

Finding Redemption, 92 ABA JOURNAL 59 (August, 2006) (Winner, American Bar Association Ross Essay Contest)

Racism in White Decision, NATIONAL LAW JOURNAL, Nov. 1, 1999, p. A-25.

Voir Dire and Jury Selection, MISSOURI CRIMINAL PRACTICE DESKBOOK (MoBar CLE Publications, 1996; revised 2005).

Jury Instructions, MISSOURI CRIMINAL PRACTICE DESKBOOK (MoBar CLE Publications, 1996; revised 2005).

Addressing the Needs of Attorneys for the Damned, 58 U.M.K.C. L. REV. 517 (Summer, 1990).

Investigating Psychological Defenses, MOBAR CRIMINAL PRACTICE INSTITUTE, October,

1990.

A Step Toward Fairness in Capital Litigation, 16 WM. MITCHELL L. REV. 633 (1990).

Trial Objections, MO. CRIM. PRACTICE DESKBOOK, (MoBar, January, 1989).

Jury Instructions, MO. CRIM. PRACTICE DESKBOOK (MoBar, 1989, 1996 and 2008).

Voir Dire, MO. CRIM. PRACTICE DESKBOOK (MoBar, 1989, revised, 1996 and 2008).

NOTEWORTHY CASES:

Lloyd E. Schlup v. Delo, 513 U.S. 298 (1995), protecting the right of innocent death row prisoners to challenge their convictions in federal court. After a subsequent hearing, the district court issued the writ of habeas corpus discharging Schlup from his conviction.

Stewart v. Ramon Martinez-Villareal, 523 U.S. 637 (1998), preserving the right of mentally ill prisoners to challenge their competence for execution.

State of Missouri ex rel. Joseph Amrine v. Donald Roper, 102 S.W.3d 541 (Mo. 2003) (en banc), establishing the right to relief on free-standing claims of innocence. Joseph Amrine was the 111th person to exonerated from death row in the United States; Joe was released from prison on July 28, 2003.

In re Bobby Lewis Shaw, Executive Clemency proceedings; Missouri Governor Mel Carnahan on June 2, 1993, commuted the death sentence of a mentally ill man convicted of stabbing three prison guards, the first capital clemency in Missouri since 1947.

State v. Theodore White, Jr., 81 S.W.3d 561 (Mo. App. 2002), creating a prosecutorial misconduct exception to Missouri procedural bar doctrine (Client exonerated and released after trial by jury, February 7, 2005).

State v. Larna Edwards, 60 S.W.3d 602 (Mo. App. 2000), establishing right to accurate jury instructions on the defense of battered woman syndrome in homicide cases.

Wrongful Convictions Corrected: I have been directly responsible for litigation that won the freedom of wrongly convicted persons, including **Lloyd E. Schlup**, *Schlup v. Delo*, 513 U.S. 298 (1995), **Larna Edwards**, 60 S.W.3d 602 (Mo. App. 2000), **Theodore White, Jr.**, *State v. White*, 81 S.W.3d 561 (Mo. App. 2002), **Joseph Amrine**, *State ex rel. Amrine v. Roper*, 102 S.W.3d 541 (Mo. 2003), **James Boyd**, 143 S.W.3d 36 (Mo. App. 2004), **Dale Helmig**, *State ex rel. Koster v. McElwain*, 340 S.W.3d 221 (Mo. App. 2011), **Rodney Lincoln**, Released by order of Missouri Gov. Eric Greitens June 1, 2018, and **Ricky Kidd**, *Kidd v. Pash*, DeKalb County No. 18DK-CC00017 (filed Aug. 14., 2019). As co-counsel, investigator, or expert witness, I was instrumental in winning the freedom of **Eric Clemmons**, *Clemmons v. Delo*, 124 F.3d 944 (8th Cir. 1997), **Ellen**

Reasonover, *Reasonover v. Washington*, 60 F. Supp. 2d 937 (E.D. Mo. 1999), **Darryl Burton**, *In re Burton v. Dormire*, Cole County No. 06AC-CC00312 (Aug. 18, 2008), **Reggie Griffin**, *State ex rel. Griffin v/ Denney*, 347 S.W.3d 73 (Mo. 2011), **George Allen**, *State ex rel. Koster v. Green*, 388 S.W.3d 603 (Mo. App. 2012), **Gabriel Drennen**, *Drennen v. State*, 213 WY 118, 311 P.3d 116 (2013), **Kirk Wilson**, *Wilson v. State*, 51 Kan. App.2d 1, 340 P.3d 1213 (2014), **Lamonte McIntyre**, *McIntyre v. State*, Wyandotte County No. 2016CV508 (October 13, 2017), and **Lawrence Callanan**, *State ex rel. Callanan v. Griffith*, No. SC95443 (Mo., May 29, 2020) (unpublished).

Unconstitutional death sentences corrected: I have been directly responsible for litigation that removed men, women and children from death row in Missouri and across the country, including **Patrick Trimble**, *Trimble v. State*, 693 S.W.2d 267 (Mo. App. 1985), **Bobby Lewis Shaw** (Executive Clemency, June 6, 1993, the first Missouri clemency since 1947), **Chuck Lee Mathenia**, *In re Mathenia*, Washington County No. CV1093-250CC (filed March 17, 1994), **Ed T. “Butch” Reuscher, III**, *State v. Reuscher*, 887 S.W.2d 588 (Mo. 1994) (Writ of habeas corpus subsequently granted by the Court—the first in modern history), **Lloyd Schlup**, *Schlup v. Delo*, 513 U.S. 298 (1995), **Roosevelt Pollard**, *Pollard v. Delo*, 513 U.S. 1107 (1995), **Marvin Jones**, *In re Jones*, (unreported opinion finding Jones incompetent to be executed, 1995), **Heath Wilkins**, 145 F.3d 1006 (8th Cir. 1998), **Ramon Martinez-Villareal**, *Stewart v. Martinez-Villareal*, 523 U.S. 637 (1998), **Faye Copeland**, *Copeland v. Washington*, 232 F.3d 969 (8th Cir. 2000), **Joseph Amrine**, *State ex rel. Amrine v. Roper*, 102 S.W.3d 541 (Mo. 2003), **Steven Parkus**, *In re Competency of Parkus*, 219 S.W.3d 250 (Mo. 2007), **James Harlow**, *Harlow v. Murphy*, No. 05CV39B (D. Wyo. Filed Feb. 15, 2008), **Dale Eaton**, *Eaton v. Wilson*, No. 09CV261J (D. Wyo. Filed Nov. 20, 2014). In all of the foregoing cases, I won postconviction relief and represented the client until release or a non-capital sentence was assessed. As an expert witness, I helped teams permanently remove prisoners from death row, including **Max Hoffman** (Idaho, 2001), **Roger Gillette** (Mississippi, 2008), **Kahn Phan** (Georgia, 2012), **Angela Johnson** (U.S.-Iowa, 2012), **David Card** (Idaho, 2013), **Garret Dotch** (Alabama, 2017), **Dwight Loving** (U.S. Military; sentence commuted by President Obama Jan. 20, 2017), **Mickey Thomas** (Arkansas, 2018), and **John Powell** (Missouri, 2021).

Juveniles Sentenced to Life Without Parole Released: This is a new project for me in 2020, working with students and the MacArthur Justice Center to advocate for the parole of prisoners who were sentenced to die in prison for crimes committed when they were juveniles. Our first success is **Lisa Harris**, released Feb. 22, 2021; **Brandon Juarez** came home on September 29, 2021.

PRESENTATIONS:

Representing Difficult Clients, Pennsylvania Association of Criminal Defense Lawyers, Webinar, December 10, 2021.

Representing Traumatized Clients, with Dr. Kathleen Wayland, Advancing Real Change Webinar, December 1, 2021.

Just Mercy in an Era of Mass Incarceration, Cockefair Chair Course, UMKC, October 7, 14, & 29, 2021.

Bearing Witness to Our Client's Trauma, with Cathleen Price & Helgi Maki, Osgoode Hall Law School, York University, Toronto, ON Canada & ReeltimeCLE Webinar, September 21 and October 20, 2021.

Ethical Constraints on Investigation, UMKC CLE, Hot Topics in Law & Practice, June 25 & August 27, 2021.

Representing Traumatized People: The Importance of Understanding Trauma in our Clients and Cases, UMKC Film & the Law Series, The Exonerated: The Trauma of Wrongful Convictions, June 2, 2021.

Responding to Aggravating Evidence in Death Penalty Trials, Guest Lecture, University of Texas-Austin Capital Representation Project, April 7, 2021.

Cultural Competence as a Standard of Practice, UMKC CLE and BLSA Film & the Law Series, Just Mercy, March 9, 2021.

Debunking Deadly Diagnoses, Bring-Your-Own-Case Capital Defense Training Webinar, National Association of Criminal Defense Lawyers, February 16, 2021.

Working with Difficult Clients, Capital Defense Training, Public Defender Association of Philadelphia, the Atlantic Center for Capital Representation, and Penn State University Dickinson Law School, January 13-15-2021.

Countering Antisocial Personality Disorder & Other Psychiatric Labels, With Dr. Kathleen Wayland, Maricopa County Public Defender and Arizona Federal Public Defender, December 25 & 15, 2020.

Selecting and Working with Mental Health Experts, with Dr. Kathleen Wayland, National Webinar, Advancing Real Change, December 1, 2020.

Working with Difficult Clients, and *Recognizing Symptoms of Impairment* (with Dr. Kathy Wayland), sponsored by Federal Public Defender, Western District of Missouri, October 16, 2020.

Implicit Bias, Just Mercy, National Webinar, Reel Time CLE & North Carolina Bar Association, September 18, 2020.

Countering Antisocial Personality Disorder, Part II: Working with Experts, with Dr.

Kathleen Wayland, National Webinar, Advancing Real Change, August 11, 2020.

ETHICS: What are the ethical obligations of the lawyer who relies on agents to perform the investigative function? UMKC Film & the Law Series, The Brian Banks Story, July 30, 2020.

Countering Prejudicial Psychiatric Diagnoses, with Dr. Kathleen Wayland, National Webinar, Advancing Real Change, July 7, 2020.

Confronting Systemic Racism: Mass Incarceration and the School to Prison Pipeline, NAACP, Hutchinson, Kansas, July 2, 2020 (Webinar).

Just Mercy and Access to Justice: Practical Skills Training for Illuminating Bias, Confronting Systemic Racism, and Doing the Hard Work that Needs to be Done, Reel Time CLE, June 26, 2020 (webinar).

Ethical Constraints on Investigation, UMKC CLE Review of the Law 2020, Kansas City, Mo., June 19 & 23, 2020 (Webinar).

Illuminating Bias, UMKC CLE Film & the Law Series: Just Mercy, co-sponsored with Reel Time CLE, Kansas City, May 13, 2020 (Webinar).

Internet Investigation, National Federal Habeas Corpus Seminar, Training Branch, Defender Services Division, Administrative Office of the U.S. Courts and Advancing Real Change, Baltimore, MD, April 21 & May 19, 2020 (Webinar).

Keynote Address: Implicit Bias in the Prosecution and Defense of Death Penalty Cases, National Legal Aid and Defender Association, Biloxi, Mississippi, March 3, 2020.

Inherent Problems in American Criminal Justice: How the U.S. Became Home to the Largest Incarceration System in the World, UMKC BLSA & UMKC CLE, Film & the Law: When They See Us, Kansas City, MO, February 9, 2020.

Behaviors as Symptoms, and *Experts 101*, California Attorneys for Criminal Justice Annual Death Penalty Defense Seminar, San Diego, CA, February 13-16, 2020.

Dealing with mental health experts: Interviewing Experts, Choosing new experts and Drafting Referral Questions, UT-Austin School of Law, January 16-20, 2020.

Working with Mental Health Experts, Atlantic Center for Capital Representation and Pennsylvania Public Defender Association Annual Capital Case Defense Seminar, Philadelphia, Pennsylvania, December 12-14, 2019

No, Your Client Does not have ASPD (“no matter what that hack says”), National Federal Habeas Corpus Seminar, Training Branch, Defender Services Division,

Administrative Office of the U.S. Courts, Pittsburgh, Pennsylvania, August 8-11, 2019).

The Lloyd Schlup Story: Briefing on the Merits in the Supreme Court, The Supreme Court Advocacy Institute, New York University, New York, June 13-16, 2019.

Dealing with mental health experts; Choosing new experts and drafting referral questions; Interviewing prior experts, The Mitigation Skills Workshop, Training Branch of the Defender Services Division of the Administrative Office of the U.S. Courts, UMKC School of Law, May 30-June 2, 2019.

Forensic Mental Health; Debunking the Anti-Social Label, Making Sense of Science: Forensic Science and the Law, National Association of Criminal Defense Lawyers, Las Vegas, Nevada, April 5-6, 2019.

Challenging harmful and unreliable mental health diagnoses, Annual Seminar on the Development and Integration of Mitigation Evidence in Death Penalty Cases, Training Branch of the Defender Services Division of the Administrative Office of the U.S. Courts, Philadelphia, Pennsylvania, March 14-17, 2019.

Signs and Symptoms of Mental Illness, with Dr. David Freedman, and *Deconstructing Prejudicial Psychiatric Language*, with L.A. Public Defender Denise Gragg, Capital Case Defense Seminar, California Attorneys for Criminal Justice and California Public Defender Association, Monterey, California, February 15-20, 2019.

Choosing new experts, Interviewing Prior Experts and drafting referral questions, Administrative Office of the U.S. Courts and UT-Austin School of Law, January 15-20, 2019.

The Client and Experts: Understanding Trauma and Mental Health as Foundation for Reliable Evaluations, The Atlantic Center for Capital Representation and the Philadelphia Public Defender, Philadelphia, PA, December 6-8, 2018.

Bridging Communication Gaps with Our Clients, 2018 Capital Case Seminar, Los Angeles County Public Defender, Los Angeles, CA, October 19, 2018.

Challenging Government Expert's Methodology, National Habeas Corpus Seminar, Administrative Office of the U.S. Courts, Baltimore, MD, August 9-12, 2018.

Planning, Preparing and Presenting Mental Health Claims and Evidence, The Anthony G. Amsterdam Capital Postconviction Skills Seminar, Administrative Office of the U.S. Courts and Loyola School of Law, Los Angeles, CA, July 12-15, 2018.

Introduction to the Workshop – How Narrative Works in Post-Conviction Practice, The Persuasion Institute, Cornell University Law School, Ithaca, NY, June 15-17, 2018.

Dealing with mental health experts. Choosing new experts and drafting referral questions. Interviewing prior experts, Mitigation Skills Workshop, UMKC Law School and Administrative Office of the U.S. Courts, Kansas City, Mo., May 17-20, 2018.

The Ethics of Dealing with Difficult Clients, UMKC CLE Film & the Law Series, North Kansas City, Missouri, May 2, 2018.

Dealing with Difficult Clients, and *The Ethics of Dealing With Difficult Clients* (with Marc Bookman), Pennsylvania Association of Criminal Defense Lawyers, Harrisburg, April 26, 2018.

Deconstructing Drive-By Diagnoses of Antisocial Personality Disorder, Annual Seminar on the Development and Integration of Mitigation Evidence in Death Penalty Cases, Training Branch of the Defender Services Division of the Administrative Office of the U.S. Courts, Miami, Florida, April 20, 2018.

Emerging Best Practices: How Mitigation Investigation and Presentation Have Changed over the Past Forty Years, (with David Bruck & Richard Burr), University of Texas Law School, Austin, April 6, 2018.

Identifying, Investigating & Litigating Ineffective Assistance of Counsel Claims, National Innocence Project Network Conference, National Association of Criminal Defense Lawyers, Memphis, Tennessee, March 22, 2018.

Emerging Issues in Neuropsychology (with Dr. Dale Watson), and *Early Childhood Development, Including Developmental Disabilities*, Capital Case Defense Seminar, California Attorneys for Criminal Justice and California Public Defender Association, Monterey, California, February 15-19, 2018.

Dealing with mental health experts. Choosing new experts and drafting referral questions. Interviewing prior experts, Mitigation Skills Workshop, Training Branch of the Defender Services Division of the Administrative Office of the U.S. Courts, Kansas City, Missouri, January 12-15, 2018.

The Ethics of Working with Difficult Clients, and *Trauma, Mental Health Issues and Working with Experts*, Philadelphia Public Defender & Atlantic Center for Capital Representation Annual Seminar, Philadelphia, Pennsylvania, Nov. 30-Dec. 2, 2017.

Mitigation Evidence as a Gateway to Federal Habeas Corpus Relief, and *Challenging the Government Expert's Methodology*, National Habeas Seminar, Training Branch of the Defender Services Division of the Administrative Office of the U.S. Courts, Atlanta, Georgia, August 10-13, 2017.

Victim Outreach: How to Respond to and Interview Crime Victims, UMKC CLE Film and the Law Series: Conviction, Kansas City, May 17, 2017.

Working with Difficult Clients, Authorized Capital Case Conference, Training Branch, Administrative Office of the U.S. Courts, St. Louis, May 24-26, 2017.

Limiting the Scope of Rebuttal Mental Health Testimony, (with Federal Defender Sean Bolser), and *How Implicit Bias Leads to Harmful, Inaccurate Psychiatric Diagnoses*, (with Dr. Kathleen Wayland), Annual Seminar on the Development and Integration of Mitigation Evidence in Death Penalty Cases, Training Branch of the Defender Services Division of the Administrative Office of the U.S. Courts, Baltimore, Maryland, April 6-9, 2017.

When the Innocent Plead Guilty: Obtaining Post-conviction Relief in Plea Cases (with Nina Morrison, NY Innocence Project), Annual Postconviction Training Seminar, The National Innocence Project Network, National Association of Criminal Defense Lawyers and the Department of Justice, San Diego, March 23, 2017.

Proper Investigation of Evidence of the Client's Neuropsychological Development (with Dale Watson, Ph.D.), and *Using Client Life History to Interpret Symptoms and Behavior* (with Indiana Federal Public Defender Monica Foster), Capital Case Defense Seminar, California Attorneys for Criminal Justice and California Public Defender Association, San Diego, CA, Feb. 17-20, 2017.

Identifying, Interviewing and Working with Mental Health Experts, Mitigation Skills Workshop, Training Branch of the Defender Services Division of the Administrative Office of the U.S. Courts, Kansas City, Missouri, January 12-15, 2017.

Trauma, Mental Health Issues, and Working with Experts, and *The Ethics of Working with the Client to Resolve the Case*. Philadelphia Public Defender and the Atlantic Center for Capital Representation, Dec.14-17, 2013, Philadelphia, PA.

Investigating and Litigating Deficient Performance, National Habeas Seminar, Training Branch of the Defender Services Division of the Administrative Office of the U.S. Courts, Washington, DC, August 11-14, 2016.

Introduction to the Workshop – The Use of Narrative Tools in Post-Conviction Practice, The Persuasion Institute, Training Branch of the Defender Services Division of the Administrative Office of the U.S. Courts, Cornell University School of Law, Ithaca, New York, July 22-24, 2016.

Planning, Preparing, and Presenting Mental Health and Mitigation Claims and Evidence, The Anthony G. Amsterdam Postconviction Skills Workshop, Loyola School of Law, Los Angeles, California, June 22-23, 2016.

Federal Habeas Corpus Update, National Association of Criminal Defense Lawyers, the Department of Justice, and the National Innocence Project Network, San Antonio, TX, April 7, 2016.

The Link Between Mental Health and Mitigation, and Implicit Bias and Mental Health Examinations, Annual Seminar on the Development and Integration of Mitigation Evidence in Death Penalty Cases, Training Branch of the Defender Services Division of the Administrative Office of the U.S. Courts, New Orleans, LA, March 31-April 4, 2016.

Death Penalty Mitigation Investigation: Legal and Professional Standards, and Dealing with Mental Health Experts: Interviewing Prior Experts, Selecting New Ones, and Drafting Referral Questions, Mitigation Skills Workshop, Training Branch of the Defender Services Division of the Administrative Office of the U.S. Courts, Kansas City, Missouri, January 14-17, 2016.

Developing Client Relationships and Recognizing Symptoms of Mental Illness, and Roadblocks to Success – Understanding the Norms to Constitutional Adjudication – Opportunity, Resources and Time, Missouri Public Defender Postconviction Skills Workshop, Kansas City, Missouri, November 17-19, 2015.

Avoiding Prejudicial Labels, and Case Budgeting, National Habeas Seminar, Training Branch of the Defender Services Division of the Administrative Office of the U.S. Courts, Charlotte, North Carolina, August 13-16, 2015.

Death is Different in Every Way: Eighth Amendment Law, the Federal Death Penalty Act and the Lawyer's Role in a Capital Representation, Regional Federal Capital Trial Training Program, District of Kansas and Western District of Missouri, Kansas University, August 13-14, 2015

Planning, Preparing, and Presenting Mental Health and Mitigation Claims and Evidence, The National Habeas College, NITA and Loyola School of Law, Los Angeles, July 1.6-19, 2015.

Important Considerations in Presenting your Case to the Court at the Merits Stage, Supreme Court Advocacy Institute, NYU, June 21, 2015.

Storytelling in Innocence Cases, The National Innocence Project Network Conference, Orlando, Florida, May 1, 2015.

Using Social Media to Investigate Innocence Cases, with Quinn O'Brien, The National Association of Criminal Defense Lawyers, Orlando, Florida, April 30, 2015.

Prong I of Strickland v. Washington: Proving Prevailing Professional Norms, with Russell Stetler, and *Your Client Is Not a Psychopath (and He Is Not Antisocial or Narcissistic Either)*, the Training Branch of the Defender Services Division of the Administrative Office of the U.S. Courts, Baltimore, April 10-12, 2015.

The Capital Defense Team as an Investigative Unit, Capital Defense College at the

Center for American and International Law, Plano Texas, March 23, 2015.

Deconstructing Diagnosis of Antisocial Personality Disorder and Psychopathy, and Lay Witnesses as Experts, California Attorneys for Criminal Justice, Monterey, California, February 13-16, 2015.

Legal and Investigative Standards Governing Investigation and Presentation of Mitigating Evidence in Death Penalty Cases, and Investigating Multigenerational Evidence of Mental Disorders, Mitigation Skills Workshop, Training Branch of the Defender Services Division of the Administrative Office of the U.S. Courts, UMKC Law School, January 15-18, 2015.

Vicarious Trauma for Capital Defense Teams, Federal Public Defender for the District of Arizona, December 10, 2014.

Trauma, Mental Health Issues, and Working with Experts, (with Russell Stetler & Michael Wiseman), Atlantic Center for Capital Representation, Philadelphia, Pa., November 21, 2014.

Recantation Evidence: How to Obtain it and Use it Effectively, (with Quinn O'Brien and Justin Brooks), National Association of Criminal Defense Lawyers, Washington, DC, September 26, 2014.

Where Mental Health Meets the Law: Psychopathy and Competent Legal Practice, Thomson-Reuters Webinar, September 11, 2014.

The Use of Narrative Tools in Postconviction Practice, the Persuasion Institute, Training Branch of the Defender Services Division of the Administrative Office of the U.S. Courts, Cornell Law School, September 5, 6 & 7, 2014.

American Capital Punishment Defense: A Case Study, Japan Federal Bar Association, Osaka and Tokyo, Japan, August 18. 21 and 22, 2014.

Important Considerations in Presenting Your Case to the United States Supreme Court, New York University, June 15, 2014.

Procedural Issues in Innocence Cases and Panel Discussion: Ethical Issues in Innocence Cases, (with Tricia Bushnell and Quinn O'Brien) UMKC Law School and Kansas City Metropolitan Bar Association *Film and the Law Series*, Kansas City, MO, May 21, 2014.

Deconstructing the Government's Mental Health Case, (with Russell Stetler, National Mitigation Coordinator), the Training Branch of the Defender Services Division of the Administrative Office of the U.S. Courts, New Orleans, LA, May 16, 2014.

Deconstructing and Avoiding Prejudicial Psychiatric Evaluations (with Dr. Kathleen

Wayland), and *Law for Mitigation Specialists* (with Denise Young), the Training Branch of the Defender Services Division of the Administrative Office of the U.S. Courts, Philadelphia, PA, March 28-30, 2014.

Representing the Mentally Impaired Client: What You See is What You Don't Get, (with Dr. Kathleen Wayland & Dr. Shawn Agharkar); *Deconstructing Prior Mental Examinations*, and *The New DSM-5* (with Dr. George Woods), California Attorneys for Criminal Justice, Monterey, California, February 14-17, 2014.

Investigating Multigenerational Evidence of Mental Disorders, the Training Branch of the Defender Services Division of the Administrative Office of the U.S. Courts, UMKC Law School, January 18, 2014.

The Standard of Care in Mitigation Investigation, Arkansas Capital Defense Training, Arkansas Association of Criminal Defense Lawyers, Fayetteville, AR, November 16, 2013

Rebutting Pseudo-Scientific Stereotypes of Capital Defendants (with Prof. Stefan H. Krieger), ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases Tenth Anniversary Symposium, Hofstra Law School, October 21, 2013.

ABA Guidelines: Death is Different (with Danalynn Recer); and *Trauma, Mental Health Issues, and Working with Experts* (with Dr. Kathleen Wayland), Philadelphia Public Defender and the Atlantic Center for Capital Representation, Sept. 26-29, 2013, Philadelphia, PA.

The duty to conduct and present mitigation evidence (with Russ Stetler), and *Integrating mitigation themes in innocence cases*. Tenth National Seminar on the Development and Integration of Mitigating Evidence, Baltimore, MD, April 5-7, 2013

Keynote Address: The Ethics of Guild Lawyering, The National Lawyers Guild Midwest Regional Conference, Kansas City, March 22-24, 2013.

Telling the Client's Story: Trial as Narrative, and *Using the ABA Guidelines to Defeat Prejudicial Psychiatric Labels*, California Attorneys for Criminal Justice, Monterey, CA, Feb. 15-18.

Keynote Address: Death is Different: Using the ABA Guidelines to Meet the Standard of Care in Death Penalty Cases and Social History Investigation, Texas Association of Criminal Defense Lawyers and the U.S. Department of Justice Capital Training Consortium, San Antonio, TX, Feb. 4-6, 2013

Keynote Address: Capital Defense Practice; Defending Against Prosecutorial Misconduct; and Preserving Legal Issues for Appellate Review, Life in the Balance

Annual Death Penalty Seminar, National Legal Aid and Defender Association, October 30, 2012.

Capital Trial Practice: Effectively Telling the Client's Story, Los Angeles Public Defender Annual Capital Defense Training Seminar, September 28, 2012.

Litigating Innocence and Using the Supplementary Guidelines on the Mitigation Function of Capital Defense Teams to Avoid or Rebut a Diagnosis of ASPD, National Habeas Seminar, Administrative Office of the U.S. Courts, Washington, DC, August 16-19, 2012.

Planning, Preparing and Presenting Mental Health and Mitigation Evidence in Death Penalty Cases, The National Institute of Trial Advocacy Habeas College, Loyola School of Law, Los Angeles, CA, July 26-29, 2012.

Prevailing Standards of Performance for Defense Counsel in Death Penalty Cases, Washburn University Law School, Topeka, KS, July 20, 2012.

Presenting Your Case to the Supreme Court at the Merits Stage, The Supreme Court Advocacy Institute, New York, June 7-10, 2012

Ethical Duties of Lawyers and Nonlawyers When Former Clients Claim Ineffective Assistance of Counsel; Law for Mitigation Specialists; and Mitigation standards, past and present, Annual Seminar on the Development and Integration of Mitigating Evidence in Death Penalty Cases, Administrative Office of the U.S. Courts, Atlanta, GA, April 26-29, 2012.

Keynote address and Getting into Court with New Science, The National Innocence Project Network Conference, Kansas City, MO, March 29-30, 2012.

Trauma, Mental Health Issues, and Working with Experts, Philadelphia Public Defender Association, Philadelphia, PA, March 15-16, 2012.

Collateral Damage, AEDPA for the Uninitiated and Psychopathy and Antisocial Personality Disorder, California Attorneys for Criminal Justice Annual Capital Defense Seminar in Monterey, California; February 16-19, 2012.

Keeping the Client Whole, Oregon Association of Criminal Defense Lawyers Annual Death Penalty Defense Seminar, Pendleton, OR, October 21-22, 2011.

Mental Health and Trauma Issues in Capital Defense, Office of the Public Defender of the State of Delaware, Dover, DE, October 14, 2011.

Developing and Presenting Mental Health Evidence, The Habeas College, UMKC Law School, Kansas City, MO, September 15-18, 2011.

Why Psychopathy Isn't Mitigating, Litigating Actual Innocence, and Multi-Dimensional Mitigation: Doing Your Clients Justice, National Habeas Seminar, Charlotte, NC, August 18-21, 2011.

Presenting Your Case to the Supreme Court at the Merits Stage, Supreme Court Advocacy Institute, NYU, New York, June 12-14, 2011.

Where Do We Go from Here? Post-2255 Litigation Options, 2011 Capital Habeas Project Bring-Your-Own Case Training, Indianapolis, May 12-14, 2011.

Challenging Psychopathy Evidence, and Getting the Time and Money We Need, Eighth National Seminar on the Development and Integration of Mitigation Evidence, Habeas Assistance and Training Counsel Project, Chicago, Illinois, March 31, April 3, 2011.

Negotiations in Capital Trial and Postconviction Cases, Standards of Performance for Mitigation Specialists, and Pervasive Developmental Defects, California Attorneys for Criminal Justice Annual Capital Defense Seminar in Monterey, California, Feb. 14-17, 2011.

The Unique Issues Surrounding Competency to Be Executed, Counsel's Ethical Responsibilities in Representing Clients with Severe Mental Illness, and Strategy Issues in Competency Litigation, Fourth National Seminar on Mental Health and the Criminal Law in New Orleans, Louisiana, Jan. 10-12, 2011.

Standards of Performance for the Mitigation Function of Capital Defense Teams, Oklahoma Office of Indigent Defense, Oklahoma City, OK, Dec. 8-10, 2010.

Challenging the anti-social personality diagnosis, Federal Capital Trial Strategy Session (Training Branch, Defender Services Division of the Administrative Office of the U.S. Courts), Austin, TX, Nov. 12, 2010.

Litigating Confession Claims Post-Berghuis & Shatz, and Litigating Innocence in Non-DNA and DNA Cases, National Federal Habeas Corpus Seminar (Administrative Office of the U.S. Courts), Cleveland, OH, August 26-29, 2010.

Unique Ethical Dilemmas in Capital Representation, National Public Defense Symposium, ABA Standing Committee on Legal Aid and Indigent Defense & The U. of Tenn. College of Law, Knoxville, TN, May 20-21, 2010.

Accounting for Aggravation and Other Bad Facts, Second Annual 2255 Training, Federal Capital Habeas Project, Indianapolis, IN, May 13-15, 2010.

Keynote Address: What is the Standard of Care in Mitigation Development in Death

Penalty Cases? and *When the Client Wants to Die*, The Seventh National Seminar on the Development and Integration of Mitigation Evidence: New Science, New Strategies, Seattle, WA, April 24 & 25, 2010.

Planning, Preparing and Presenting Mental Health and Mitigation Evidence in Death Penalty Cases, The National Institute of Trial Advocacy Habeas College, Golden Gate University School of Law, San Francisco, CA, March 13, 2010.

Broke and Broken: Missouri Public Defender Crisis, University of Missouri, Columbia, February 26, 2010.

Capital Defense Mental Health Training: Dealing with Government's Experts, Witnesses, and Evidence, UMKC Law School, November 12-15, 2009.

The Persuasion Institute, Cornell University School of Law, September 11-13, 2009.

Ethical Duties of Capital Defense Lawyers, Florida Public Defender Association's Annual Life Over Death Seminar, September 11, 2009.

Supreme Court Update (with Keir Weyble and John Blume), *Funding Motions, Discovery, Expanding the Record* (with Denise Young), and *Litigating Innocence Post-Osborne*, 14th Annual National Habeas Seminar, Pittsburgh, PA, August 20-23, 2009.

The James Harlow Case: Using Narrative Techniques in Law School Clinical Representation, Lewis & Clark Law School Storytelling Conference, Portland, OR, July, 2009.

Ethics or No Ethics? (with Larry Fox) NAACP Legal Defense Fund Annual Capital Punishment Conference, Airlie House Conference Center, Warrenton, VA, July, 2009.

Supreme Court Advocacy Institute, NYU, New York, NY, June 12-14, 2009.

Ethical Duties in Mitigation Development, and Avoiding Landrigan, Habeas Assistance and Training Counsel Project, Philadelphia, PA, April 16-19, 2009.

Serving Under-represented Populations Through Law School Clinical Programs, Salmon P. Chase School of Law, University of Northern Kentucky, March 3, 2009.

When the Client Wants to Die: Landrigan v. Schriro, California Attorneys for Criminal Justice Annual Death Penalty Seminar, Monterey, CA, February 14, 2009.

Keynote Address: Telling the Client's Story: The Big Picture, and Telling the Client's Mental Health Story, Oregon Criminal Defense Lawyers' Association Annual Death Penalty Defense Seminar, Welches, OR, October 17-18-2008.

Capital § 2255 Cases: Getting Resources, Case Budgeting and Investigating Cases Even When Funds Are Scarce, (with Naomi Terr and Miriam Gohara); *Non-DNA Innocence Claims*; and *Aggravation as Mitigation: Turning Bad Facts to Your Advantage*, Thirteenth Annual Federal Habeas Corpus Seminar, St. Louis, MO, August 21-24, 2008.

A New Tool to Meet an Old Need: The Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases, NAACP Legal Defense & Education Fund 29th Annual Capital Punishment Training Conference, Warrenton, Virginia, July 13, 2008.

Planning, Preparing and Presenting Mental Health Evidence, The Anthony G. Amsterdam Post-Conviction Skills Seminar, San Francisco, CA, June 12-15, 2008.

Keynote Address: The Development, Integration and Presentation of Mitigating Evidence in Capital Cases, and *Investigating, Developing and Presenting Evidence of Prison Culture*, (with Craig Haney, JD, Ph.D.), Habeas Assistance and Training Project, Baltimore, MD, May 31 and June 1, 2008.

How to Get a Really Old, Procedurally Barred Non-DNA Case Back into Court and Win It, Annual Innocence Network Conference, Santa Clara University School of Law, CA, March 26-28, 2008.

Guidelines for Capital Mitigation Symposium, Hofstra Law School, Hempstead, New York, Dec. 5, 2007.

Making the ABA Guidelines Work, Arizona Capital Representation Project, Tucson and Phoenix, Arizona, May 24-25, 2007.

Funding the Mitigation Investigation in Capital Cases, Annual National Seminar on the Development and Integration of Mitigation Evidence sponsored by the Habeas Assistance and Training Counsel Project, Washington, DC, March, 2007.

Prosecutorial Misconduct in Innocence Cases, Eastern Jackson County Bar Association, March 31, 2005.

Telling a New and Persuasive Story, National Institute of Trial Advocacy and the Texas Association of Criminal Defense Lawyers Houston, TX, February 22-25, 2005.

Building the Mitigation Case, Washburn University School of Law, Victim-offender Reconciliation in Capital Cases; *Telling the Client's Story*; *Working With Mitigation Specialists*, Topeka, Kansas, November 11-13, 2004.

The American Bar Association Guidelines on the Performance of Counsel in Capital Cases, Arkansas Association of Criminal Defense Lawyers, Fayetteville, AR, September 30, 2004.

Jury Selection in Capital Cases, Lecture and Demonstration, Arizona Association of Criminal Defense Lawyers, Phoenix, Arizona, April 22-23, 2004.

Investigating Penalty Phase Defense: Working With a Multi-Disciplinary Team, National Institute of Trial Advocacy, New Orleans, LA, April 19-22, 2004.

Telling the Client's Story, National Institute of Trial Advocacy, San Antonio, Texas, February 18-21, 2004.

Representing the Innocent Capital Prisoner (co-presentation with Barry Scheck); *Alternative Dispute Resolution in Capital Cases*; *Surviving the Capital Case*; California Attorneys for Criminal Justice, Monterey, California, February 12-16, 2004.

Common Obstacles to Constitutional Trials in Arkansas Death Penalty Cases (with Cathi Compton & Ruth Friedman), *Choosing a Strategy that Makes Sense—When, Where, and How to Get Relief* (with Denise Young & Ruth Friedman); *Funding Issues Revisited: Strategies for Funding the Defense Team in Your Case* (with Didi Salling & Denise Young), Arkansas Public Defender Commission & Arkansas Association of Criminal Defense Lawyers, Jan. 22-23, 2004.

Litigating Innocence, Federal Public Defender Training Group, National Habeas Seminar, Chicago, Illinois, August 22, 2003.

Keynote Address: Abolitionists in the Mainstream, NAACP Legal Defense & Education Fund Annual Arlie House Conference, Warrenton, Virginia, July 17, 2003.

Mitigation Investigation and Mental Health Assessments in Capital Cases (with William A. O'Connor, Ph.D.), Federal Public Defender, Eastern District of Arkansas, Little Rock, June 26-27, 2003.

Telling the Client's Story, The Persuasion Institute, New York University, May 15-17, 2003.

Common Ethical Issues in the Defense of Capital Cases, University of Arkansas-Little Rock, May 9, 2003.

Jury Selection in High Publicity Cases, KCMBA, Lake Ozark, Missouri, May 3, 2003; Kansas Association of Trial Attorneys, Overland Park, Kansas, April 11, 2003.

Litigating Competency Issues in Capital Trial, Appeal and Postconviction Cases, Federal Public Defender Training Group, National Habeas Seminar, Nashville, Tennessee, August 22, 2003.

Defending Battered Women in Criminal Cases, The Missouri Bar, Lake of the Ozarks

March 1, 2002.

Representing Habeas Petitioners in Capital Cases, The National Institute of Trial Advocacy, Orlando, Florida, January 2-6, 2002.

Competency to Be Executed: Interdisciplinary and Ethical Considerations, American Academy of Psychiatry and the Law, Boston, Massachusetts, October 25-28, 2001.

Executing the Mentally Retarded, Yale Law School, First Monday in October Lecture Series, October 2, 2001.

Defending Capital Cases: the Impact of Missouri's New Bar on Executing the Mentally Retarded, Kansas City Metropolitan Bar Association, June 22, 2001.

Jurors' Perceptions of Mitigating Evidence, Clarence Darrow Death Penalty Defense College, University of Michigan Law School, May 15, 2001.

The Key Ingredients of Wrongful Convictions: Eyewitness Testimony, Federal Public Defender Training Group, National Habeas Seminar, Nashville, Tennessee, August, 2000.

Federal Habeas Corpus—Common Issues Under the Antiterrorism and Effective Death Penalty Act, NAACP Legal Defense & Education Fund Annual Airlie House Conference, Warrenton, VA, July, 2000.

What Every Lawyer Should Know about the DSM-IV, and Investigating and Presenting Pleas for Executive Clemency, Federal Public Defender Training Group, National Habeas Seminar, Atlanta, Georgia, August, 1999.

Litigating Incompetency to Be Executed, Federal Public Defender Training Group, National Seminar on Mental Illness and the Criminal Law, Washington, DC, July, 1999.

Approaching Survivors of Homicide, National Legal Aid and Defender Association, Life in the Balance (Atlanta, Georgia, March, 1999).

Capital Defense in a Cruel and Unusual Era: Successful Plea Bargaining Techniques; Dealing with Survivors of Homicide, California Attorneys for Criminal Justice/California Public Defender Association, Monterey, California, February, 1998.

Westminster University School of Law, London--First Annual A.J. Bannister Memorial Lecture, "Issues of Concern in the American System of Capital Punishment," December 3, 1997.

Keynote Address: The Importance of Investigation in Capital Cases, Working with Mental Health Experts, and Cross-Examination of State's Expert Witnesses, Indiana

Public Defender Council 1997 Defending Death Cases, Indianapolis, September, 1997.

Anti-terrorism and Effective Death Penalty Act: Opt-in Provisions, NAACP Legal Defense & Education Fund Airlie House Conference, Warrenton, VA, August, 1997.

Winning Strategies in Capital Trials, University of Arkansas-Little Rock, May, 1997.

Keynote Address: Success in Spite of the New Habeas, Seeking Justice in the Seventh Circuit; Training for Appointed Counsel in Capital Post-conviction Cases, Chicago, IL, April, 1997.

The New Federal Habeas: What State Legislatures Should Do in Response, National Conference of State Legislators Annual Convention, St. Louis, MO, August, 1996.

Approaching the Families of Homicide Victims, NAACP Legal Defense & Education Fund Annual Death Penalty Defense Conference, Georgetown University, Washington, DC, August, 1996.

Litigating Under the New Habeas, University of Missouri-Kansas City, sponsored by Public Interest Litigation Clinic and the Administrative Office of the U.S. Courts, Kansas City, MO, May, 1996.

Keynote address:, *Defending Condemned Prisoners*, Washington Council of Lawyers, Georgetown University School of Law, Washington, DC, May, 1996.

Counseling Clients and Co-workers Through the Execution of a Client, Kentucky Department of Public Advocacy, Frankfort, KY, March, 1996.

Dealing with Survivors of Homicide and Investigating Petitions for Executive Clemency, National Legal Aid and Defender Association Annual Life in the Balance, St. Louis, MO, March, 1996.

Court-Appointed Attorney Fees and Expenses in Capital Cases, Defender Services Committee of the United States Courts, Miami, Florida, December, 1995.

Successful Practice in the United States Supreme Court, Missouri Association of Criminal Defense Lawyers and the Missouri Bar, St. Louis, MO, April, 1995.

Keynote Address: Life in the Balance; Jury Selection: Aggravating and Mitigating Factors, and *Investigating Postconviction Claims of Innocence*, National Legal Aid and Defender Association Annual Death Penalty Defense Seminar, Kansas City, MO, March, 1995.

Recent Decisions Affecting Capital Cases, Missouri Capital Punishment Resource Center and Missouri Association of Criminal Defense Lawyers, Kansas City, MO, February,

1995.

Procedural Bars--Preventing Losses on Federal Habeas Corpus, and Hot Issues: Getting Out Front on New Issues, Kansas Association of Criminal Defense Lawyers, Death Penalty Seminar, Wichita, KS, September, 1994.

Significant Developments in the Criminal Law, University of Missouri-Kansas City School of Law CLE Annual Review of the Law, June, 1994.

The Constitution and Innocence: The Right to Present Exculpatory Evidence, Illinois Appellate Defender Annual Death Penalty Training Seminar, Edwardsville, IL, April, 1994.

Writing Persuasive Appellate Briefs, Missouri Bar and Missouri Association of Criminal Defense Lawyers, Kansas City, MO, April, 1994.

Federal and State Postconviction Relief: Practice Tips Under Missouri Rules 29.15 and 24.035, Missouri Bar and Missouri Association of Criminal Defense Lawyers Springfield, MO, October, 1993.

Independent Judiciary and the Rule of Law in the United States, Greater Kansas City Chamber of Commerce International Visitors' Council, Kansas City, MO, August, 1993.

Executive Clemency in Death Penalty Cases, NAACP Legal Defense & Education Fund Annual Airlie House Conference, Warrenton, VA, August, 1993.

Significant Developments in the Criminal Law, University of Missouri-Kansas City School of Law CLE Annual Review of the Law, June, 1993.

Investigating and Presenting Psychological Defenses, Missouri Bar and Missouri Association of Criminal Defense Lawyers, Kansas City, MO, October, 1992.

Preparing Pleadings in Federal Habeas Corpus Cases, University of Missouri-Kansas City and Missouri Association of Criminal Defense Lawyers, Kansas City, MO, September, 1992.

Significant Developments in the Criminal Law, University of Missouri-Kansas City School of Law CLE Annual Review of the Law, June, 1992.

Cross-Examination of Trial Lawyers in Postconviction Hearings, Missouri State Public Defender Appellate Training Conference, March, 1992.

How State Court Lawyers Help--or Hurt--Their Clients' Federal Cases, Missouri State Public Defender Appellate Training Conference, March, 1992.

Representing Clients Under Sentence of Death, Missouri Association of Criminal Defense Lawyers, Kansas City, MO, October, 1991.

Losers in the Capital Punishment Lottery, The Brenner Forum Series, All Souls Unitarian Church, Kansas City, MO, September, 1991.

Protecting the Record for Appellate Review, Missouri Public Defender Trial Skills Workshop, Columbia, MO, November, 1990.

Missouri Approved Instructions: Recent Modifications, Missouri Bar and Missouri Association of Criminal Defense Lawyers, Kansas City, Springfield and St. Joseph, MO, October, 1990.

Significant Developments in the Criminal Law, University of Missouri-Kansas City School of Law CLE, Kansas City, MO, June, 1990.

Cross-examination of Expert Witnesses, University of Missouri-Kansas City School of Law CLE, Kansas City, MO, March, 1990.

Trial Objections: Preserving the Record for Appellate Review, Missouri Bar and Missouri Association of Criminal Defense Lawyers (Kansas City, MO, October, 1990).

Picking Jurors Who Will Vote for Life, and Talking to Survivors of Homicide: Sensitivity Training for Criminal Defense Lawyers, National Legal Aid and Defender Association Annual Meeting, Kansas City, MO, October, 1989.

Record Preservation in Capital Cases: The Importance of Federal Issues, Missouri Public Defender Death Penalty Training Program, St. Louis, MO, November, 1988.

Missouri Appellate/Postconviction Practice: The New Unified System, University of Missouri-Kansas City School of Law and Missouri Association of Criminal Defense Lawyers, Kansas City and St. Joseph, MO, October, 1988.

Voir Dire: Challenges for Cause, Missouri Public Defender System, St. Louis, MO, November, 1987.

Record Preservation, Missouri Public Defender Trial Skill Workshop, Columbia, MO, June, 1985.