

**SEAN D. O'BRIEN**  
Associate Professor  
University of Missouri-Kansas City School of Law  
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**BAR MEMBERSHIP:**

Missouri Bar; U.S. District Court, Western District of Missouri; Eighth Circuit Court of Appeals; Tenth Circuit Court of Appeals; 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, Honorary Doctor of Humane Letters, 2005

**ACADEMIC POSITIONS:**

**Associate Professor, UMKC School of Law.** Criminal Law, Criminal Procedure, Problems and Issues in the Death Penalty (Adjunct, 1995-2005; Visiting Professor, 2005-2007, Associate Professor, Sept. 1, 2007)

**Adjunct Professor of Law, Washburn University School of Law.** Death Penalty Seminar is a survey course covering constitutional law and post-conviction remedies in the context of capital punishment. (2004--present)

**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--present

**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, New York University,** Faculty member 2003-Present.

**The Habeas College, National Institute of Trial Advocacy,** Faculty Member 2002-

present. This annual workshop focuses on interview, analytical and presentation skills.

#### **PROFESSIONAL POSITIONS:**

**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)

**Midwest Innocence Project, University of Missouri–Kansas City**, Member, Board of Directors. The Innocence Project is a clinical program in which law students investigate and pursue cases of actual innocence for indigent prisoners (2000-present)

**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.** 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).

**President, Missouri Association of Criminal Defense Lawyers, 1992-93**

**Chairman, Missouri Bar Criminal Law Committee, 1989 - 1992**

#### **PROFESSIONAL AWARDS:**

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:**

*When Life Depends on It: Supplementary Guidelines for the Mitigation Function of Capital Defense Teams*, \_\_\_ HOFSTRA L. REV. \_\_\_ (Summer 2008).

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

*Kansas v. Marsh: Putting the Guesswork Back Into Capital Sentencing*, 105 MICH. L. REV. FIRST IMPRESSIONS 90 (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).

*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, revised, 1996 and 2005).

## **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 and sentence.

***Ramon Martinez-Villareal v. Stewart*, 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 111<sup>th</sup> 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 in which Missouri Governor Mel Carnahan on June 2, 1993, commuted the death sentence of a mentally ill man convicted of stabbing three prison guards. This was 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*, WD 55243 (Mo. App. March 28, 2000), establishing right to accurately instruct jury on defense of battered woman syndrome in homicide cases.

## PRESENTATIONS:

*Guidelines for Capital Mitigation Symposium*, Hofstra Law School, Dec. 5, 2007 (to be published June, 2008)

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

*Supplementary Guidelines for the Mitigation Function of Capital Defense Teams*, Annual Capital Punishment Training Conference sponsored by the NAACP Legal Defense Fund (Warrenton, VA, July, 2006 and 2007); Annual Meeting of the National Association of Sentencing Advocates and Mitigation Specialists (Baltimore, MD, June, 2006); Making the Case for Life, sponsored by the National Association of Criminal Defense Lawyers (Oklahoma City, OK, October, 2005, and Las Vegas, NV, 2006); Annual National Habeas Corpus Seminar, sponsored by the Administrative Office of the U.S. Courts (Pittsburgh, PA, August, 2005 and 2006, and Nashville, TN, August, 2007); Annual National Seminar on the Development and Integration of Mitigation Evidence sponsored by the Habeas Assistance and Training Counsel Project (Salt Lake City, UT, April, 2005; Washington, DC, March, 2006 and 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

## **PRESENTATIONS (Continued)**

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.

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

*Keynote Address: Abolitionists in the Mainstream*, NAACP Legal Defense Fund Annual Airlie House Conference, Warrenton, Virginia, July 17, 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*, Kansas City Metropolitan Bar Association, Tan-Tar-a Resort, 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, Annual National Habeas Corpus Training, 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,

## PRESENTATIONS (Continued)

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 University School of Law First Monday in October Lecture Series, Hartford, Connecticut, 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, Annual National Habeas Corpus Training, Nashville, Tennessee, August, 2000

*Federal Habeas Corpus--Common Issues Under the Antiterrorism and Effective Death Penalty Act*, NAACP Legal Defense 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, Annual National Habeas Corpus Training, 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*, Indiana Public Defender Council 1997 Defending Death Cases, Indianapolis, September, 1997. (Also Working with Mental Health Experts, Cross-Examination of State's Expert Witnesses).

*Anti-terrorism and Effective Death Penalty Act: Opt-in Provisions*, NAACP Legal Defense

## PRESENTATIONS (Continued)

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 Postconviction 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 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*, National Legal Aid and Defender Association Annual Life in the Balance program, St. Louis, MO, March, 1996.

*Investigating Petitions for Executive Clemency*, National Legal Aid and Defender Association Annual Life in the Balance program, 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*, National Legal Aid and Defender Association Life in the Balance program, Kansas City, MO, March, 1995.

*Jury Selection: Aggravating and Mitigating Factors*, National Legal Aid and Defender Association Annual Life in the Balance program, Kansas City, MO, March, 1995.

*Investigating Postconviction Claims of Innocence*, National Legal Aid and Defender Association Annual Life in the Balance program, Kansas City, MO, March, 1995.

## **PRESENTATIONS (Continued)**

*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*, Kansas Association of Criminal Defense Lawyers, Death Penalty Seminar, Wichita, KS, September, 1994.

*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 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.



## **PRESENTATIONS (Continued)**

*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*, National Legal Aid and Defender Association Annual Meeting, Kansas City, MO, October, 1989.

*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.

## **PERSONAL:**

**PRESENTATIONS (Continued)**

Born February 27, 1956; Excellent health; Married 30 years to Ellen B. O'Brien; daughters Quinn C. O'Brien, age 23, and Haley D. O'Brien, age 20. Hobbies: Swimming, Cycling.