

No. 24-872

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**Supreme Court of the United States**

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JOHN Q. HAMM,  
COMMISSIONER OF THE ALABAMA  
DEPARTMENT OF CORRECTIONS,  
*Petitioner,*

v.

JOSEPH CLIFTON SMITH,  
*Respondent.*

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ON WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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**JOINT APPENDIX  
VOLUME II OF III**

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CERTIORARI PETITION FILED: FEB. 12, 2025  
CERTIORARI GRANTED: JUN. 6, 2025

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COURT OF CRIMINAL APPEALS OF ALABAMA.

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CR-98-0206

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JOSEPH CLIFTON SMITH

v.

STATE.

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May 26, 2000.  
Rehearing Denied Aug. 25, 2000.

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Glenn L. Davidson, Mobile, for appellant.

Bill Pryor, atty. gen.; and J. Clayton Crenshaw and  
Thomas F. Parker IV, asst. attys. gen., for appellee.

PER CURIAM.

The appellant, Joseph (“Jody”) Clifton Smith, was convicted of murdering Durk Van Dam during the course of a robbery, an offense defined as capital by § 13A-5-40(a)(2), Ala.Code 1975. The jury, by a vote of 11 to 1, recommended that Smith be sentenced to death. The trial court accepted the jury’s recommendation and sentenced Smith to die in Alabama’s electric chair at a date to be set by the Alabama Supreme Court.

The State’s evidence tended to show the following. On November 25, 1997, police discovered the badly beaten body of Durk Van Dam in his mud-bound Ford Ranger truck in a wooded area near Shipyard Road in Mobile County. Dr. Julia Goodin, a forensic pathologist for the Alabama Department of Forensic

Sciences, testified that Van Dam died as a result of 35 different blunt-force injuries to his body. Van Dam had marks consistent with marks made by a saw on his neck, shoulder, and back; he also had a large hemorrhage beneath his scalp, brain swelling, multiple rib fractures, a collapsed lung, multiple abrasions to his head and knees, and defensive wounds on his hands. Dr. Goodin testified that the multiple rib fractures that caused one lung to collapse were probably the most immediate cause of death.

Smith gave two statements to the police. In the first statement he denied any involvement in the robbery-murder but said that he was with Larry Reid when Reid beat and robbed Van Dam. Smith denied taking anything from the victim. When police were questioning Reid, Smith repeatedly knocked on the interrogation room door and requested to talk to the officer who had taken his first statement. In his second statement Smith admitted that he and Reid had planned to rob Van Dam because they had been told that Van Dam was carrying \$1,500 in cash. Smith said that he, Reid, and Van Dam left the Highway Host motel in Van Dam's red truck on November 23, 1997. Van Dam was driving. Reid directed Van Dam, who had been drinking, to an isolated location. Once there, Reid began hitting Van Dam. He said that when Reid kicked Van Dam in the face he thought Van Dam was dead. Smith said that Van Dam then got up and Smith hit him on the head with his fist, kicked him in the ribs several times, threw a handsaw at him, and may have hit him with a hammer but he wasn't entirely sure because he suffers from blackouts. Reid then got a power saw from the back of Van Dam's truck, Smith said, and ran the saw against Van Dam's neck. Smith held Van

Dam down while Reid took the money from his pockets. Smith and Reid then attempted to move the truck, because they had planned to steal it, but it got stuck in the mud. Smith also admitted that he took the victim's boots, because his shoes were wet, and that he took the victim's tools. The two discussed where to take Van Dam's body and Smith suggested that they take it to a nearby lake. However, they left the body, Smith said, under a mattress near Van Dam's truck. Smith said that when they divided the money he got only \$40 and Reid kept the rest, approximately \$100. Smith also told police that he had just been released from custody on Friday—two days before the robbery-murder on Sunday.<sup>1</sup>

Russell Harmon testified that on November 23, 1997, he went to the Highway Host motel and saw Reid and Smith. He said that Smith told him that they were going to rob Van Dam and asked if he wanted to join them. Harmon declined and left the motel. Later that day he went back to the motel to see if the two had been successful with their plans. He said that Smith told him that he had beaten the victim on the head and that he had cut him with a saw. On cross-examination he admitted that he could not swear that Smith was the one who said he had cut Van Dam in the back but that it could have been Reid who made this statement. However, on cross-

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<sup>1</sup> At the time of the robbery-murder Smith had not completed the remainder of his sentence on convictions for two counts of burglary and one count of receiving stolen property. On November 21, 1997, Smith was placed on Prediscretionary Leave, which is a community-custody program where the inmate can live at home and work in the community. Betty Teague, director of the central records office for the Alabama Department of Corrections, testified that an inmate who is nearing the end of his sentence may be placed in this program.

examination Harmon reiterated that Smith told him that he “hit the man, beat the man—hit the man in the head and cut him.” (R. 340.) Harmon testified that Smith asked him to go with him to get the tools from where he had left them in the woods. He said that he went with Smith and that they got the tools and took them to a pawnshop—Smith received \$200 for the tools. Harmon testified that he was currently in the county jail because his probation had been revoked.

M.A.<sup>2</sup> testified that she was living at Highway Host motel with her mother and sister at the time of Van Dam’s murder. She said that her sister, M., was dating Smith. M.A. testified that on November 23, 1997, she saw Smith, Reid, and Van Dam drive away from the motel in a red truck. She said that when Smith and Reid returned sometime later they were in a black car, Van Dam was not with them, and Smith had blood on his clothes. M.A. testified that Smith told her that he had hit, cut, and stabbed Van Dam in the back.

Patty Milbeck testified that she saw Smith, Reid, and Van Dam on the day of the robbery-murder. When they returned, she said, Van Dam was not with them and Smith appeared nervous. Smith told her that Van Dam had become angry and left. Milbeck stated that at the time of her trial testimony she was in jail because she failed to report to her probation officer.

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<sup>2</sup> M.A. is a juvenile with a juvenile record. In keeping with the laws designed to protect the anonymity of juvenile offenders we are using this witness’s initials. § 12-15-72, Ala.Code 1975, and Rule 52, Ala.R.App.P.

Joey Warner, an employee of 24-Hour Pawn pawnshop, testified that on November 23, 1997, Smith pawned several tools including saws, drills, and a router. He was given \$200 and he showed his Alabama Department of Corrections identification card as identification to pawn the tools. (Supp. R. 92.)

*Standard of Review*

Because Smith has been sentenced to death, this Court must review each issue raised in Smith's brief, even if the issue was not first presented to the trial court. This Court must also review the record to determine if there is any "plain error" i.e., error that has adversely affected the substantial rights of the appellant, see Rule 45A, Ala.R.App.P., even though the issue was not raised in Smith's appellate brief to this Court.

"The standard of review in reviewing a claim under the plain-error doctrine is stricter than the standard used in reviewing an issue that was properly raised in the trial court or on appeal. As the United States Supreme Court stated in *United States v. Young*, 470 U.S. 1, 105 S.Ct. 1038, 84 L.Ed.2d 1 (1985), the plain-error doctrine applies only if the error is 'particularly egregious' and if it 'seriously affect[s] the fairness, integrity or public reputation of judicial proceedings.' See *Ex parte Price*, 725 So.2d 1063 (Ala.1998), cert. denied, 526 U.S. 1133, 119 S.Ct. 1809, 143 L.Ed.2d 1012 (1999); *Burgess v. State*, 723 So.2d 742 (Ala.Cr.App.1997), aff'd, 723 So.2d 770 (Ala.1998), cert. denied, 526 U.S. 1052, 119 S.Ct. 1360, 143 L.Ed.2d 521 (1999); *Johnson v. State*, 620 So.2d 679, 701 (Ala.Cr.App.

1992), rev'd on other grounds, 620 So.2d 709 (Ala.1993), on remand, 620 So.2d 714 (Ala.Cr.App.), cert. denied, 510 U.S. 905, 114 S.Ct. 285, 126 L.Ed.2d 235 (1993)."

*Hall v. State*, [Ms. CR-94-0661, October 18, 1999] \_\_\_\_ So.2d \_\_\_\_, \_\_\_\_ (Ala.Cr.App.1999).

*Guilt-Phase Issues*

I.

Smith argues that "the trial court violated Mr. Smith's rights to a capital trial free from arbitrariness when it randomly removed a juror from the venire." (Appellant's brief to this Court, p. 89.) The following occurred after the trial court granted strikes for cause:

"The Court: Okay. So that means we have lost one, two, three, four, five, six, seven, eight, nine. That means we've got 39. All right. Lesley [court reporter], give me any number between 1 and 48."

"The Court Reporter: Thirty-five.

"The Court: Ma'am?

"The Court Reporter: Thirty-five.

"The Court: All right. Thirty-five. Gentlemen, strike 35. All right. All right. That leaves 38."

(R. 111.)

Initially, we observe that no objection was made to the court's using the court reporter to strike one juror so that the State and the defense would have an even number of strikes. Our review, therefore, is limited to determining whether plain error occurred. Rule 45A, Ala.R.App.P.



Section 12–16–100(a), Ala.Code 1975, addresses the drawing, selection, and empaneling of juries in criminal cases and states in part:

“In every criminal case the jury shall be drawn, selected and empaneled as follows: Upon the trial by jury in the circuit courts of any person charged with a felony, including a capital felony, a misdemeanor, or violation, the court shall require a strike list or lists to be compiled from the names appearing on the master strike list as established in Section 12–16–74. *In compiling the list or lists, names of qualified jurors may be omitted on a nonselective basis. . . .*”

(Emphasis added.) This same provision is also contained in Rule 18.4(a), Ala.R.Crim.P.

Clearly, the trial court was authorized by law to remove this prospective juror. There is no argument that this prospective juror was not removed on a “nonselective basis,” indeed, Smith’s argument states that this prospective juror was “randomly struck.” No error, much less plain error, occurred here.

## II.

Smith argues that he was denied an impartial and unbiased jury because the trial court denied his request for individual sequestered voir dire examination.

The following occurred at a pretrial hearing regarding Smith’s motion for individual voir dire:

“Mr. Hughes [defense counsel]: Judge, I don’t have anything other than what was stated in the motion, as far as that goes.

*“The Court: It’s my understanding, based on my review of the Alabama law, that there’s no requirement to individual voir dire in a capital case.*

*“Mr. Hughes: I think you’re correct, Judge.*

*“The Court: And so the lawyers will know exactly what I intend to do, we will qualify our panel generally, meaning the panel in its entirety. Those who express particular reservations about the death penalty or those who indicate that they would automatically impose it will then be reduced to smaller groups, in the past, usually done in groups of three or five.*

*“I don’t know that pretrial publicity is an issue in this case, but if you all think that, too, is something that needs to be gone into with those who express some knowledge, we’ll sure do that.*

*“But my plan is to qualify them generally and then separate those folks whose responses create a death-penalty issue or pre-trial publicity issues.*

*“I would also ask that I get from each lawyer a list of proposed voir dire questions by 5:00 p.m. on Friday, September 11, the Friday before we go to trial on Monday. . . .”*

(R. 7–8) (emphasis added). Defense counsel’s own words indicate that he was aware that there is no right to individual voir dire in a capital case.

The Court gave the venire the following instruction prior to voir dire examination:

“The Court: . . . If the answer to a question is something that you find to be of a particularly sensitive or personal nature that you don’t want to share with 48 strangers, I understand that. And if you find yourself in that situation where the answer to a question applies to you, but you don’t want to share it with the rest of your fellow jurors, you are free to come up here to the bench and outside the hearing of the rest of your fellow jurors tell us whatever your response is.”

(R. 15–16.)

The record reflects that the trial court did grant individual voir dire to the extent that any juror who thought his or her answer was sensitive could be questioned outside the presence of the remaining veniremembers.

“ ‘ “In Alabama, there is no requirement that a defendant be allowed to question each prospective juror individually during voir dire examination. This rule applies to capital cases, and the granting of a request for individual voir dire is discretionary with the trial court.” *Coral v. State*, 628 So.2d 954, 968 (Ala.Cr.App.1992). “The fact that the appellant’s case involved capital murder is not alone reason to require individual voir dire. . . . A trial court’s decision in denying individual voir dire examination of a jury panel will not be disturbed on appeal absent an abuse of that discretion.” *Smith v. State*, 588 So.2d 561, 579 (Ala.Cr.App.1991). See also *Henderson v. State*, 583 So.2d 276, 283 (Ala.Cr.App.1990), affirmed, 583 So.2d 305

(Ala.1991), cert. denied, 503 U.S. 908, 112 S.Ct. 1268, 117 L.Ed.2d 496 (1992).’

“*Taylor v. State*, 666 So.2d 36, 66 (Ala.Cr.App.1994), aff’d, 666 So.2d 73 (Ala. 1995), cert. denied, 516 U.S. 1120, 116 S.Ct. 928, 133 L.Ed.2d 856 (1996). See also *Smith v. State*, 727 So.2d 147 (Ala.Cr.App.1998); and *George v. State*, 717 So.2d 827 (Ala.Cr.App.), aff’d in pertinent part, 717 So.2d 844 (Ala. 1996), aff’d. on return to remand, 717 So.2d 849 (Ala.Cr.App.1997), aff’d, 717 So.2d 858 (Ala.), cert. denied, 525 U.S. 1024, 119 S.Ct. 556, 142 L.Ed.2d 462 (1998). Perkins offered no evidence in the trial court to show how he was prejudiced as a result of prospective jurors being questioned in panels, as opposed to individually, regarding their views on capital punishment. On appeal, he offers only general arguments concerning the *possibility* of prejudice and fails to show that any comments by a prospective juror improperly influenced other members of a panel.

“ ‘A trial court is vested with great discretion in determining how voir dire examination will be conducted, and that court’s decision on how extensive a voir dire examination is required will not be overturned except for an abuse of that discretion.’ *Ex parte Land*, 678 So.2d 224, 242 (Ala.), cert. denied, 519 U.S. 933, 117 S.Ct. 308, 136 L.Ed.2d 224 (1996). A careful review of the record reveals that the method of voir dire employed by the trial court was sufficient to ‘provide[ ] reasonable assurance that prejudice would have been

discovered if present.’ *Haney [v. State]*, 603 So.2d [368] at 402 [(Ala.Crim.App.1992)]. Accordingly, we find that the trial court did not abuse its discretion by denying Perkins’s motion for individual, sequestered voir dire examination regarding the veniremembers’ views on capital punishment.”

*Perkins v. State*, [Ms. CR-93-1931, November 19, 1999] \_\_\_ So.2d \_\_\_, \_\_\_ (Ala.Cr.App.1999). See also *Ingram v. State*, 779 So.2d 1225 (Ala.Cr.App.1999) and *Whitehead v. State*, 777 So.2d 781 (Ala.Cr.App.1999).

This case is similar to *Perkins*. Smith has offered no specific allegations that any prospective juror was prejudiced by the answers of another prospective juror. The trial court’s method of voir dire examination was sufficient.

### III.

Smith argues that the trial court committed reversible error, and violated the United States Supreme Court’s holding in *Witherspoon v. Illinois*, 391 U.S. 510, 88 S.Ct. 1770, 20 L.Ed.2d 776 (1968), by removing a prospective juror for cause for the sole reason, he argues, that the juror had expressed mere reservations about the death penalty.

The following occurred during defense counsel’s voir dire examination of prospective juror M.C.:

“The Court: Hi, Mr. [C.] When we were asking questions earlier this morning about the death penalty you indicated that neither your conscience nor your convictions, if I heard you correctly, would allow you to

impose a penalty of death by electrocution in any circumstance. Is that right, sir?

“[M.C.]: Correct.

“The Court: All right. The law requires that I give the lawyers for both sides the opportunity to ask you any follow-up questions, if in fact they have any, outside the presence of the rest of the jury, which is why we are here at this stage.

“So, Mr. Hughes [defense counsel], do you have any questions of Mr. [C.]?

“Mr. Hughes: Mr. [C.], you have not heard any of the facts in this case at this point. If you heard the facts, all the details in this whole business, and the Judge tells you how you must consider the facts, and if you were satisfied from the facts that Mr. Smith had done all of the things they have alleged in this case and you at that point say—voted and the jury voted to convict Mr. Smith of capital murder and then you were presented with evidence, some that might be what are called aggravating factors that would make it seem or the State’s position that it ought to carry the death penalty and mitigate the factors from the defense that would say you ought not to put him in the electric chair, that really the correct decision would be life without parole, and the Judge would tell you to consider these factors and weigh one against the other, would you be able to follow the Judge’s instructions and do that?

“[M.C.]: I would probably lean toward life without parole if the—I probably wouldn’t—I

wouldn't consider the death penalty. That's it. That's just –

“Mr. Hughes: Are you saying—Well, let me ask you this. I believe you told us earlier that your brother had been robbed and hit on the head.

“[M.C.]: He had an incident. Yeah, there was an incident.

“Mr. Hughes: All right. And thank God it didn't come to pass, but just to give us a

talking point here, had your brother been killed would you feel that that would then might be something that would justify the electric chair for somebody that might have done that?

“[M.C.]: I wouldn't have voted—I mean, if they had killed him I wouldn't. I wouldn't—I wouldn't have gave—I couldn't have gave them the electric chair. Maybe somebody else would, but I wouldn't.”

(R. 91–93.)

The standard we use in determining whether a prospective juror was properly struck for cause based on opposition to the death penalty was discussed by this Court in *Pressley v. State*, 770 So.2d 115, 127 (Ala.Cr.App.1999), *aff'd*, 770 So.2d 143 (Ala.2000). In *Pressley* we stated:

“The ‘original constitutional yardstick’ on this issue was described in *Witherspoon v. Illinois*, 391 U.S. 510, 88 S.Ct. 1770, 20 L.Ed.2d 776 (1968). Under *Witherspoon*, before a juror could be removed for cause based on the juror's views on the death

penalty, the juror had to make it unmistakably clear that he or she would automatically vote against the death penalty and that his or her feelings on that issue would therefore prevent the juror from making an impartial decision on guilt. However, this is no longer the test. In *Wainwright v. Witt*, 469 U.S. 412, 105 S.Ct. 844, 83 L.Ed.2d 841 (1985), the United States Supreme Court held that the proper standard for determining whether a venire member should be excluded for cause because of opposition to the death penalty is whether the venire member's views would "prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath." The Supreme Court has expressly stated that juror bias does not have to be proven with 'unmistakable clarity.' *Darden v. Wainwright*, 477 U.S. 168, 106 S.Ct. 2464, 91 L.Ed.2d 144 (1986)."

It is clear from the quoted discussion with this prospective juror that this juror never wavered in his conviction that he would be unable to consider a death sentence under any circumstances. This juror even indicated that if his brother had been killed he could not vote to execute the killer. This juror had views towards the death penalty that would have impaired his duties as a juror in this capital case. The trial court properly struck this prospective juror for cause.

In a footnote to Smith's brief to this Court Smith states that he was never given the opportunity to individually question veniremembers as to whether



they had fixed opinions in *favor* of the death penalty. Smith's argument is not supported by the record and is raised for the first time on direct appeal. See Rule 45A, Ala.R.App.P. The record reveals that the trial court asked the prospective jurors the following questions:

"The Court: . . . Please forgive me for being somewhat repetitive, but the law requires that we identify each prospective juror by name and get that individual's precise response on the record. So that's why you're hearing some of these questions asked over and over again.

"Now, there's a flip side to that question, which is this. If the State were to meet its burden of proof and satisfy you that the Defendant was guilty beyond a reasonable doubt of an intentional killing in the course of a robbery, is there any one of you who would automatically vote to impose a penalty of death by electrocution?

"(No response.)" (R. 58–59.)

Later, during defense counsel's voir dire examination the following occurred:

"Mr. Hughes [defense counsel]: Do any of you feel, just as a matter of conscience, that if a person participates in any activity that results in another person dying that the person who is the actor in the activity forfeits his right to live, just because someone dies as a result, directly or indirectly, of their actions?

"(No response.)

“Mr. Hughes: Do any of you feel that imprisonment is too easy of a punishment for someone who has killed another?”

“(No response.)”

“Mr. Hughes: Would all of you be willing to consider in the event there is a conviction Let me rephrase that. Are there any of you who would not be willing to consider a punishment of life imprisonment without parole in the event there should be a conviction for capital murder? Is there anybody that would automatically say that’s not an option?”

“(No response.)”

(R. 82–83.)

After the general voir dire questioning, the court excused all of the jurors except the ones who had responded to the question about their opposition to the death penalty. These prospective jurors were individually questioned. At no time did defense counsel object to the lack of any further questioning concerning the prospective jurors’ views *in favor of* the death penalty. In fact, each time a question was asked concerning this issue no prospective juror responded. Smith’s allegation is not supported by the record.

Moreover, “this court has held that the failure of the trial court to question potential jurors concerning their views in favor of the death penalty does not constitute plain error. *Henderson v. State*, 583 So.2d 276 (Ala.Cr.App.1990), affirmed, 583 So.2d 305 (Ala.1991), cert. denied, 503 U.S. 908, 112 S.Ct. 1268, 117 L.Ed.2d 496 (1992).” *Harris v. State*, 632 So.2d

503 (Ala.Cr.App.1992), *aff'd*, 632 So.2d 543 (Ala.1993), *aff'd*, 513 U.S. 504, 115 S.Ct. 1031, 130 L.Ed.2d 1004 (1995).

#### IV.

Smith next argues that the State violated *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986), by using its peremptory strikes to remove black prospective jurors based on their race. Smith contends that the record reflects that of the 13 blacks on the venire the State removed 8 by its peremptory strikes. He contends that the record supports his entitlement to a *Batson* hearing because, he says, the record establishes a *prima facie* case of racial discrimination. We do not agree.

There was no *Batson* objection to the State's use of its peremptory strikes. Smith contends that the strike list supports his motion to remand for a *Batson* hearing because it shows that 8 of the State's 13 strikes were used to remove prospective black jurors. We note that the strike list also reflects that defense counsel used every one of its 13 strikes to remove white prospective jurors.<sup>3</sup> The strike list is confusing. It fails to indicate what jurors were struck for cause, and it does not reflect the final composition of Smith's jury.

As this Court stated in *Boyd v. State*, 715 So.2d 825, 836 (Ala.Cr.App.1997), *aff'd*, 715 So.2d 852 (Ala.), cert. denied, 525 U.S. 968, 119 S.Ct. 416, 142 L.Ed.2d 338 (1998):

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<sup>3</sup> *Batson* applies to white prospective jurors, see *White Consolidated Industries, Inc. v. American Liberty Insurance Co.*, 617 So.2d 657 (Ala. 1993), and to defense counsel, see *Georgia v. McCollum*, 505 U.S. 42, 112 S.Ct. 2348, 120 L.Ed.2d 33 (1992).

“In his appellate brief, the appellant argues that a prima facie case of gender discrimination exists because the prosecutor used 10 of his 14 peremptory strikes to remove 10 of 26 female jurors. However, a review of the strike list included in the record, as well as the voir dire examination, indicates that the appellant used 10 of his 13 strikes to remove female jurors. There were no supporting circumstances to indicate gender discrimination or to render a failure by the trial court to find the existence of a prima facie case of gender discrimination plain error, i.e., error that would adversely affect the substantial rights of the appellant. Similarly, in *George v. State*, 717 So.2d 827 (Ala.Cr.App.1996), rev’d on other grounds, 717 So.2d 844 (Ala. 1996) this Court found that the record did not supply an inference of gender discrimination. ‘Before the plain error analysis can come into play in a *Batson* issue, the record must supply an inference that the prosecution engaged in purposeful discrimination. *Ex parte Watkins*, 509 So.2d 1074 (Ala.), cert. denied, 484 U.S. 918, 108 S.Ct. 269, 98 L.Ed.2d 226 (1987); *Rieber [v. State]*, 663 So.2d 985 (Ala.Cr.App.1994), affirmed, 663 So.2d 999 (Ala.1995)].’ *Pace v. State*, 714 So.2d 316 (Ala.Cr.App.1995).”

The record fails to raise an inference of racial discrimination. We refuse to find error based on this inadequate record.

## V.

Smith argues that the trial judge erred in failing to sua sponte recuse himself from hearing Smith’s case.

Specifically, he contends that there was an appearance of impropriety because the trial judge, Judge Chris Galanos, had prosecuted Smith for two counts of receiving stolen property and for third-degree burglary when Judge Galanos was district attorney for Mobile County.

Initially, we observe that there was no motion to recuse filed in the trial court. Therefore, our review of this issue is limited to determining whether plain error was present. Rule 45A, Ala.R.App.P.

Our review of the record reflects that in 1990, eight years before Smith's trial for capital murder, Smith pleaded guilty to receiving stolen property and to burglary in the third degree while Judge Galanos was the district attorney for Mobile County.

Smith contends that Judge Galanos should have recused himself from hearing this present case against Smith because, he argues, there was an appearance of impropriety sufficient to require Judge Galanos to recuse himself under Canon 3(C)(1), Alabama Canons of Judicial Ethics.

We have previously addressed this issue in *James v. State*, 423 So.2d 339 (Ala.Cr.App.1982), and stated: "It was held in *Ray v. State*, 398 So.2d [774 at] 776–777 [(Ala.Cr.App.1981)], that the fact that the trial judge, before he was a judge and while he was district attorney of the particular circuit, had prosecuted the defendant in another case presented no valid ground for a motion that he recuse himself." See also *Payne v. State*, 48 Ala.App. 401, 265 So.2d 185 (1972), cert. denied, 288 Ala. 748, 265 So.2d 192 (1972), cert. denied, 409 U.S. 1079, 93 S.Ct. 703, 34 L.Ed.2d 669 (1972).

Other courts have reached this same conclusion. See *Jarrell v. Balkcom*, 735 F.2d 1242 (11th Cir. 1984), cert. denied, 471 U.S. 1103, 105 S.Ct. 2331, 85 L.Ed.2d 848 (1985) (“The mere fact that a judge acted as prosecutor in an unrelated case is insufficient to constitute reversible error.”); *Goodspeed v. Beto*, 341 F.2d 908 (5th Cir.1965), cert. denied, 386 U.S. 926, 87 S.Ct. 867, 17 L.Ed.2d 798 (1967) (“[T]he judge who presided was a former district attorney who had prosecuted the petitioner for different crimes. That was not sufficient ground for the disqualification of the judge.”); *Hathorne v. State*, 459 S.W.2d 826, 829 (Tex.Crim.App.1970), cert. denied, 402 U.S. 914, 91 S.Ct. 1398, 28 L.Ed.2d 657 (1971) (“It is of course well settled that the mere fact that the trial judge personally prosecuted the (defendant) in past crimes does not disqualify him from presiding over a trial where a new offense is charged.”); *Thomas v. Workmen’s Compensation Appeal Board*, 680 A.2d 24 (Pa.Comm. Ct.1996) (Because judge previously prosecuted defendant does not preclude judge in future unrelated cases from presiding over trial.).

## VI.

Smith argues that he was denied a fair trial because the trial court failed to admonish the jurors, every time that they left the courtroom, not to discuss the case with anyone and to avoid exposure to any outside contact concerning the case. He cites Rule 19.3(d), Ala.R.Crim.P., in support of this contention.

Initially, we note that there was no objection to the court’s failure to admonish the jury every time that the jurors left the courtroom. Thus, our review is limited to determining whether plain error occurred. Rule 45A, Ala.R.App.P.

Rule 19.3(d), Ala.R.Crim.P., states:

“(d) *Admonitions to Jurors.* In all cases, the court shall admonish the jurors that they are not:

“(1) To discuss among themselves any subject connected with the trial until the case is submitted to them for deliberation;

“(2) To converse with anyone else on any subject connected with the trial, until they are discharged as jurors in the case;

“(3) To knowingly expose themselves to outside comments or to news accounts of the proceedings, until they are discharged as jurors in the case; or

“(4) To form or express any opinion on the case until it is submitted to them for deliberation.

“If the jurors are permitted to separate, they may also be admonished not to view the place where the offense allegedly was committed.”

Smith argues that at each break on the first day of trial, the trial court failed to so admonish the jury.

The jury in this case was sequestered. At the first break on the first day of jury selection the trial court instructed the venire that the members were not to discuss the case with anyone. (R. 61.) After Smith’s jury was sworn, the trial court gave the jurors detailed instructions on their obligations. The court’s instructions, in part, stated:

“The Court: . . . And the reason for that is pretty simple. That is, that your verdict,

whatever it is, must be based exclusively on what is seen and heard in this courtroom and cannot even appear to be influenced by any outside source, which was why earlier today I twice said, please, don't talk about this case nor allow anyone to talk about it with you.

"All right. So, obviously, rule one from this point forward is no exposure in any way, shape or form to any local media for fear that you might hear or see something about this case. Rule number two is that you shall not talk about this case with anyone, nor allow anyone to talk about it with you until 12 of you retire to that room right behind you and actually start to deliberate a verdict. And the reason for that is also simple. You're going to hear this case in bits and pieces. And both as a matter of law and as a matter of conscience you shouldn't even begin to make up your mind or share your opinions until you've got all the pieces put together."

(R. 119–20.)

The trial court did not give similar detailed instructions at each break in the court proceedings. To require a court to do so would be unduly burdensome, disruptive, and contrary to the clear wording of Rule 19.3(d). Indeed, Rule 19.3(d) does not require that a trial court give the admonitions at each court break. Indeed, Rule 19.3(d) does not state that these instructions must be given more than once in the trial. The record clearly reflects that the jurors were aware of their duties and obligations. There was no violation of Rule 19.3(d).



## VII.

Smith argues that his statements to police should have been suppressed because, he says, they were illegally obtained. He cites several different grounds in support of this contention.

## A.

Smith argues that the police did not have probable cause to arrest him without a warrant; therefore, he says, the statements he made to the police should have been suppressed because they were “fruits of the poisonous tree.” *Wong v. United States*, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963).

This Court has stated the following about arresting an accused without a warrant:

“Section 15–10–3(3), Ala.Code 1975, provides that an officer may arrest someone *without a warrant* when he has reasonable cause to believe that the person arrested committed a felony. “Reasonable cause is equated with probable cause.” *Sockwell v. State*, 675 So.2d 4 (Ala.Cr. App.1993), *aff’d*, 675 So.2d 38 (Ala.1995). ‘Probable cause is knowledge of circumstances that would lead a reasonable person of ordinary caution, acting impartially, to believe that the person arrested is guilty.’ *Sockwell*, 675 So.2d at 13.

“Probable cause to arrest exists when, at the time the magistrate issues the warrant or the officer makes the arrest, there are reasonably trustworthy facts and circumstances sufficient, given the totality of the circumstances, to lead a reasonable person to believe there is a fair probability that the

suspect is committing or has committed an offense.’

“*Swain v. State*, 504 So.2d 347 (Ala.Cr. App.1986), citing *Fifteenth Annual Review of Criminal Procedure; United States Supreme Court and Courts of Appeal 1984–1985*, 74 Geo. L.J. 499, 518 (1986). As concerns probable cause, we note that the Alabama Supreme Court has held:

“Probable cause exists if facts and circumstances known to the arresting officer are sufficient to warrant a person of reasonable caution to believe that the suspect has committed a crime. “In dealing with probable cause, however, as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians act. . . .” “The substance of all the definitions of probable cause is a reasonable ground for belief of guilt.” “Probable cause to arrest is measured against an objective standard and, if the standard is met, it is unnecessary that the officer subjectively believe that he has a basis for the arrest.” The officer need not have enough evidence or information to support a conviction in order to have probable cause for arrest. Only a probability, not a *prima facie* showing, of criminal activity is the standard of probable cause.’

“*Dixon v. State*, 588 So.2d 903, 906 (Ala.1991) (citations omitted).”

*Smith v. State*, 727 So.2d 147, 156–57 (Ala.Cr.App.1998), *aff'd*, 727 So.2d 173 (Ala.), *cert. denied*, 528 U.S. 833,

120 S.Ct. 91, 145 L.Ed.2d 77 (1999). See also *Melson v. State*, 775 So.2d 857 (Ala.Cr.App.1999).

Here, a suppression hearing was held to determine whether Smith's statements were voluntary.<sup>4</sup> After the officers discussed the circumstances surrounding Smith's statements, defense counsel argued that the statements were illegal because there was no probable cause to arrest Smith. Another hearing was held on this issue. Detective Sgt. Mike Reynolds of the Mobile County Sheriff's Office testified that as a result of information that he received that a juvenile, M.A., was telling people that Smith and Reid had been involved in a robbery-murder, he went to the Highway Host motel to talk with M.A. M.A. told police that she had seen Smith, Reid, and an unknown white male in a red truck on the day of the robbery-murder. When Smith and Reid returned to the motel, M.A. told police, Smith had blood on his jeans, and he told her that he and Reid had robbed, and had beaten Van Dam, and had left his body in the woods. Reynolds testified that M.A. told him:

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<sup>4</sup> The record contains no formal written motion to suppress the statements. The record concerning defense counsel's objections to the statements is very confusing. At one point the trial court stated: "Well, you know, one thing that would have been nice would have been to get a written motion so we would know exactly what it is you're objecting to." (R. 180.) It does appear that counsel objected on the basis that the statements were involuntary, that police failed to satisfy the *Miranda* requirements, that the time between the statements was too long and that *Miranda* warnings should have been given again, and that Smith had been coerced into making a statement.

“[Smith] told her how he had taken the gentleman to a wooded area near the ‘party hole,’ is what she called it, off Shipyard Road, how they had robbed him, how they had beat him, also how they had gotten the truck stuck and that when they left him they left him beneath a mattress. Also, that they had at some point placed an ‘x’ on his back.”

(R. 187.) M.A. also told Reynolds that Smith showed her a Tennessee driver’s license that he said was the victim’s. Reynolds stated that police then talked with Reid, who was staying at the Highway Host motel at the time of the murder. Reid told police that he had been with Smith and Van Dam but that he had gotten them to drop him off. Reid also went with police to where M.A. said the body was located. Reid told police that the body was in the opposite direction from where it was eventually found. Police did not discover the body when they were with Reid. They took Reid back to the motel and went back to the area, where they discovered Van Dam’s body in his truck. A bloody mattress was located near the truck. Reynolds also stated that much of the information M.A. had given them was corroborated by the murder scene. After talking with Reid and M.A., police proceeded to Smith’s house to take him into custody. Certainly, there was more than sufficient probable cause to believe that Smith was involved in the robbery-murder.

B.

Smith further argues that he was illegally arrested at his home without a warrant in violation of *Payton*

*v. New York*, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980).

We note that the circumstances surrounding Smith's arrest were not totally developed in the record because Smith did not attack his arrest on this ground at trial. We are thus confined to a plain-error analysis. Rule 45A, Ala.R.App.P. We have stated about reviewing the validity of an arrest that "[t]he defendant cannot successfully argue that error is plain in the record when there is no indication in the record that the act upon which the error is predicated ever occurred." *Smith v. State*, 588 So.2d 561 (Ala.Cr.App.1991), on remand, 620 So.2d 727 (Ala.Cr.App.1992), quoting *Ex parte Watkins*, 509 So.2d 1074 (Ala.), cert. denied, 484 U.S. 918, 108 S.Ct. 269, 98 L.Ed.2d 226 (1987).

Here, Sgt. Patrick Pyle of the Mobile County Sheriff's Office testified that Smith was arrested at his mother's trailer, which was located in a trailer park off Old Pascagoula Road in Mobile. There is no evidence in the record concerning who was present at the time of Smith's arrest. However, Pyle testified that he went to Smith's mother's trailer several different times that day. He said that she gave them permission to search the trailer and that she signed two permission to search forms. These forms are contained in the record. (Supp. R. 446–47.) There is absolutely no evidence in the record that the police forced their way into Smith's mother's house to arrest him.

As this Court stated in *Smith*:

“[T]here is no merit to Smith's argument that the entry into his home to make the arrest violated *Payton v. New York*, 445 U.S.

573, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980). *Payton* concerned a warrantless and a *nonconsensual* entry into a suspect's home to make a routine felony arrest. There is no evidence here that the officers' entry into Smith's mother's trailer (where Smith was staying) was without consent. (R. 1127.) As the state pointed out in its brief to this court, "the consent necessary in the *Payton* context is consent to enter, not consent to arrest." quoting *Fortenberry v. State*, 545 So.2d 129, 137 (Ala.Cr.App.1988), *aff'd*, 545 So.2d 145 (Ala. 1989), quoting in turn *United States v. Briley*, 726 F.2d 1301 (8th Cir.1984)."

727 So.2d at 157–58.

Moreover, officers could have legally entered Smith's mother's trailer and arrested Smith without a warrant if there was probable cause to arrest and exigent circumstances. We have already determined that there was probable cause to arrest Smith. Thus, we are left to determine whether exigent circumstances existed for his immediate arrest without first obtaining a warrant. As this Court stated in *Borden v. State*, 769 So.2d 935 (Ala.Cr.App.1997):

"In *Bush [v. State]*, 523 So.2d 538 [(Ala.Cr.App. 1988)], this court set forth the following as factors that may indicate the existence of exigent circumstances:

"(1) the gravity or violent nature of the offense with which the suspect is to be charged; (2) a reasonable belief that the suspect is armed; (3) probable cause to believe that the suspect committed the crime; (4) strong reason to believe that the

suspect is in the premises being entered; (5) a likelihood that delay could cause the escape of the suspect or the destruction of essential evidence, or jeopardize the safety of officers or the public; and (6) the peaceful circumstances of the entry.’

“523 So.2d at 546, citing *United States v. Standridge*, 810 F.2d 1034, 1037 (11th Cir.), cert. denied, 481 U.S. 1072, 107 S.Ct. 2468, 95 L.Ed.2d 877 (1987). See *Dorman v. United States*, 140 U.S.App. D.C. 313, 435 F.2d 385, 392–93 (D.C.Cir.1970); 3 W.LaFave, *Search and Seizure* § 6.1(f) (3d ed.1996). Virtually all of the factors described in *Bush* were present in the instant case. ‘[T]he gravity of the underlying offense was of the highest nature. The defendant had committed an offense for which the death penalty was authorized.’ *Musgrove [v. State]*, 519 So.2d [565] at 573 [(Ala.Cr.App.), aff’d, 519 So.2d 586 (Ala.1986), cert. denied, 486 U.S. 1036, 108 S.Ct. 2024, 100 L.Ed.2d 611 (1988)]. Law enforcement officers had reason to believe that the appellant would be armed, in view of the fact that they had information that he had stabbed Ledbetter to death approximately 13 hours earlier. There was probable cause to believe that the appellant had committed the crime, including the statements of eyewitnesses. The officers had reason to believe that the appellant was inside the apartment where his automobile was parked outside and that his probable state of mind made it likely that further delay could allow the appellant to flee or could jeopardize the safety of the woman known to reside in the apartment. Additionally, there is evidence that the arrest was made without the use of force: the officers first attempted to effect entry by knocking and announcing themselves, and after their entry, the appellant was cooperative, even signing a

consent-to-search form. Accordingly, even if the appellant's arrest was unauthorized under the warrant (and we emphatically do not so hold), it was justified on the ground of probable cause and exigent circumstances."

We believe that there were exigent circumstances present here to uphold the entry into Smith's mother's trailer to arrest him without a warrant.

Based on the record before us, we hold that Smith's arrest was not illegal.

### C.

Smith also argues that the statements he made to the police should have been suppressed because, he says, they were involuntary, i.e., given as a result of police coercion and involuntary because, he says, the *Miranda*<sup>5</sup> warnings were not given.

A confession is presumed involuntary and it is the State's burden to prove by a preponderance of the evidence that *Miranda* warnings were given and that the accused voluntarily waived his *Miranda* rights. *Coral v. State*, 628 So.2d 954 (Ala.Cr.App.1992), *aff'd*, 628 So.2d 1004 (Ala.1993), cert. denied, 511 U.S. 1012, 114 S.Ct. 1387, 128 L.Ed.2d 61 (1994); *Lewis v. State*, 535 So.2d 228 (Ala.Cr.App.1988). In determining whether a statement is voluntary, a reviewing court must look at the "totality of the circumstances" surrounding the confession. *McLeod v. State*, 718 So.2d 727, 729 (Ala.), on remand, 718 So.2d 731 (Ala.Cr.App.), cert. denied, 524 U.S. 929, 118 S.Ct. 2327, 141 L.Ed.2d 701 (1998). "When determining the admissibility of a confession, this Court must look at

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<sup>5</sup> *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).



the entire circumstances, not only the behavior of the interrogators in creating pressure, but also the defendant's experience with the criminal justice system and personal characteristics." *Craig v. State*, 719 So.2d 274, 278 (Ala.Cr.App.1998).

Here, Smith gave two statements to police. Detective Donald Lunceford of the Mobile County Sheriff's Office testified that he and another officer went to Smith's mother's trailer on November 27, 1997, at around noon to arrest Smith. Lunceford said that Smith was read his *Miranda* rights at the moment he was taken into custody and again after he was transported to the criminal investigation division office in Theodore. Detective Reynolds stated that he talked with the appellant at around 5:00 p.m. that same day and that he did not give him *Miranda* warnings again because when he entered the interview room he saw a *Miranda* form. He said that Detective Lunceford told him that Smith had already been informed of his *Miranda* rights. Also, Smith was in police custody from the time that he was arrested, around 12:00 p.m., until he made his first statement, at approximately 5:00 p.m. the same day. There was a lapse of approximately five hours from his arrest to the first statement. Reynolds and Lunceford both testified that Smith was made no promises or offered any inducements to testify. Both also testified that Smith was not coerced in order to get a statement from him. Reynolds said that he told Smith that he had been implicated in the robbery-murder of Van Dam. Reynolds testified that Smith was in Detective Lunceford's and Detective Pyle's presence until he was turned over to him. (R. 440.)<sup>6</sup> Reynolds also

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<sup>6</sup> Though this information is not contained in the record of the suppression hearing, Detective Reynolds testified as to this

stated that no one had access to Smith after Lunceford and Pyle relinquished him to Reynolds. (R. 445.) Smith gave a second statement at 8:00 p.m. on the same day. He was read his *Miranda* before making this statement and he signed a waiver of rights form.

1.

Smith initially argues that his statements were involuntary because his IQ is low.

Initially, we note that this was not a reason given for suppressing Smith's statement. (R. 179.) Thus, our review is limited to a plain-error analysis. Rule 45A, Ala.R.App.P.

We observe that when the suppression motion was made, the trial court had no knowledge of Smith's IQ. The only evidence of Smith's IQ is contained in the penalty phase of the proceedings. At the time of the motion to suppress nothing in the record reflected Smith's IQ.

In this case, Detective Lunceford testified that, when he made his statements, Smith did not appear to be under the influence of drugs or alcohol, and that he was lucid, coherent, and aware of his circumstances. He asked Smith if he could read and write and whether he understood the English language; he indicated that he could and he did. Smith then signed the acknowledgement-of-rights form and he appeared to understand his rights. Also, Smith had had prior

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before the jury. "In reviewing a trial court's ruling on a motion to suppress, this Court may consider the evidence adduced both at the suppression hearing and at the trial." *Henry v. State*, 468 So.2d 896, 899 (Ala.Cr.App.1984), cert. denied, 468 So.2d 902 (Ala. 1985).

involvement with the police and the criminal justice system. Detective Reynolds verified what Lunceford had testified to.

Mental subnormality is but one factor to consider when reviewing the totality of the circumstances surrounding a confession, *Harkey v. State*, 549 So.2d 631 (Ala.Cr.App.1989); *Lewis v. State*, 535 So.2d 228 (Ala.Cr.App.1988); *Whittle v. State*, 518 So.2d 793 (Ala.Cr.App.1987); *Sasser v. State*, 497 So.2d 1131 (Ala.Cr.App.1986), and will not alone render a confession involuntary. *Flynn v. State*, 745 So.2d 295 (Ala.Cr.App.1999).

Here, “[e]ven considering evidence of the defendant’s mental subnormality[,] which was not before the trial judge when he ruled on the admissibility of the statements, the defense testimony ‘does not show that [the defendant] was so mentally deficient that he was incapable of being able to make a knowing and intelligent waiver.’” *Whittle v. State*, 518 So.2d at 797, quoting *Sasser*, 497 So.2d at 1134.

## 2.

Smith argues that his statement was involuntary because before his first statement he was not again read his *Miranda* rights. We do not agree.

The record shows that Smith was given his *Miranda* rights on two separate occasions within five hours of making his first statement to Reynolds. This Court has frequently stated:

“It should be made clear that once *Miranda’s* mandate was complied with . . . it was not necessary to repeat the warnings at the beginning of each successive interview. To adopt an automatic second warning

system would be to add a perfunctory ritual to police procedures rather than providing the meaningful set of procedural safeguards envisioned by *Miranda*.’ ”

*Jones v. State*, 47 Ala.App. 568, 258 So.2d 910 (Ala.Cr.App.1972). See also *McBee v. State*, 50 Ala.App. 622, 282 So.2d 62 (1973); *Allen v. State*, 53 Ala.App. 66, 297 So.2d 391 (1974), cert. denied, 292 Ala. 707, 297 So.2d 399 (Ala.1974). See also *Anderson v. State*, 339 So.2d 166 (Ala.Cr.App.1976) (*Miranda* warnings given the night before when defendant was arrested; it was not necessary to give *Miranda* warnings again).

We have also stated:

“In *Hollander v. State*, 418 So.2d 970, 972 (Ala.Cr.App.1982), this court stated:

“It is well settled that once *Miranda* warnings have been given and a waiver made, a failure to repeat the warnings before subsequent interrogation will not automatically preclude the admission of an inculpatory response. *Fagan v. State*, 412 So.2d 1282 (Ala.Crim.App.1982); *Smoot v. State*, 383 So.2d 605 (Ala.Crim.App.1980). Whether the *Miranda* warnings must be repeated depends on the facts of each individual case, with the lapse of time and the events which occur between interrogation being relevant factors to consider. *Fagan v. State*, supra; *Jones v. State*, 47 Ala.App. 568, 258 So.2d 910 (1972).”

*Cleckler v. State*, 570 So.2d 796, 803 (Ala.Cr.App.1990).

Here, when Smith gave the first statement at approximately 5:00 p.m. he told police that he had nothing to do with the robbery-murder and that Reid had beaten and robbed Van Dam. This first statement was an exculpatory statement that did not implicate Smith in the robbery-murder. Only five hours had passed since he was taken into custody and Smith had been in Pyle's and Lunceford's custody during this time. The second statement was taken at approximately 8:00 p.m. the same day. Reynolds testified that before Smith made this second statement—in which he admitted that he had hit, and had kicked Van Dam, and had thrown a handsaw at Van Dam, and had held Van Dam down while Reid took his money—he read Smith his *Miranda* rights and Smith signed a waiver of rights form. This waiver is in the record. (Supp. R. 449.) It is undisputed that Smith was given his *Miranda* rights before he made his second inculpatory statement.<sup>7</sup> No violation of *Miranda* occurred here.

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<sup>7</sup> Even if we were to conclude that Smith should have been advised of his *Miranda* rights before the first statement, which we do not, we would still hold that the second statement was accompanied by the appropriate *Miranda* warnings and would not be inadmissible on that basis. As this Court stated in *Hogan v. State*, 663 So.2d 1017, 1020 (Ala.Cr.App.1994):

“We reject the appellant's first argument on the authority of *Oregon v. Elstad*, 470 U.S. 298, 105 S.Ct. 1285, 84 L.Ed.2d 222 (1985), *Cleveland v. State*, 555 So.2d 302, 304 (Ala.Cr.App.1989), and *Scott v. State*, 555 So.2d 763 (Ala.Cr.App.1988).

“In *Scott*, this court approved the following analysis by the trial court:

““The Court finds that even if the statement by the defendant to Officer Sharp was inadmissible because of a failure to give the complete warning under Rule

Smith argues that his statement was involuntary because, he says, police coerced him into making the statement by telling him that Reid had implicated him in the robbery-murder.

Initially, we observe that there was no objection on this basis at the suppression hearing. Our review is limited to plain error. Rule 45A, Ala.R.App.P.

We have stated that telling a suspect that he has been implicated in a crime is not coercive. *C.C. v. State*, 586 So.2d 1018 (Ala.Cr.App.), on remand, 591 So.2d 156 (Ala.Cr.App.1991). “Confronting a defendant with evidence of guilt is not coercion on the part of police and does not render a subsequent confession involuntary.” *Jackson v. State*, 562 So.2d 1373, 1382 (Ala.Cr.App.1990).

### VIII.

Smith argues that the trial court committed reversible error when it asked the coroner about the number of distinct wounds that she had counted on Van Dam’s body. He contends that this information was relevant only to the penalty phase issue—to the question whether the crime was especially heinous, atrocious, or cruel—and was highly inflammatory at the guilt phase of the proceedings.

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11(A), [Ala.R.Juv.P.,] the second statement to Nesmith and Lee would not necessarily be rendered inadmissible as a result. In *Oregon v. Elstad*, 470 U.S. 298, 105 S.Ct. 1285, 84 L.Ed.2d 222 (1985), the United States Supreme Court held that a statement given after proper Miranda warnings is not tainted by an earlier unwarned statement where both statements are voluntary. . . .’”

At the end of Dr. Goodin's testimony the following occurred:

"The Court: Doctor, if I may, in the course of your autopsy, how many separate and distinct injuries were you able to document?"

"Mr. Byrd [defense counsel]: Your, Honor, I would respectfully object to that as being a little bit too vague. I would ask it be limited to certain and distinct injuries caused by some force inflicted by a human being, not say indefinite as to all the different injuries."

"The Court: I will rephrase the question at your request."

"Mr. Byrd: Thank you, sir."

"The Court: If there has been testimony in this case that Mr. Van Dam was beaten, was assaulted with a saw and struck with certain tools, can you tell us how many separate and distinct injuries your external examination documented?"

"Mr. Byrd: Before we receive an answer, Your Honor, may we approach?"

"The Court: Yes. "(At the sidebar:)"

"The Court: Okay. What's on your mind?"

"Mr. Byrd: Judge, with regards to the Court's question we would submit that by asking questions of fact from this particular witness and that particular question would be helping the State with [its] case and the question is vague, Your Honor."

"The Court: First of all, let me bring to your attention Rule 614 of the Alabama Rules of

Evidence which gives the Court permission not only to question but to interrogate. All right. Secondly, there has been some caselaw most recently *K-Mart Corporation & Ray Jones v. Joyce Kyles*, [723 So.2d 572 (Ala. 1998)] where this issue was raised. And the Court of—excuse me. The Alabama Supreme Court affirmed the right of the judge to ask questions.”

(R. 626–27.)

The above quote from the record clearly shows that Smith did not object to this question at trial on the basis he now raises on appeal. Thus, we are limited to a plain-error analysis. Rule 45A, Ala.R.App.P.

As the trial court stated above, a trial judge has the right to ask questions of a witness. That right is provided in Rule 614(b), Ala.R.Evid. and has been recognized in the case cited by the judge, *K-Mart Corp. v. Kyles*, 723 So.2d 572 (Ala.1998). The trial court had the right to ask the coroner this question. However, Smith argues on appeal that the answer to the question was relevant only to a penalty-phase issue—whether the crime was especially heinous, atrocious, or cruel, as compared to other capital cases.

Dr. Goodin testified that there were 35 different injuries on Van Dam’s body. We fail to see how the coroner’s testimony could possibly have risen to the level of plain error based on the record before us. Dr. Goodin, before this question had been asked, testified in depth concerning the different and distinct injuries suffered by the victim and the fact that the victim did not die a slow death. Also, the jury was shown photographs of the victim’s body and had firsthand



knowledge of the different injuries. Furthermore, in both of Smith's statements he told police that Van Dam was beaten repeatedly. There is absolutely no question that Van Dam suffered numerous and severe injuries. We are confident that the trial court's conduct here did not amount to error, much less plain error.

## IX.

Smith argues that the admission of what he alleges is hearsay evidence amounts to reversible error. He cites several different places in the record in support of this contention.

### A.

Smith argues, citing *Bruton v. United States*, 391 U.S. 123, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968),<sup>8</sup> that it was reversible error to allow hearsay testimony during Russell Harmon's testimony concerning what Reid had told him about the robbery-murder. During Harmon's testimony the following occurred:

"Q [by prosecutor]: Russell, was there any conversation about any money from the dead man?

"A: They had said that they had got—that they had

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<sup>8</sup> "In *Bruton v. United States*, 391 U.S. 123, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968), the United States Supreme Court held that admission of the confession of a nontestifying defendant, implicating his codefendant in the crime, violated the co-defendant's rights under the Confrontation Clause of the Sixth Amendment, notwithstanding any cautionary instructions to the jury." *Sneed v. State*, 783 So.2d 841, 847 (Ala.Cr.App.1999).

“Mr. Hughes [defense counsel]: Your Honor, it if please the Court, I would object to ‘they,’ that he state specifically who said what.

“The Court: That’s fair. Can you tell us who said what about the money, if anything was said about the money?

“A: Yes, sir. Larry and then Jody was mainly agreeing with Larry. Jody did not come right out and say anything about the money, no.”

(R. 343–44.)

Initially, we observe that in the above exchange defense counsel not only did not object to the elicited testimony but asked that the witness identify who had made the statement. Counsel acquiesced to the admission of this testimony and cannot now complain on appeal that any error occurred. “A party may not predicate an argument for reversal on ‘invited error,’ that is, ‘error into which he has led or lulled the trial court.’” *Atkins v. Lee*, 603 So.2d 937 (Ala.1992). We have applied the invited-error rule to capital cases. *Ex parte Bankhead*, 585 So.2d 112, 126 (Ala.), on remand, 585 So.2d 133 (Ala.Cr.App.1991), after remand, 625 So.2d 1141 (Ala.Cr.App.1992), rev’d on other grounds, 625 So.2d 1146 (Ala.), on remand, 625 So.2d 1149 (Ala.Cr.App.1993). “An invited error is waived, unless it rises to the level of plain error.” *Perkins v. State*, [Ms. CR-93-1931, November 19, 1999] \_\_\_ So.2d \_\_\_, \_\_\_ (Ala.Cr.App.1999), quoting *Bankhead*, 585 So.2d at 126.

Here, there is no question that the above-quoted exchange did not rise to the level of plain error. The information elicited from this witness had been volunteered by Smith in his statement to police.

Smith said that he held Van Dam down while Reid took the money out of his pockets.

Smith also objects to the following testimony:

“Q [defense counsel]: Can you recall exactly what Jody said and can you recall exactly what Larry said?

“A [Harmon]: No, ma’am. No, ma’am.

“Q: Any [reason] why can’t you separate them?

“A: Well, because it was a year ago and I don’t sit and dwell on—I mean, I don’t sit and think about it.

“Q: Other than that the guy was left for dead, were you told anything else about his condition?

“A: No ma’am, just beat bad. He was just beat bad.

“Q: And who told you something about a mattress, do you recall who that was?

“A: I think—I’m not for sure, but I think Larry did.

“Mr. Hughes: Well, that answers the question. If he’s not for sure he’s just speculating and guessing and we would object to it.

“The Court: It’s sustained. You could lay a predicate, though, I mean.

“Q: Do you recall who said anything about a mattress?

“A: I believe it was Larry.”

(R.345–46.)

Initially, we note that counsel did not raise the same objection to the testimony at trial that he now raises on direct appeal. We are therefore limited to a plain-error analysis. Rule 45A, Ala.R.App.P.

Smith argues that the above exchange resulted in the admission into evidence of hearsay about Reid’s out-of-court statements implicating Smith. Our reading of the exchange does not reveal that the testimony suggests that Reid implicated anyone but himself. Also, this same information was contained in Smith’s statements to police. “Testimony which may be apparently illegal upon admission may be rendered prejudicially innocuous by subsequent or prior lawful testimony to the same effect or from which the same facts can be inferred.” *McCorvey v. State*, 642 So.2d 1351, 1354 (Ala.Cr.App.1992), quoting *Thompson v. State*, 527 So.2d 777, 780 (Ala.Cr.App.1988). See also *Ex parte Bush*, 474 So.2d 168 (Ala.1985); *Parker v. State*, 587 So.2d 1072 (Ala.Cr.App. 199 1), on remand, 610 So.2d 1171 (Ala.Cr.App.), aff’d, 610 So.2d 1181 (Ala. 1992), cert. denied, 509 U.S. 929, 113 S.Ct. 3053, 125 L.Ed.2d 737 (1993); *Gulledge v. State*, 526 So.2d 654 (Ala.Cr.App.1988).

## B.

Smith argues that the trial court erred in allowing Sgt. Pyle to testify about what Smith’s mother told him. The following occurred during Pyle’s testimony:

“Q [prosecutor]: And what did you search the house—what areas of the house did you look in?

“A: We searched the area that Ms. Smith indicated was the Defendant’s bedroom area and we looked in the washing machine.

“Q: And where was the washing machine located?

“A: It was—if you walk in you’re in a living room with a kitchen to the left and a small hallway. The washer and dryer were in that small hallway.

“Q: And were the washer—was the washer running?

“A: Yes, ma’am, it was in a—like a spin cycle.

“Q: And what made you search the washing machine?

“A: Well, we were looking, from what we had learned from the people we had talked to earlier, for some clothes and when we got to the house, Lunceford and myself, we were talking to Ms. Smith about where Jody [Smith] had been, what he had been doing. I could hear the washer running and I asked her was she washing any amount of clothes in there and she said no, Jody was.

“Q: And because of that did you make any immediate request of Ms. Smith?

“A: I asked her if she would mind stopping that washer right away.

“Q: And did she stop the washing machine?

“A: Yes, ma’am.”

(R. 408–09.) Smith contends that Pyle’s testimony that Smith’s mother told him that Smith was washing clothes was hearsay, was highly prejudicial, and resulted in his being denied his right to confrontation.

There was no objection to the admission of this testimony; thus, we apply a plain-error review. Rule 45A, Ala.R.App.P.

A review of the above-quoted portion of the record shows that this statement was elicited to establish the reasons for the officer’s action and the reasons the officers searched certain areas of the trailer. It was not offered for the truth of the matter asserted and was not hearsay. “The fact of the conversations in this case was offered to explain the officer’s actions and presence at the scene—not for the truth of the matter asserted. Accordingly, it was not hearsay. *Clark v. City of Montgomery*, 497 So.2d 1140, 1142 (Ala.Cr.App.1986).” *Thomas v. State*, 520 So.2d 223 (Ala.Cr.App.1987).

Moreover, Smith told police in his statements that he had washed the clothes he had worn during the robbery-murder. Thus, even if this evidence was hearsay, it was cumulative of other evidence that was presented though Smith’s own admissions to police.

“Testimony that may be apparently inadmissible may be rendered innocuous by subsequent or prior lawful testimony to the same effect or from which the same facts can be inferred. *McFarley v. State*, 608 So.2d 430, 433 (Ala.Crim.App.1992); *Thompson v. State*, 527 So.2d 777, 780 (Ala.Crim.App.1988). Mary Evans’s testimony that Mary Enfinger yelled for her to get her gun from under the bed is

merely cumulative of evidence that had already been elicited by the appellant's counsel. Even if Mary Evans's testimony were inadmissible hearsay, the statement was cumulative of prior evidence and any error that may have resulted was harmless."

*Yeomans v. State*, 641 So.2d 1269, 1272-73 (Ala.Cr.App.1993). See also *Flynn v. State*, 745 So.2d 295 (Ala.Cr.App.1999).

# X.

Smith next argues that the trial court erred in not allowing him to cross-examine State's witness M.A. about where she was residing at the time of trial to show her bias in favor of the State. See *Davis v. State*, 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974). It is apparent from the record that Smith sought to elicit that M.A. had been adjudicated a juvenile offender and that at the time of trial she was in the custody of juvenile correctional authorities because her probation had been revoked. The following occurred during her testimony:

"Q [defense counsel]: [M.A.], where do you live today?

"Ms. Davis [prosecutor]: Judge, we're going to object. Can we approach?

"The Court: Sure.

"(At the sidebar:)

"Mr. Byrd [defense counsel]: Judge, she's been revoked on a drug violation.

"The Court: You can ask her if she was using drugs at the time that this occurred. That's pertinent. But as to

where she's living now, I sustain the objection.

“Mr. Byrd: Well, Judge, that goes to her credibility. *It is offered strictly for impeachment and would go directly to her credibility.*”

“The Court: Well, it might—it might affect her credibility, but the question is consistent with the Rules of Evidence, is that a proper mode of impeachment, and I don't think it is.”

(R. 369) (emphasis added).

Smith argues that this evidence was admissible to establish any possible bias M.A. might have in favor of the State. This specific argument was not raised during trial and Smith made no attempt to argue that M.A. had made any deal with the State that would result in her being biased. Smith made no offer of proof that the juvenile probation revocation would be proof of bias. We have held that an offer of proof is necessary before we can review a trial court's ruling on the limitation of cross-examination. See *M.T. v. State*, 677 So.2d 1223 (Ala.Cr.App.1995); *Myers v. State*, 601 So.2d 1150 (Ala.Cr.App.1992).

Other jurisdictions have held that because of the restrictive holding of *Davis*, and the fact that juvenile records may not be used for impeachment of general credibility, an offer of proof is essential to preserve this issue for an appellate court. In *Smith v. United States*, 392 A.2d 990 (D.C.Ct.App.1978), the issue before the court was whether the lower court erred in not allowing a State's witness, who had identified the accused as the robber and had picked him out of a lineup, to be cross-examined about the fact that the



witness, at the time of trial, was incarcerated in a juvenile facility. The *Smith* Court stated:

“In the case at bar, counsel for appellant did not proffer, nor does the record indicate any reason why Mr. Thames’ juvenile record or place of residence would make his testimony partial or biased. Hence, the proffered cross-examination here was intended simply as a general impeachment of the witness’ credibility.

“There is an inherent difference between cross-examination intended as a general attack on the credibility of a witness and cross-examination directed toward revealing possible bias, prejudices, or ulterior motives of a witness. See *Davis v. Alaska*, [415 U.S. 308,] 316, 94 S.Ct. 1105[, 39 L.Ed.2d 347 (1974)]; *Springer v. United States*, [388 A.2d 846] at 855 [(D.C.1978)]; *Gillespie v. United States*, D.C.App., 368 A.2d 1136, 1137 (1977).

“‘[B]ias is always a proper subject of cross-examination.’ *Hyman v. United States*, D.C.App., 342 A.2d 43, 44 (1975). And, the curtailment of such cross-examination by a trial court must be reviewed in terms of whether it is constitutional error. See *Davis v. Alaska*, supra 415 U.S. at 318, 94 S.Ct. 1105; *Brookhart v. Janis*, supra 384 U.S. at 3, 86 S.Ct. 1245; *Springer v. United States*, supra at 856; *Gillespie v. United States*, supra at 1138. However, the Constitution does not confer a right in every case to impeach the general credibility of a witness through cross-examination

about his past delinquency adjudications or criminal convictions. *Davis v. Alaska*, supra 415 U.S. at 321, 94 S.Ct. 1105 (Stewart, J., concurring). In fact, in the context of impeachment of general credibility, evidence of a prior conviction usually is inadmissible if the conviction resulted from a juvenile adjudication. See *Brown v. United States*, supra[, 119 U.S.App.D.C. 203, 338 F.2d 543 (1964)]. See also Fed.R.Evid. 609(d); *United States v. Decker*, 543 F.2d 1102, 1104–05 (5th Cir.1976), cert. denied sub nom. *Vice v. United States*, 431 U.S. 906, 97 S.Ct. 1700, 52 L.Ed.2d 390 (1977); *United States v. Lind*, 542 F.2d 598, 599 (2d Cir.1976), cert. denied, 430 U.S. 947, 97 S.Ct. 1585, 51 L.Ed.2d 796 (1977). Hence, we conclude that the trial court's restriction of the impeachment of Mr. Thames' general credibility by cross-examination regarding his juvenile record was not inconsistent with the Sixth Amendment's confrontation clause.

“ . . . .

“We are not convinced on the record of this case, that trial court abused its discretion. We cannot perceive that such impeachment might have affected the outcome.”

392 A.2d at 992–93. See also *State v. Wilson*, 16 Wash.App. 434, 557 P.2d 18, 21 (1976), review denied, 88 Wash.2d 1015 (1977) (“If it was the purpose of defense counsel to impeach the testimony of Thomas by demonstrating his bias within the rule of *Davis*, it was incumbent upon him to make this purpose known to the trial court in his offer of proof.”); *Bellinder v. State*, 69 Wis.2d 499, 230

N.W.2d 770 (1975) (“The problem created by an inadequate record is particularly apparent in this case because of the limited factual applicability of *Davis v. Alaska*, supra.”).

The above-quoted portion of the record reflects that defense counsel sought to elicit this testimony for the purpose of attacking M.A.’s credibility—not to show any bias that M.A. had in favor of the State. This conclusion is supported by the record. Before trial Smith filed a motion styled as a “Motion to Compel Disclosure of Existence and Substance of Promises of Immunity, Leniency, or Preferential Treatment.” (R. 143.) This motion requested the State to disclose any deals that it had made with any State witnesses. This motion was granted, and at a pretrial hearing the following occurred:

“The Court: . . . Mr. Brandyburg [prosecutor], do you know if anyone would be testifying in this case pursuant to any sort of a bargain with the district attorney?

“Mr. Brandyburg: Judge, based on the information and belief, to this point there are no agreements. The State is aware of its obligations to reveal any agreements, as such, as they arise, and I’m sure Ms. Davis [prosecutor] will do that. At this point, no, sir, there are none.

“ . . . .

“Ms. Davis: Your Honor, for the record, there have been no agreements with any parties in this case.”

(R. 4–10.) The record clearly shows that M.A. was not offered any reward from the State in exchange for her testimony at Smith’s trial.

Based on the application of the above principles of law, our review of this issue is limited to a plain-error analysis. Rule 45A, Ala.R.App.P. However, we emphasize that our affirmance of this issue is not dependent on application of the plain-error doctrine. The trial court’s ruling was not error, much less, plain error.

Smith argues, citing the United States Supreme Court’s opinion in *Davis v. Alaska*, 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974), that he was denied his Sixth Amendment rights of confrontation on cross-examination when the trial court sustained the State’s objection to the question concerning M.A.’s residence. In *Davis*, the state’s key witness, a juvenile, identified the defendant as the man he had seen on a road near his family’s house at the point where a stolen safe was later discovered. At the time of the defendant’s trial and at the time of the events the witness testified to, the witness was on probation, having been adjudicated a delinquent for two burglaries. The defendant argued that he should have been allowed to reveal to jurors the witness’s status as a juvenile probationer to show that the witness had made a faulty identification of the defendant in an effort to shift attention away from himself as a suspect in the crime and because he “might have been subject to undue pressure from the police and made his identifications under fear of possible probation revocation.” 415 U.S. at 311, 94 S.Ct. 1105. The trial court granted the state’s motion to keep the witness’s juvenile records secret. The Supreme Court, reversing the trial court’s judgment, held that the

defendant was entitled to introduce the witness's juvenile record to support an inference that the witness was biased because of his "vulnerable status as a probationer," *Davis*, 415 U.S. at 318–19, 94 S.Ct. 1105, and that the exclusion of this evidence violated the defendant's right of confrontation and cross-examination.

*Davis*, however, does not stand for the proposition that a juvenile witness can be cross-examined as to prior juvenile adjudications for impeachment purposes; it stands for the proposition that such rights of cross-examination are for the purpose of showing bias or prejudices under the guidelines therein set forth. The defendant in *Davis* made it clear that he would not introduce the witness's juvenile adjudication for purposes of general impeachment of his character as a truthful person but, rather, to show the bias and prejudice of the witness. Here, however, Smith's counsel argued only that M.A.'s probation revocation "goes to her credibility. It is offered strictly for impeachment and would go directly to her credibility." On appeal, in an effort to bring himself within *Davis*, Smith suggests that his trial counsel was attempting to bring out matters that would have shown that M.A., because she was presumably under the control of juvenile authorities, was induced by bias to give testimony for the State. However, counsel for Smith did not proffer, nor does the record indicate any reason why, M.A.'s juvenile record or place of residence would make her testimony partial or biased in favor of the State. In fact the record supports the conclusion that the State had no agreement with M.A. in exchange for her testimony.

This case is distinguishable from the holding in *Davis* for several very significant and distinct

reasons, and we believe that the facts of this case do not fall under the restrictive holding of *Davis*. Unlike the juvenile in *Davis*, M.A.'s probation had already been revoked. Any conceivable help she could have expected from the State would be speculative at best and not supported by the record in this case. M.A. had no state action pending against her and was not in the "vulnerable status [of] a probationer." *Davis*, 415 U.S. at 318–19, 94 S.Ct. 1105. Also, one major distinction not present in this case, that was noted in *Davis*, is that the juvenile in *Davis* was an "crucial" eyewitness to the accused's presence near the scene of the crime when it occurred and possibly a suspect in the crime. The *Davis* court noted, "serious damage to the strength of the State's case would have been a real possibility had petitioner been allowed to pursue this line of inquiry." *Davis*, 415 U.S. at 319, 94 S.Ct. 1105. Here, every material aspect of M.A.'s testimony was either corroborated by other witnesses or corroborated by Smith's confession. Most significant is the fact that M.A. was not a suspect in the case and was not Smith's accomplice in the robbery-murder.

We find support for this holding in Alabama law. Recognizing the competing interests of protecting the anonymity of juvenile offenders versus the right of an accused to confront the witnesses against him, Alabama has limited the Supreme Court's holding in *Davis*, by holding that, although juvenile records may properly be used to show a witness's bias, the use of juvenile records for purposes of general impeachment is disallowed. Rule 609, Ala.R.Evid., addresses the admissibility of prior convictions to impeach a witness. Rule 609(d), states: "Evidence of juvenile or youthful offender adjudications is not admissible under this rule." Also, § 12–15–72(a)(b), Ala.Code 1975,

provides that a juvenile adjudication is not a conviction and is not admissible against a juvenile in any court. Further, Alabama caselaw has consistently distinguished the restrictive holding in *Davis*. See *Ex parte Lynn*, 477 So.2d 1385 (Ala.1985), on remand, 477 So.2d 1388 (Ala.Cr.App.1985), after remand, 543 So.2d 704 (Ala.Cr.App.1987), *aff'd*, 543 So.2d 709 (Ala.1988), cert. denied, 493 U.S. 945, 110 S.Ct. 351, 107 L.Ed.2d 338 (1989) (case reversed because the defendant was not allowed to cross-examine accomplice about his plea bargain with the state in exchange for his testimony against his accomplice; the Court noted that there is a difference between general impeachment of a juvenile witness and attacking the witness's credibility because of bias); *Ex parte McCorvey*, 686 So.2d 425 (Ala.), on remand, 686 So.2d 426 (Ala.Cr.App.1996) (Supreme Court held that there was no error in limiting the cross-examination of defendant about his probationary status as youthful offender); *Rowell v. State*, 647 So.2d 67 (Ala.Cr.App.1994); *Kirby v. State*, 581 So.2d 1136 (Ala.Cr.App.1990), (*Davis* is "carefully limited and [was] not intended to mandate a sweeping constitutional intrusion into state evidence law"); *Hunt v. State*, 453 So.2d 1083 (Ala.Cr.App.1984), overruled on other grounds, *Ex parte Marek*, 556 So.2d 375 (Ala. 1989) (the court declined to apply the holding in *Davis* because juvenile witness was no longer on probation, his probation had been terminated five years before trial); and *Alderson v. State*, 370 So.2d 1119 (Ala.Cr.App.1979) ("holding in *Davis* was limited, and was not meant to be a general license to impeach a witness by past juvenile delinquency adjudication in all situations"). Cf. *May v. State*, 710 So.2d 1362 (Ala.Cr.App.1997) (court did not improperly deny defendant access to juvenile

records because juvenile witness had no pending actions against him at the time of trial).

Even if we were to hold that *Davis* mandated the introduction of evidence of M.A.'s juvenile probation revocation, we believe that any possible error in its exclusion was harmless beyond a reasonable doubt based on the Supreme Court's decision in *Delaware v. Van Arsdall*, 475 U.S. 673, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986).

Before the Supreme Court released *Davis*, that Court, on two occasions, examined the right of an accused to cross-examine the witnesses who testify against him. See *Smith v. Illinois*, 390 U.S. 129, 88 S.Ct. 748, 19 L.Ed.2d 956 (1968), and *Alford v. United States*, 282 U.S. 687, 51 S.Ct. 218, 75 L.Ed. 624 (1931). The Court in *Alford*, citing prior case-law, noted that "a denial of cross-examination without waiver . . . would be constitutional error of the first magnitude and no amount of showing of want of prejudice would cure it." 390 U.S. at 131, 88 S.Ct. 748, quoting *Brookhart v. Janis*, 384 U.S. 1, 3, 86 S.Ct. 1245, 16 L.Ed.2d 314 (1966).

However, in the years since *Smith*, *Alford*, and *Davis*, the Supreme Court has clearly eschewed a per se Confrontation Clause analysis in favor of a harmless-error analysis. In *Delaware v. Van Arsdall*, the Supreme Court specifically limited its holdings in those cases and held that the denial of "the opportunity to cross-examine an adverse witness does not fit within the limited category of constitutional errors that are deemed prejudicial in every case." The *Van Arsdall* Court stated:

"We hold that the constitutionally improper denial of a defendant's opportunity to im-



peach a witness for bias, like other Confrontation Clause errors, is subject to a *Chapman* [*v. California*, 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967),] harmless-error analysis. The correct inquiry is whether, assuming that the damaging potential of the cross-examination were fully realized, a reviewing court might nonetheless say that the error was harmless beyond a reasonable doubt. Whether such an error is harmless in a particular case depends upon a host of factors, all readily accessible to reviewing courts. These factors include the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution's case."

475 U.S. at 684, 106 S.Ct. 1431.

Other states have, since the release of *Van Arsdall*, applied the harmless-error analysis to a trial court's curtailment of cross-examination to show bias. See *People v. Nutall*, 312 Ill.App.3d 620, 245 Ill.Dec. 515, 728 N.E.2d 597 (2000); *State v. Roberts*, 97 Wash.App. 1069 (1999); *People v. Kliner*, 185 Ill.2d 81, 235 Ill.Dec. 667, 705 N.E.2d 850 (1998), cert. denied, 528 U.S. 830, 120 S.Ct. 86, 145 L.Ed.2d 73 (1999); *People v. Jones*, 209 Mich.App. 212, 530 N.W.2d 128 (1995), appeal denied, 450 Mich. 955, 549 N.W.2d 560 (1995); *State v. Davis*, 256 Kan. 1, 883 P.2d 735 (1994); *State v. Bowen*, 254 Kan. 618, 867

P.2d 1024 (1994); *State v. Howell*, 868 S.W.2d 238 (Tenn.1993), cert. denied, 510 U.S. 1215, 114 S.Ct. 1339, 127 L.Ed.2d 687 (1994).

An application of the principles set out in *Van Arsdall* more than supports a finding of harmless error. The most damaging evidence that M.A. testified to was the following:

“[Smith] said they went off drinking and that they had hit the man in the head with a 2 x 4 and struck him in the face a couple of times. They ended up pulling off in the woods, they drug him about a mile away from his vehicle and Larry had walked away when Jody struck him. Jody—Jody told me that he had stabbed the man in the back, cut an ‘x’ in his back, hit him in the knees with a hammer so he couldn’t walk and sliced his throat with a handsaw.”

(R. 361.) Smith himself told police in his confession that he kicked Van Dam in the ribs several times,<sup>9</sup> hit him on the head with his fist, probably hit him with a hammer but he could not actually remember because he suffered from blackouts, threw a handsaw at him, and held him down while Reid took the money from his pockets. He said that the two then left Van Dam’s body under a mattress after Smith suggested that they put Van Dam’s body in a nearby

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<sup>9</sup> The coroner testified that the rib fractures that caused the collapsed lung were probably the most immediate cause of death. “[W]hen you fracture multiple ribs and you no longer have the integrity of the space that holds your lung the lung will collapse and that’s probably what happened here. He has probably a pneumothorax and a collapsed lung and his rib fractures are probably his most life-threatening injury.” (R. 623.)

lake. Smith's own words reflect that he aided and abetted Reid in the robbery-murder and most likely, based on the coroner's testimony and on Smith's statements, struck the fatal blows when he kicked Van Dam in the ribs.

Smith's own words and actions indicate his intent to rob and to kill Van Dam. Smith tried initially to put the blame on Reid; he then admitted that he and Reid intended to rob Van Dam. Smith suggested that the two put the body in a nearby lake, and Smith said that he was mad at Van Dam and that he kicked him. Smith indicated that he knew he had messed up because he had just been released from prison two days before the murder, and Smith said that he held Van Dam down while Reid went through his pockets and got his money. Even if Smith did not actually strike the fatal blow, he is not excused from liability for the robbery-murder under Alabama law. We have held: "As long as the appellant intentionally promoted or aided in the commission of the killing itself, whether he actually committed the murder does not affect his liability or guilt." *Price v. State*, 725 So.2d 1003 (Ala.Cr.App.1997), *aff'd*, 725 So.2d 1063 (Ala.1998), *cert. denied*, 526 U.S. 1133, 119 S.Ct. 1809, 143 L.Ed.2d 1012 (1999).

Also, Russell Harmon corroborated M.A.'s testimony and testified that Smith and Reid approached him on the day of the robbery-murder and asked if he wanted to participate in robbing Van Dam. He said that when he spoke to the two later that day they both said that they had beaten and robbed Van Dam. Harmon said that Smith told him that he had cut Van Dam with a saw. On cross-examination Harmon did say he was not absolutely sure whether Smith or Reid made this statement. However, Harmon

reiterated on cross-examination that Smith told him that he had “hit the man, beat the man—hit the man in the head and cut him.” (R. 340.)

Other aspects of M.A.’s testimony were corroborated by police testimony concerning the crime scene and testimony that Smith had pawned the tools he had taken from Van Dam.

The record also reflects that the trial court allowed M.A. to be questioned concerning her use of drugs in 1997 and the fact that she had smoked marijuana on the day of the robbery-murder. Defense also questioned M.A. about the specifics of her direct examination. Here, there was not a total denial of cross-examination.

Moreover, the most incriminating evidence offered against Smith was not M.A.’s testimony but Smith’s own confession of his participation in the robbery-murder. Certainly, a confession is the most damaging and compelling evidence the State may present against an accused.<sup>10</sup> This is abundantly clear when reviewing the history of the *Miranda* decision. M.A.’s testimony was not the most “crucial” piece of evidence the State presented against Smith.

We hold that the failure to allow M.A. to be questioned about the fact that her juvenile probation had been revoked was harmless.

## XI.

Smith argues, in one paragraph in his brief to this Court, that the trial court erred in allowing what he

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<sup>10</sup> The Alabama Supreme Court in *Ex parte Cothren*, 705 So.2d 861 (Ala.1997), cert. denied, 523 U.S. 1029, 118 S.Ct. 1319, 140 L.Ed.2d 482 (1998), characterized a confession as the “centerpiece” of the State’s case against an accused.

argues were cumulative and gory photographs of the victim's body to be introduced at trial because, he says, they were so prejudicial that their admission denied him a fair trial.

“Photographic evidence is admissible in a criminal prosecution if it tends to prove or disprove some disputed or material issue, to illustrate some relevant fact or evidence, or to corroborate or dispute other evidence in the case. Photographs that tend to shed light on, to strengthen, or to illustrate other testimony presented may be admitted into evidence. *Chunn v. State*, 339 So.2d 1100, 1102 (Ala.Cr.App.1976). To be admissible, the photographic material must be a true and accurate representation of the subject that it purports to represent. *Mitchell v. State*, 450 So.2d 181, 184 (Ala.Cr.App.1984). The admission of such evidence lies within the sound discretion of the trial court. *Fletcher v. State*, 291 Ala. 67, 277 So.2d 882, 883 (1973); *Donahoo v. State*, 505 So.2d 1067, 1071 (Ala.Cr.App.1986) (videotape evidence). Photographs illustrating crime scenes have been admitted into evidence, as have photographs of victims and their wounds. E.g., *Hill v. State*, 516 So.2d 876 (Ala.Cr.App.1987). Furthermore, photographs that show the external wounds of a deceased victim are admissible even though the evidence is gruesome and cumulative and relates to undisputed matters. E.g., *Burton v.*

*State*, 521 So.2d 91 (Ala.Cr. App.1987). Finally, photographic evidence, if relevant, is admissible even if it has a tendency to inflame the minds of the jurors. *Hutto v. State*, 465 So.2d 1211, 1212 (Ala.Cr.App.1984).’

“*Ex parte Siebert*, 555 So.2d 780, 783–84 (Ala.1989), cert. denied, 497 U.S. 1032, 110 S.Ct. 3297, 111 L.Ed.2d 806 (1990). See also *Kuenzel v. State*[, 577 So.2d 474 (1990)]; *Ivery v. State*[, 686 So.2d 495 (1996)]; C. Gamble, *McElroy’s Alabama Evidence*, § 207.01(2) (5th ed.1996). We have examined the photographs introduced into evidence in this case, and applying the legal principles set out above to the facts of this case, we conclude that the trial court did not abuse its discretion in admitting the photographs into evidence at either the guilt phase or the sentencing phase of the trial.”

*Ingram v. State*, 779 So.2d 1225, 1273 (Ala.Cr. App.1999).

## XII.

Smith argues that the trial court erred in denying his motion for a new trial after a State’s witness testified that Smith had previously been in prison. The following occurred during the direct examination of Patricia Milbeck:

“Q: [prosecutor]: Now, at that time did you know Jody?

“A: Yes, sir, by writing him when he was in prison.

“Mr. Hughes [defense counsel]: Your Honor,  
I object to that.”

(R. 271.)

After this occurred the trial court held a hearing outside the presence of the jury. Smith then moved for a mistrial because, he argued, the error could not be corrected with curative instructions. The trial court took the motion under advisement until later in the day and then gave the jury the following curative instruction:

“Members of the jury, the last response given by the witness to a question from Mr. Cherry was not only inappropriate and improper, but it was not a legal response. This Defendant is on trial because he is alleged to have committed a particular offense and as we talked about both yesterday and today, your sole focus is on the question of whether he is guilty or not guilty of that offense. At this stage of these proceedings his past, whatever it might be, is of no legal significance whatsoever.”

(R. 278.) The trial court then polled the jury to determine if the members could follow the instructions. Each juror indicated that he or she could.

The Court then held a hearing on the issue whether the comment made by the witness warranted a mistrial. After considering arguments from both sides, the court held that there was no manifest necessity for a mistrial. (R. 310.) We agree.

Smith, citing *Ex parte Sparks*, 730 So.2d 113 (Ala.1998), on remand, 730 So.2d 117 (Ala.Cr. App.1999), argues that the presentation of evidence

of a prior offense could not be eradicated by a curative instruction and automatically warrants reversal. However, we believe that Smith's reliance on *Sparks* is misplaced. See *Sullivan v. State*, 742 So.2d 202 (Ala.Cr.App.1999).

In *Sparks*, the accused was on trial for driving under the influence of alcohol and running a stop sign. Sparks testified in his own defense and denied that he had been drinking and attributed his failing his field sobriety test to problems with his knees. The city prosecutor, on cross-examination, asked Sparks if he had previously been convicted of driving under the influence. There was an objection and a motion for a mistrial. The trial court denied the motion and gave the jury a curative instruction. The Supreme Court reversed the driving-under-the-influence conviction, stating that it could not condone "a prosecutor's attempt to elicit testimony about a defendant's prior convictions in violation of the general exclusionary rule against such evidence." 730 So.2d at 115. The Court also noted that the prejudice could not be eradicated because the prior conviction was for the same offense the defendant was presently on trial for.

Here, the question asked by the prosecutor did not call for evidence that Smith had a prior record. The question called for a yes or no answer—the witness, on her own volition, elaborated on that answer; thus, her answer was nonresponsive to the prosecutor's question.

"We find that Claiborne's references to the appellant's having been in prison, which were clearly unresponsive to the questions posed are comparable to remarks that we have held can be eradicated by curative



instructions.” See, e.g., *Bowers v. State*, 629 So.2d 793, 794 (Ala.Cr.App.1993) (where ‘trial court, of its own volition, instructed the jurors to disregard [police detective’s unresponsive answer that he “understood the defendant was facing charged in Milwaukee”] and questioned jurors to ensure that they could disregard the statement,’ the trial court’s actions ‘cured any possible error’); *Garnett v. State*, 555 So.2d at 1155 (‘any prejudice arising from [prosecutor’s] question [indicating that murder defendant had been arrested for beating his wife] . . . was both capable of eradication and was eradicated by the trial court’s prompt action’ in instructing the jurors to disregard the question and in polling the jurors to ascertain that they could disregard the question); *Floyd v. State*, 412 So.2d 826, 830 (Ala.Cr.App.1981) (‘the trial court’s action in immediately instructing the jury to disregard the prosecution’s vague reference to another unspecified crime cured any potential error prejudicing the appellant’s case’).”

*Stanton v. State*, 648 So.2d 638, 643 (Ala.Cr.App.1994).

Moreover, we note that there was other evidence presented showing that Smith had been in prison. The pawnshop employee testified that when Smith pawned the power tools he showed his Alabama Department of Corrections identification card. Also, Smith said in his first statement that he had just gotten out of prison on the Friday before the robbery-murder on Sunday.

## XIII.

Smith argues that there was insufficient evidence to convict him of capital murder as charged in the indictment because, he says, there was no evidence that he was armed with a power saw at the time of the robbery-murder.

The indictment against Smith read as follows:

“The Grand Jury of said County charge, that, before the finding of this indictment Joseph Clifton Smith whose name is to the Grand Jury otherwise unknown than as stated, did in the course of committing the theft of lawful United States Currency, the amount and denomination not known to the Grand Jury, used force against the person of Durk Van Dam, with intent to overcome Durk Van Dam’s physical power of resistance which Joseph Clifton Smith was armed with a deadly weapon or dangerous instrument, to-wit: a power tool, in violation of § 13A-8-41 of the Code of Alabama. Smith did with intent to cause the death of Durk Van Dam cause the death of Durk Van Dam by hitting him about the head and body with an object or objects unknown to the Grand Jury, in violation of § 13A-5-40(2) of the Code of Alabama, against the peace and dignity of the State of Alabama.”

(R. 6.)

What Smith fails to consider is that an indictment encompasses the conduct of an accomplice as well as a principal. As we stated in *Price v. State*, 725 So.2d

1003, 1055 (Ala.Cr.App.1997), *aff'd*, 725 So.2d 1063 (Ala.1998):

“[I]n Alabama, an individual who is present with the intent to aid and abet in the commission of an offense is as guilty as the principle wrongdoer. § 13A-2-20, -23, Code of Alabama 1975. See *Stokley v. State*, 254 Ala. 534, 49 So.2d 284 (1950); *Robinson v. State*, 335 So.2d 420 (Ala.Cr.App.1976), *cert. denied*, 335 So.2d 426 (Ala.1976); *Heard v. State*, 351 So.2d 686 (Ala.Cr.App.1977); *Hill v. State*, 348 So.2d 848 (Ala.Cr.App.1977), *cert. denied*, 348 So.2d 857 (Ala. 1977). ‘A conviction of one charged in the indictment with having been the actual perpetrator of a crime is authorized on proof of a conspiracy or that the accused aided and abetted in the commission of the crime. *Stokley v. State*, 254 Ala. 534, 49 So.2d 284 (1950). . . . As long as the appellant intentionally promoted or aided in the commission of the killing itself, whether he actually committed the murder does not affect his liability or his guilt. *Lewis v. State*, 456 So.2d 413 (Ala.Cr.App.1984). The trial court instructed the jury as to the laws of complicity and accomplice liability in the present case.’”

“Under Alabama law, the distinction between principals and accessories has long been abolished; one charged as a principal may be convicted as an accomplice, and the State is not required to notify the defendant in the indictment or otherwise that it is proceeding under a complicity theory.” *Johnson v. State*, 612 So.2d 1288 (Ala.Cr.App.1992). We note

that the trial court gave a thorough and extensive charge on accomplice liability.

In Smith's first statement to police he said that Reid dragged a skill saw blade across Van Dam's neck and yelled, "Where's the money at, give me the goddamn money or I'm fixing to kill you." In the second statement, Smith said that Reid took a "skill saw blade" to Van Dam.

There was more than sufficient evidence to show that Smith was, at a minimum, an accomplice to the murder as charged in the indictment.

#### XIV.

Smith argues that several comments by the prosecutor in his closing argument in the guilt phase denied him a fair trial.

When reviewing a prosecutor's comment made in argument to the jury we must look at the record as a whole and view the remark in the context of the entire trial. *Duren v. State*, 590 So.2d 360, 364 (Ala.Cr.App.1990), *aff'd*, 590 So.2d 369 (Ala.1991), *cert. denied*, 503 U.S. 974, 112 S.Ct. 1594, 118 L.Ed.2d 310 (1992). We have stated that the failure to object to an allegedly improper argument in a death-penalty case will weigh against a claim of prejudice. *Freeman v. State*, 776 So.2d 160 (Ala.Cr.App.1999). Also, "[i]mproper comments by the district attorney will result in reversal only if they 'so infected the trial with unfairness as to make the resulting conviction a denial of due process.'" *Darden v. Wainwright*, 477 U.S. 168, 106 S.Ct. 2464, 91 L.Ed.2d 144 (1986), quoting *Donnelly v. DeChristoforo*, 416 U.S. 637, 94 S.Ct. 1868, 40 L.Ed.2d 431 (1974).

“In reviewing allegedly improper prosecutorial comments, conduct, and questioning of witnesses, the task of this Court is to consider their impact in the context of the particular trial, and not to view the allegedly improper acts in the abstract. *Whitlow v. State*, 509 So.2d 252, 256 (Ala.Cr.App.1987); *Wysinger v. State*, 448 So.2d 435, 438 (Ala.Cr.App.1983); *Carpenter v. State*, 404 So.2d 89, 97 (Ala.Cr.App.1980), cert. denied, 404 So.2d 100 (Ala.1981). Moreover, this Court has also held that statements of counsel in argument to the jury must be viewed as delivered in the heat of debate; such statements are usually valued by the jury at their true worth and are not expected to become factors in the formation of the verdict.”

*Wilson v. State*, 777 So.2d 856, 893 (Ala.Cr.App.1999), quoting *Bankhead*, 585 So.2d at 106–07.

A.

Smith argues that the prosecutor improperly commented on a statement to police made by Smith’s codefendant, which was never admitted into evidence. Smith challenges the following:

“Well, Jody started thinking, ‘Better get my story straight,’ so he’s banging on the door, ‘Hey, tell that detective I want to talk to him, I need to talk to him again,’ and that’s when Detective Reynolds comes back. Now, *Larry’s* story is closer to the mark. He’s still lying about where the pawnshop was, but he admits more of what he did. And they got his clothes out of his Mama’s washing

machine, they got the tools back from the pawnshop.”

(R. 657) (emphasis added). Smith argues that this comment was a reference to a statement by Smith’s codefendant. There was no objection to this argument. See Rule 45A, Ala.R.App.P.

A review of the remark, together with the evidence presented at trial, shows that the prosecutor inadvertently misstated the name. The prosecutor said Larry instead of Jody. The contents of the remark reflect that the prosecutor was referring to Smith’s statement not to any statement that his codefendant may have made to police. Clearly, this was an inadvertent slip of the tongue. We find no error, much less plain error, here. *Baxter v. State*, 723 So.2d 810 (Ala.Cr.App.1998).

B.

Smith also argues that the prosecutor denied him a fair trial by calling him a thief. The following occurred:

“Jody, Joseph C. Smith, is a thief. He was [a] thief back in November of 1997. He stole Durk Van Dam’s money, he took his wallet, he took his checkbook. For a while he had control of his truck. He took his identity, his I.D. cards, his driver’s license, he took his tools, he took his shoes, his boots. And lastly, but definitely not leastly, he stole his life. He took everything from Durk Van Dam.”

(R. 648.) There was no objection to the above remark; thus, we apply a plain-error review. Rule 45A, Ala.R.App.P. The failure to object to an alleged improper argument does weigh against a claim of

prejudice. *Freeman v. State*, 776 So.2d 160 (Ala.Cr.App.1999).

This Court in *Barbee v. State*, 395 So.2d 1128, 1134 (Ala.Cr.App.1981), noted:

“The digest abounds with instances where the prosecutor has commented on the defendant’s character or appearance. *Hall v. United States*, 419 F.2d 582 (5th Cir.1969) (‘hoodlum’); *Wright v. State*, 279 Ala. 543, 188 So.2d 272 (1966) (‘Judas’); *Rogers v. State*, 275 Ala. 588, 157 So.2d 13 (1963) (‘a slick and slimy crow’); *Watson v. State*, 266 Ala. 41, 93 So.2d 750 (1957) (‘a maniac’); *Weaver v. State*, 142 Ala. 33, 39 So. 341 (1905) (‘beast’); *Liner v. State*, 350 So.2d 760 (Ala.Cr.App.1977) (‘a rattlesnake’ and ‘a viper’); *Jones v. State*, 348 So.2d 1116 (Ala.Cr.App.), cert. denied, *Ex parte Jones*, 348 So.2d 1120 (Ala. 1977) (‘a purveyor of drugs’); *Kirkland v. State*, 340 So.2d 1139 (Ala.Cr.App.), cert. denied, *Ex parte Kirkland*, 340 So.2d 1140 (Ala. 1977) (‘slippery’); *Jeter v. State*, 339 So.2d 91 (Ala.Cr.App.), cert. denied, 339 So.2d 95 (Ala.1976), cert. denied, 430 U.S. 973, 97 S.Ct. 1661, 52 L.Ed.2d 366 (1977) (‘a flim flam artist’); *Cassady v. State*, 51 Ala.App. 544, 287 So.2d 254 (1973) (‘a demon’); *Reed v. State*, 32 Ala.App. 338, 27 So.2d 22, cert. denied, 248 Ala. 196, 27 So.2d 25 (1946) (‘lied like a dog running on hot sand’); *Williams v. State*, 22 Ala.App. 489, 117 So. 281 (1928) (‘a chicken thief’); *Ferguson v. State*, 21 Ala.App. 519, 109 So. 764 (1926) (‘a smart aleck’); *Quinn v. State*, 21 Ala.App.

459, 109 So. 368 (1926) ('a wild catter'); *Thomas v. State*, 19 Ala.App. 187, 96 So. 182, cert. denied, *Ex parte Thomas*, 209 Ala. 289, 96 So. 184 (1923) ('a moral pervert'); *Beard v. State*, 19 Ala.App. 102, 95 So. 333 (1923) ('seducer')."

References in closing argument to a defendant's character will not constitute reversible error if they are supported by the record. *Nicks v. State*, 521 So.2d 1018, 1023 (Ala.Cr.App.1987), *aff'd*, 521 So.2d 1035 (Ala.), cert. denied, 487 U.S. 1241, 108 S.Ct. 2916, 101 L.Ed.2d 948 (1988). See *Schartau v. State*, 534 So.2d 378 (Ala.Cr.App.1988) (reference to appellant as thief did not amount to reversible error); *Jackson v. State*, 249 Ala. 348, 31 So.2d 519 (1947) (reference to appellant as "damned thief" did not amount to reversible error).

Here, the comment was supported by the record. Smith told police that he stole Van Dam's tools and pawned them. By his own admission, he was a thief in November 1997 as the prosecutor said in his argument.

### C.

Smith argues that the prosecutor prejudiced him by referring to him as a liar. The following occurred:

"And Jody gave them two statements. The first statement he's lying through his teeth. He said, 'I don't—I—I didn't—I didn't do anything to that man, I didn't touch that man, my fingerprints won't be on nothing, I didn't go anything.' Now, that was a lie."



(R. 656.) There was no objection to this comment; thus, our review is for plain error. Rule 45A, Ala.R.App.P.

Clearly, this characterization of the appellant is supported by the record. Smith, in his first statement, totally denied any involvement in the robbery-murder. In the second statement he admitted his participation in the robber-murder. “[T]he prosecutor, in the appropriate case, may use opprobrious terms to characterize the accused or his conduct, provided that the remarks are in accord with the evidence.” *Bankhead*, supra.

D.

Smith argues that the prosecutor misstated the law when he argued, “If the Judge let you see it, then it was evidence and you could consider it.” (R. 657–58.)

There was no objection to this comment; thus, our review is limited to determining whether there was plain error. Rule 45A, Ala.R.App.P.

Here, the trial court repeatedly told the jurors that comments of counsel were not evidence and that it was the court’s duty to instruct them on the law. We do not believe that this isolated statement by the prosecutor so “infected the trial with unfairness” that Smith was denied due process. *Darden v. Wainwright*.

E.

Smith argues that the prosecutor illegally argued victim-impact evidence at the guilt phase and that her doing so resulted in prejudice to Smith.

During the closing argument the prosecutor argued:

“In the final seconds of his life Durk Van Dam pleaded for his life. He had two little boys that he knew he would never see again. I ask that you let that be the picture in your mind as you decide what intent is, as they robbed him and they slowly and mercilessly intentionally and cruelly kicked and beat this man to death.”

(R. 675.)

We agree with the State—the above statement was a reply to the defense’s argument that there was absolutely no evidence of intent. “A prosecutor has a right based on fundamental fairness to reply in kind to the argument of defense counsel.” *DeBruce v. State*, 651 So.2d 599, 609 (Ala.Cr.App.1993), *aff’d*, 651 So.2d 624 (Ala.1994). Also, the argument was based on the facts presented at trial through Smith’s own statement, in which he told police, “The guy’s hollering, ‘No, sir, no, sir, please, don’t kill me, I got two little boys, please, don’t kill me.’” (R. 470.) A prosecutor may argue facts in evidence. *Manigan v. State*, 402 So.2d 1063 (Ala.Cr.App.), *cert. denied*, 402 So.2d 1072 (Ala.1981). The argument was based on evidence presented at trial.

We have reviewed all of the challenged comments made by the prosecutor and are confident that none of them so infected the trial with unfairness that Smith was denied due process. *Darden v. Wainwright*.

## XV.

Smith argues that the trial court’s jury instructions were flawed for several reasons.

“A trial court has broad discretion in formulating its jury instructions, providing those instructions accurately reflect the law and the facts of the case. *Raper v. State*, 584 So.2d 544 (Ala.Cr.App.1991). We do not review a jury instruction in isolation, but must consider the instruction as a whole, *Stewart v. State*, 601 So.2d 491 (Ala.Cr.App. 1992), *aff’d* in relevant part, 659 So.2d 122 (Ala.1993), and we must evaluate instructions like a reasonable juror may have interpreted them. *Francis v. Franklin*, 471 U.S. 307, 105 S.Ct. 1965, 85 L.Ed.2d 344 (1985); *Stewart v. State*.”

*Griffin v. State*, 790 So.2d 267, 332 (Ala.Cr.App. 1999), quoting *Ingram v. State*, 779 So.2d 1225 (Ala.Cr.App.1999).

#### A.

Smith first argues that the trial court erred in giving an instruction on flight because, he argues, there was no evidence of flight. He also argues that even if an instruction was warranted the one given was erroneous.

Smith argues in his brief to this Court that there was no evidence of flight because, “Indeed, the State offered no evidence that Mr. Smith ever left the small corner of Mobile County where he lived and all the events in this case occurred.” (Smith’s brief to this Court at page 20.)

*McElroy’s Alabama Evidence* states the following concerning evidence of flight:

“The prosecution is generally given wide latitude in proving things that occurred dur-

ing the accused's flight. Indeed, the term 'flight' includes any conduct of the accused that is relevant to show a consciousness of guilt. *Such conduct may include the use of aliases, concealment of identity, attempting to avoid arrest and the use of false exculpatory statements.*"

*McElroy's* § 190.01(1) (5th ed.1996) (emphasis added).

In *Ex parte Jones*, 541 So.2d 1052, 1053–57 (Ala.1989), Justice Maddox, writing for the Court, detailed what constitutes evidence of flight in Alabama. Justice Maddox stated:

"Evidence of flight has long been allowed in the courts of Alabama, and the State is generally given wide latitude in proving things that occurred during the accused's flight. C. Gamble, *McElroy's Alabama Evidence*, § 190.01(1) at 381 (3d ed.1977). However, as Dean Gamble has noted:

"Logic would dictate that at some point the flight of the accused will be so far removed from the time of the charged crime that such flight will be too remote to be relevant as having probative value upon the accused's consciousness of guilt. However, such a case has not yet made its way before the appellate courts of Alabama."

*Id.*, § 190.01(4) at 383.

"One of this Court's first detailed examinations of evidence of flight came in *Levison v. State*, 54 Ala. 520 (1875); there, this Court stated:

“Flight, the demeanor when arrested, stolidity or trepidation, under accusation, prevarication in answer to inquiries relating to the offense, or to his conduct, the fabrication or suppression of evidence, or previous threats, or antecedent grudges, are all evidentiary facts against the person to whom they are imputable, dependent for their value on a connection with other criminating circumstances. They are evidence against the party to whom they are imputable, and not constituting the guilty act, only pointing to him as the guilty agent, are not evidence for or against another with whom he has no connection. *The most inconclusive of the criminating circumstances, that which, not combined with other factors, is of the least probative force is flight.* [citation omitted.] It may be attributable to fear, or to impatience and restlessness, under the duress of imprisonment, or to a consciousness of guilt. Much depends on the character of the mind, temperament and education. One will, with fortitude, endure imprisonment without murmuring, and without an effort to fly, though tortured with the consciousness of crime; while another of a different mental, or moral, or physical organization, conscious of innocence, fretting under unaccustomed restraints, or fearful of the issue of the events leading to his imprisonment, will fly on the first opportunity. Flight is of consequence, in itself, delusive and inconclusive as a criminating fact.’

“54 Ala. at 527. (Emphasis added.)

“In an even earlier case, this Court did hold, however, that care must be taken in introducing evidence like evidence of flight. In *Liles v. State*, 30 Ala. 24, 24–25 (1857), this Court stated:

“In determining how far the conduct of a prisoner may be evidence against him, we feel that we are treading on dangerous and doubtful ground. One of acute sensibilities might be overwhelmed by a simple accusation of crime; while a hardened offender would stand unabashed, and undisturbed in muscle, though conscious of the deepest guilt. A respectable modern writer, speaking of the effect produced by imputation of crime, uses the language, that ‘it is an impulse of nature, consequent upon extreme surprise, to which the innocent may yield as well as the guilty. It may happen that the more innocent the party, the greater the shock occasioned by such a proceeding.’ *Burrill on Cir. Ev.*, 476–7; *Smith v. The State*, 9 Ala. 990–5.’

“ . . . .

“One of the most recent cases summarizing the Alabama rule on this subject is *Beaver v. State*, 455 So.2d 253, 257 (Ala.Crim.App.1984):

“ ‘ “In a criminal prosecution the state may prove that the accused engaged in flight to avoid prosecution . . . as tending to show the accused’s consciousness of guilt. . . . The state is generally given wide latitude or freedom in proving things that occurred during the

accused's flight." C. Gamble, *McElroy's Alabama Evidence* § 190.01(1) (3rd ed.1977). "Evidence of flight is admissible even though it is weak or inconclusive or if several days have passed since the commission of the crime." *Tate v. State*, 346 So.2d 515, 520 (Ala.Cr.App.1977). Evidence of flight is admissible even though that evidence involves the commission of other crimes by the accused. See *Tate*, supra; *Neal v. State*, 372 So.2d 1331, 1344-45 (Ala.Cr.App.1979). For the same reason, evidence that the accused resisted or attempted to avoid arrest is admissible. *Crenshaw v. State*, 225 Ala. 346, 348, 142 So. 669 (1932). Additionally, the evidence that the accused was observed at the police station throwing keys in a trash can was admissible. Any act proving or tending to prove the accused's effort or desire to obliterate, destroy, or suppress evidence of a crime is relevant and admissible even if it involves evidence of a separate offense. *Watwood v. State*, 389 So.2d 549, 551 (Ala.Cr.App.), cert. denied, *Ex parte Watwood*, 389 So.2d 552 (Ala.1980).'

See also *Ex parte Weaver*, 678 So.2d 284 (Ala.), on remand, 678 So.2d 292 (Ala.Cr.App.1996) (quoting *Jones* in depth).

Here, the evidence indicated that Smith and Reid attempted to hide the body under a mattress, and tried to steal Van Dam's truck but it got stuck in the mud and they left it behind, and that Smith went

back to the Highway Host motel to shower and to change clothes. He admitted to police that he tried to wipe his fingerprints off the truck and also told police that he had washed the clothes he was wearing at the time of the robbery-murder. Also, when he was first questioned about the murder he denied any involvement and placed the blame for the robbery-murder on Reid. Clearly, these facts are sufficient to fit within the definition of “flight,” as they evidence a consciousness of guilt, as that term is defined in Alabama. *McElroy’s Alabama Evidence*, § 190.1(1). All of the conduct evidences a “consciousness of guilt” on the part of Smith.

Also, this Court has never held that in order to establish flight the State must prove that the accused left the city or community where the crime occurred. *Muse v. State*, 29 Ala.App. 271, 196 So. 148 (1940), cert. denied, 239 Ala. 557, 196 So. 151 (Ala.1940) (“[T]here can be no set or specific time necessary to constitute flight, and the distance the accused ran before he was apprehended is also immaterial.”) Other states have reached this same conclusion. *State v. Hatten*, 297 Mont. 127, 991 P.2d 939 (1999) (“flight includes fleeing, even a short distance, to wherever a defendant thinks is safe to dispose of evidence.”); *State v. Hill*, 875 S.W.2d 278, 284 (Tenn.Crim.App.1993) (flight occurred when accused ran between two houses—“Flight from the crime scene may be taken in any manner.”); *Baier v. State*, 891 P.2d 754 (Wyo.1995) (evidence sufficient to show flight where accused left the hotel where assault occurred and was apprehended a short distance away by police); *State v. Moseley*, 338 N.C. 1, 449 S.E.2d 412 (1994), cert. denied, 514 U.S. 1091, 115 S.Ct. 1815, 131 L.Ed.2d 738 (1995) (evidence of flight sufficient because accused left the victim in a



secluded area, took the victim's identification, and left the scene).

Smith argues that the court's instruction on flight was erroneous because the instruction told the jury that the State had presented evidence of flight. The trial court gave the following instruction on flight:

"In this case you have heard testimony concerning flight. That is, that the Defendant allegedly left from the scene of the purported crime. With reference to evidence that was presented in this case bearing on the alleged flight by the Defendant from the scene of the alleged crime, the jury is instructed that evidence may be offered tending to show flight of the Defendant, and when such evidence is offered by the State it may be considered by you, the jury in connection with all of the other evidence in the case of circumstances tending to prove guilt, and in connection with such evidence consideration should be given to any evidence of the motive which may have prompted such flight. That is, whether a consciousness of guilt, an impending or likely apprehension of being brought to justice caused the flight or whether it was caused from some other or more insistent motive.

"In the first place, where evidence is offered to show the Defendant's flight, that is, he went away from the scene of the alleged offense, it would be for you, the jury, to say whether it is flight as a matter of fact. The jury would have to determine from the evidence the question whether this was flight or

not and then you would further consider such evidence in light of all the other evidence you have heard in this case, including any evidence to negate or explain any such evidence of flight and whether such evidence was a reasonable explanation or not, all of which you would consider in connection with all the other evidence giving each part of the evidence such weight as you, the jury, feel it is entitled to receive in this particular case.”

(R. 700–01.)

Defense counsel objected to the court’s instruction on flight and the court recharged the jury as follows:

“Finally, and consistent with the notion that I do not want you to think that I have commented on the evidence in any way, shape or form, in charging you on the issue of flight I remind you that what was said was that it is for you to determine whether or not there was flight in this case. And if and only if you determine as a matter of fact that there was flight in this case would you then be permitted by law to perceive and consider what, you know, may have prompted such flight.

“But again, can each of you accept the proposition that the Court is not in any way, shape or form trying to suggest to you that there was flight in this case? If you cannot, please, raise your hand.”

(R. 720.)

The trial court cured the defect now asserted on appeal. Also, the instruction given in this case was similar to an instruction in *Minor v. State*, 780 So.2d 707 (Ala.Cr.App.1999), that this Court upheld. The instruction correctly explained Alabama's law on flight.

B.

Smith argues that the trial court's instruction on reasonable doubt was flawed because it contained the term "actual doubt" in violation of the United States Supreme Court's holding in *Cage v. Louisiana*, 498 U.S. 39, 111 S.Ct. 328, 112 L.Ed.2d 339 (1990).

Smith did not object to the trial court's instruction on reasonable doubt; thus, our review is limited to plain error. Rule 45A, Ala.R.App.P.

The Court gave the following instruction:

"A reasonable doubt is not a mere possible doubt because everything related to human affairs is open to some possible or imaginary doubt. A reasonable doubt is a doubt of a fair-minded juror honestly seeking the truth after careful and impartial consideration of all the evidence in the case. It is a doubt based upon reason and common sense. It does not mean a vague or arbitrary notion, but it is an actual doubt based upon the evidence, the lack of evidence, a conflict in the evidence or a combination thereof. It is a doubt that remains after going over in your minds the entire case and giving consideration to all the testimony. It is distinguished from a doubt arising from mere possibility, from bare imagination or from fanciful conjecture."

(R. 680.)

“In *Cage*, the United States Supreme Court found that if the trial court defines “reasonable doubt” by using the terms “grave uncertainty,” “actual substantial doubt” and “moral certainty,” a reasonable juror could interpret the instructions to mean that a lesser degree of proof is needed to convict than is required by the due process clause.” *McWhorter v. State*, 781 So.2d 257, 303 (Ala.Cr.App.1999), quoting *Lawhorn v. State*, 756 So.2d 971 (Ala.Cr.App.1999).

The reasonable doubt instruction given here was virtually identical to the pattern jury instruction on the burden of proof. The instruction did not contain the term “actual substantial doubt.” “A trial court’s following of an accepted pattern jury instruction weighs heavily against any finding of plain error.” *Wilson v. State*, 777 So.2d 856 (Ala.Cr.App.1999), quoting *Price v. State*, 725 So.2d 1003, 1058 (Ala.Cr.App.1997), *aff’d*, 725 So.2d 1063 (Ala.1998), cert. denied, 526 U.S. 1133, 119 S.Ct. 1809, 143 L.Ed.2d 1012 (1999). Cf. *Ex parte Wood*, 715 So.2d 819 (Ala.), cert. denied, 525 U.S. 1042, 119 S.Ct. 594, 142 L.Ed.2d 536 (1998) (court noted that it had never held that following the pattern jury instruction may never amount to plain error).

We have upheld a similar reasonable doubt instruction against a claim of plain error. *Smith v. State*, 756 So.2d 892 (Ala.Cr.App.1998).

### C.

Smith argues that the trial court’s jury instruction on accomplice liability was erroneous because, he says, it lowered the State’s burden of proof by allowing for the jury to find Smith guilty by transferring Reid’s intent.

The trial court gave a detailed instruction on accomplice liability. At several points in the charge it instructed the jurors that an accomplice must intend for the conduct to occur. The court instructed in part:

“The accomplice is criminally responsible for acts which are the direct, proximate, natural result of the conspiracy formed. He is not responsible for any special act not within the scope of a common purpose, but which grow out of the individual malice of another perpetrator when intent is one of the required constituent elements of an offense. And in each of the offenses that I am going to define for you intent is a requirement.”

(R. 681–82.) The court further stated, “it must be shown beyond a reasonable doubt that he was present with the intent to aid and abet the principal actor and it must also be shown that he possessed the same intent to kill.” (R. 682.)

The court did state, “Without this individual intent or personal knowledge it cannot be affirmed that he aided or abetted in the crime charged. This need not, however, be positively proved.” (R. 682.) However, the court further charged the jury:

“A person acts intentionally when it is his purpose to cause the death of another person. The intent to kill must be real and specific. Intent is a state of mind. There is generally no way to prove intent by positive evidence. It usually has to be proven by circumstantial evidence.”

(R. 684.)

The court's instructions were thorough and accurate statements of the law. There was no error in the court's instruction on accomplice liability.

D.

Smith further argues that the trial court erred in not instructing the jury on drawing "no adverse inference" from Smith's failure to testify at trial.

Smith never requested a no-adverse-inference instruction and never objected when the judge failed to sua sponte give such an instruction. The United States Supreme Court in *Carter v. Kentucky*, 450 U.S. 288, 101 S.Ct. 1112, 67 L.Ed.2d 241 (1981), held that the Fifth Amendment requires the giving of a "no-adverse-inference" instruction when requested to do so by trial counsel. The duty to give such an instruction arises only when a request has been made to give the instruction to the jury. *Carter*.

We have followed the prevailing view and held that a trial court commits no error in failing to sua sponte give a "no-adverse-inference" instruction. *Phillips v. State*, 726 So.2d 292 (Ala.Cr.App.1998).

"Appellant cites *Carter v. Kentucky*, 450 U.S. 288, 101 S.Ct. 1112, 67 L.Ed.2d 241 (1981), for the proposition that a trial judge in a criminal case must instruct the jury that the defendant has a right not to testify and no adverse inference shall be drawn from his failure to do so. In this case there was no request for such an instruction. We disagree that the trial judge should have instructed the jury sua sponte. It is a matter of judgment for defense counsel to decide whether such an instruction is more harmful than beneficial. Counsel may decide it

merely calls attention to the problem. We adhere to the requirement that such an instruction shall be given when requested.”

*Ice v. Commonwealth*, 667 S.W.2d 671, 677 (Ky.), cert. denied, 469 U.S. 860, 105 S.Ct. 192, 83 L.Ed.2d 125 (1984). See also *Dutton v. State*, 674 P.2d 1134, 1140 (Okla.Cr.App.), cert. denied, 467 U.S. 1256, 104 S.Ct. 3548, 82 L.Ed.2d 850 (1984) (“We reject appellant’s assertion that a trial judge is obligated to give a cautionary instruction on its own initiative.”); *Davis v. State*, 161 Ga.App. 358, 359, 288 S.E.2d 631, 632 (1982) (“we cannot agree that the failure to give the charge sua sponte was error”); *People v. Castaneda*, 81 Mich.App. 453, 265 N.W.2d 367 (1978) (“Inasmuch as defendant did not request the instruction, the issue has been waived. . . .”). See also *Mills v. Commonwealth*, 996 S.W.2d 473 (Ky.1999), cert. denied, 528 U.S. 1164, 120 S.Ct. 1182, 145 L.Ed.2d 1088 (2000); *People v. Sully*, 283 Cal.Rptr. 144, 53 Cal.3d 1195, 812 P.2d 163 (1991), cert. denied, 503 U.S. 944, 112 S.Ct. 1494, 117 L.Ed.2d 634 (1992); *State v. Baxter*, 51 Haw. 157, 454 P.2d 366 (1969), cert. denied, 397 U.S. 955, 90 S.Ct. 984, 25 L.Ed.2d 138 (1970).

### *Penalty-Phase Issues*

#### XVI.

Smith argues that Alabama’s method of execution—the electric chair—results in cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution. The use of the electric chair, as a means of satisfying a capital punishment, has repeatedly withstood constitutional challenge. See *Woods v. State*, 789 So.2d 896 (Ala.Cr.App.1999); *Jackson v. State*, [Ms. CR-97-

2050, May 28, 1999] \_\_\_\_ So.2d \_\_\_\_ (Ala.Cr.App.1999); *Scott v. State*, 728 So.2d 164 (Ala.Cr.App.1997), aff'd, 728 So.2d 172 (Ala.), cert. denied, 528 U.S. 831, 120 S.Ct. 87, 145 L.Ed.2d 74 (1999); *Williams v. State*, 556 So.2d 737 (Ala.Cr.App.1986), aff'd in part, rev'd in part on other grounds, 556 So.2d 744 (Ala.1987), on remand, 556 So.2d 746 (Ala.Cr.App.1988), after remand, 571 So.2d 336 (Ala.Cr.App.1989), aff'd, 571 So.2d 338 (Ala.1990), cert. denied, 500 U.S. 938, 111 S.Ct. 2067, 114 L.Ed.2d 471 (1991).

## XVII.

Smith argues that Alabama's system of limiting the compensation for attorneys appointed on capital cases to \$1,000 for out-of-court work violates the separation-of-powers doctrine, constitutes a taking without just compensation, violates the Due Process Clause, deprives indigent capital defendants of the effective assistance of counsel, and violates the Equal Protection Clause. These claims have repeatedly been rejected. See *Ex parte Smith*, 698 So.2d 219 (Ala.), cert. denied, 522 U.S. 957, 118 S.Ct. 385, 139 L.Ed.2d 300 (1997); *May v. State*, 672 So.2d 1310 (Ala.1995); *Ex parte Grayson*, 479 So.2d 76 (Ala.), cert. denied, 474 U.S. 865, 106 S.Ct. 189, 88 L.Ed.2d 157 (1985); *Smith v. State*, 581 So.2d 497 (Ala.Cr.App.1990), rev'd on other grounds, 581 So.2d 531 (Ala.1991), on remand, 581 So.2d 536 (Ala.Cr.App.1991), after remand, 698 So.2d 189 (Ala.Cr.App.1996), aff'd, 698 So.2d 219 (Ala.), cert. denied, 522 U.S. 957, 118 S.Ct. 385, 139 L.Ed.2d 300 (1997).

“It should be noted that the Alabama Legislature recently passed the ‘Investment in Justice Act of 1999,’ and, in pertinent part, that Act amended § 15–12–21. Under the new Act, the rate of compensation for



attorneys representing indigent criminal defendants is increased to \$50 per hour for in-court time and \$30 per hour for out-of-court time, with no limit on compensation for an attorney in a case involving a capital offense. Moreover, effective October 1, 2000, the hourly rate increases to \$40 per hour for out-of-court time and \$60 per hour for in-court time.”

*McWhorter v. State*, 781 So.2d 257, 306 (Ala.Cr. App.1999).

#### XVIII.

Smith argues that he was denied his right to a just sentencing determination by remarks made by the prosecutor in the sentencing phase.

We review the allegations of prosecutorial misconduct using the standards of review discussed by this Court in Part XIV of this opinion.

#### A.

Smith argues that the following comment implied that Smith should be sentenced to death because he was mentally retarded:

“The Doctor said that this Defendant has a low IQ and I asked him this question because from your own common sense, from your own experience you know it to be true, there are folks out there with marginal IQs who are streetwise. They get along they get by, they survive sometimes better than the rest of us in certain situations. This man’s been in prison, this man’s been around, this man is streetwise. He knew what he was doing.”

(R. 831.)

There was no objection to the above comment; thus, we apply a plain-error analysis. Rule 45A, Ala.R.App.P.

The above comment did not imply that Smith should be sentenced to death because he is mentally retarded. The comments were based on the evidence presented through Dr. James F. Chudy's testimony. Dr. Chudy, a clinical psychologist, testified that people with low IQs can be streetwise and can function as well as, or better than, the average person. There comments were based on facts in evidence and were the proper subject of comment in closing. See *Manigan v. State*, 402 So.2d 1063 (Ala.Cr.App.), cert. denied, 402 So.2d 1072 (Ala. 1981).

B.

Smith argues that the prosecutor committed reversible error by, he argues, commenting that any sentence but death would be an insult to the victim's family. The following occurred:

"Life without parole means just that. That he would serve the rest of his natural life in prison. But what does that say to Durk Van Dam's family? What does that say to them about their brother, about their father, about their son, about their uncle? It says Durk's life was valueless. There was no value in his life and there was no meaning in his death. You see, life without parole means that Jody would live."

(R. 820-21.)

As the State asserts in brief, this type of argument is permissible at the sentencing phase of a capital trial. As this Court stated in *Burgess v. State*, [Ms. CR-93-2054, November 20, 1998] \_\_\_\_ So.2d \_\_\_\_ (Ala.Cr.App.1998):

“[T]he State has a legitimate interest in counteracting the mitigating evidence which the defendant is entitled to put in, by reminding the sentencer that just as the murderer should be considered as an individual, so too the victim is an individual whose death represents a unique loss to society and, in particular, [his] family.’ *Payne v. Tennessee*, 501 U.S. at [808,] 824, 111 S.Ct. 2597[, 115 L.Ed.2d 720 (1991)], citing *Booth v. Maryland*, 482 U.S. 496, 517, 107 S.Ct. 2529, 96 L.Ed.2d 440 (White, J., dissenting).

“It is presumed that jurors do not leave their common sense at the courthouse door. It would elevate form over substance for us to hold, based on the record before us, that [Smith] did not receive a fair trial simply because the jurors were told what they probably had already suspected—that [Van Dam] was not a “human island,” but a unique individual whose murder had inevitably had a profound impact on [his] children, spouse, parents, friends or dependents (paraphrasing a portion of Justice Souter’s opinion concurring in the judgment in *Payne v. Tennessee*, 501 U.S. at 838, 111 S.Ct. 2597.)’

*“Ex parte Rieber*, 663 So.2d 999, 1006 (Ala. 1995), cert. denied, 516 U.S. 995, 116 S.Ct. 531, 133 L.Ed.2d 437 (1995).”

There was no improper argument here.

C.

Smith argues that the following comment made by the prosecutor “impermissibly criticiz[ed] his exercise of [his right to a trial by jury] in violation of Alabama law”. (Smith’s brief to this Court at p. 82):

“Now, my Mama always told me as I was sitting at her knee growing up as a young girl that there are consequences to your conduct. Now, my Mama didn’t use those words. What she told me was, ‘Baby, you’re going to reap what you sow.’ If you sow seeds of brutality, if you kill people, you’re going to reap that back. And today for Joseph Smith it is harvest time. It is because of Jody that you all are being placed with this enormous and awesome responsibility. It is because Jody stood out on Shipyard Road and was making decisions about the life of Durk Van Dam that you are placed here today. It is Jody’s fault, but it’s because of the decisions that Jody made that you are called upon today to make a decision about his life.”

(R. 820.) There was no objection to this comment; thus, our review is limited to plain error. Rule 45A, Ala.R.App.P.

By no stretch of the imagination can the above comment be interpreted as criticizing Smith’s right to a trial by jury. Clearly, the prosecutor was arguing that Smith was responsible for his own actions and

that he intended to rob and kill Van Dam, and, thus, that his sentence should be death.

XIX.

Smith argues that there were numerous errors in the trial court's instructions to the jury and that those errors resulted in his being denied a fair and accurate sentence determination.

We use the same standards of review we discussed in Part XV of this opinion.

A.

Smith first argues that the trial court incorrectly instructed the jury on what it had to find before it could return a verdict of life imprisonment without parole.

The trial court gave the following instruction:

“All right. And to repeat, in order to return an advisory verdict of death by electrocution at least 10 of your number must be satisfied beyond a reasonable doubt that aggravating circumstances have been proven and outweigh mitigating circumstances. In order to return an advisory verdict recommending life without parole at least 7 of your number must be satisfied beyond a reasonable doubt of the existence of mitigating circumstances and that those mitigating circumstances outweigh the aggravating circumstances.”

(R. 848.)

Smith objected to the above instruction and the trial court clarified its instruction on the burden of proof necessary to find mitigating circumstances. The trial court reinstructed the jury as follows:

“Ladies and gentlemen, I wish to make clear the distinction between the burden of proof as it relates to proof of an aggravating circumstances and proof of a mitigating circumstance.

“Proof of a mitigating circumstance only requires proof by a preponderance of the evidence, which I will define again for you. Proof of an aggravating circumstance requires proof beyond a reasonable doubt.

“And I repeat, a mitigating circumstance considered by you should be based on the evidence you have heard. When the factual existence of an offered mitigating circumstance is in dispute, the State shall have the burden of disproving the factual existence of that circumstance by a preponderance of the evidence. The burden of disproving it by a preponderance of the evidence means that you are to consider that the mitigating circumstance does exist unless taking the evidence as whole it is more likely than not that the mitigating circumstances does not exist. Therefore, if there is a factual dispute over the existence of a mitigating circumstance, then you should find and consider that mitigating circumstance unless you find the evidence is such that it is more likely than not that the mitigating circumstance does not exist.

“Only an aggravating circumstance must be proven beyond a reasonable doubt and the burden is always on the State of Alabama to convince you from the evidence beyond a reasonable doubt that such an aggravating cir-

cumstance exists and the burden is also on the State to prove to you beyond a reasonable doubt that the aggravating circumstance or circumstances, should you find that they exist, outweigh any mitigating circumstances which need only be proven by a preponderance of the evidence.”

(R.854–56.)

Clearly, the trial court’s restatement of the burden of proof was a correct statement of the law and corrected the court’s earlier misstatement concerning the burden of proof necessary to find mitigating circumstances. Also, the trial court thoroughly instructed the jury that the aggravating circumstances must outweigh the mitigating ones and that this weighing is not merely a numerical one. (R. 844.)

The trial court’s instructions on these principles of law were both thorough and accurate. No error occurred here.

#### B.

Smith also argues that the trial court’s failure to instruct the jury that its finding as to mitigating circumstances did not have to be unanimous, implied that its findings as to the mitigating circumstances had to be unanimous. There was no objection raised at trial concerning the court’s failure to instruct that the jury’s finding did not have to be unanimous. We review this issue for plain error. Rule 45A, Ala.R.App.P.

A review of the jury’s instruction on mitigating circumstances does not reflect that the trial court instructed the jury that its decision that evidence was

mitigating had to be unanimous. The trial court instructed that jury in accordance with the *Alabama Proposed Pattern Jury Instructions for Use in the Guilt Stage of Capital Cases Tried Under Act No. 81-178*.

As we recently stated in *Hall v. State*, [Ms. CR-94-0661, October 1, 1999] \_\_\_ So.2d \_\_\_ (Ala.Cr.App.1999):

“This Court addressed a similar issue in *Freeman v. State*, 776 So.2d 160 (Ala.Cr.App.1999):

“Freeman also contends that the trial court erred by failing to instruct the jury that its findings as to mitigating circumstances did not have to be unanimous. In failing to so instruct the jury, he says, the trial court implied that the jurors had to unanimously agree before they could find the existence of a mitigating circumstance. Freeman did not object at trial to the trial court’s instructions to the jury concerning mitigating circumstances; therefore, we will review this claim under the plain error rule. Rule Ala.R.App.P.’

“We have reviewed the trial court’s instructions to the jury; we find nothing in the instructions that would have suggested to the jurors, or given them the impression, that their findings concerning the existence of mitigating circumstances had to be unanimous. See *Coral v. State*, 628 So.2d 954, 985 (Ala.Cr.App.1992), *aff’d*, 628 So.2d 1004



(Ala.1993), cert. denied, 511 U.S. 1012, 114 S.Ct. 1387, 128 L.Ed.2d 61 (1994); *Windsor v. State*, 683 So.2d 1027 (Ala.Cr.App.1994), aff'd, 683 So.2d 1042 (Ala.1996), cert. denied, 520 U.S. 1171, 117 S.Ct. 1438, 137 L.Ed.2d 545 (1997).”

C.

Smith argues that the trial court erred in referring to the allegedly erroneous instruction it had given on reasonable doubt in the guilt phase of the proceedings.

In Part XV.B. of this opinion we held that the court’s reasonable doubt instruction was not erroneous. Thus, our focus is on whether the trial court erred in not reinstructing the jury on reasonable doubt but rather in relying on an instruction he had given in the guilt phase.

We observe that Smith did not object to the court’s relying on its previous given instruction. Our review is limited to plain error. Rule 45A, Ala.R.App.P.

Here, the trial court at the beginning of its charge stated:

“It is again my duty to instruct you on those rules of law that you shall apply in your determination of the appropriate punishment in this case. In charging you I want to remind you of the instructions that you received yesterday during the guilt phase, particularly concerning the basic law in defining the term ‘reasonable doubt,’ as well as your duties and functions as jurors. If any one of you feels that it is necessary, I

will recharge you as to each and every one of those principles of law.”

(R. 834.) Also, the reasonable doubt charge was given within 24 hours of the court’s instructions in the penalty phase. As we stated in *Griffin v. State*, 790 So.2d 267 (Ala.Cr.App.1999):

“The trial court gave a detailed definition of reasonable doubt during the guilt phase at approximately 5:00 p.m. and then referenced his instruction the following morning at approximately 11:00 a.m. Only a short time—less than 24 hours—lapsed between the instructions. Additionally, the trial court asked the jury if it needed to reinstruct on reasonable doubt and no one indicated that he did not remember the previous instruction. “It is assumed that the jury will consider the previously given instructions along with those given in the supplemental charge.” *Collins v. State*, 611 So.2d 498, 503 (Ala.Cr.App.1992), quoting *Brannon v. State*, 549 So.2d 532, 542 (Ala.Cr.App.1989), quoting *Davis v. State*, 440 So.2d 1191, 1195 (Ala.Cr.App.1983), cert. denied, 465 U.S. 1083, 104 S.Ct. 1452, 79 L.Ed.2d 770 (1984).”

As we did in *Griffin*, we find no plain error here.

#### D.

Smith argues that the trial court’s instruction on the aggravating circumstance that the offense was especially heinous, atrocious, or cruel, as compared to other capital cases was erroneous because, he says, it

implied that the jury was to compare this case to others and the instruction expanded on the definition.

There was no objection to the court's charge on this aggravating circumstance; thus, we apply the plain-error doctrine. Rule 45A, Ala.R.App.P.

The trial court gave the following instruction:

"The term 'heinous' means extremely wicked or shockingly evil.

"The term 'atrocious' means outrageously wicked and violent.

"The term 'cruel' means designed to inflict a high degree of pain with utter indifference to or even enjoyment of the suffering of others.

"What is intended to be included in this aggravating circumstance [are] those cases where the actual commission of the capital offense is accompanied by such additional acts as to set the crime apart from the norm of capital offenses. For a capital offense to be especially cruel, it must be a conscienceless or pitiless crime which is unnecessarily torturous to the victim. All capital offenses are heinous, atrocious, and cruel to some extent."

(R. 838.)

The trial court's jury instruction is identical to the *Proposed Pattern Jury Instructions for Use in the Sentence Stage of Capital Cases Tried Under Act No. 81-178* and tracks the caselaw definition of the especially heinous, atrocious, or cruel aggravating circumstance. *Godfrey v. Georgia*, 446 U.S. 420, 100

S.Ct. 1759, 64 L.Ed.2d 398 (1980), and *Kyzer v. State*, 399 So.2d 330 (Ala.1981). The jury instruction was not erroneous; it was a correct definition of this aggravating circumstance.

E.

Smith argues that the trial court diminished the jury's role at sentencing by reminding it that its verdict would only be a recommendation.

We have repeatedly stated that a trial court does not diminish the jury's role by stating that its verdict in the penalty phase is a recommendation or an advisory verdict. *Taylor v. State*, 666 So.2d 36 (Ala.Cr.App.1994), on remand, 666 So.2d 71 (Ala.Cr.App.1994), aff'd, 666 So.2d 73 (Ala.1995), cert. denied, 516 U.S. 1120, 116 S.Ct. 928, 133 L.Ed.2d 856 (1996); *Burton v. State*, 651 So.2d 641 (Ala.Cr.App.1993), aff'd, 651 So.2d 659 (Ala.1994), cert. denied, 514 U.S. 1115, 115 S.Ct. 1973, 131 L.Ed.2d 862 (1995); *White v. State*, 587 So.2d 1218 (Ala.Cr.App.1990), aff'd, 587 So.2d 1236 (Ala.1991), cert. denied, 502 U.S. 1076, 112 S.Ct. 979, 117 L.Ed.2d 142 (1992).

XX.

Smith argues that trial court's sentencing order is erroneous for several reasons.

Smith did not object to any of the alleged errors he now argues occurred in the trial court's sentencing order. We are confined to reviewing these allegations for plain error. Rule 45A, Ala.R.App.P.

A.

Smith contends that the trial court erroneously relied upon the sentencing recommendation of the victim's family. The record reflects that included in the

presentence report is a victim-impact statement from the victim's family—his parents, sisters, and sons. The statement relates that the victim's family “upholds the verdict made by the jury” and that Smith should never be allowed to enter society.

The trial court stated that it had read and was familiar with the presentence report—the court also stated the following before imposing sentence:

“The law requires that the Court weigh the statutorily enumerated aggravating circumstances against both the statutory enumerated mitigating circumstances, as well as any other factor which might reasonably be considered in mitigation.”

(R. 19, sentencing hearing before the judge.) Also, the sentencing order reflects that the trial court considered only what the law allows in determining whether to impose the death penalty.

The record reflects that the trial court did not consider any sentencing recommendations of the victim's family when imposing sentence. No plain error occurred here. *Ex parte Land*, 678 So.2d 224 (Ala.), cert. denied, 519 U.S. 933, 117 S.Ct. 308, 136 L.Ed.2d 224 (1996); *Burgess v. State*, 723 So.2d 742 (Ala.Cr.App.1997), aff'd, 723 So.2d 770 (Ala.1998), cert. denied, 526 U.S. 1052, 119 S.Ct. 1360, 143 L.Ed.2d 521 (1999).

## B.

Smith argues that the trial court erred in failing to find several mitigating circumstances.

First, Smith argues that the trial court should have found as a mitigating circumstance that Smith committed the act while he was “under the influence

of extreme mental or emotional disturbance.” § 13A-5-51(2), Code of Alabama 1975. Specifically, he states that the psychologist testified that Smith had an array of mental problems and that he was borderline retarded.

The trial court, when evaluating this statutory mitigating circumstance, stated the following in its order:

“The capital offense was committed while the Defendant was under the influence of extreme mental or emotional disturbance. The Court has carefully reviewed and weighed both the report and testimony of Doctor James Chudy, a clinical psychologist, in the context of the facts underlying the offense charged and proven.

“The value of human life mandates that the Defendant’s troubled history and array of psychological disorders—not psychosis—be balanced against Dr. Chudy’s conclusions that the Defendant could appreciate the wrongfulness of his acts and was competent and in control at the time of the crime.

“The conclusion is fortified by the Defendant’s conduct on November 23, 1997, and thereafter. The robbery and murder of Durk Van Dam were calculated, intentional acts. The Defendant possessed the presence of mind to hide the victim’s tools which he directed Russell Harmon to retrieve. He had the guile to attempt to minimize his participation in the crime in his initial statement of investigators on November 25, 1997, and in his subsequent confession he demon-

strated the presence of mind to admit he ‘F\_\_\_ Up.’ The Court concludes that the Defendant was not mentally or emotionally disturbed neither to an extreme extent, nor to the extent this mitigating circumstance exists.”

(R. 188.)

We have stated, “ ‘merely because an accused proffers evidence of a mitigating circumstance does not require the judge or the jury to find the existence of that fact. *Mikenas [v. State]*, 407 So.2d 892, 893 (Fla.1981); *Smith [v. State]*, 407 So.2d 894 (Fla.1981).’ “ *Loggins v. State*, 771 So.2d 1070, 1088 (Ala.Cr.App.1999), quoting *Harrell v. State*, 470 So.2d 1303, 1308 (Ala.Cr.App.1984), *aff’d*, 470 So.2d 1309 (Ala.), *cert. denied*, 474 U.S. 935, 106 S.Ct. 269, 88 L.Ed.2d 276 (1985).

Here, the trial court’s findings were supported by Smith’s statements to police. There was no evidence that Smith was under extreme mental and emotional disturbance at the time of the robbery-murder.

Smith also argues that the trial court erred in not finding, as mitigation, that he acted under the domination of another, § 13A-5-51(5). The trial court stated that the “record is devoid that the Defendant on November 23, 1997, acted under the domination of Larry Reid or anyone else.” This finding is also supported by Smith’s admissions to police. Smith said that both he and Reid planned to rob Van Dam, that he suggested that they dispose of the body in a nearby lake, and that he took the tools to the pawnshop. Smith did not state in his statement to police that he was threatened to participate in the robbery-murder. He told police in both statements

that Reid threatened him if he told anyone about the robbery-murder. The court's failure to find this as a mitigating circumstance is supported by the record.

Smith argues that the trial court erred in failing to find as nonstatutory mitigating evidence his abusive childhood home and the fact that he was mentally retarded. The trial court, when considering the nonstatutory mitigating evidence, stated the following:

"The testimony of Dr. Chudy and the Defendant's mother give rise to a duty to consider the non-statutory mitigating circumstances.

"The potential existence of nonstatutory mitigating circumstances come from further consideration of Doctor Chudy's testimony and that of his mother. It is irrefutable that this Defendant is the product of an abusive environment woefully lacking in nurturance and emotional support. These factors, though regrettable, are not a license for violence, nor do they justify any act of senseless rage directed at an innocent human being. Were this the case every person from a deprived background could explode at will without fear of consequence.

"Likewise, the Defendant's lack of intelligence is not an excuse for murder, especially in the context of this case. The Defendant knew he had 'F Up' and while in control as he savagely attacked Durk Van Dam.

"Therefore, these nonstatutory circumstances, though thoughtfully considered and applied, do not merit significant consideration."



(R. 190.) “Although the trial court is required to consider all mitigating circumstances, the decision whether a particular mitigating circumstance is proven and the weight to be given it rests with the sentencer.” *Boyd v. State*, 715 So.2d 825, 840 (Ala.Cr.App.1997), *aff’d*, 715 So.2d 852 (Ala.1998), quoting *Williams v. State*, 710 So.2d 1276, 1347 (Ala.Cr.App.1996), *aff’d*, 710 So.2d 1350 (Ala.1997), *cert. denied*, 524 U.S. 929, 118 S.Ct. 2325, 141 L.Ed.2d 699 (1998). The trial court’s findings are more than supported by the evidence presented at trial and contained in the record.

### C.

Smith argues that the trial court erred in finding that the murder was especially heinous, atrocious, or cruel as compared to other capital murders. The trial court in its sentencing order stated the following:

“Doctor Julia Goodin, a board certified forensic pathologist, testified to a constellation of injuries which mandate consideration of the applicability of this aggravating circumstance within the narrow context of *Kyzerv. State*, 399 So.2d 330 (Ala.1981).

“The cause of the victim’s death was multiple blunt force injuries, totalling approximately thirty-five (35) separate, distinct exterior injuries to the victim’s head, torso, and appendages and eleven (11) separate, distinct injuries which caused internal trauma. Doctor Goodin testified that the victim was repeatedly beaten, cut, and kicked, and additional testimony established that a variety of tools were used as weapons.

“The victim, furthermore, did not die quickly. According to Doctor Goodin, she opined that the likely mechanism of death was rib fractures which probably resulted in a pneumothorax and a collapsed lung, probably leaving the victim gasping for breath, for an unspecified period of time. Therefore, this Section 13A–5–49(8) aggravating circumstance is proven beyond a reasonable doubt and is considered.”

(R. 186.)

The Alabama Supreme Court in *Ex parte Clark*, 728 So.2d 1126 (Ala.), on remand, 728 So.2d 1141 (Ala.Cr.App.1998), characterized this aggravating circumstance as follows:

“In *Lindsey v. Thigpen*, 875 F.2d 1509 (11th Cir.1989), the United States Court of Appeals for the Eleventh Circuit upheld this Court’s application of the ‘especially heinous, atrocious or cruel’ aggravating circumstance because this Court’s application of it provided a ‘principled way to distinguish’ cases in which the death penalty is appropriately imposed from cases in which it is not. *Id.* at 1513 (upholding our application of Ala.Code 1975, § 13A–5–49(8) and quoting *Godfrey [v. Georgia]*, 446 U.S. [420] 431, 100 S.Ct. 1759, 64 L.Ed.2d 398 [(1980)]). The Eleventh Circuit emphasized that the Alabama appellate courts’ interpretation of § 13A–5–49(8) passed muster under the Eighth Amendment because this Court and the Court of Criminal Appeals had consistently defined ‘especially heinous, atrocious or cruel’ to include only ‘those con-

scienceless or pitiless homicides which are *unnecessarily torturous* to the victim.’ *Lindsey v. Thigpen*, at 1514 (quoting *Ex parte Kyzer*, 399 So.2d 330, 334 (Ala. 1981))(emphasis added).”

We have upheld a finding that the murder was especially heinous, atrocious, or cruel, where the victim was severely beaten. See *Ex parte Hutcherson*, 727 So.2d 861 (Ala.1998), cert. denied, 527 U.S. 1024, 119 S.Ct. 2371, 144 L.Ed.2d 775 (1999); *Ashley v. State*, 651 So.2d 1096 (Ala.Cr.App.1994); *McGahee v. State*, 632 So.2d 976 (Ala.Cr.App.1993), aff’d, 632 So.2d 981 (Ala.1993), cert. denied, 513 U.S. 1189, 115 S.Ct. 1251, 131 L.Ed.2d 132 (1995).

Clearly, the testimony established that Van Dam was severely beaten for approximately 45 minutes and that he was left to die under a mattress. Smith said that one point he begged for his life because of his two young sons. Also, Van Dam tried to defend himself against the attack as evidenced by the many defensive wounds he sustained to his hands. The coroner also testified that Van Dam died a slow death because of the collapse of one of his lungs. One can also infer from the evidence that Van Dam lived long enough to crawl into his truck, after his severe and prolonged beating, where he died. There was more than sufficient evidence presented for the trial court to find that the murder was “especially heinous, atrocious, or cruel” as compared to other capital murders.

#### D.

Smith argues that the trial court erred in relying on a nonstatutory aggravating factor when the court

stated in its sentencing order that Smith “is a demonstrable danger to civilized society.” (R. 190.)

The record reflects that this statement was made at the end of the trial court’s application of the aggravating and the mitigating circumstances and at the beginning of the court’s final sentence pronouncement. It is clear from the order that the court did not rely on this finding as a nonstatutory aggravating circumstance. See *Burgess v. State*, 744 So.2d 958 (Ala.Cr.App.1998).

## XXI.

Last, as required by § 13A-5-53, Ala.Code 1975, we will address the propriety of Smith’s conviction for capital murder and the sentence to death by electrocution. Smith was indicted and convicted of murdering Durk Van Dam during the course of a robbery, an offense defined as capital in § 13A-5-40(a)(2).

The record reflects that Smith’s sentence was not imposed under the influence of passion, prejudice, or any other arbitrary factor. Section 13A-5-53(b)(1).

The trial court correctly found that the aggravating circumstances outweighed the mitigating circumstances and mandated that Smith be sentenced to death. The trial court found no statutory mitigating circumstances. The trial court made the following findings about the nonstatutory mitigating circumstances:

“The testimony of Doctor Chudy and the Defendant’s mother give rise to a duty to consider the non-statutory mitigating circumstances.

“The potential existence of nonstatutory mitigating circumstances come from further consideration of Doctor Chudy’s testimony and that of his mother. It is irrefutable that this Defendant is the product of an abusive environment woefully lacking in nurturance and emotional support. These factors, though regrettable, are not a license for violence, nor do they justify any act of senseless rage directed at an innocent human being. Were this the case every person from a deprived background could explode at will without fear of consequence.

“Likewise, the Defendant’s lack of intelligence is not an excuse for murder, especially in the context of this case. The Defendant knew he had ‘F Up’ and while in control as he savagely attacked Durk Van Dam.

“Therefore, these nonstatutory circumstances though thoughtfully considered and applied, do not merit significant consideration.”

(R. 190). The trial court found the existence of three aggravating circumstances, §§ 13A-5-49(1), 13A-5-49(4) and 13A-5-49(8): that Smith was under a term of imprisonment for two burglary convictions and one receiving-stolen-property conviction at the time of the robbery-murder; that the murder of Van Dam occurred during the course of a robbery; and that the murder was especially heinous, atrocious, or cruel as compared to other capital offenses. We agree with the trial court’s findings.

Section 13A-5-53(b)(2) provides that we must independently weigh the aggravating circumstances

and the mitigating circumstances to determine the propriety of Smith's sentence of death. After an independent weighing, we are convinced, as was the trial court, that death is the appropriate sentence for Smith's conduct.

Section 13A-5-53(b)(3) provides that we must address whether Smith's sentence is disproportionate or excessive to other penalties imposed in similar capital cases. Smith's conviction is neither. "In fact, two-thirds of the death sentences imposed in Alabama involve cases of robbery/murder." *McWhorter v. State*, 781 So.2d 257 (Ala.Cr.App.1998).

Last, we have searched the entire record for any error that may have adversely affected Smith's substantial rights and have found none. Rule 45A, Ala.R.App.P.

Smith's conviction and sentence to death by electrocution are due to be, and are hereby, affirmed.

**AFFIRMED.**

LONG, P.J., and McMILLAN, COBB, BASCHAB, and FRY, JJ., concur.

IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

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Civil Action No.: 05-04744-CG-M

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Clinical & Forensic Psychologist, P.C.

Licensed Psychologist

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FORENSIC PSYCHOLOGICAL REPORT

Joseph Clifton Smith, Petitioner vs. Jefferson S.  
Dunn, Commissioner Alabama  
Department of Corrections, Respondent

Name:	Joseph Clifton Smith
Gender:	Male
Age:	46
Date of Birth:	██████████
Marital Status:	Single
Examiner:	Glen D. King, J.D., Ph.D., ABPP
Date of Exam:	01/31/2017
Date of Report:	02/22/2017

## REFERRAL

Joseph Clifton Smith has been convicted of Capital Murder and, on appeal, his attorneys are raising the issue that his legal counsel at the time of his jury trial did not raise an issue about the possibility that Mr. Smith might be intellectually disabled (formerly known as mentally retarded); which, if true, would obviate the death penalty. Mr. Smith was evaluated at Holman Prison by this evaluator to conduct what is referred to as an Atkins Evaluation to determine the presence or absence of intellectual disability (formerly known as mental retardation).

## NOTIFICATION

Prior to beginning the examination, Mr. Smith was informed that this examiner was retained by the Alabama Attorney General's Office to conduct this evaluation. He was further informed that none of the information was privileged or confidential and was subject to being placed into a report and possibly used in litigation in his appeal process. Mr. Smith was further informed that if the examiner's information was to be used in litigation that copies of the examiner's report would be sent to his legal counsel and that any raw data that might be collected could be transmitted to a psychological expert that might be retained by his legal counsel. Mr. Smith understood the lack of privilege and confidentiality on all of the parameters surrounding this evaluation and agreed to proceed on that basis.



## DATA SOURCES

Information for this report was obtained from the following sources:

- Scheduling Order by Callie V. S. Granade, Senior United States District Judge
- *Smith v. State*, 160 So.3d 40 (2010)
- *Smith v. Campbell*, 620 Fed. App. 734 (11th Cir. 2015).
- Smith's first statement to the police on November 25th, 1997
- Smith's second statement to the police on November 25th, 1997
- Dr. James F. Chudy's September 6th, 1998, report
- Dr. James F. Chudy's testimony during the penalty phase of the trial
- Educational records that were introduced during Smith's trial
- Presentence Investigation Report
- Records from the Alabama Department of Corrections dated generally from 2001 through 2012
- Department of Corrections records, dated generally November 1997 through 2001
- Interview with Joseph Clifton Smith at Holman Prison on January 31st, 2017
- Wechsler Adult Intelligence Scale-IV (WAIS-IV)
- Wide Range Achievement Test-4 (WRAT-4)
- Adaptive Behavior Assessment System-Third Edition (ABAS-3)
- Collateral interview with Rebecca Smith, younger sister of Joseph Clifton Smith

## HISTORY AND OBSERVATIONS

Joseph Clifton Smith is a 46 year old, single, Caucasian male who was evaluated at Holman Prison, commencing on Tuesday, January 31st, 2017, at 8:30 a.m., Central Standard Time. The defendant has male pattern baldness with brown hair and hazel eyes. He was well-groomed and well-nourished, dressed in standard white Alabama Department of Corrections issue. He reports his height to be 5'7" tall and his weight to be 220 lbs. which is consistent with observations. He reports that he has been incarcerated in this facility since November of 1998 and was in Mobile Metro Jail for one year prior to that time. He reports that he was age 27 when he was arrested on a murder charge for which he was convicted. He knew his AIS #, Social Security Number, birthdate, and age without referral to written information. He knew the address of the Holman Unit, reporting to be Holman Unit, 3700, Atmore, Alabama, 36503.

When asked about physical or medical difficulties, Mr. Smith reports that he has chronic bronchitis. He reports that he had recently been at the Atmore Hospital in January of 2015. When asked about alcohol and drug abuse before he was incarcerated, he responded that he had significant problems with alcohol. He reported that he started sneaking and drinking beer at approximately age 3-4. He reports that by the time he was 13 his father was giving it to him, but "not a whole lot." By the time he was 20, he was drinking a half-case to a case of beer per day. He reports that he was always drinking beer and did not particularly care for liquor. He was drinking on a daily basis between the ages of 20 and 27 until his arrest.

When asked about psychiatric difficulties, he responded "they tell me I have." When asked what he meant by that, he responded "I don't know." When he asked what he thought that he might have as psychiatric or psychological difficulties, he responded "I know I ain't all there — a few boards short of a picket fence." When asked if he had any "crazy problems," he responded that he did not.

#### PREVIOUS TREATMENT HISTORY

Mr. Smith reports that he has never matriculated through an alcohol or drug treatment program as a civilian. He reports that he attended the SAP Program while he was in the Department of Corrections and also the Relapse Program. During his life before he was incarcerated, he never saw a mental health professional for treatment either as an inpatient or an outpatient. He has never been psychiatrically hospitalized.

#### PHYSICAL HISTORY

Mr. Smith reports that he is in fair physical health at the present time with no other history for serious physical disorders or diseases. He reports he currently takes no medications. He indicates in the past he had taken some medications for headaches and they would give him Excedrin. He indicated that he had not received any prescribed medications.

As indicated previously, Mr. Smith was sent to the Atmore Hospital overnight at age 44 for a heart workup. He had an EKG. He smokes a pack of cigarettes per day. His alcohol usage is as noted. He denies current or past usage of marijuana or other drugs.

## GENETIC HISTORY

Mr. Smith was not adopted and reports that his mother was deceased at age 69 when she fell and broke her neck. She reportedly had hypertension, back problems, and he indicated spontaneously "she loved me and my brothers and sisters." He reports that his parents divorced when he was approximately age nine. His father was deceased at approximately age 70 when he had hip surgery and he then had a cerebrovascular accident. It was reported that his father was left to some extent on life support and that Mr. Smith and his father never "got along." When he was approximately age nine and his parents divorced, he reports that he was shuffled back and forth between his mother and father. He indicated that his mother remarried when he was approximately age 11 or 12 and Mr. Smith did not like his stepfather, Hollis Luker. He indicates that his mother eventually divorced Mr. Luker after Mr. Smith was locked up. His father remarried when Mr. Smith was between the ages of 11 and 12 as well and Mr. Smith did not like his stepmother, Connie Dickinson. He reports that his father and Ms. Dickinson eventually split up and got a divorce.

Mr. Smith reports that he has two brothers and two sisters. He reports his brother, Jason Smith, is in his early forties. He reports his brother, Christopher Smith, is around age 43. He has a sister, Lynn Halford, who is 47, and knows her birthdate to be July 18th, 1969. He reports he has another sister, Rebecca Smith, whom he believes is 41 and believes that her birthdate is December 29th, but he could not tell me the year. He reports that he has little or no contact with any of his siblings and has not for years. He reports that all of his siblings stayed with his

mother and that he was the only child that was shuffled back and forth between the mother and father. When asked why he thought that was, he responded “because I didn’t like my stepdad and he would tell my mom to send me to dad and then the same thing would happen there and they would send me back.”

Mr. Smith reports that he was never sexually abused as a child or adolescent. When asked if he were physically abused, he responded “I always was beaten on by dad and stepdad with water hoses, fan belts, and lost the top of my left ear on one occasion.” He reported that his father had hit him with an ax handle on one occasion and had left marks on him. Mr. Smith has no children.

#### SOCIAL HISTORY

Mr. Smith reports that he was born in Fairhope, Alabama and lived in Mobile County all of his life. He finished the 6th grade and dropped out in the 7th. When asked why he dropped out of school, he responded “what was the point, I knew that we would be moving.” He reportedly spent the 1st grade at Stapleton Elementary School and continued at that elementary school through the 4th grade. For the 5th and 6th grades he was shuffled back and forth and they wanted him to repeat the 7th grade so that is why he quit. He reports during that time he attended 3 or 4 schools. He never earned his GED. He reports that he had lived in Mobile, Monroe, and Baldwin Counties and the families kept moving back and forth. He had some special classes involving learning disabilities. He reports that he got along fairly well with his teachers.

Mr. Smith reports he was arrested for the first time at age 24 for Truancy and Criminal Mischief. At age 18 he reported that his brother and some of his friends took his truck and broke in somewhere and he got in trouble because it was his truck. He was charged with Burglary and Receiving Stolen Property and sent to Kilby and then to boot camp. He reportedly was supposed to be released from boot camp early, but because he had a spider bite and was in a medical unit for a while, he was not released when he was supposedly to be released. He reports that he was sentenced to 10 years and served five. Until his arrest on the murder charge, he had no other felonies.

Mr. Smith reports he never had a driver's license or driver's permit but he drove anyway. He indicated that he had possession of his own vehicles and that he had quite a few of them. When asked the last vehicle that he had or owned, he responded "an 84 Ford pickup," that he bought himself.

Mr. Smith had somewhat spotty working history. He indicated that he first started working mowing grass and doing light lawn maintenance between the ages of 13 and 14. He claimed that he was making more in a week doing that than his father was making. When asked how much he would make back then doing that work, he responded "\$400 or \$500 a week." He then typically was doing roofing, painting, and he worked offshore on rigs and supply boats. He also would install swimming pools and do landscaping. His last job was landscaping which he did for two years. He reports that he always had money in his pocket and he always worked full time and he always got along well with fellow employees and his employers.

When asked about his attorneys during the trial, he responded "I don't know, they never came to see me — they came to see me one time and then in court, Dr. Chudy — he recommended I see some specialist." Mr. Smith reports that he got along well with his attorneys but was dissatisfied with their representation of him.

#### MENTAL STATUS EXAMINATION

Joseph Clifton Smith is a 46 year old, single, Caucasian male who was evaluated at the Holman Prison and presented with thoughts normal in progress and form with no confusion. His thought processes were normal and the structure of his thoughts was logical and relevant. His affect was normal with no evidence whatsoever overtly for the presence of anxiety or depression. He was oriented as to person, place, time, and situation. When asked about his sleep habits, he responded that he sleeps 3 or 4 hours per night and two hours during the daytime. He appeared a little bit tired during this examination. He reports no changes in appetite. He denies the presence of auditory and visual hallucinations as well as depersonalization and derealization. He was able to identify the current and immediate past presidents of the United States accurately. When asked if could present some information from the news, he responded "Trump fired that Attorney General because she refused to defend his immigration thing."

The defendant was unable to do serial 7 subtractions from 100, as he was slow and inaccurate. He was able to repeat six digits forward and five digits backwards. He was able to engage in abstract reasoning and he gave an abstract interpretation to a proverb. He reports no suicidal ideation or intent and

reports that he made one suicide attempt at age 14 when he cut himself with a razorblade but he didn't require any medical attention.

#### COLLATERAL INTERVIEW

An interview was held with Rebecca Smith, on February 12th, 2017, at approximately 10 o'clock p.m., Central Standard Time. She is age 41 and reports that she is five years younger than her brother, Joseph Clifton Smith. She was actually unable to provide much information about Mr. Smith's growing up, because she was five years younger and by the time that she was 7 or 8 years old, he was already gone because their parents were divorced. She reported that he had left home and she remembered that her stepfather and Jody always fought. She also confirms that her stepfather was abusive to Joseph whom she refers to as "Jody," and that their real father also beat all the brothers. She recalls that Jody was approximately age 15 when he was sent to prison the first time. Ms. Smith reports that she was the baby of the family and that she was spoiled and that she had some contact with her brother as she used to write letters to him. She reported that after her mother passed away, she had her own psychological difficulties and "kind of closed up, and didn't talk to anybody, and didn't write." She reports that eventually Jody wrote her a very "nasty letter," and said "she wasn't his sister no more and that he didn't want to hear from me."

Ms. Smith reports that while they were growing up that she didn't really know Jody as her brother. He seemed to be just another kid because he was already gone. She confirms that he lived back and forth with their mother and father. She does recall that he was drinking alcohol and started very young. By the time



she was 8 or 9, Jody was out of the house most of the time. She reports that she has little or no contact with the other siblings in the family. She indicates that her brother Christopher and her brother Jason do not keep phones and are very difficult to contact or track down. She reports that she doesn't talk to Christopher at all and that she has not talked to her brother Jason in a lengthy period of time. Apparently Christopher had also been in prison and when he was released, Ms. Smith reports that her brother Christopher and her husband got involved in methamphetamines which she blames on her brother Christopher and this resulted in her own divorce from her husband.

#### TESTS ADMINISTERED

- Psychological Interview
- Mental Status Examination
- Wechsler Adult Intelligence Scale-IV (WAIS-IV)

Similarities — 5	Block Design — 8
Digit Span — 8	Matrix Reasoning — 6
Vocabulary — 6	Symbol Search — 6
Arithmetic — 5	Visual Puzzles — 9
Information — 4	Coding — 5

<b>Index</b>	<b>IQ Score</b>
Verbal Comprehension	72
Perceptual Reasoning	86
Working Memory	80
Processing Speed	76
Full Scale IQ	74

- Wide Range Achievement Test-4 (WRAT-4)  
 Word Reading Scale — Standard Score = 83;  
 Grade Equivalence = 8.1  
 Spelling Scale — Standard Score = 75;  
 Grade Equivalence = 5.1  
 Math Computation — Standard Score = 85;  
 Grade Equivalence = 6.1
- Adaptive Behavior Assessment System, Third Edition (ABAS-3)

<b>ADAPTIVE SKILL AREA</b>	<b>RAW SCORE</b>	<b>SCALED SCORE</b>
Communication	61	6
Community Use	57	6
Functional	63	8
Home Living	69	10
Health and Safety	52	7
Leisure	46	6
Self-Care	73	8
Self-Direction	63	7
Social	60	6
(Work)	66	(8)

**Sum of Scaled Scores to General Adaptive Composite (GAC) and Adaptive Domain Score Conversions**

	<b>Sum of Scaled</b>	<b>Standard Score</b>	<b>Percentile Rank</b>
General Adaptive Composite	72	83	13
Conceptual	21	83	13
Social	12	79	8
Practical	39	87	19

## TEST RESULTS AND INTERPRETATION

On the Wechsler Adult Intelligence Scale-IV (WAIS-IV), Joseph Clifton Smith generated a Full Scale IQ Score of 74 which would technically place him the borderline range of intellectual functioning at the present time relative to his same age peers. However, there is significant index scatter with index scores range from a high of 86 for Perceptual Reasoning which is in the low average range of ability to a low of 72 for Verbal Comprehension which is in the borderline range of functioning. There was a significant discrepancy of almost one standard deviation between the Verbal Comprehension Index of 72 and the Perceptual Reasoning Index of 86. This differential is almost always associated with the presence of learning disabilities. In addition, it should be remembered that this individual did not complete the 7th grade so that his education level would be somewhat stunted and stymied at approximately that point. He appears also to have some difficulty with Processing Speed. The examiner has reviewed these types of protocols on thousands of individuals and this would best be described as a protocol significant for the likely presence of learning disabilities, which was also what he was diagnosed with by his own report early in his educational career. While the Full Scale IQ score is 74, it is not reflective, in this examiner's opinion, of his true intellectual functioning. His true intellectual functioning is best described as that for his Perceptual Reasoning Index which would place him in the low average range of ability. The results of achievement testing show that this individual is currently reading at an 8.1 grade level, spelling at a 5.1 grade level, and doing arithmetic at a 6.1 grade level. As indicated previously, it should be remembered that he discontinued

his education without finishing the 7th grade. Therefore his achievement levels are in good concert with where he was functioning at the time that he discontinued his education. His reading level is actually almost in the low average range as is his math computation level. His reading and math computation level would be considered to be adequate literacy levels and his spelling would be marginal.

The Adaptive Behavior Assessment System, Third Edition (ABAS-3) is a standardized instrument to determine adaptive functioning. It is the only instrument that has self-report norms for an individual giving a report on himself. There are 10 separate adaptive skill areas with composite and domain scale scores. These skill areas range from a possible scale score of 1 to a high of 10. Any score below 4 in any area would indicate a significant impairment in that area of adaptive functioning. Mr. Smith has no areas of measured adaptive functioning that fall at a score below 4. In fact, he has no adaptive functioning score that falls below 6. General Adaptive Composite is at 83 and the remainder domain scores range from 79 to 87, all in the low average to average range of adaptive functioning.

In order to diagnose the presence of intellectual disability, formerly known as mental retardation, three conditions need to be met. First, the individual must have a score on an intelligence test by either the Wechsler Adult Intelligence Scale or the Stanford Binet Instrument that renders an IQ score of 69 or below. However, a single Full Scale IQ score needs to be additionally parsed in order to look at whether there is subtest scatter or whether there is consistency. In this particular case, Mr. Smith had a great deal of scatter on his indexes with his indexes

ranging from a low average range to the borderline range of ability. The two best indications of overall intellectual functioning are the Verbal Comprehension Index and the Perceptual Reasoning Index on the Wechsler Adult Intelligence Scale-W (WAIS-W). Individuals who function in the retarded range of ability, will have very low scores in these two areas which will be consistent with each other. In this particular case, Mr. Smith generates a significant difference between his Perceptual Reasoning Index and the Verbal Comprehension Index of almost a standard deviation and this is indicative of the presence of a learning disabilities protocol. As a consequence, Mr. Smith, in this examiner's opinion, does not meet the first criterion for diagnosing intellectual disability (formerly known as mental retardation).

Secondly, an individual must have adaptive functioning that is significantly below average as measured by a standardized adaptive functioning device. Mr. Smith was administered the Adaptive Behavior Assessment System, Third Edition (ABAS-3) and generated no scores that were extremely low or that showed a disability in any of the areas of adaptive functioning. In addition, his history does not indicate that he had any serious problems with adaptive functioning. Indeed, he worked many jobs and apparently took a great deal of pride in his work, including landscaping, installing pools, roofing, and other manual labor type jobs. In addition, he managed his own money and always had a vehicle to drive by his report. He took great pride in his work and indicated that he always related very well to fellow employees and employers. As a consequence of the foregoing, Mr. Smith does not meet the second criterion for a diagnosis of intellectual disability. He

does not have any adaptive functioning levels that are significantly sub-average, or that show any significant impairment.

The third requirement for a diagnosis of intellectual disability is that there must be a documented onset before the age of 18. There is no record that indicates that Mr. Smith was diagnosed with intellectual disability (mental retardation) before the age of 18. Indeed, there appears to be some indication from his own report that he was in some learning disability classes, indicating that he was already diagnosed with learning disabilities as this examiner has indicated early in his educational career. A learning disability and intellectual disability (mental retardation) are not equivalent. As a consequence, Mr. Smith, in this examiner's opinion, does not meet the third criterion necessary for diagnosing the presence of intellectual disability.

## DIAGNOSTIC IMPRESSIONS

### DSM-V DIAGNOSES

- Learning Disabilities, NOS

### SUMMARY

Joseph Clifton Smith was evaluated at the Holman Prison with regard to the presence of intellectual disability (formerly known as mental retardation). He was administered a number of psychological tests including an IQ test, achievement test, adaptive behavior test, and review of records was also accomplished. It is the examiner's opinion that Mr. Smith does not meet any of the criterion for diagnosing the presence of intellectual disability (mental retardation). He does not have an intelligence quotient score below 70; he does not have any

significantly impaired areas of adaptive functioning; and he does not have a documented onset of intellectual disability (mental retardation) before the age of 18.

Respectfully Submitted,

/s/ Glen D. King

Glen D. King, J.D., Ph.D., ABPP

Diplomate in Clinical Psychology

Certified Forensic Examiner

GDK/jlm

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**EDUCATIONAL BACKGROUND**

FAULKNER UNIVERSITY, JONES SCHOOL OF  
LAW

J.D. (August, 1999) *Magna Cum Laude*

FLORIDA STATE UNIVERSITY

Ph.D., Clinical Psychology, Sociology minor (1972)  
M.S., Clinical Psychology (1970)

UNIVERSITY OF MINNESOTA



B.A., Psychology, Chemistry minor (*Cum Laude*, 1968)

Diplomate in Clinical Psychology, American Board of Professional Psychology (1979)

Senior Analyst and Diplomate, American Board of Disability Analysts

Certified Forensic Examiner, Alabama State Department of Mental Health (1992 to present)

## **PSYCHOLOGY**

### **PROFESSIONAL EXPERIENCE**

Private Practice (June, 1973 to Present). Part time private practice June, 1973 to June 1983. Full time private practice June 1983 to present. Psychotherapy with children, adolescents, adults; marital therapy; family therapy; group therapy. Forensic evaluations for criminal and civil courts. Personal injury evaluations for civil litigation; competency evaluations for civil and criminal courts. Neuropsychological evaluations of adolescents and adults. Disability and vocational evaluations. General clinical assessments of children, adolescents and adults including IQ tests, personality tests, objective tests, academic tests, neuropsychological tests.

Certified Forensic Examiner, Alabama State Department of Mental Health (June 1992 to present). Responsibility for thirty counties in circuit court jurisdictions. Conduct evaluation for competency to stand trial and mental status at the time of offense to aid the Court in these decisions.

Valley, Alabama and West Point, Georgia Police Departments (1986 to present). Conduct evaluations of all police officer candidates.

Vocational Rehabilitation Services (June 1983 to present). Consultant to Vocational Rehabilitation Services for Lee County and Montgomery County regions. Provide evaluations and consultation.

Veterans Administration Hospital, Tuskegee, Alabama (October 1980 to present), Staff Consultant. Consult with staff, interns in psychology, and residents about psychiatric inpatients and outpatients.

Head Start, Tallapoosa-Chamber-Coosa County (September 1977 to June 1983). Provide assessment of identified high risk children and provide consultation for teachers in eight centers.

Psychology Research and Training Clinic (October 1975 to June 1983). Director and Founder. Coordinate clinic operations, provide liaison with community referrals, seek extramural support, lead a clinical team, supervise psychotherapy, clinical assessments and neuropsychological assessments. Founded and developed this clinic.

Dothan Police Department (October 1974 to June 1976). Consultant. Development of in-service training, riding with police officers, organizational change and maintenance.

East Alabama Community Mental Health Center (January 1973 to June 1983). Consultant for program accountability, research, and in-service training. Training of staff, supervision of student interns, conduct staff meetings, patient contact.

Auburn Police Department (March 1974 to June 1983). Police psychologist. Selection of new police officers, consultation with Chief of Police, develop-

ment of a family intervention program, assessment of offenders.

Department of the Army, Ft. Benning Martin Army Hospital, Neuropsychiatric Unit (September 1973 to June 1983). Consultant. Staff consultation and supervision of students on psychodiagnostic practicum.

East Alabama Alcoholism and Drug Abuse Services (July 1973 to June 1983). Consultant. Hold two weekly staff conferences to process new cases, review continuing cases, supervise student interns, provide staff and administrative consultation, present didactic materials.

Auburn University Student Development Services Mental Health Unit (January 1973 to September 1974). Staff Psychologist. Served as consultant to other staff forming treatment plans for patients; supervise psychodiagnostic testing; conduct individual and group psychotherapy; engage in emergency intervention on campus.

Lee County Crisis Center (October 1972 to June 1983). Consultant to Board of Directors and staff back-up. Consult and advise with regard to technical aspects of telephone and crisis counseling. Go out on emergency calls.

Auburn University, Department of Psychology. Assistant Professor (September 1972 to August 1976). Associate Professor (September 1976 to August 1981). Professor of Clinical Psychology (September 1981 to August 1983).

Wayside House (January 1972 to July 1972). Lead group therapy for female alcoholics in half-way house.

Human Resource Associates, Inc. (December 1971 to August 1972). Staff member. Taught human relations course for teachers through Mankato State Teachers College.

Walk-In Counseling Center (October 1971 to April 1972). Community crisis intervention, emergency psychotherapy.

Hennepin County Drug Dependency Unit (Meadowbrook) (September 1971 to August 1972). Co-leader for alcoholic-and-spouse couples groups two nights per week.

University of Minnesota Medical School, Department of Psychiatry (September 1971 to September 1972). Clinical Psychology residency. Duties included individual outpatient psychotherapy with caseload of 9 hours per week, outpatient group psychotherapy, psychodiagnostic evaluations, neuropsychological assessments, supervision of psychology clerks, and assuming primary responsibility for treatment and administration of inpatients in the hospital.

Charleston County Mental Health Clinic (June 1971 to September 1971). Duties included outpatient group psychotherapy one night per week.

Hotline of Charleston, South Carolina (June 1971 to September 1971). Served as consultant to telephone counseling service and as director of training paraprofessionals in telephone counseling techniques. Leader of periodic encounter and marathon groups for staff of hotline.

Veteran's Administration Hospital at Charleston, South Carolina (Full time trainee, June 1971 to September 1971). Duties included psychodiagnostic

testing, individual psychotherapy with caseload of 12 hours per week, coordinator and leader of psychodrama groups of inpatients, neuropsychological evaluations, development and supervision of individual behavior modification programs including token systems.

Florida State University Counseling Center (September 1970 to June 1971). Half-time practicum position. Duties included individual psychotherapy with caseload of 10 hours per week, leader of encounter groups for undergraduate students, group interpretations of personality tests.

Florida State University Counseling Center (March 1970 to June 1970). Duties included psychodiagnostic and vocational testing, vocational counseling, emergency psychotherapy. 150 hours.

Florida State University Telephone Counseling Service (July 1970 to June 1971). In charge of training for telephone counseling techniques. Duties included emergency telephone psychotherapy, training of paraprofessionals to handle telephone crisis intervention, made staff presentations and held workshops in telephone counseling techniques.

Sunland Hospital for the Mentally Retarded at Tallahassee (January 1970 to March 1970). Duties included psychodiagnostic and rehabilitation evaluations, formulation and supervision of behavior modification programs, supportive counseling for trauma victims. 100 hours.

Florida State Hospital at Chattahoochee (September 1969 to December 1969). Duties included psychodiagnostic testing, formulating treatment

programs, presentation at staff conferences. 100 hours.

Leon County Mental Health Clinic (June 1969 to September 1970). Duties included psychodiagnostic testing of children and adults, test interpretation and family interviews, counseling, community psychology outreach workshop programs to rural schools. 500 hours.

### **PROFESSIONAL WORKSHOPS ATTENDED**

Antisocials, Borderlines, Narcissists & Histrionics: Effective TX Webinar, Auburn, Al. (Dec. 2016)

Ethics & Risk Management in the Age of the ACA, Webinar, Washington, D.C. (December, 2016)

Cognitive-Behavioral Therapy for PTSD, Birmingham, Al. (October, 2016)

Ethics: Necessary & Essential Information for MH Professionals, Birmingham, Al. (Sept. 2016)

THSMF Certified Forensic Examiner (CFE) Training, Tuscaloosa, Al. (July, 2016)

What Every MHP Needs to Know about Psychotropic Meds, Columbus, Ga. (January, 2016)

THSMF Certified Forensic Examiner (CFE) Training, Tuscaloosa, Al. (August, 2015)

Miranda Warnings and Waivers: Conceptual Framework. Atlanta, GA (November, 2014)

Clinician's Survival Guide to Suicide and Homicide. Columbus, GA (November, 2014)

Alabama Legal and Ethical Issues for Mental Health Clinicians. Montgomery (June, 2014)

2014 Advanced Forensic Inservice. Tuscaloosa (June 2014)

An Ounce of Prevention: Mental Health Ethics and the Law. Columbus, Ga.(May, 2014)

Advanced Forensic In-Service. Tuscaloosa, Alabama (June, 2013)

Psychopharmacology: Moods, Medication & Mental Health. Montgomery, Al. (April, 2013)

Clinical Psychopharmacology: A Science, An Art, or Both. Atlanta, Georgia (December, 2012)

Ethics and Risk Management in the Digital Era. Birmingham, Alabama (November, 2012)

Couples and Affairs: Managing the Clinical Challenges. Birmingham, Alabama (August, 2012)

Taylor Hardin Secure Medical Facility Inservice. Tuscaloosa, Alabama (June, 2012)

An Ounce of Prevention: Mental Health Ethics and the Law. Columbus, Georgia (January, 2012)

Advanced Forensic Evaluation Training. Tuscaloosa, Alabama (August, 2011)

Understanding Older Minds. Montgomery, Alabama (September, 2011)

Keeping Pace with Evolving Standards for Assessment and Intervention Of Autism Spectrum Disorders. Orange Beach, Alabama (June, 2011)

Asperger's High Functioning Autism & Nonverbal LD. Montgomery, Al. (December, 2010) It's a Brain Disease: On the psychopharmacology of addiction (Atlanta, Ga. (October, 2010)

Mental Health Evaluation for Individuals in Crim Just. System, Tuscaloosa (August 2010) Sexual & Lifestyle Diversity. Atlanta, Georgia (May, 2010)

Current Issues in Ethics and Licensing. Atlanta, Georgia (May, 2010)

Insomnia, Depression & Anxiety. Montgomery, Alabama (September 2009)

Compatible Assessment & Treatment Techniques for SI & NDT Montgomery (September 2009) The State of Our Profession: Our Law and Practice Act. Birmingham, Alabama (Feb. 2010) Evolving Issues in Criminal Forensic Evaluations. Tuscaloosa, Alabama (August, 2009) Neuropsychology of Sports Concussion. Ft. Walton Beach (June, 2009)

Risk Management in Specific High Risk Areas. Birmingham, Alabama (September, 2008) Critical Issues in Forensic Psychology. Tuscaloosa, Alabama (August, 2008)

Couples and Affairs: Managing the Clinical Challenges. Birmingham, Alabama (August, 2008) Criminal Forensic Evaluations & Expert Testimony. Ft. Walton Beach, Florida (June, 2008) Childhood Developmental Disorders. Birmingham, Alabama (May, 2008)

MeCP2 dysfunction in mice: epigenetic regulation of synaptic transmission. Birmingham, Alabama (April, 2008)

Falling Through the Cracks: The Unmet Medical Needs of Correctional Populations. Birmingham, Alabama (April, 2008)

Genetic Predictors of Schizophrenia and Response to Antipsychotic Treatment, Birmingham, Alabama (April, 2008)



Forensic Issues in Psychology for District Attorneys. Prattville, Alabama (April, 2008)

Advances in Forensic Evaluations. Tuscaloosa, Alabama (August, 2007).

Sleep, Medications & Sleep Disorders. Birmingham, Alabama (November, 2006)

Legal & Ethical Risks and Risk Management in Practice. Birmingham, Alabama (November, 2006)

Protecting Your Practice, Profession & Career. Birmingham, Alabama (November, 2006)

Forensic Issues Advanced Training. Tuscaloosa, Alabama (August, 2006)

Memory, Aging and Sleep. Montgomery, Alabama (July, 2006)

Trauma: Response and the Impact on Self/Others, One day workshop on effect of sexual abuse and adjustment of adults, adolescents and children. Atlanta, Georgia (June 1997).

Taylor Hardin Secure Medical Facility. One day workshop an update of policies and procedures for certified forensic examiners. Tuscaloosa, Alabama (February 1997).

Assessment and Treatment Planning for Alcohol, Tobacco and Other Drug Problems with an Emphasis on Clinical Applications. Linda C. Sobell. Nova State University, Ft. Lauderdale, Florida (August 1996).

Guided Self change Treatment for Problem Drinkers. Mark Sobell. Nova State University, Ft. Lauderdale, Florida (August 1996).

Considerations in Treatment of Spinal Cord Injury Patients. Healthsouth Rehabilitation Hospital.

Montgomery, Alabama (July 1996).

Basic Training Workshop in Clinical Neuropsychology. Three-day workshop on administration, scoring, and interpretation of Halstead-Reitan Neuropsychological Test Battery conducted by Ralph Reitan and Deborah Wolfson. San Diego, California (September 1995).

Taylor Hardin Secure Medical Facility, Tuscaloosa, Alabama. One-day workshop on update on policies and procedures for Certified Forensic Examiners, Juvenile Court Evaluations, Somatic and Factitious Disorders (February 1995).

American Academy of Forensic Psychologists. Three-day workshop on Forensic Evaluations in Personal Injury Cases; Risk Assessment: Implications for Evaluations, Intervention and Decision-Making; Preparing for the Diplomate Exam in Forensic Psychology. Baltimore, Maryland (April 1994).

Taylor Hardin Secure Medical Facility, Tuscaloosa, Alabama. One-day workshop on Update on Policies and Procedures for Certified Forensic Psychologists; Assessment of Sexual Offenders; Malingering & Deception; Interface between Adult and Juvenile Courts (February 1994).

American Academy of Forensic Psychologists. Three-day workshop on Risk Assessment: Implications for Evaluation, Intervention & Decision Making; Forensic Assessment of Juveniles; Preparing for the Diplomate Exam in

Forensic Psychology. Philadelphia, Pennsylvania (February 1993).

Taylor Hardin Secure Medical Facility, Tuscaloosa, Alabama. Three-day workshop for training to develop skills in determination of competency to stand trial and mental state at the time of offense. Exam passed for certification as Forensic Examiner by Alabama State Department of Mental Health (February 1992).

Therapeutic Interventions for Grief, Loss, and Mourning. Two-day workshop with Therese Rondo, Ph.D. in Baltimore, Maryland (September 1991).

Systems of Therapeutic Interventions. Two-day workshop with Carl Whittaker, M.D. in Columbia, South Carolina (February 1991).

Advanced Clinical Hypnosis. Two-day workshop at University of Alabama Medical Center at Birmingham, Alabama (March 1982).

Family Therapy Workshop by Carol Anderson, M.S.W. and Director, Family Therapy Institute, Pittsburgh, Pennsylvania. Held at Auburn University, Alabama (February 1979).

Reality Therapy Workshop by William Glasser, Augusta, Georgia (December 1973).

## **PROFESSIONAL ASSOCIATIONS AND POSITIONS**

Alabama Board of Examiners in Psychology, License No. 137

Georgia Board of Examiners in Psychology, License No, 3275

Alabama Regional Council on Alcoholism (1972-1983)

Alabama Psychological Association

Constitution Rewriting Committee, Chair (1976-1977)

Legislative Committee, Member (1977-1978)

Membership Committee, Chair (1978-1979)

President-Elect (1979-1980)

President (1980-1981)

American Association for the Advancement of Science (1972-1983)

American Association of Correctional Psychologist (1976-1983)

American Psychological Association Past member, Divisions 8, 27

Current member:

Division 12: Clinical Psychology

Division 40: Neuropsychology

Division 41: Forensic Psychology

Lee County Psychological Association (1972-1983)

Midwestern Psychological Association (1972-1983)

Southeastern Psychological Association (1972-1983)

Diplomate in Clinical Psychology, American Board of Professional Psychology (1979)

Senior Analyst and Diplomat; American Board of Disability Analysts (1995)

Site Visitor of Internship Facilities, American Psychological Association (1982 to Present)

Alabama Board of Examiners in Psychology

Member, appointed to 5-year term by Gov. George Wallace (March 1983)

Chair (1986-1988)

Alabama Bar Association, Licensed practicing Attorney, May 2000

American Bar Association

### **DEPARTMENTAL POSITIONS**

Auburn University, Alabama

Chairman, Joint \*Student-Faculty Ethics Committee (1973-1975)

Chairman, Graduate Affairs Committee (1974-1975)

Coordinator, Internship Placement (1974-1982)

Director, Psychology Research & Training Clinic (1975-1983)

Chairman, Curriculum Committee (1975-1981)

Member, University Graduate Council (1978-1981)

University of Minnesota Medical School

Representative to Division of Psychology Policy Committee (1971-1972)

### **TEACHING EXPERIENCE (GRADUATE)**

Troy State University, Montgomery, Alabama

Psychology 645 Psychological Assessment of Individual

Auburn University, Alabama

Psychology 601 Ethics and Professional Issues

Psychology 602 Community Psychology

Psychology 635 Personality Theory

Psychology 638 Systems of Psychotherapy

Psychology 639 Psychotherapy Practicum

Psychology 671 Personality Assessment I

Psychology 672 Personality Assessment II

Psychology 673 Personality Assessment III

Psychology 680 Seminar in Current Research

Psychology 680 Advanced MMPI Interpretation

Psychology 690 Introduction to Hypnosis and  
Hypnotherapy

Psychology 690 Neuropsychological Assessment

Psychology 692 Directed Individual Study

Psychology 699 Directed Thesis Research

Psychology 799 Directed Dissertation Research

Psychology 637 Advanced Abnormal Psychology

University of Minnesota

Psychiatric Nursing - Guest lecturer on  
transference in psychotherapy

**TEACHING EXPERIENCE**  
**(UNDERGRADUATE)**

Auburn University, Alabama

Psychology U200 Frontiers of Behavior

Psychology 211 Introductory Psychology

Psychology 515 Introduction to Theory of  
Measurement

Psychology 516 Psychological Testing (group  
methods)

Psychology 533 Personality

Psychology 535 Behavior Pathology

Psychology 590 Special Problems in Psychology

Psychology 444 Psychological Aspects of Human Sexuality

Florida State University (under supervision)

Psychology 201H - Introductory psychology for honor students

Psychology 340 - Introduction to clinical and counseling psychology

Mankato State Teacher's College, Minnesota

HR- I - Introductory human relations course  
EDF 4903

Southwestern State Teacher's College, Minnesota

ED 495-1 - Human relations workshop

### **PRESENT TEACHING INTEREST AREAS**

1. Abnormal Psychology focusing on both the empirical research and symptomology of abnormal or psychological behaviors.
2. Test and Measurements focusing on the theory and research on objective and projective testing, testing for individual differences, and psychodiagnostic testing with particular emphasis on projective techniques.
3. Clinical Practicum for intellectual evaluations, psychodiagnostic test batteries, and psychotherapy including traditional and behavior modification approaches to both individual and group therapy.

**PRESENT RESEARCH INTEREST AREAS**

1. The personality correlates of various psychiatric diagnostic groups as measured by the Minnesota Multiphasic Personality Inventory, the Missouri Children's Picture Series, and the California Personality Inventory.
2. The application of psychological principles and knowledge to the practice of law and the courtroom situation.
3. Development of programs at the community level to deal with mental illness on a broad scale and the development of assessment procedures to measure the impact of such programs.
4. Development of a system of psychotherapy that is eclectic in the sense that a variety of techniques from other psychotherapy systems are applied at specific times in the course of treatment.
5. The assessment of police officers and the assessment of training programs for police officers.
6. The evaluation of the effectiveness of mental health delivery systems such as crisis centers and community mental health centers.

**FELLOWSHIPS AND TRAINEESHIPS**

United States Public Health Service Fellow  
(September 1968 to June 1969; September 1969  
to September 1970; September 1971 to  
September 1972)

Veteran's Administration Trainee (September 1970  
to September 1971)



## **EDITORIAL POSITIONS**

Book Reviewer for American Journal of Community Psychology.

Review of MMPI for VIII Mental Measurements Yearbook.

## **HONORS**

Psi Chi

Sigma Xi

Distinguished Professional Psychologist Award, Alabama Psychological Association (1987)

Sherman C. Raffel Leadership Award, Alabama Psychological Association (1989)

## **GRANTS**

Auburn University Research Council. \$1,653.25.  
“The assessment and development of Community Mental Health Intervention Programs.”

Tallapoosa-Chamber-Coosa Head Start Program.  
\$10,000 for delivery of psychological screening and testing.

## **THESES AND DISSERTATIONS DIRECTED AND COMPLETED**

McGrath, R. E. (1983). Initial evaluation of an integrative model of depressive phenomena. Doctoral dissertation, Auburn University, Auburn, AL.

McCollister, R. (1983). The usefulness of the Kinetic Family Drawing in the assessment of aggression among populations of juvenile offenders. Doctoral dissertation, Auburn University, Auburn, AL.

- Grace, W. C. (1982). White college student's expectancies of black psychotherapists' roles. Doctoral dissertation, Auburn University, Auburn, AL.
- Carifio, M. (1982). An investigation of personal space preferences. Master's thesis, Auburn University, Auburn, AL.
- McGrath, R. E. (1981). A comparison of life stress measurement systems. Master's thesis, Auburn University, Auburn, AL.
- Johnson, P. W. (1981). The dispositional effect of a juvenile offender's race and sex on the attitudes of selected juvenile justice professionals. Doctoral dissertation, Auburn University, Auburn, AL.
- Hart, R. M. (1981). Attitudinal aspects of premenstrual tension. Doctoral dissertation, Auburn University, Auburn, AL.
- Creal, R. S. (1981). Variables affecting mock juror decisions: Can the judge instruct Mr. Prejudice and Ms. Sympathy to leave the courtroom? Doctoral dissertation, Auburn University, Auburn, AL.
- Renfro, G. J. (1979). The validity of the Missouri Children's Picture Series in assessing aggression in a population of juvenile delinquents. Doctoral dissertation, Auburn University, Auburn, AL.
- Preskitt, D. (1979). An investigation of the relationship between sex role related traits and anxiety, depression, and neuroticism. Master's thesis, Auburn University, Auburn, AL.
- Hinkle, A. H. (1979). The impact of expert witness and jury size on jury verdicts. Doctoral dissertation, Auburn University, Auburn, AL.

- McGowen, R. (1978). The effects of authoritarian, antiauthoritarian, and egalitarian legal attitudes on juror and jury decision. Master's thesis, Auburn University, Auburn, AL.
- Hart, L. E. (1978). An investigation of the relative contribution of selection and training to the effectiveness of paraprofessionals. Master's thesis, Auburn University, Auburn, AL.
- Doonan, R. J. (1978). An analysis of ratings methodologies of empathy, warmth, and genuineness. Doctoral dissertation, Auburn University, Auburn, AL.
- Schwiebert, D. (1977). Unfavorable stereotyping of the aged as a function of death anxiety, sex, perception of elderly relatives, and a death anxiety-repression interaction. Doctoral dissertation, Auburn University, Auburn, AL.
- Martin, J. (1977). Evaluation of procedures to establish stimulus control of blood pressure. Doctoral dissertation, Auburn University, Auburn, AL.
- Daniel, W. H. (1977). The interactive effect of reinforcement content and interreinforcement interval upon adjunctive fluid consumption. Doctoral dissertation, Auburn University, Auburn, AL.
- Cincirpini, P. (1977). Blood pressure discrimination in the natural environment. Doctoral dissertation, Auburn University, Auburn, AL.
- Morgan, J. P. (1976). Effect of caller depth of self-exploration on high-, medium-, and low-functioning telephone counselors. Doctoral dissertation, Auburn University, Auburn, AL.

- Doonan, R. .1. (1976). The effect of perceived locus of control on the expression of empathy, warmth, and genuineness by untrained telephone counselors. Master's thesis, Auburn University, Auburn, AL.
- Sides, J. P. (1975). Emotional responses of children to physical illness and hospitalization. Doctoral dissertation, Auburn University, Auburn, AL.
- Gutting, D. (1975). Neuropsychology changes after carotid endarterectomy. Master's thesis, Auburn University, Auburn, AL.
- Grigsby, D. P. (1975). Perceived differential attainability of vocational roles as it relates to emotional adjustment in the southern adolescent. Doctoral dissertation, Auburn University, Auburn, AL.
- Abrams, D. (1975). The modeling of depression: An empirical investigation. Doctoral dissertation, Auburn University, Auburn, AL.
- Morgan, J. P. (1974). A validity study of the selection and evaluation of the volunteer-paraprofessional-telephone counselor. Master's thesis, Auburn University, Auburn, AL.
- Goodson, J. H. (1974), A clinical and actuarial study on the validity of the Goldberg Index of the MMPI. Master's thesis, Auburn University, Auburn, AL.
- Galantowicz, E. P. (1974). The effects of different shock intensities on schedule-induced polydipsia. Master's thesis, Auburn University, Auburn, AL.
- Bisbee, D. S. P. (1974). The effect of lunar cycles and diurnal rhythms on activity, exploration,

and elicited aggression in rats and mice. Doctoral dissertation, Auburn University, Auburn, AL.

Daniel, W. H. (1973). Schedule-induced polydipsia: The consequences of restricted water accessibility during the interpellet interval. Master's thesis, Auburn University, Auburn, AL.

## **PUBLICATIONS**

Kirkland, K., Kirkland, K., King, G.D. & Renfro, G.D. (2006). Quasi-Judicial Immunity for Forensic Mental Health Professionals in Court-Appointed Roles. Journal of Child Custody, 3(1) 1-22.

Kirkland, K., King, G. D., & Renfro, G. J. (1996). Assessment of Testamentary Capacity. Alabama Trial Lawyer, under review.

Snider, H. C., & King, G. D. (1986). Minnesota Multiphasic Personality Inventory as a predictor of operative results in thoracic outlet syndrome. Southern Medical Journal, 79, 1527-1530.

Hinkle, A. L., Smelzer, D. J., Allen, C. A., & King, G. D. (1983). The judgements of college students and jurors concerning sanity and guilt of an alleged murderer. Journal of Social Psychology, 120, 253-257.

McGowen, R., & King, G. D. (1982). Effects of authoritarian, antiauthoritarian, and egalitarian legal attitudes on mock juror and jury decision. Psychological Reports, 51, 1067-1074.

McGowen, R., & King, G. D. (1980). Expectations about effectiveness of telephone crisis intervention. Psychological Reports, 46, 640-642.

- Burkhart, B., & King, G. D. (1981). Blind men and elephants: A case study of consultation with the police. Journal of Community Psychology, 9, 133-139.
- King, G. D., McGowen, R., Doonan, R., & Schweibert, D. (1980). The selection of para-professional telephone counselors using the California Psychological Inventory. American Journal of Community Psychology, 8, 495-501.
- Kelley, C. K., & King, G. D. (1980). Two- and three-point classification of MMPI profiles in which Scales 2, 7, and 8 are the highest elevations. Journal of Personality Assessment, 44, 25-33.
- Kelley, C. K., & King, G. D. (1980). Normative data on the Missouri Children's Picture Series and the Missouri Children's Behavioral Checklist with southern black children. Journal of Abnormal Child Psychology, 8, 421-433.
- Kelley, C. K., & King, G. D. (1979). Cross validation of the 2-8/8-2 MMPI code type for young adult psychiatric outpatients. Journal of Personality Assessment, 43, 143-149.
- Kelley, C. K., & King, G. D. (1979). Behavioral correlates of the "2-7-8" MMPI profile type in students at a university mental health center. Journal of Consulting and Clinical Psychology, 47, 679-685.
- Kelley, C. K., & King, G. D. (1979). Behavioral correlates of infrequent two-point MMPI code types at a university mental health center. Journal of Clinical Psychology, 35, 576-585.

- Hart, L. E., & King, G. D. (1979). Selection versus training in the development of paraprofessionals. Journal of Counseling Psychology, 26, 235-241.
- Collins, F., Kuhn, I. F., & King, G. D. (1979). Variables affecting subject's ethical ratings of proposed experiments. Psychological Reports, 44, 155-164.
- King, G. D., Hannay, H. J., Masek, B., & Burns, J. (1978). The effects of anxiety and sex on neuropsychological tests. Journal of Consulting and Clinical Psychology, 46, 475-476.
- King, G. D., & Confer, W. N. (1978). Ethics: Is informed deceit the answer to informed consent? Psychology Today, May, 36-38.
- King, G. D. (1978). Mental health in Alabama. In K. J. Ward (Ed.), Alabama Issues. Auburn, AL: Office of Public Service and Research.
- Kelley, C. K., & King, G. D. (1978). Behavioral correlates for within-normal-limits MMPI profiles with and without elevated K in a college student mental health center. Journal of Clinical Psychology, 34, 695-699.
- Hinkle, A. H., & King, G. D. (1978). A comparison of three survey methods to obtain data for community mental health program planning. American Journal of Community Psychology, 6, 389-397.
- Abrams, D., & King, G. D. (1978). An empirical investigation of the modeling of depression. Psychological Reports, 42, 823-832.
- Morgan, J. P., King, G. D., & Smith, E. B. (1977). Calls to a telephone counseling service. Journal of Community Psychology, 5, 112-115.

- King, G. D., & Kelley, C. K. (1977). MMPI behavioral correlates of spike-5 and two point code types with scale 5 as one elevation. Journal of Clinical Psychology, 33, 180-185.
- King, G. D., & Kelley, C. K. (1977). Behavioral correlates for spike-4, spike-9, and 4-9/9-4 MMPI profiles in students at a university mental health center. Journal of Clinical Psychology, 33, 718-724.
- King, G. D., Gideon, D., Haynes, C. D., Dempsey, R. L., & Jenkins, C. W. (1977). Intellectual and personality changes associated with carotid endarterectomy. Journal of Clinical Psychology, 33, 215-220.
- King, G. D. (1977). An evaluation of the effectiveness of a telephone counseling center. American Journal of Community Psychology, 5, 75-83.
- Christian, W. P., Schaeffer, R. W., & King, G. D. (1977). Schedule-induced behavior: Research and theory. Annual Research Reviews Schedule-Induced Behavior, 1.
- Brown, S., Burkhart, B. R., King, G. D., & Solomon, R. (1977). Roles and expectations for mental health professionals in law enforcement agencies. American Journal of Community Psychology, 5(2), 207-215.
- Lair, C. V., & King, G. D. (1976). MMPI profile predictors for successful and expired open heart surgery patients. Journal of Clinical Psychology, 32, 51-54.



- King, G. D. (1976). Evaluating the effectiveness of telephone counseling centers. College Student Personnel.
- Haynes, C. D., King, G. D., & Gideon, D. A. (1976). Surgery helps mental status of some patients. Journal of the American Medical Association, 236, 2037-2038.
- Haynes, C. D., Gideon, D. A., King, G. D., & Dempsey, R. L. (1976). The improvement of cognition and personality after carotid endarterectomy. Surgery, 80, 699-704.
- Goodson, J. H., & King, G. D. (1976). A clinical and actuarial study on the validity of the Goldberg Index of the MMPI. Journal of Clinical Psychology, 32, 328-335.
- Morgan, J. P., & King, G. D. (1975). The selection and evaluation of the volunteer paraprofessional telephone counselor: A validity study. American Journal of Community Psychology, 3, 237-249.
- King, G. D., & Sides, J. P. (1975). Punishment of schedule-induced wheel running. Bulletin of the OPsychonomic Society, 5, 323-324.
- King, G. D. (1975). [A review of Crisis Intervention]. American Journal of Community Psychology, 3, 181-182.
- King, G. D. (1975). [A review of Crisis Intervention and Counseling by Telephone]. American Journal of Community Psychology, 3, 179-181.
- King, G. D. (1975). The enhancement of schedule-induced polydipsia by FR-20 and FR-80 contingent shock. Bulletin of the Psychonomic Society, 6, 542-544,

- Haynes, S., King, G. D., & Dempsey, R. L. (1975). Improvement of cognitive and personality changes after carotid endarterectomy. Surgical Forum, 26, 288-289.
- Galantowicz, E. P., & King, G. D. (1975). The effects of three levels of lick-contingent foot shock on schedule-induced polydipsia. Bulletin of the Psychonomic Society, 5, 113-116.
- Daniel, W. H., & King, G. D. (1975). The consequences of restricted water accessibility on schedule-induced polydipsia. Bulletin of the Psychonomic Society, 5, 297-299.
- King, G. D., Schaeffer, R. W., & Pierson, S.C. (1974). Reinforcement schedule preference of a raccoon (*Procyon lotor*). Bulletin of the Psychonomic Society, 4, 97-99.
- King, G. D., Morgan, J. P., & Smith, B. (1974). The telephone counseling center as a community mental health assessment tool. American Journal of Community Psychology, 2, 53-60.
- King, G. D. (1974). Wheel running in the rat induced by a fixed-time presentation of water. Animal Learning and Behavior, 2, 325-328.
- King, G. D. (1974). The enhancement of schedule-induced polydipsia by preschedule noncontingent shock. Bulletin of the Psychonomic Society, 3, 46-48.
- King, G. D. (1974). How to handle hotline calls. Mental Hygiene, 58(4), 10-13.
- Pierson, S. C., Schaeffer, R. W., & King, G. D. (1973). The consumption of saccharin and glucose solutions by Mongolian gerbils. Bulletin of the Psychonomic Society, 2, 389-391.

- King, G. D., & Schaeffer, R. W. (1973). A developmental analysis of schedule-induced polydipsia. Psychological Reports, 32, 1087-1095.
- King, G. D., McGill, D., Pierson, S. C., & Schaeffer, R. W. (1972). Schedule-induced alcohol and water intakes in rats on a FFI-60-sec schedule. Psychological Reports, 30, 291-296.
- King, G. D. (1972). Three experiments on stress-induced behaviors. Dissertation Abstracts International, 23(5).

#### **PAPER PRESENTATIONS**

- McGowen, R., & King, G. D. (1979). The effects of juror characteristics on juror and jury verdicts. Paper presented at the meeting of the Southeastern Psychological Association, New Orleans.
- Hart, L. E., & King, G. D. (1979). An analysis of the network of referrals between community agencies. Paper presented at the meeting of the Southeastern Psychological Association, New Orleans.
- King, G. D., & Kelley, C. K. (1976). Base rates for psychopathology and behavioral correlates of MMPI profiles at a university mental health center. Paper presented at the meeting of the Southeastern Psychological Association, New Orleans.
- Hinkle, A., & King, G. D. (1976). A comparison of three mental health planning survey methods. Paper presented at the meeting of the Southeastern Psychological Association, New Orleans.

- King, G. D. (1975). Roles for psychologists in the police department. Paper presented at the meeting of the Southeastern Psychological Association, Atlanta.
- King, G. D. (1975). Program on psychology and the police. (Chair), Symposium conducted at the meeting of the Southeastern Psychological Association, Atlanta.
- King, G. D. (1975). Evaluation of a telephone counseling center. Paper presented at the meeting of the Southeastern Psychological Association, Atlanta.
- Haynes, C. D., & King, G. D. (1975). Improvement of cognitive and personality changes following carotid endarterectomy. Paper presented at the meeting of the American College of Surgeons, San Francisco.
- Daniel, W. H., & King, G. D. (1975). The conditioned suppression of licking and bar-pressing during schedule-induced polydipsia. Paper presented at the Southeastern Psychological Association, Atlanta.
- King, G. D. (1973). Problems of comprehensive examinations. Paper presented at the meeting of the Southeastern Psychological Association, New Orleans.
- King, G. D. (1973). Telephone counseling: Techniques, problems, and procedures. (Chair), Symposium conducted at the meeting of the Southeastern Psychological Association, New Orleans.

## **LAW**

### Law Honors:

Copus Juris Secundum Honors Award

Civil Procedure

Criminal Law

Law Review

West's Scholarship Award (in top 4 of class)

James J. Carter Scholarship Award (Highest grade point average in graduating class)

## **PUBLICATIONS**

Kirkland, K., Kirkland, K., King, G.D. & Renfro, G.J. (2006). Quasi-Judicial Immunity for Forensic Mental Health Professionals in Court-Appointed Roles. Journal of Child Custody, 3(1) 1-22.

Kirkland, K., King, G.D., & Renfro, G.J. (1998). Assessment of Testamentary Capacity. Alabama Lawyer, in press.

Hinkle, A. L., Smelzer, D. J., Allen, C. A., & King, G. D. (1983). The judgements of college students and jurors concerning sanity and guilt of an alleged murderer. Journal of Social Psychology, 120, 253-257.

McGowen, R., & King, G. D. (1982). Effects of authoritarian, antiauthoritarian, and egalitarian legal attitudes on mock juror and jury decision. Psychological Reports, 51, 1067-1074.

## LEGAL CASES

Glen D. King, J.D., Ph.D., ABPP

This is a listing of civil legal cases for which Dr. Glen D. King was retained as an expert.

1. Scott v. Montgomery Mental Health      1984  
Authority  
Retained by Plaintiff  
Court testimony  
U.S. District Court - Montgomery,  
Alabama
2. Dale v. Alabama State Dept. of Mental      1985  
Health  
Retained by Plaintiff  
Court testimony  
Montgomery County Circuit Court
3. Dale v. State Farm Insurance Co.      1986  
Retained by Plaintiff  
Court testimony  
U.S. District Court - Montgomery,  
Alabama
4. Robinson v. Dr. Ronald Steward et al.      1987  
Retained by Plaintiff  
Court testimony  
Cleburne County Circuit Court
5. Duncan v. U.S. Government      1984  
Retained by Plaintiff  
Court testimony  
U.S. District Court - Montgomery,  
Alabama
6. Jane Doe v. Auburn University      1988  
Retained by Defense  
Settled before deposition  
U.S. District Court - Opelika, Alabama

7. Lucy Mills v. Chase Products 1989  
Retained by Defense  
Court testimony  
Montgomery County Circuit Court
8. John Coleman Bryars v. Radcliff 1991  
Marine & Fuel Co.  
Retained by Plaintiff  
Deposition only, case settled  
U.S. District Court - New Orleans,  
Louisiana
9. Robinson v. Workman's Compensation 1992  
Retained by Plaintiff  
Court testimony  
Montgomery County Circuit Court
10. Brown v. Rankin 1993  
Retained by Defense  
Court testimony  
Circuit Court - Sioux Falls, South  
Dakota
11. Bouck v. Orkin 1994  
Retained by Defense  
Court testimony  
U.S. District Court - Syracuse, New  
York
12. Liberti et al. v. Walt Disney World 1994  
Retained by Plaintiff  
Settled after deposition  
U.S. District Court - Orlando, Florida
13. McCollum v. Servidyne 1995  
Retained by Defense  
Settled after deposition  
U.S. District Court - Atlanta, Georgia

14. Schroeder v. State Farm Insurance 1994  
Retained by Defense  
Settled before deposition  
County Court - Sioux Falls, South  
Dakota
15. Esmay v. Chicago & Northwestern 1995  
Retained by Defense  
Settled after evaluation  
U.S. District Court - Rapid City, South  
Dakota
16. Remet v. River Oaks Hospital 1994  
Retained by Plaintiff - settled  
Jefferson Parish, Louisiana
17. Harold v. Superior Roofing 1994  
Retained by Defense  
Settled after evaluation  
Montgomery County Circuit Court
18. Powell v. Whitfield Foods 1994  
Retained by Plaintiff  
Court testimony  
Montgomery County Circuit Court
19. Scarborough v. American Softball 1995  
Association  
Retained by Defense  
Advise regarding records and  
neuropsychological evaluation  
Pike County Circuit Court
20. Watkins v. Perry County School Board 1996  
Retained by Plaintiff - settled  
Perry County Circuit Court



21. Cockrill v. City Tire of Wetumpka, 1995  
Alabama  
Retained by Plaintiff  
Settled  
Elmore County Circuit Court
22. Norman v. ABC Home Health Care 1995  
Retained by Defense  
Settled  
Cleburne County Circuit Court
23. Sylvester et al v. Southtrust Bank, et 1996  
al  
Retained by Defense  
Settled  
Barbour County Circuit Court
24. Theresa Coleman v. Godwin Material 1996  
Service Inc., et al  
Retained by Defense  
Settled  
Elmore County Circuit Court
25. Pritchett v. Universal Underwriters 1996  
Insurance, et al  
Retained by Defense - settled after  
evaluation
26. Ellington v. Universal Underwriters 1997  
Insurance, et al  
Retained by Defense - settled
27. Jessie Shuford v. Simcala, Inc. 1997  
Retained by Defense  
Settled  
Montgomery County Circuit Court

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|-----|---|---------------|
| 28. | Kearce v. United States<br>Retained by U.S. Attorney's Office<br>(civil)<br>Settled<br>U.S. District Court — Middle District<br>of Alabama              | 1997          |
| 29. | Gloria Woods v. First Choice Personnel<br>Retained by Defense<br>Settled<br>Montgomery County Circuit Court   | 1998          |
| 30. | Ledbetter v. United States<br>Retained by U.S. Attorney's Office<br>(civil)<br>Settled<br>U.S. District Court — Middle District<br>of Alabama           | 1998          |
| 31. | Baggett v. Baggett<br>Retained by Petitioner<br>Testimony & hearing<br>Montgomery County Circuit Court  | 1998          |
| 32. | Jackson v. American Banker's Trust<br>Retained by Defendant<br>Settled<br>Choctaw County Circuit Court  | 1998          |
| 32. | Knight v. United States<br>Retained by Defendant Settled<br>U.S. District Court — Middle District<br>of Alabama   | 2001          |
| 33. | Philip Hardy v. Prudential Insurance<br>Retained by Defense<br>Deposition and Testimony at Trial<br>U.S. District Court Southern District<br>of Alabama | 1997-<br>2001 |

34. Mason v. Associated School Boards of South Dakota      2001  
 Retained by Defense  
 Settled  
 Pennington County Circuit Court,  
 South Dakota
35. Angel Cremeens v. H.P. Tampa, L.L.C.      2001  
 Retained by Defense  
 Testimony at hearing  
 Florida Dept. of Occupation & Health
36. Jamieson v. Comala Credit Union      2001  
 Retained by Defense  
 Settled  
 Montgomery County Circuit Court
37. Lane v. Southern Food Groups      2001  
 Retained by Defense  
 Settled  
 U.S. District Court — Northern  
 District of Alabama
38. Laura Singleton v. United States      2002  
 Retained by Defense  
 Testimony at trial  
 U.S. District Court — Middle District  
 of Alabama
39. Kemp v. Foster Farms      2002  
 Retained by Defense  
 Deposition used at Bench trial  
 Marengo County Circuit Court
40. Baggett v. Flowers Hospital, et al.      2002  
 Retained by Defense  
 Settled  
 Mobile County Circuit Court

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| 41. | Mathis v. United States<br>Retained by Defense<br>Settled<br>U.S. District Court — Arkansas                      | 2002 |
| 42. | Parker v. Wadsworth<br>Retained by Defense<br>Settled<br>Montgomery County Circuit Court                         | 2003 |
| 43. | McLemore v. FedEx<br>Retained by Defense<br>Settled<br>Montgomery County Circuit Court                           | 2003 |
| 44. | Golden v. Haynes Ambulance<br>Retained by Defense<br>Settled<br>Montgomery County Circuit Court                  | 2003 |
| 45. | Beck v. Daimler-Chrysler<br>Retained by Plaintiff<br>Settled after Deposition<br>Houston County Circuit Court    | 2004 |
| 46. | Williams v. First Coastal Pallet<br>Retained by Defense<br>Testified in Court<br>Montgomery County Circuit Court | 2005 |
| 47. | Kitchens v. Millco<br>Retained by Defense<br>Ongoing<br>Montgomery County Circuit Court                          | 2005 |
| 48. | Williams v. BushHog, L.L.C.<br>Retained by Defense<br>Testified in Court 2/06<br>Dallas County Circuit Court     | 2005 |

49. Iverson Hill v. Arch Insurance Co. 2005  
 Retained by Defense  
 Testified in Court 1/06  
 Lee County Circuit Court
50. H.Y. et al. v. Russell County School Board 2005  
 Retained by Plaintiffs  
 Settled after delivery of evaluations  
 U.S. District Court, Middle District of Alabama
51. In Re: Caleb Church, Circuit Court, Bristol, TN 2008-2009  
 Retained by Defendants  
 Settled  
 Circuit Court, Bristol Tennessee
52. Nesmith v. Owners Insurance Co., Montgomery, Al. 2013  
 Retained by Defendants  
 Settled  
 U.S. District Court, Middle District of Alabama
53. Pelham v. Tigercat 2013  
 Retained by Plaintiff  
 Settled  
 Barbour County, Circuit Court
54. Dutcher v. Methodist Homes Develop Corp 2013  
 Retained by Plaintiff  
 Jefferson County, Circuit Court

55. Tomberlin v. Clark, et al. (Fetter) 2014  
Retained by Defense  
Settled with Summary Judgment  
U.S. District Court, Northern District,  
Alabama
56. Donald Keith Pelham v. Green 2014  
Logging, Inc.  
Retained by Plaintiff  
Settled after Deposition  
Butler County Circuit Court
57. Shivers v. Textron 2015  
Retained by Plaintiff  
Ongoing  
Lowndes County Circuit Court

This is a listing of Death Row Criminal Appeals cases in which Dr. King has given testimony or been deposed since 1998. In each case, Dr. King was initially retained by the Alabama Attorney General's Office or the Georgia Attorney General's Office; however, in some cases Dr. King ultimately rendered an opinion for the petitioner, or testified on behalf of the petitioner.

#### RULE 32 CASES

1. Colon Lavon Guthrie v. Alabama St. 1999  
Clair County
2. Derreck DeBruce v. Alabama Talladega 1999  
County
3. Christopher Brooks v. Alabama 2000  
Jefferson County
4. Timothy Scott Cothren v. Alabama 2000  
Shelby County
5. Holly Woods v. Alabama Pike County 2001

6. Jack Traywick v. Alabama Jefferson County 2001
6. Michael Shannon Taylor v. Alabama Etowah County 2002
7. Jimmy Davis v. Alabama Calhoun County 2002
8. Windsor v. Alabama St.Clair County 2003
9. Smith v. Alabama Shelby County 2003
10. Borden v. Alabama Lauderdale County (Petitioner) 2003
11. Bobby Tarver v. Alabama Mobile County (Petitioner) 2003
12. Michael Samra v. Alabama Shelby County 2003
13. Eugene Clemmons v. Alabama Shelby County 2004
14. William Bush v. Alabama Montgomery County 2004
15. Roy Perkins v. Alabama Tuscaloosa County 2005
16. Melvin Davis v. Alabama Montgomery County 2005
17. Robin Myers v. Donald Campbell Morgan County 2006
18. Norris Speed v. William Terry Atlanta Georgia 2006
19. Lasamuel Gamble v. Alabama, 2006
20. Matthew Reeves v. Alabama, Dallas County 2006

21. Richard Flowers v. Alabama, Montgomery Co. 2006
22. Pye v. Terry, Jackson, Georgia 2006
23. Larry George v. Alabama, Talladega County 2007
24. Wayne Travis v. Alabama, Conecuh County 2006
25. Ledford v. Head, Jackson, Georgia 2007
26. Tharpe v. Terry, Jackson, Georgia 2007
27. Lewis v. Hall, Jackson, Georgia 2007
28. Dobyne v. Jones, Alabama (Petitioner) 2007
29. Washington v. Alabama 2007
30. Stewart v. Alabama 2007
31. C. Smith v. Alabama, Tallapoosa County 2007
32. Sealey v. Hall, Jackson, Georgia 2008
33. W. Smith v. Alabama, Elmore County 2008
34. Guthrie v. Alabama, Marshall County (Petitioner) 2009
35. Simmons v. Culliver, Federal Habeas (Petitioner) 2009
36. Gavin v. Alabama, Cherokee County 2009
37. Benjamin v. Alabama, Houston County 2009
38. Connor v. Carl Humphrey, Warden, So. Dist. Ga. 2013
39. Flowers v. Alabama, Mobile County 2013
40. Brooks v. Alabama, Russell County 2014



41. Walden v. Stanley Williams, Warden 2015  
U.S. Dist. Ct. Ga.
42. Burgess v. Alabama U.S. Dist. Ct. 2015  
Alabama (ongoing)
43. 43, Peraita v. Alabama, Escambia 2015  
County
44. Colbert v. Robert Toole, Warden U.S. 2016  
Dist. Ct. Ga. (ongoing) 2016
45. Eggers v. Alabama, U.S. Dist. Ct. 2016  
Tuscaloosa
46. Belisle v. Alabama, Marshall County 2016  
(ongoing)
47. Smith v. Dunn, U.S. Dist, Ct. Mobile 2016  
(ongoing)

In addition to civil cases, Dr. King is a certified forensic examiner for the Alabama State Department of Mental Health/Mental Retardation. He examines approximately 250-500 defendants per year charged with various offenses ranging from Class C felonies to Capital felonies. These examinations are for competency to stand trial, mental state at the time of the alleged offense, competency to waive Miranda rights, competency to be executed or to qualify for death sentence, pre-sentence evaluation and risk of violence. Criminal court testimony occurs 1-4 times per month regarding competency to stand trial and/or mental state at the time of the alleged offense on average. Since the evaluations are court ordered, opinions may benefit either the defense or prosecution, depending on the findings. Appearance in hearings or in criminal trial has at times been at the request of either the state or the defense. To date,

Dr. King has completed approximately 8,000 of these evaluations for the Courts in Alabama.

Additional evaluations are done for the courts on a regular basis for child custody and visitation; competency to serve as a witness (children); malingering of mental, physical, memory, and emotional problems; neuropsychological deficits; competency to manage affairs and make testamentary devices; conservatorship and guardianship.

In criminal and civil litigation cases the fee for expert witness assistance is \$250.00 per hour, which is charged for document review, evaluation and travel time, testimony, and document preparation. Where travel requires departure from normal duties at the office, a \$3,000.00 per day maximum is assessed. In criminal litigation cases initiated by the Attorney General's Office on contract, the hourly fee is \$200.00 per hour for all time spent on the case.

Deposition testimony is billed to the firm requiring the deposition at \$500.00 for the first hour and \$250.00 per hour thereafter including all time spent for travel. Preparation time for deposition is billed to the firm retaining Dr. King as an expert.

Dr. King serves as regional consultant for Alabama Department of Rehabilitation Services. In that capacity, evaluation of adolescents and adults for academic abilities, job placement, personality adjustment, learning disabilities and attention problems are conducted 10 to 20 times per week for the last 25 years.

Dr. King serves as an evaluator for the Social Security Administration to determine qualification for SSI and SSDD benefits. Dr. King typically

conducts 20 evaluations per week of children from the age of 2 years to elderly adults. Dr.

King has conducted at least 10,000 evaluations of children and adolescents during his professional career.

JOHN MATTHEW FABIAN, PSY.D., J.D., ABPP  
 BOARD CERTIFIED FORENSIC & CLINICAL PSYCHOLOGIST  
 FELLOWSHIP TRAINED CLINICAL NEUROPSYCHOLOGIST  
 EVALUATION OF CHILDREN, ADOLESCENTS, ADULTS &  
 MILITARY/VETERANS FEDERAL, MULTI-STATE, COUNTY,  
 MUNICIPAL COURT EVALUATIONS

CRIMINAL FORENSIC PSYCHOLOGICAL/  
 NEUROPSYCHOLOGICAL EVALUATIONS

- Competency to Stand Trial, Competency to Waive Miranda Rights/Confess/False Allegations
- Not Guilty by Reason of Insanity
- Mens Rea/Diminished Capacity
- Posttraumatic Stress Disorder (PTSD) related self-defense claims (Veterans, Battered Woman's Syndrome)
- Forensic neuropsychological evaluations for PTSD cases/ Military with Traumatic Brain Injury and polytrauma
- Presentence Psychological/Disposition/Mitigation Evaluations
- Conditional Release and Parole Forensic Psychological Evaluations
- Evaluation and Record Review for Judicial Release
- Violence Risk Assessment/Assessment of Psychopathy
- Forensic Neuropsychological evaluations addressing brain/behavior relationships/functioning in legal contexts

- ◆ Capital Litigation Forensic Psychological/ Neuropsychological Evaluations
  - Death Penalty Mitigation and Forensic Neuropsychological assessment at sentencing
  - Competency to Waive Mitigation
  - Competency to Waive Appeals
  - Competency to be Executed
  - Atkins Mental Retardation Evaluations
  - Violence Risk Assessment at Capital Sentencing
  - Sexual homicide mitigation and neuropsychological evaluations
  - Forensic psychological/neuropsychological evaluations of Veterans with PTSD & Brain Injury
- ◆ Sexual Offender Risk Assessment & Disposition Evaluations
  - Civil Commitment of Sexual Violent Predators
  - Megan's Law & Adam Walsh Act Sex Offender Evaluations
  - Internet Pornography Forensic Psychological Evaluations
  - Neuropsychological evaluations and neurodevelopmental traumatic brain injury risk assessment
- ◆ Juvenile Forensic Psychological Evaluations
  - Competency to Stand Trial, Competency to Waive Miranda Rights

- Assessment of legal sanity and mens rea for juveniles who are being tried in adult court
- Waiver/Bindover Evaluations
- Forensic Neuropsychological assessment at sentencing disposition
- Serious Youth Offender/Blended Sentencing Evaluations
- Juvenile Sexual Offender Evaluations
- Juvenile Presentence Psychological Evaluations
- Violence Risk Assessment

#### CIVIL FORENSIC PSYCHOLOGICAL/ NEUROPSYCHOLOGICAL EVALUATIONS

- Personal Injury Examinations in Torts for Emotional Distress
- Employment Discrimination and Harassment Examinations
- Insurance disability evaluations

#### FITNESS FOR DUTY PSYCHOLOGICAL EVALUATIONS

- Law enforcement fitness for duty and pre-employment screening evaluations
- Violence risk assessment/workplace violence evaluations of law enforcement and corporate personnel

#### DOMESTIC COURT FORENSIC PSYCHOLOGICAL EVALUATIONS

- Child Custody Evaluation

- Child Sexual Abuse/Assessment of  
Childhood/Adolescent Trauma

JOHN MATTHEW FABIAN, PSY.D., J.D., ABPP  
BOARD CERTIFIED FORENSIC &  
CLINICAL PSYCHOLOGIST  
FORENSIC & CLINICAL NEUROPSYCHOLOGIST  
▪ 5716 W US Hwy 290, Suite 110 Austin, TX 78735 ▪  
North Loop 1604 East, Suite 150 San Antonio, TX  
78232 ▪ Telephone: 512.487.7216 ▪ Fax 512-840-1980 ▪  
Email john@johnmatthewfabian.com

#### CURRICULUM VITAE

Board Certifications American Board of Professional  
Psychology  
Board Certified Diplomate in  
Forensic Psychology  
Board Certified Diplomate in  
Clinical Psychology

Fellowship Training Clinical Neuropsychology  
University of New Mexico  
School of Medicine  
Center for Neuropsychological  
Services &  
Neuropsychology Polytrauma  
Unit Raymond G. Murphy VA  
Medical Center New Mexico VA  
Health Care System

Hospital Consulting Appointment North Dakota State  
Hospital Forensic  
Services Unit  
Consultant to  
Forensic Services  
Team

**JOURNAL REVIEWS**  
Journal of Aggression and  
Violent Behavior  
The Clinical Neuropsychologist  
Journal of Forensic Psychology  
Practice  
Psychological Injury and Law  
Forensic Psychology Unbound  
Book Review and Legal  
Section Editor  
Journal of Psychiatry and  
Behavioral Science  
Reviewer Homicide Studies  
Reviewer International Journal  
of Offender Therapy &  
Comparative Criminology  
Reviewer Research in  
Developmental Disabilities  
Reviewer Criminal Justice  
Review  
Reviewer Journal of Sexual  
Medicine  
Psychological Services  
Behavioral Sciences and the  
Law  
Justice Quarterly  
Journal of Sex and Marital  
Therapy  
AIMS Neuroscience Journal



## PUBLICATIONS

Book Chapter Fabian, J.M. Forensic Neuropsychology and Violence: Neuroscientific and Legal Implications. In *Handbook of Forensic Neuroscience* (in press). Eds., Anthony Beech, Adam J Carter, Ruth Mann and Pia Rotshtein. Oxford, England: Wiley Blackwell.

## Peer Reviewed Journals

Fabian, J.M. Assessing the sex offender with Asperger's Disorder: A forensic psychological and neuropsychological perspective. Sex Offender Law Report, Vol 12(5), 65-69.

Fabian, J.M. Diagnosing and litigating hebephilia in sexually violent predator civil commitment proceedings. American Academy of Psychiatry and Law (39), 496-505.

Fabian, J.M. (2011). Paraphilias and predators: The ethical application of psychiatric diagnoses in partisan sexually violent predator commitment proceedings. Journal of Forensic Psychology Practice, Vol. 11(1), 82-98.

Fabian, J.M. (2011). Applying *Roper v. Simmons* in juvenile transfer/waiver proceedings. International Journal of Offender Therapy and Comparative Criminology, 55(5).

Fabian, J.M. (2010). Neuroscience, volitional impairment and sexually violent predators: A review of the

literature and its application to civil commitment proceedings. Journal of Aggression and Violent Behavior (17), 1-15.

Fabian, J.M. (2010). Neuropsychological and neurological correlates in violent and homicidal offenders: A legal and neuroscience perspective. Journal of Aggression and Violent Behavior, Vol. 15(3), 209-223.

Fabian, J.M. (2009). Mitigating murder at capital sentencing: An empirical and practical psycho-legal strategy. Journal of Forensic Psychology Practice Vol. 9(1), 1-34.

Fabian, J.M. (2008). Current standards and practices in violence risk assessment and communication at a maximum security forensic hospital following a high profile sexual homicide. Journal of Aggression and Violent Behavior, 13(5), 337-345.

Fabian, J.M. (2007). Methamphetamine motivated murder: Forensic psychological/psychiatric & legal applications in criminal contexts. Journal of Psychiatry and Law, 35(4), 443-474.

Fabian, J.M. (2006). A literature review of the utility of selected violence and sexual violence risk assessment instruments. Journal of Psychiatry and Law, 34(3), 307-350.

Fabian, J.M. (2006). State supreme court responses to *Atkins v. Virginia*: Adaptive functioning assessment in light of purposeful planning, premeditation, and the behavioral context of the homicide. Journal of Forensic Psychology Practice, 6(4).

Fabian, J.M. (2005). Life, death, and IQ: it's much more than just a score: The dilemma of the mentally retarded on death row. Journal of Forensic Psychology Practice, 5(4).

#### Law Review Journals

Fabian, J.M., Thompson, W., & Lazarus, J. (2011). Life, Death, and IQ: It's much more than just a score. Understanding and utilizing forensic psychological and neuropsychological evaluations in *Atkins* intellectual disability/mental retardation cases. Cleveland State Law Review, 59(3).

Fabian, J.M. (2011). The Adam Walsh Child Protection and Safety Act: Legal and psychological aspects of the new civil commitment law for federal sex offenders. Cleveland State Law Review, 59(3).

Fabian, J.M. (2006). Rethinking "rational" in the *Dusky* standard: Assessing a high profile delusional killer's functional abilities in the Courtroom in the context of a capital murder trial. Quinnipiac Law Review, 25(2).

Fabian, J.M. (2005). The risky business of conducting risk assessments for those already civilly committed as sexually violent predators. William Mitchell School of Law, 32(1).

Fabian, J.M. (2003). Examining our approaches to sex offenders & the law: Kansas v. Hendricks, Crane and beyond: “mental abnormality,” and “sexual dangerousness,”: volitional vs. emotional abnormality and the debate between community safety and civil liberties. William Mitchell School of Law, 29(4).

Fabian, J.M. (2003). Death penalty mitigation and the role of the forensic psychologist. University of Alabama Law & Psychology Review, 27.

#### Bar Journals

Fabian, J.M. (2011). Evaluating Ohio’s Life Tail Sexual Violent Predator Indictment Specification: The Necessity of a Sexual Offender Risk Assessment at Sentencing Phase. Vindicator (OACDL), 34-41.

Fabian, J.M. (2009). To catch a predator, and then commit him for life. Part I: Analyzing the Adam Walsh Act’s Civil Commitment Scheme under 18 U.S.C. § 4248. Part II Sexual Offender Risk Assessment. NACDL Champion Magazine.

- Fabian, J.M. (2007). Adam Walsh Child Protection and Safety Act: Legal, psychological, aspects of the new civil commitment law for federal sex offenders. NLADA Cornerstone, 29(2).
- Fabian, J.M. & Friedman, I. (2007). Get tough on sex offenders: The Adam Walsh Act & Ohio Senate Bill 10. Law & Fact, 83(2).
- Fabian, J.M. (2007). How to deal with difficult clients from a mental health perspective. NACDL Champion Magazine.
- Fabian, J.M. (2007). How to utilize forensic psychological evaluations within internet online solicitation and pornography sex crime cases. TCDLA, The Voice for the Defense.
- Fabian, J.M., & Gideon, A.F. (2007). The law and psychology in workers' compensation claims. Law & Fact, 83(3).
- Fabian, J.M. & Lazarus, J. (2007). Considering *Roper v. Simmons* in waiver/bindover proceedings. Law & Fact, 83(2).
- Fabian, J.M. (2007). Megan's law and sexual violence risk assessment. Law & Fact, 83(1).
- Neller, D., & Fabian, J.M. (2007). Trauma and its link to violence. Center for Crime and Justice Studies-Criminal Justice Matters

Fabian, J.M. (2006). Forensic psychological/psychiatric evaluations in mortgage foreclosure cases: a clinical and legal perspective. Law & Fact, 82(4).

Fabian, J.M. (2004). Psychologists as expert witnesses in the courtroom: an overview of forensic psychology. Law & Fact.

#### Book Reviews

Fabian, J.M. (2011). Book review of C.D. Rostow & R.D. Davis. *A Handbook for Psychological Fitness-for-Duty Evaluations in Law Enforcement.*

Fabian, J.M. (2009). Book review of Ira Packer. *Evaluation of Criminal Responsibility.* In *Forensic Psychology Unbound.*

Fabian, J. M. (2015). Review of: Hynan, D. (2014). *Child custody evaluation New theoretical applications and research.* Illinois: Charles C. Thomas, Publisher, Ltd. 254 pages. ISBN-13: 978-0398080945. *Open Access Journal of Forensic Psychology, 7, 56-63.*

#### ACADEMIC APPOINTMENTS

University of Texas Dell Medical School  
Department of Psychiatry Training for  
Psychiatric Residents  
Faculty Forensic Psychiatry Fellowship

Case Western Reserve University Department  
of Psychological Sciences Adjunct Professor:  
*“Cognitive and Neuropsychological Assessment”*

Cleveland State University-Department of Psy-  
chology Adjunct Professor: *“Forensic Psychology  
and the Law” “Psychology of Violence”*

## EDUCATION

Fielding Graduate Institute  
*Bethesda, Maryland*  
Completion of Postdoctoral Neuropsychology  
Certificate Program  
Supervisor, Allan Mirsky, Ph.D., ABPP-CN  
Board Certified Clinical Neuropsychologist  
200 Hours of Direct Clinical Supervision  
including 70 personal cases and approximately  
300 additional postdoctoral student cases

Cleveland – Marshall College of Law  
Cleveland, Ohio  
J.D., Juris Doctor, conferred May 24, 2003

Landmark Case Seminar, American Psychiatry  
& Law Society, instructed by Phillip Resnick,  
M.D., forensic psychiatrist, July, 2002-April, 2003

Chicago School of Professional Psychology  
*Chicago, Illinois*  
APA Approved doctoral program in Clinical  
Psychology  
Psy. D., Doctorate of Psychology, Conferred with  
Honors, August 31, 1999 Dissertation Title:  
*“Adult Criminal Behavior and Morality:  
Analysis of Moral Reasoning in Offenders and  
Non-Offenders”*

Chicago School of Professional Psychology  
*Chicago, Illinois*  
 Master of Arts, Clinical Psychology

University of Cincinnati  
*Cincinnati, Ohio*

Master of Arts, Psychology

Thesis Title: "The Impact of Discipline and Supervision Practices and the Etiology of Antisocial Personality Disorder"

University of Cincinnati  
*Cincinnati, Ohio*

Bachelor of Arts, Political Science and Psychology

#### Forensic Psychology & Law Experiences

Forensic Psychologist *Court Psychologist-Travis County Court Psychologist*  
 Conduct court ordered competency to stand trial evaluations

Forensic Psychologist *Independent Practice- Forensic & Clinical Psychology (Multi-state practice) Clinical/ Forensic Neuropsychology Pretrial Forensic Psychological Evaluations: Competency to Waive Miranda Rights, Competency to Stand Trial, Sanity, Mens Rea, Diminished Capacity, Posttraumatic Stress Disorder (PTSD) and PTSD related self-defense, Battered Women's Syndrome Risk Assessment: Sexual Violence (Megan's Law and Civil Commitment of Sexually*



Violent Predators, Violence  
Risk Assessment

*Capital Litigation:* Competency  
to Waive Appeals, Mitigation  
& Execution; Mitigation at  
Capital Sentencing; Mental  
Retardation Evaluations;  
Future Dangerousness

*Juvenile Forensic Psychological Evaluations:* Competency  
to Waive Miranda Rights,  
Competency to Stand Trial,  
Mens Rea, Waiver to Adult  
Court, Juvenile Sex Offender  
Evaluation, Juvenile  
Homicide

*Law Enforcement Evaluations:*  
Pre-employment screening and  
fitness for duty evaluations

*Civil Forensic Psychological Evaluations:* Personal Injury  
Examinations in Torts for  
Emotional Distress, Assessing  
Employment Discrimination  
and Harassment Tort Claims,  
Disability and Workers'  
Compensation claims; Fitness  
for Duty Evaluations with  
Law Enforcement

*Forensic Neuropsychological Evaluations:* Evaluate criminal  
trial defendants and civil  
claimants relevant to cogni-  
tive and neuropsychological  
functional abilities including  
language, memory, visuospatial

construction, attention, and executive functioning. Integrate data to statutory and legal referral questions.

Cuyahoga County Court of Common Pleas  
Juvenile Court Division

County of Cuyahoga Juvenile Diagnostic  
Clinic

*Cleveland, Ohio*

Consulting psychologist performing delinquency-disposition/mitigation and treatment evaluations, competency to stand trial, violence/sexual violence risk assessments, bindover/waiver to adult court evaluations. Provide child custody evaluations and testimony as well as parenting rights and responsibilities examinations.

Forensic Psychologist State Operated Forensic  
Services at Minnesota  
Security Hospital

*St. Peter, Minnesota*

Provided specialized forensic evaluation services to the courts and comprehensive services to assigned Forensic Services patients. Forensic evaluations include: competency to stand trial, not guilty by reason of insanity, Commitment evaluations including Mentally Ill, Mentally Ill and Dangerous, Sexually Dangerous Persons, Sexual Psychopathic Personality. Provided expert consultation and testimony to courts and special review

boards. Provided technical consultation and direction to a broad spectrum of other clinicians, the courts, and community care providers in the field of forensic psychology. Provided specialized consultation to treatment teams in multiple programs serving the mentally ill, chemically dependent, developmentally disabled, and sex offender populations throughout the State. Operated Forensic Services network in Minnesota. Provided in depth evaluation and training relevant to violence and sexual violence risk assessments.

Forensic Psychologist  
Consultant

Federal Bureau of Prisons-  
Federal Correctional Institution  
*Waseca, Minnesota*

Performed pre-trial forensic psychological evaluations and expert testimony for federal courts, including: competency to stand trial, not guilty by reason of insanity, and violence risk.

Forensic Psychologist  
Court Psychologist

Forensic Psychiatric Clinic of  
Lake County Court of Common  
Pleas & Adult Probation  
Department  
*Lake County, Ohio*

Performed pre-trial forensic psychological evaluations

including: competency to stand trial, not guilty by reason of insanity, competency to testify as a witness, and competency to waive Miranda rights. Conducted presentence and pre-parole Sex Offender Classification (HB180) evaluations for community registration and notification pursuant to Ohio's Megan's Law. Collaborated with the sex offender registration and notification deputy officer regarding sexual offenders released into the community. Consulted with detectives regarding internet pornography cases. Performed violence risk assessments of offenders and mentally ill offenders, conditional release evaluations, presentence mitigation evaluations including psychiatric factors in the crime, psychological status, and psychiatric recommendations regarding disposition, drug and alcohol dependency mitigation evaluations, and Treatment in Lieu of Conviction sentencing evaluations. Consulted with judges, prosecutors, defense attorneys, and probation/parole departments regarding special cases and sentencing recommendations.

Death Penalty  
Evaluations

Provided expert testimony for the court.

Assessed inmate crises in the jail and occasional suicide risk assessments. Provided in-service training to probation staff, attorneys, and judges. Assessed patient psychiatric medication needs with jail psychiatrist.

*Post Doctoral Supervisors (1999):* Sandra McPherson, Ph.D., Dee Konick, Ph.D., Todd Gates, M.D

Ohio- Ohio Public Defender Commission, Ohio Attorney Generals Office common pleas court appointments, county common pleas, and court appointed defense counsel. Evaluated defendants for death penalty mitigation, post-conviction appeal evaluations, competency to be executed, competency to waive appeals, mental retardation claims pursuant to *State of Ohio v. Lott* and *Atkins v. Virginia*.

Consultant to Forensic Psychiatric Clinic, Public Defenders Offices, Area Common Pleas Courts, Prosecutors' Offices, Private Defense

*Forensic Psychiatric Center of Northeast Ohio, Inc., Youngstown, Ohio Cuyahoga County, Ashtabula County,*

*Ohio Public Defenders Commission Portage, Geauga, Muskingham County Common Pleas Courts Cuyahoga and Summit County Prosecutor's Offices*

Performed evaluations including: not guilty by reason of insanity competency to stand trial and waive Miranda rights, Sex Offender Classification

Consulting Psychologist  
Juvenile Court

Cuyahoga County Court of Common Pleas Juvenile Court Division

County of Cuyahoga Juvenile Diagnostic Clinic

*Cleveland, Ohio*

Consulting psychologist performing delinquency-disposition/mitigation and treatment evaluations, competency to stand trial, violence/sexual violence risk assessments, bindover/waiver to adult court evaluations.

Forensic/Clinical  
Psychology Intern

(Full APA Accreditation) *Northwest Ohio Consortium for Internship Training in Professional Psychology Medical College of Ohio Toledo, Ohio*

Performed forensic psychological evaluations for the

courts. Provided expert witness court testimony for sexual predator hearings. Evaluations included: Sex Offender Classification (HB180), violence risk assessment, competency to stand trial, not guilty by reason of insanity, presentence, presentence drug dependency, observed juvenile bindover and child custody and visitation evaluations. Conducted diagnostic assessments for sex offenders. Co-facilitated sex offender treatment groups through the Sex Offender Treatment Program (SOTP), and anger management treatment group. Conducted individual psychotherapy, psychological testing, and diagnostic assessments with clients from Division of Work Release, Lucas County Correctional Treatment Facility, Lucas County Jail, Lucas County Adult Probation Department, United States Probation/Parole, and two community mental health centers. Provided consultation services to various community agencies. Presented didactics con-

cerning such topics as psychotherapy and sexual recidivism. Attended clinical case and staff meetings. Observed court expert witness testimony.

*Supervisor:* Jon Pansky, Ph.D., Alice Holly, Ph.D.

Other Rotations Completed *Flower Rehabilitation Center*

Activities:

Conducted neuropsychological screens for neuropsychological deficits with adults who have or are suspected of having neurological damage or disease states. Identified atypical performance on neuropsychological assessment instruments and referred patients for neuropsychological evaluations. Critically reviewed neuropsychological reports and applied evaluation results in treatment issues. Participated in forensic evaluations related to neurological damage as well as consultations to the general hospital floors.



*University of Toledo  
Counseling Center and  
Student Medical Center*

Activities:

Conducted intake evaluations, individual therapy, and couples therapy. Participated in staff and service meetings, case preparations, and crisis stabilization counseling. Provided diagnostic and evaluation services. Provided counseling for international psychotherapy. Provided preventative and educational functions, including seminars and workshops on sexuality, rape prevention, and consultation with various university offices.

*Supervisor:* Jean Haefner,  
Ph.D.

*Harbor Behavioral  
Healthcare*

Activities:

Co-facilitated juvenile sex offender treatment group based on cognitive/behavioral relapse prevention model.

*Supervisor:* Bob Cooley,  
Ph.D.

Student Intern *Cuyahoga County Prosecutors Office  
Cleveland, Ohio*

Shadowed assistant county prosecutors and public defenders in following assignments: Major Trial Division, Drug Unit, Child Protection Counsel (Child Sex Crimes Unit), Appeals Division, and General Legal Counsel Division. Exposed to Mentally Disordered Offenders Program and Juvenile Justice System.

Therapy Practicum Student *Metropolitan Correction  
Center Federal Bureau of  
Prisons  
United States Department of  
Justice  
Chicago, Illinois*

Provided individual and group psychotherapy to inmates and individual treatment to sex offenders. Performed psychological intake assessments, structured clinical interviews and assessments, substance abuse assessments for treatment, forensic screens, fitness for disciplinary hearing officers, and suicide risk assessment. Wrote case notes, formulated treatment plans and wrote termination notes under supervision of licensed clinical psychologists. Co-facilitated three group therapies, including: anger management group,

substance abuse group, and values group. Attended medication clinics with staff psychologist and psychiatrist. Attended department head staff meetings. Attended hostage negotiation training. Participated in panel interviews of potential employees. Facilitated communication skills training for officers. *Completion of 900 clinical hours.*

*Supervisors:* Daniel Greenstein, Psy.D., John Pindelski, Ph.D.

Diagnostic Assessment *Isaac Ray Center and Section*  
 Practicum Student *on Psychiatry and Law*  
 (Full APA *Cermak Health Services for*  
 Accreditation) *Cook County Department of*  
*Corrections*  
*Chicago, Illinois*

Activities:

Performed intelligence and personality assessments (selected, administered, scored, and interpreted psychological batteries) with male and female inmate population under supervision of licensed clinical psychologist. Psychological evaluations included standard cognitive and personality tests in addition to forensic tests. Conducted psychological screenings in Intensive Treatment Unit. Provided individ-

ual therapy, facilitated and co-facilitated four structured group therapies, including: anger management group, victimization group, self-esteem group, and values group. Facilitated bi-weekly substance abuse support groups for dual diagnosis unit. Attended medication clinics with psychologist and psychiatrist. Participated in case conferences and treatment team staffings. Attended didactics for mental health staff. Participated in court ordered forensic evaluation at Cook County Court Psychiatric Unit.

*Completion of 788 clinical hours.*

*Supervisors:* Carl Alaimo, Psy.D., Gary B. Kanuik, Psy.D.

## Neuropsychology & Law Experiences

### Clinical Neuropsychology

Cuyahoga County Court of Common Pleas  
Juvenile Court Division

County of Cuyahoga Juvenile Diagnostic Clinic  
*Cleveland, Ohio*

Consulting neuropsychologist performing delinquency-disposition/mitigation and treatment evaluations, competency to stand trial, violence/sexual violence risk assessments, bindover/waiver to adult court evaluations. Special emphasis with providing neuropsych-

chological assessment with juvenile delinquents with histories of ADHD, learning disability, mental retardation, traumatic brain injury, epilepsy, and neurodevelopmental risk factors.

The Center for Neuropsychological Services (CNS) in the University of New Mexico Hospital and Department of Psychiatry at the University of New Mexico Health Sciences Center (UNM HSC) is the only Level One Trauma Facility and medical school in the state. The CNS receives referrals for inpatient and outpatient neuropsychological evaluations and/or consultation from a variety of departments within the UNM HSC, including Family Practice and Community Medicine, Neurology, Neurosurgery, Internal Medicine, Psychiatry, and Pediatrics.

Evaluate of a variety of patients (children, adolescents, adults, and geriatrics) with diverse neuropathology and psychopathology. Such conditions and evaluations include traumatic brain injury, epilepsy, mental retardation, cerebral-vascular disorders, brain tumor, ECT, multiple sclerosis, HIV/AIDS, dementia, ADHD, chronic medical conditions, children, adolescents, and adults with developmental disorders and mental retardation, and various psychiatric disorders including schizophrenia, bipolar disorder, substance abuse, and personality disorders. CNS provides pre and postoperative neuropsychological evaluations and Wada testing for epilepsy surgery candidates. Evaluation of forensic-legal issues including competency to consent to treatment, decisional capacity, and guardianship. Evaluation of University athletes (men's and women's soccer,

and men's football) for neuropsychological pre and post concussion study. Assisted behavioral neurologist at UNM Mind Institute with evaluating clinical neurology patients. Provided regular consultations to both neurology and psychiatry physicians and medical residents.

Participated in clinical neuropsychology rotation in the Neuropsychology Polytrauma Unit at Raymond G. Murphy VA Medical Center New Mexico VA Health Care System. Evaluated a variety of patients (adults and geriatrics) with diverse neuropathology and psychopathology, including special emphasis of traumatic brain injury, substance abuse, ADHD, and PTSD. Specific clinical attention was provided in neurocognitive assessment of veterans with both PTSD and traumatic brain injury. Provided forensic evaluations regarding competency to consent to treatment and competency to make medical decisions. Attended clinical neuropsychology rounds at the Albuquerque Veteran's Administration Hospital as well as psychiatry, neuroradiology, and neurology rounds at the University of New Mexico School of Medicine. Supervision by John H. King, Ph.D., ABPP-CN and Rex Swanda, Ph.D., ABPP-CN

Applewood Centers, Inc.

*Cleveland, Ohio*

Conduct neuropsychological and psychological evaluations for at risk children and adolescents. Consult with treating mental health professionals regarding cognitive, neuropsychological, psychiatric, and psychological functioning of children.

Neurology & Neuroscience Associates, Inc.  
*Akron, Ohio*

Provide neuropsychological and clinical psychological assessments on brain injured patients, patients with dementia and seizure disorders

#### Specialized Psychopathy Training

FAA HIMS Basic Education Education Seminar  
Occupational Education Programming  
FAA Fitness For Duty Evaluations and  
CogScreen Fundamentals  
*Denver, Colorado*

Stable 2007 Acute Training by Andrew Harris,  
Ph.D. *Montreal, Canada*

Monarch BTI Penile Plethysmograph Training  
*Salt Lake City, Utah*

Hare Psychopathy Checklist Revised training  
(Hare PCL-R) with Robert Hare,

Hare Psychopathy Checklist Revised and Sex  
Offender Risk Assessment Training with Robert  
Hare, Ph.D., Dennis Doren, Ph.D., Douglas  
Epperson, Ph.D., Karl Hanson, Ph.D., Vernon  
Quinsey  
*Madison, Wisconsin*

#### PRESENTATIONS

November 4, 2016 Volition, the Brain, Daubert, and  
Sexually Violent Predators  
Association for the Treatment of  
Sex Abusers *Orlando, Florida*

October 21, 2016 Developing Mental Health Defense  
Themes Austin Bar Association  
Death Penalty Symposium  
*Austin, Texas*

- May 31, 2016 University of Texas Dell Medical School Department of Psychiatry  
Capital Death Penalty Mitigation: Understanding the Law  
Mock Trial Seminar  
*Austin, Texas*
- April 27, 2016 Forensic Neuropsychological Assessment: Understanding its Application and Utility in Capital Litigation  
The Center for American and International Law  
*Plano, Texas*
- May 4, 2016 Forensic Psychological and Neuropsychological Evaluations in Competency To Stand Trial Cases-Part 2, Understanding the Dusky Standard  
Travis County Criminal Bar  
*Austin, Texas*
- March 30, 2016 Forensic Psychological and Neuropsychological Evaluations in Competency To Stand Trial Cases  
Travis County Criminal Bar  
*Austin, Texas*
- March 24, 2016 Forensic Psychological and Neuropsychological Evaluations for the Courts Williamson County Criminal Bar Association  
*Georgetown, Texas*



- November 20, 2017 Traumatic Brain Injury and PTSD  
Texas Criminal Defense  
Lawyers Association  
Capital Litigation and Mental  
Health  
*South Padre Island, Texas*
- November 17, 2015 University of Texas Health  
Sciences Center San Antonio  
Department of Psychiatry  
Introduction to Forensic  
Psychological/Psychiatric  
Evaluations for the Courts  
*San Antonio, Texas*
- November 10, 2015 University of Texas Health  
Sciences Center San Antonio  
Department of Psychiatry  
Introduction to Forensic Psycho-  
logical/Psychiatric Evaluations  
of Legal Competencies  
*San Antonio, Texas*
- November 5, 2015 National Academy of Neuropsychology  
Poster Presentation  
Evaluating a Sexually Dangerous Person Rape Case in Light of  
Antisocial Burnout And Onset of  
Mild Neurocognitive Disorder  
*Austin, Texas*

- November 3, 2015 University of Texas Health  
Sciences Center San Antonio  
Department of Psychiatry  
Introduction to Clinical  
Neuropsychological Testing and  
Assessment  
*San Antonio, Texas*
- October 30, 2015 Bexar County Criminal Defense  
Lawyers Association  
Forensic Psychological and  
Neuropsychological Evaluations  
for the Courts  
*San Antonio, Texas*
- March 13, 2015 Mental Health, Neuropsychological  
Testing and Why it  
Matters:  
The Role of the Forensic  
Psychologist and Neuropsychologist  
in Capital Proceedings  
Tennessee Association of  
Criminal Defense Lawyers  
*Chattanooga, TN*
- January 24, 2015 The Forensic Psychological and  
Neuropsychological Evaluation  
in Death Penalty Cases:  
Mitigating Murder at Capital  
Sentencing  
Alabama Criminal Defense  
Lawyers' Association  
*Birmingham, AL*

- November 21, 2014 Changes to DSM 5: And How They May Affect Capital Criminal Defense Practice  
Ohio Association of Criminal Defense Lawyers  
*Columbus, OH*
- November 20, 2014 The Forensic Neuropsychological Evaluation in Death Penalty Cases  
Texas Criminal Defense Lawyers Association  
*South Padre Island, TX*
- July 17, 2014 Neuropsychological Evaluations in Sexually Dangerous Persons Cases  
New York Mental Hygiene Legal Services  
*Utica, NY*
- December 8, 2013 Substance Use and the Courts  
Zukerman Daiker and Lear LPA and Cleveland Bar Association  
*Cleveland, OH*
- November 1, 2013 Neuropsychological Assessment in Sexually Violent Predator Civil Commitment Proceedings  
ATSA Annual Conference  
Chicago, IL

- July 14, 2013 Neuropsychology, neuroscience, volitional impairment and sexually violent predators: A review of the literature and the law and their application to civil commitment proceedings  
33rd International Academy of Law & Mental Health  
*Amsterdam, Netherlands*
- May 16, 2013 Case Presentation: Forensic Evaluation of Not Guilty by Reason of Insanity in a School Shooter with Adolescent Schizophrenia  
Case Western University and University of Cincinnati Schools of Medicine  
Departments of Forensic Psychiatry  
Northcoast Behavioral Healthcare Inc.  
*Sagamore Hills, OH*
- May 15, 2013 Forensic Neuropsychology and Violence  
American Academy of Forensic Psychology  
Louisville, Kentucky
- May 2, 2013 Alabama/Georgia Criminal Defense Lawyer Associations  
Forensic Neuropsychological Evaluations of Clients with Traumatic Brain Injury (TBI)  
*Panama City, FL*

- March 1, 2013 Attorney's Guide to Child  
Custody Evaluations  
The Role of the Forensic  
Psychologist  
National Business Institute  
*Independence, OH*
- November 16, 2012 Veterans, PTSD, and Traumatic  
Brain Injuries  
Death Penalty Seminar, Ohio  
Association of Criminal Defense  
Lawyers  
*Columbus, OH*
- June 1, 2012 Risk Assessment Issues for Sex  
Offenders with Neurodevelop-  
mental and Intellectual Disabil-  
ities.  
Disabilities  
New Jersey Association for the  
Treatment of Sexual Abusers,  
Inc.  
*Newark, NJ*
- October 13, 2011 Neuropsychological evaluations  
for the courts: A primer for  
criminal attorneys  
Cuyahoga Public Defender's  
Office & Cleveland Criminal  
Defense Lawyer's Association  
*Cleveland, OH*
- October 15, 2011 Miranda & Competency Issues  
in Death Penalty Litigation  
Arkansas Criminal Defense  
Lawyer's Association  
*Fayetteville, AR*

- September 20, 2011 Utilizing forensic expert witnesses in sexual violence risk assessments & Utilizing an Expert in Sex Abuse Allegations  
Alabama Criminal Defense Lawyers' Association  
*Huntsville, Alabama*
- July 17-23 2011 Neuropsychological Correlates in Violent and Homicidal Offenders: A Legal and Neuroscience Perspective  
32nd International Academy of Law and Mental Health  
*Berlin, Germany*
- June 17, 2011 Death Penalty Mitigation and the Roles of the Forensic Psychologist and Clinical Neuropsychologist  
Clark County Public Defender  
*Las Vegas, Nevada*
- January 25, 2011 Confirming Competencies in Death Penalty Proceedings  
Alabama Criminal Defense Lawyers Association  
*Birmingham, Alabama*
- October 23, 2010 God's Law, Man's Law, and the Meaning of M'Naughten Wrongfulness  
American Academy of Psychiatry and Law  
*Tucson, Arizona*

- October 1, 2010      Neurocognitive      Development  
and Traumatic Brain Injury in  
Murder Defendants: The Role of  
the Neuropsychologist  
Virginia      Indigent      Defense  
Capital Defenders  
*Norfolk, Virginia*
- July 16, 2010      Neurobiological      Aspects      of  
Violence      and      Aggression:  
Neurocognitive Development &  
Traumatic Brain Injury Risk  
Factors in Sexual Homicide Cases  
The Mind and Criminal Defense  
*Plano, Texas*
- April 15, 2010      Assessing Competency to Waive  
Miranda Rights, Suggestibility,  
and Police- Induced Confessions  
Cleveland      Criminal      Defense  
Lawyer's Association  
*Cleveland, Ohio*
- July 23, 2009      Anatomy of a filicide: The Amber  
Hill case  
Cuyahoga      County      Court  
Psychiatric Clinic  
*Cleveland, Ohio*
- July 16-17 2009      Post-Traumatic Stress Disorder,  
Traumatic      Brain      Injury,  
Neuroscience and Violence  
The Mind and Criminal Defense  
Texas Defender Service  
*Plano, Texas*

- June 25, 2009 Neuropsychological and Neurological Correlates in Violent and Homicidal Offenders: A Legal and Neuroscience Perspective  
International Conference: Violence in Public Places and Institutions  
*University of Lancashire, Great Britain*
- June 20, 2009 How to Utilize Forensic Psychological Evaluations within Internet Solicitation and Child Pornography Sex Cases  
Sexually Violent Predator Risk Assessment and the Law  
Alabama Criminal Defense Lawyers Association  
*Pensacola, Florida*
- November 21, 2008 Examining Competency to Stand Trial  
Ohio Association of Criminal Defense Lawyers  
*Columbus, Ohio*
- August 14, 2008 Rethinking "Rational" in the Dusky Standard: Assessing the CWRU Killer's Functional Abilities  
Cuyahoga County Court Psychiatric Clinic  
*Cleveland, Ohio*



- July 17-18      The Mind and Criminal Defense  
 The Issue of Competency  
 Throughout Your Proceedings  
 Freewill: What Is It and What  
 Can We Do With It?  
 Insanity Evaluations and the  
 Concept of Wrongfulness  
 The Center for American and  
 International Law  
*Plano, Texas*
- April 25, 2008      Indigent Criminal Defense:  
 Advanced Skills for the  
 Experienced Practitioner  
 Understanding and Defending  
 the Mentally Impaired  
*Richmond, VA*
- January 25, 2008      The Alabama Criminal Defense  
 Lawyers Association  
 Loosening the Death Belt XII:  
 Back to Basics  
 Mental Health Evidence for  
 Both Phases  
*Birmingham, Alabama*
- September 20, 2007      Indiana Death Penalty Conference  
 Evaluating Atkins Mental  
 Retardation Claims  
*Merrillville, IN*
- August 2, 2007      Forensic      Psychological/  
 Psychiatric Evaluations in  
 Competency to Stand Trial  
 Cases: Rethinking Rational in  
 the *Dusky* Standard  
 NACDL  
*San Francisco, CA*

- June 2, 2007 Forensic Psychological  
Evaluations for the Courts  
Cuyahoga County Criminal  
Defense Lawyers Association  
*Mountaineer, West Virginia*
- May 5, 2007 Evaluating Sexual Homicide At  
Capital Sentencing  
American College of Forensic  
Psychology  
*23rd Annual Symposium, Santa  
Fe, New Mexico*
- April 20, 2007 Forensic Mental Health and the  
Death Penalty  
*Mississippi College of Law*
- March 23, 2007 A Survey of the Literature on  
Risk Factors for Juvenile  
Offenders Capital Defense-  
Punishment Phase of a Capital  
Trial  
The Center For American And  
International Law  
*Plano, Texas*
- March 13, 2007 Megan's Law and Sex Offender  
Risk Assessment: The Role of  
the Forensic Psychologist  
Baldwin Wallace College,  
College of Arts and Sciences  
Departments of Sociology/  
Criminology and Psychology  
*Cleveland, Ohio*

- February 23, 2007 Forensic Psychological Evaluations in Juvenile Competency Cases  
Cuyahoga County Public Defenders Office (Juvenile Division)  
*Cleveland, Ohio*
- June 30, 2006 2006 Office of the State Appellate Defender of Illinois  
Center for Justice in Capital Proceedings  
DePaul University College of Law  
Mitigating Madness and Sexual Deviance: 2 Capital Case Examples  
*Chicago, Illinois*
- Consultant to PESI Healthcare Inc. 2005-2006  
Seminar: *Dangerous and Sexually Violent Clients*  
Portland and Eugene, Oregon, March 9-10, 2006  
Appleton and Brookfield, Wisconsin, November 3-4, 2005  
Trumbull and Rocky Hill, Connecticut, Warwick, Rhode Island  
October 5-7, 2005

- October 27, 2005      Testimony to Vermont House  
Judiciary Committee on Civil  
Commitment Legislation for  
Sexually Violent Offenders and  
Violent Offenders  
State Operated Forensic  
Services of Minnesota  
Violence and Sexual Violence  
Risk Assessment Training  
*St. Peter, Minnesota*
- June 29, 2005      Hennepin County Bar  
Association, 7th Annual Civil  
Commitment Seminar  
Risk Assessment of Sexual  
Dangerousness  
*Minneapolis, Minnesota*
- May 17, 2003      Ohio Department of  
Rehabilitation and Correction,  
Adult Parole Authority  
Dynamic Risk Factors in Sexual  
Offending  
*Cleveland, Ohio*
- August 11, 2003      Court of Common Pleas, County  
of Lake  
Violence Risk Assessment of  
Mentally Ill Offenders  
*Painesville, Ohio*
- July, 2001      *Ohio Association of Criminal  
Defense Lawyers*  
Treatment in Lieu of Conviction  
*Mountaineer, West Virginia*
- December, 2000      *Eastlake Police Department*  
Stalking  
*Painesville, Ohio*

Professional Memberships American Psychological  
Association Member  
Division 41 American  
Psychology-Law Society  
Member  
American Academy of  
Clinical Neuropsychology  
National Academy of  
Clinical Neuropsychology

**DANIEL J. RESCHLY****Biographical Summary**

Dan Reschly is Professor of Education and Psychology Emeritus in Peabody College, Vanderbilt University where he Chaired Department of Special Education from 1998-2006, gaining the #1 national ranking for the first time in 2003. From 1975 to 1998 Reschly directed the Iowa State University School Psychology Program where he achieved the rank of Distinguished Professor of Psychology. Reschly earned graduate degrees at the University of Iowa and the University of Oregon and served as a school psychologist in Iowa, Oregon, and Arizona. Reschly has published on identification of disabilities (Mild ID, SLD, minority issues), response to intervention, and policy issues in special education. In recent years he has served as an expert witness in trials involving claims of mild intellectual disability in death penalty cases. In 2015 Reschly was recognized as the second most cited author in the history of school psychology and is among the top 5 contributors to service and leadership. He has been active in state and national leadership roles including President of the National Association of School Psychologists (NASP), Editor of the *School Psychology Review*, Chair of NASP-NCATE Graduate Program Approval, President of the Society for the Study of School Psychology, and Chair of the Council of Directors of School Psychology Programs. Reschly served on the National Academy of Sciences Panels on *Standards-based Reform and the Education of Students with Disabilities* and *Minority Students in Special and Gifted Education*. He chaired the National Academy Panel on Dis-

*ability Determination in Mental Retardation*. He has received the NASP Lifetime Achievement Award, three NASP Distinguished Service Awards, the Stroud Award, appointment to Fellow of the American Psychological Association and the American Psychological Society, 1996 Outstanding Alumnus University of Oregon, 2000 NASP Lifetime Achievement Award, and the 2007 NASP Legend Award.

### **Personal Data**

Birthplace: Wayland, IA – Married, three children  
 Address: 1402 Lille Ct., Franklin TN 37067-8584  
 Telephone: Office/Cell 615-708-7910;  
 Home 615-790-7262;  
 e-mail: dan.reschly@gmail.com or  
 dan.reschly@vanderbilt.edu

### **Educational Background**

BS	1966 Iowa State University, Honors Program, History/Psychology/Education
MA	1968 University of Iowa, NDEA Fellowship, School Psychology/Special Education
PhD	1971 University of Oregon, EPDA Fellowship, Educational Psychology/School Psychology

### **Professional Employment History**

1967-1969:	School Psychologist, Louisa County Schools, Wapello, IA
1969:	Director of Summer Head Start Program, Louisa County, IA

- 1970-1971: School Psychology Intern, Albina Youth Opportunity Center and Portland Oregon Public Schools
- 1971-1975: Assistant Professor, Department of Educational Psychology, University of Arizona, Tucson, AZ
- 1975-1998: Associate Professor/Professor/Distinguished Professor and Director of the School Psychology Program, Joint Appointment to Department of Psychology (75%) and Professional Studies in Education (25%), Iowa State University (Promotions: to Professor in 1980; to Distinguished Professor 1991)
- 1996-1998: Associate Dean, College of Education, Iowa State University and Director of Research Institute for Studies in Education
- 1998-2014 Professor of Education and Psychology and Chair (1998-2006), Department of Special Education, Peabody College, Vanderbilt University
- 2014- Professor of Education and Psychology Emeritus, Department of Special Education, Peabody College, Vanderbilt University

### **Licensure**

Nationally Certified School Psychologist

State Licensure as a School Psychologist in Iowa, Oregon, and Arizona



Iowa Teaching Certification Endorsements in  
Special Education, K-12 Teaching Endorsement in  
Mental Retardation, Secondary Social Studies

### **Major Areas of Professional Interest**

- Teaching: Psychology and education of persons with disabilities, response to intervention, behavioral problem solving, and special education policy
- Research: School psychology services, response to intervention, high incidence disabilities (mild MR and SLD), minority overrepresentation

### **Professional Memberships**

National Association of School Psychologists, American Psychological Association (Divisions 15, 16, & 33), American Association on Intellectual and Developmental Disabilities, Council for Exceptional Children, Learning Disabilities Association of America, International School Psychology Association, Tennessee Association of School Psychologists

### **Publications (refereed journals, book chapters and books)**

- Reschly, A. L., & Reschly, D. J. (2014). School consultation and response to intervention: Convergence, divergence, and future directions for research and practice. In W. P. Erchul & S. M. Sheridan (Eds), *Handbook of research in school consultation* (pp. 495-512). New York: Routledge.
- Reschly, D. J. (2014). Identifying and treating educational disabilities. In I. B. Weiner & R. K. Otto (Eds.). *Handbook of forensic psychology (4th ed.)* (pp. 197-218). New York: John Wiley.

- Reschly, D. J. (2014). Response to intervention and the identification of specific learning disabilities. *Topics in Language Disorders, 34*, 39-58.
- Oliver, R. M. & Reschly, D. J. (2014). Special education teacher preparation in classroom organization and behavior management. In, P. T. Sindelar, E. D. McCray, M. T. Brownell, & B. Lignugaris-Kraft (Eds.). *Handbook of research on special education teacher preparation* (288-302). New York: Routledge, Taylor, & Francis.
- Reschly, D. J. (2013). Assessing mild intellectual disability: Issues and best practices. In D. H. Saklofske, C. R. Reynolds, & V. L. Schwann, & (Eds.). *The Oxford handbook of child psychological assessment* (pp. 683-697). New York: Oxford University Press.
- Gresham, F. M., & Reschly, D. J. (2011). Standard of practice and Flynn Effect testimony in death penalty cases. *Intellectual and Developmental Disabilities, 49*(3), 131-140.
- Oliver, R. M., Wehby, J. H., Reschly, D. (2011). *The effects of teachers' classroom management practices on disruptive or aggressive student behavior. Campbell Systematic Reviews, 4*, 1-55. <http://campbellcollaboration.org>. Also listed in *Crime Solutions* at [www.crimesolutions.gov](http://www.crimesolutions.gov)
- Oliver, R. M., & Reschly, D. J. (2010). Special education teacher preparation in classroom management: Implications for students with emotional and behavioral disorders. *Behavioral Disorders, 35*, 188-199.
- Gresham, F. M., Reschly, D. J., & Shinn, M. R. (2010). RTI as a driving force in educational

- improvement: Historical, legal, research, and practice perspectives. In M.R. Shinn & H.M. Walker (Eds.). *Interventions for achievement and behavior problems in a three-tier model including RTI* (2nd ed., pp. 47-77). Bethesda, MD: National Association of School Psychologists.
- Reschly, D. J., & Bergstrom, M. K. (2009). Response to intervention. In T. B. Gutkin & C. R. Reynolds (Eds.) *The handbook of school psychology* (4th ed., pp. 434-460). New York: Wiley.
- Reschly, D. J. (2009). Documenting the developmental origins of mild mental retardation. *Applied Neuropsychology*, 16, 124-134.
- Reschly, D. J. (2009). *Prevention of Disproportionate Special Education Representation Using Response to Intervention*. Washington DC: Learning Point Associates. <http://www.tqsource.org/forum/documents/TQIssuePaperRTIDisproportionality.pdf>
- Reschly, D. J., & Wood-Garnett, S. (2009). *Teacher Preparation and Response to Intervention at Middle and High Schools*. Washington DC: Learning Point Associates, National Comprehensive Center for Teacher Quality. <http://www.tqsource.org/publications/September2009Brief.pdf>
- Reschly, D. J., Holdheide, L. R., Behrstock, E., & Weber, G. (2009). Enhancing teacher preparation, development and support. In L. R. Goe (Ed.), *America's opportunity: Teacher effectiveness and equity in K-12 classrooms* (pp. 41-69). Washington DC: Learning Point Associates, National Comprehensive Center on Teacher Quality.
- Reschly, D. J. (2008). School psychology RTI paradigm shift and beyond. In A. Thomas & J.

- Grimes (Eds.) *Best practices in school psychology V* (5th ed., pp. 3-15). Bethesda, MD: National Association of School Psychologists.
- Smartt, S. M., & Reschly, D. J. (2007). *Barriers to the preparation of highly qualified teachers in reading*. Chicago: Learning Point Associates, National Comprehensive Center on Teacher Quality.
- Holdheide, L. R., & Reschly, D. J. (2008). *Teacher Preparation to Deliver Inclusive Services to Students with Disabilities*. Washington DC: Learning Point Associates, National Comprehensive Center on Teacher Quality. <http://www.tqsource.org/publications/TeacherPreparationtoDeliverInclusiveServices.pdf>
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  - “Expanding roles or guild interests.” 1984, 13(4), 1-2.

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- Reschly, D. J. (1987). *Adaptive behavior in classification and programming*. St. Paul, MN: Minnesota Department of Education. Revised and expanded in 1988 for the state of Florida.
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- Reschly, D. J. (1989). Videotape: *Adaptive behavior: Designing interventions and monitoring progress*. Washington D. C.: National Association of School Psychologists.
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- Reschly, D. J., & Flugum, K. R. (1992). *Special education and related services: Characteristics of current services and implications for reform*. Des Moines, IA: Iowa Department of Education, Bureau of Special Education.
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- Reschly, D. J., & Tilly, W. D. (1997). *Effects of the systems change process on the implementation of transition services*. Des Moines, IA: Iowa Department of Education, Bureau of Special Education (32 pages).
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- Reschly, D. J., & Hughes, G. (1999, March). *Review of Special Schools Placement Data for Roma and Non-Roma Children in Ostrava, Czech Republic*. Unpublished report, Department of Special Education, Vanderbilt University, Nashville TN.
- Reschly, D. J. (2002). Change dynamics in special education assessment: Historical and cotemporary patterns. *Peabody Journal of Education*, 77(2), 117-136.
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*education teacher preparation coursework in reading, behavior, and inclusive practices.*  
Springfield, IL: Illinois State Board of Education.

**Administrative Law Judge Decisions:**

-Reschly, D. J. In Re: David F.. *Renee M. v. Mason City Community School District and Northern Trails Area Education Agency 2*, 7 D.o.E. 74, Administrative docket # 2027, May, 1989.

-Reschly, D. J. In Re: Hussun H., *Aldona H. v. Sioux City Community School District and Western Hills Area Education Agency 12*, 7 D.o.E. App. Dec. 144, Admin. Doc. #2029, June, 1989

-Reschly, D. J. In Re: Leonna N., *Vera N. v. West Burlington Community School District and Great River Area Education Agency 16*, 7 D.o.E. App. Dec. 144, Admin. Doc. #2021, October, 1989.

-Reschly, D. J., In Re: Michael H., *Des Moines Community School District v. Mary A.*, 7 D.o.E., App. Dec. 387, Admin. Doc. S.E. #13, June, 1990.

-Reschly, D. J., In Re: Christopher L., *Victoria L. v. Ottumwa Community School District and Southern Prairie Area Education Agency 15*, D.o.E. App. Dec. 125, Admin. Doc. S.E. #21, November, 1990.

-Reschly, D. J. In Re: Timothy B. (June 12, 1991), *Timothy B. v. Keokuk Community School District*, SE-35, *Individuals with Disabilities Education Law Report*, 18, 874

-Reschly, D. J., In Re: Jill C. (April 12, 1993), *Jill C. v. Sioux City Community School District*, *Individuals with Disabilities Education Law Report*, 20, 107.

-Reschly, D. J. In re: Laura L. (December 28, 1993). *Laura L. v. Burlington Community School District*, SE-96, *Individuals with Disabilities Education Law Report*, 20, 1014. -Reschly, D. J. In Re Nick B. Gail B. v. Ottumwa Community School District & Southern Prairie Area Education Agency XV, Admin. Doc. SE-102, 11 DoE App. Dec. 331, September 13, 1994, *Individuals with Disabilities Education Law Report*, 22, 740. -Reschly, D. J. In Re In re John M. Glen and Rita K., v. Des Moines Independent School District and Heartland Area Education Agency XI, Admin. Doc. SE-109, Cite as 12 D.o.E. App. Dec. 168, December, 1994. *Individuals with Disabilities Education Law Report*, 22, 176.

-Reschly, D. J. In Re Travis H. Sandra Y. v. Newton Community School District and Heartland Area Education Agency XI, Admin. Doc. SE-146, Cite as 12 D.o.E. App. Dec. 288, March, 1995. *Individuals with Disabilities Education Law Report*, 22, 915.

-Reschly, D. J. In Re Ryan U. *Burlington Community School District and Great River AEA 16 v. Mr. and Mrs. Allen Underwood*, Admin. Doc. SE-151, Cite as 12 D.o.E. App. Dec. 360, September, 1995. *Individuals with Disabilities Education Law Report*, 23, 162.

-Reschly, D. J. In Re Robert T. John T. and Leigh T. v. Marion Independent School District and Grant Wood AEA 10, Admin. Doc. SE-160, Cite as 13 D.o.E. App. Dec. 40, January 29, 1996, February 21, 1996. *Individuals with Disabilities Education Law Report*,

-Reschly, D. J. In Re Jonathan G. *Frank and Judy G. v. Cedar Rapids Community School District*, June 28, 1996.

-Reschly, D. J. In Re: Amanda S., *Amanda S. v. Webster City Community School District*, SE-185, May 22, 1997. *Individuals with Disabilities Education Law Report*, 26, 80 -Reschly, D. J. In Re: Theodor A., *Theodor A. v. Fairfield Community School District*, SE-192, September 2, 1997. *Individuals with Disabilities Education Law Report*, 26, 1090. Reschly, D. J. In Re: Stefan S. *Stefan S. v. Ankeny Community School District and Heartland Area Education Agency 11*, SE 194, March 6, 1998. *Individuals with Disabilities Education Law Report*, 27, 1007

### **Grants**

- Reschly, D., & Jipson, F. (1974-1975). Arizona Department of Education, *Prevalence of handicapped students by sociocultural group and region*. \$92,700.
- Reschly, D., & Gresham, F. (1981-1982). Federal Department of Education, *Use of social competence measures to facilitate parent/teacher involvement, and nonbiased assessment*. \$48,769.
- Reschly, D. (1985-1986). Iowa Department of Education, *Project excellence, continuing education of school psychologists*. \$26,880.
- Reschly, D., & Andre, T. (1986-1987). Iowa Department of Education, *Investigation of programs for children and youth with mental disabilities*. \$14,904.
- Grimes, J. P., & Reschly, D. (1986-1988). United States Department of Education, *Project RE-AIM*

(*Relevant educational assessment and intervention model*), total award \$175,000; ISU portion \$51,140.

- Reschly, D., & Casey, A. (1987-1988). Iowa Department of Education, *Extension and expansion of the analysis and evaluation of mental disabilities programs*, \$24,991.
- Reschly, D. J., & Reiher, T. C. (1987-1988). Iowa Department of Education, *Iowa behavior disorders research project*, \$19,602.
- Reschly, D. J. (1987). National Association of School Psychologists Contract to edit *Directory of school psychology graduate programs*, \$7,845.
- Reschly, D. J., & Reiher, T. C. (1988-1989). Iowa Department of Education, *Iowa Behavior Disorders Research Project Extension*, \$24,950.
- Reschly, D. J. (1989-1992). Bureau of Special Education, Iowa Department of Education, "Evaluation of Renewed Services Delivery System for At Risk and Handicapped Children and Youth," \$210,700.
- Peterson, C. & Reschly, D. (1994-1999). "School Psychologists in Early Childhood Preservice Training Project." Personnel Preparation Program, U.S. Department of Education. (\$433,913).
- Reschly, D. J. (1994-1996). *Evaluation of Conventional and Alternative Special Education Assessment Procedures with Diverse Populations in an Urban School Environment*. Minnesota Department of Education, Bureau of Special Education. (\$90,000).
- Fuchs, D., Reschly, D., & Deshler, D. (Co-Directors) (2001-2006). *The National Research*

*Center in Learning Disabilities*. U.S. Department of Education, Office of Special Education Programs (\$3,500,000).

- Coulter, T., Dwyer, C., Laine, S., & Reschly, D., (Principal Investigators), National Comprehensive Center on Teacher Quality, (2005-2010) \$5,000,000, US Department of Education.

Reschly is the PI for the Vanderbilt University subcontract, 2005-2006 funding at \$225,000; 2006-2007 funding at \$248,920; 2007-2008 funding at \$250,207; 2008-2009 funding at 250,000; 2009-2010 funding at \$261, 066; 2010-2011 at \$261,970; 2011-2012 at \$270,000.

### **Refereed Papers Presented**

- Reschly, D. (1972). *Rates of self-reinforcement as a function of task ambiguity and self-esteem status*. Paper presented at the meeting of the Rocky Mountain Psychological Association. Las Cruces, NM.
- Reschly, D. & Sabers, D. (1972). *An empirical study of attitudes toward open education*. Paper presented at the meeting of the Rocky Mountain Educational Research Association. Las Cruces, NM.
- Reschly, D., & Swanson, R. (1973, May). *An investigation of word difficulty of the adjective check list*. Paper presented at the meeting of the Rocky Mountain Psychological Association. Las Vegas.
- Reschly, D. (1974, March). *Diverse meanings of consultation as a means of providing school psychological services*. Paper presented at the



meeting of the National Association of School Psychologists. Las Vegas.

- Reschly, D., Brown, D., Wasserman, H., & Davis, R. (1974, March). *Use of covert modeling and self-management procedures in modifying inappropriate teacher behaviors and children's hyperactivity*. Paper presented at the meeting of the National Association of School Psychologists. Las Vegas.
- Sabers, D., Reschly, D., & Meredith, K. (1974, April). *Age differences in degree of acquiescence on positively and negatively scored attitude scale items*. Paper presented at the meeting of the National Council on Measurement in Education. San Francisco.
- Reschly, D. (1975, April). *Empirical data on traditional and pluralistic assessment procedures with culturally different children*. Paper presented at the meeting of the National Association of School Psychologists. Atlanta.
- Reschly, D. (1975, April). Chair. *Practical differences among three approaches to school psychology consultation*. Symposium conducted at the meeting of the National Association of School Psychologists.
- Reschly, D. (1975, April). *Key variables in behavioral consultation*. Paper presented at the meeting of the National Association of School Psychologists.
- Reschly, D. (1976, March). Chair. *Issues in behavioral consultation*. Symposium conducted at the meeting of the National Association of School Psychologists.

- Reschly, D. (1976, March). *Problems and tentative solutions for evaluating the outcomes of behavioral interventions in the schools*. Paper presented at the meeting of the National Association of School Psychologists.
- Reschly, D., Sabers, D., & Meredith, K. (1976, April). *Analysis of different concepts of cultural fairness using WISC-R and MAT scores from four ethnic groups*. Paper presented at the meeting of the American Educational Research Association. (ERIC Document Reproduction Service No. ED 126 111)
- Reschly, D. (1977, March). Chair. *Continuing Education for School Psychologists: Content, Method, and Means*. Symposium conducted at the meeting of the National Association of School Psychologists.
- Reschly, D. (1977, March). *School psychologists' evaluations of training programs and in service needs*. Paper presented at the meeting of the National Association of School Psychologists.
- Reschly, D. (1977, March). *Nonbiased assessment: Differing conceptions and empirical results*. Paper presented at the meeting of the National Association of School Psychologists.
- Reschly, D. (1978, March). *Predictive validity of WISC-R factor scores: Implications for nonbiased assessment*. Paper presented at the meeting of the National Association of School Psychologists.
- Reschly, D. (1978, May). *Comparison of bias in assessment using conventional and pluralistic measures*. Paper presented at the meeting of the

Council for Exceptional Children. (ERIC Document Reproduction Service No. ED 153 386)

- Reschly, D. (1979, March). Research with the WISC-R: Implications for assessment of minorities. In *Assessment of minorities*. Symposium conducted at the meeting of the National Association of School Psychologists.
- Reschly, D. (1979, March). Journal policies in school psychology. In *Editors of school psychology journals*. Symposium conducted at the meeting of the National Association of School Psychologists.
- Reschly, D. (1980, April). Journal policies in school psychology. In *Editors of school psychology journals*. Symposium conducted at the meeting of the National Association of School Psychologists.
- Reschly, D., & Kazimour, K. (1980, April). *Generalizability of SOMPA standardization data to other populations*. Paper presented at the meeting of the National Association of School Psychologists.
- Reschly, D. (1981, April). *WISC-R differential validity: Psychological evidence vs court opinions*. Paper presented at the meeting of the National Association of School Psychologists.
- Reschly, D. (1981, April). Journal policies in school psychology. In *Editors of school psychology journals*. Symposium conducted at the meeting of the National Association of School Psychologists.
- Reschly, D. (1981, April). Continuing education needs of school psychologists. In *Leadership in school psychology*. Symposium conducted at the meeting of the National Association of School Psychologists.

- Reschly, D. (1982, March). *SOMPA research: First facts*. Paper presented at the meeting of the National Association of School Psychologists.
- Reschly, D. (1982, March). *Neuropsychological vs behavioral models: To explain or to change?* Invited paper presented at the meeting of the National Association of School Psychologists.
- Reschly, D. (1983, March). *Convergent and discriminant validity of the Children's Adaptive Behavior Scale*. Paper presented at the meeting of the National Association of School Psychologists.
- Reschly, D. (1983, March). *Neuropsychological vs behavioral models: To explain or to change?* Invited paper presented at the meeting of the National Association of School Psychologists.
- Reschly, D. (1983, April). The right questions (finally): Comments on the National Academy of Sciences report on mild mental retardation classification/placement. In *Placing children in special education: Findings of the National Academy of Sciences panel*. Symposium conducted at the meeting of the American Educational Research Association, Montreal, Canada. (Invited)
- Reschly, D. J. (1984, April). *ABIC and ELP validity: The search for psychological meaning and educational relevance*. Paper presented at the meeting of the National Association of School Psychologists, Philadelphia, PA.
- Reschly, D. J. (1984, April). *School neuropsychology: Excess baggage in psychoeducational assessment*. Paper presented at the meeting of the National Association of School Psychologists, Philadelphia, PA.

- Reschly, D. J., Graham-Clay, S., & Gresham, F. M. (1984, May). *Adaptive behavior measures with mildly retarded students: The name IS the same but the results are different*. Paper presented at the meeting of the American Association on Mental Deficiency.
- Reschly, D. J. (1984, July). *Mild mental retardation: An international perspective*. Paper presented at the meeting of the VII International School Psychology Colloquium, Orleans, France. (Invited)
- Reschly, D. J. (1985, April). *Psychometric differences between nonimpaired and mildly impaired black students*. Paper presented at the meeting of the National Association of School Psychologists, Las Vegas, NV.
- Reschly, D. J. (1985, April). *School neuropsychology: Excess baggage in psychoeducational assessment*. Paper presented at the meeting of the National Association of School Psychologists, Las Vegas, NV.
- Reschly, D. J. (1985, August). Myths and realities in minority special education overrepresentation. Invited paper in Placement of children in special education: Scientific issues and policy trends. Board of Scientific Affairs Symposium conducted at the Annual Convention of the American Psychological Association, Los Angeles, CA.
- Reschly, D. J., & Kicklighter, R. J. (1985, August). *Comparison of black and white EMR students from Marshall v. Georgia*. Paper presented at the meeting of the American Psychological Association, Los Angeles, CA.

- Reschly, D. J. (1985, December). Invited participant and speaker. Wingspread Conference on the Education of Students with Special Needs: Research Findings and Implications for Policy and Practice, Racine, WI.
- Reschly, D. J. (1986, April). *The research integration project and special education reform: Implications for school psychologists*. Paper presented at the meeting of the National Association of School Psychologists, Hollywood, FL.
- Reschly, D. J. (1986, April). Discussant. *New directions in the assessment of behavior disorders*. Symposium conducted at the meeting of the National Association of School Psychologists, Hollywood, FL.
- Reschly, D. J. (1986, April). Chair. *Refereed journals in school psychology*. Editor's Roundtable conducted at the meeting of the National Association of School Psychologists, Hollywood, FL.
- Corkery, J., McDougall, L., & Reschly, D. (1986, April). *Testing or intervention? Effects of behavioral interviews with referral agents*. Paper presented at the meeting of the National Association of School Psychologists, Hollywood, FL.
- Reschly, D. J. (1986, May). Moderator and Discussant. *The special education reform movement: Implications for students now classified as mildly mentally retarded*. American Association on Mental Deficiency, Denver, CO.
- Reschly, D. J. (1986, May). The quiet revolution: Changes in educational criteria, placement, and programming for the mildly retarded. Invited paper in *Sociocultural mental retardation: Per-*

*spectives and issues in prevention and treatment.* Multidisciplinary Session conducted at the Annual Convention of the American Association on Mental Deficiency, Denver, CO.

- Reschly, D. J. (1986, August). Adaptive behavior: Issues in classification, placement, program planning, and interventions. In *Social competence characteristics of mildly handicapped children*. Symposium conducted at the Annual Convention of the American Psychological Association, Washington, DC.
- Reschly, D., & Casey, A. (1987, March). Effects of behavioral consultation training on school psychologists. In *Special/regular education reform: Preparing for the revolution in school psychology*. Symposium conducted at the Annual Convention of the National Association of School Psychologists, New Orleans, LA.
- Grimes, J., & Reschly, D. (1987, March). *Project RE-AIM goals and initial outcomes*. Paper presented at the meeting of the National Association of School Psychologists, New Orleans, LA.
- Reschly, D. (1987, May). *The influence of the AAMD classification manual on placement bias litigation*. Invited paper presented at the meeting of the American Association on Mental Deficiency, Los Angeles, CA.
- Reschly, D. (1987, May). *Development of the S-1 Federal Court defense against allegations of discrimination due to minority EMR overrepresentation*. Invited paper presented at the Annual Convention of the American Association on Mental Deficiency, Los Angeles, CA.

- Reschly, D. (1987, May). *The continuing saga of minority misclassification litigation*. In symposium conducted at the meeting of the American Association on Mental Deficiency, Los Angeles, CA.
- Reschly, D. (1987, August). Evaluation of RE-AIM. In *Alternative designs for alternative delivery systems*. Symposium conducted at the meeting of the American Psychological Association, New York, NY.
- Reschly, D. (1987, August). A statewide consultation project. In *Behavioral consultation research: A synthesis of the Mardi Gras symposium*. Symposium at the Annual Convention of the American Psychological Association, New York, NY.
- Reschly, D. (1988, April). Chair. *Special education reform/school psychology revolution*. Symposium at the Annual Convention of the National Association of School Psychologists, Chicago, IL.
- Binder, M., Marks, R., & Reschly, D. J. (1988, April). RE-AIM results: Participants' evaluation of training and commitment to reforms. In *Special education reform/school psychology revolution*. Symposium conducted at the meeting of the National Association of School Psychologists, Chicago, IL.
- Grimes, J. P., & Reschly, D. J. (1988, April). The relevant educational assessment and intervention models. In *Special education reform/school psychology revolution*. Symposium conducted at the meeting of the National Association of School Psychologists, Chicago, IL.



- Pierce, K., Reschly, D., Casey, A., & Derr, S. (1988, April). RE-AIM results: Acquisition of behavior consultation skills, consultee evaluations, and student outcomes. In *Special education reform/school psychology revolution*. Symposium conducted at the meeting of the National Association of School Psychologists, Chicago, IL.
- Reschly, D. (1989, March). *Legal and ethical issues in the design of alternative delivery systems*. Paper presented at the Annual Convention of the National Association of School Psychologists, Boston, MA.
- Reschly, D. J., & McMaster-Beyer, M. (1990, April). *Trends and non-trends in school psychology graduate education*. Paper presented at the meeting of the National Association of School Psychologists, San Francisco, CA.
- Prasse, D. P., & Reschly, D. J. (1990, April). *Legal challenges to special education reform*. Paper presented at the meeting of the National Association of School Psychologists, San Francisco, CA.
- Reschly, D. J. (1990, April). *The Iowa Renewed Services Delivery System baseline results: Implications for national reform plans*. Paper presented at the Annual Convention for the national Association of School Psychologists, San Francisco, CA.
- Reschly, D. (1990, July). *Trends in the graduate education of school psychologists in the United States*. Paper presented at the Thirteenth Annual International School Psychology Colloquium, Salve Regina College, Newport, RI.
- Reiher, T. C., & Reschly, D. J. (1990, October). *Teacher ratings of support services for Iowa*

*behaviorally disordered students*. Paper presented at the meeting of the Iowa Council for Exceptional Children, Des Moines, IA.

- Reschly, D. J. (1991, March). *University faculty shortages: A 1989-1991 study of filled and unfilled vacancies*. Annual Convention of the National Association of School Psychologists, Dallas.
- Reschly, D. J. (1991, March). Symposium Organizer and Chair. *Personnel shortages: The school psychology crisis of the 1990s and beyond*. Meeting of the National Association of School Psychologists, Dallas, TX.
- Reschly, D. J., & Ullman, J. (1991, March). Redefining service delivery options for school psychologists: Current status and the Iowa experience. In *Training initiatives in school psychology: Programs and perspectives*. Symposium conducted at the meeting of the National Association of School Psychologists, Dallas, TX.
- Reschly, D. J., & McMaster-Beyer, M. (1991, March). *Program enrollment and graduates: A twenty-year decline*. Paper presented at the meeting of the National Association of School Psychologists, Dallas TX.
- Reschly D. J., & Connolly, L. M. (1991, March). University faculty shortages: A 1989-1991 study of filled and unfilled vacancies. In *Personnel shortages: The school psychology crisis of the 1990s and beyond*. Symposium conducted at the meeting of the National Association of School Psychologists, Dallas, TX.
- Reschly, D. J., Flugum, K., & Golbert, K. (1991, August). *Influences of intervention quality on the*

*outcomes of prereferral interventions.* Annual Convention of the American Psychological Association, San Francisco.

- Reschly, D. J. & Starkweather, A. (1992, March). *Alternative educational delivery systems: The emerging consensus among practitioners and faculty.* Paper presented at the meeting of the National Association of School Psychologists, Nashville, TN.
- Reschly, D. J. (1992, March). *School psychology faculty and practitioners' demographics, job satisfaction, and role preferences.* Paper presented at the meeting of the National Association of School Psychologists, Nashville, TN.
- Reschly, D. J. (1992, March). IQ testing: Our past, not our future. Invited address. In *The Future of Psychological Assessment*. Symposium conducted at the meeting of the National Association of School Psychologists, Nashville, TN.
- Reschly, D. J. & Flugum, (1992). *Prediction of consultation short- and long-term outcomes.* Annual Convention of the American Psychological Association, Toronto.
- Reschly, D. J. (1993, August). *School psychology and minority overrepresentation.* Paper. SSSP. Toronto.
- Andresen, K. R., & Reschly, D. J. (1993). *Effects of the conceptualization of student problems on teacher self-efficacy.* Annual Convention of the National Association of School Psychologists. Washington DC
- Reschly, D. J. (1993, March). *The future of assessment.* Debate. Annual Convention of the

National Association of School Psychologists,  
Washington D.C.

- Reschly, D. J. (1993, March). *Functional assessment for classification and intervention*. Preconvention Workshop. NASP.
- Reschly, D. J. (1994, March). *System reform implications for the training of school psychologists*. Annual Convention of the National Association of School Psychologists, Seattle.
- Reschly, D. J. (1994, March). *Analysis of minority overrepresentation research and litigation: Implications for system reform*. Annual Convention of the National Association of School Psychologists, Seattle.
- Reschly, D. J. (1994, March). Assessment issues and NASP Policy. Invited presentation. In *The future of psychological assessment*. Symposium. Annual Convention of the National Association of School Psychologists, Seattle.
- Reschly, D. J. (1994, August). Behavior Assessment Technology and the Revision of the Standards for Educational and Psychological Testing, Symposium. Annual Convention American Psychological Association, Los Angeles.
- Reschly, D. J. (1994, August). Variables related to behavioral consultation outcomes. In *Behavior consultation: Advances in research and practice*. Symposium. Annual Convention American Psychological Association, Los Angeles.
- Reschly, D. J. (1995, January). *IQ and Special Education: History, Current Status, and Alternatives*. Invited Address. Board on Testing and

Assessment, National Research Council, National Academy of Sciences, LaJolla, CA.

- Reschly, D. J., Starkweather, A. R., Birtwistle, J., & Dawson, M. M. (1995, July). *Role Preferences and Priorities: Comparisons of British (Educational) and American (School) Psychologists*. Paper Presented at the XVIII International School Psychology Colloquium, University of Dundee, Dundee, Scotland.
- Reschly, D. J. (1995, August). *Characteristics of school psychology graduate education and school-based practice: Implications for doctoral specialty definition*. Paper presented at the meeting of the Council of Directors of School Psychology Programs Second Annual School Psychology Training Conference, American Psychological Association, New York, NY.
- Reschly, D. J. (1995, August). *System change in the heartland*. Paper presented at the Second Annual Institute for Administrators of School Psychological Services, American Psychological Association, New York.
- Reschly, D. J. (1995, August). *Politics or science—The Bell Curve controversy*. In symposium presented at the meeting of the American Psychological Association, New York.
- Reschly, D. J. (1996, April). Approaches to the Analysis and Resolution of Disproportionate Minority Participation in General and Special Education Programs, Mini-Skills Workshop, National Association of School Psychologists Annual Convention, Atlanta.

- Reschly, D. J., & Wilson, M. S. (1996, August). Psychologists' Choices of Assessment Instruments: Malpractice Litigation Looking for a Place to Happen? American Psychological Association Symposium Paper, Annual Convention, Toronto
- Reschly, D. J. (1997, March). Analysis and Prevention of Disproportionate Minority Representation in General and Special Education Programs. Annual Convention of the National Association of School Psychologists, Anaheim.
- Reschly, D. J. (1998, April). *Review and critique of the responsibilities of test users in the proposed APA/AERA/NCME standards*. Paper presented as part of symposium, "Standards for educational and psychological testing in the 21st century." Annual Convention of the National Association of School Psychologists, Anaheim, CA.
- Ikeda, M. J., & Reschly, D. J. (1997). *Application of problem solving to low incidence conditions and evaluation of effects of problem solving*. Presented as part of a day long workshop at the National Association of School Psychologists Annual Conference, Anaheim, CA, April 1997.
- Reschly, D. J. (1997). *Patterns of disproportionate representation and strategies to reduce overrepresentation in special education*. Paper presented at the Annual Convention of the National Association for Multicultural Education, Albuquerque, New Mexico.
- Reschly, D. J. (1998, April). *Securing school psychology's future: Data-based decision making and outcomes criteria*. Preconvention Workshop, Annual Convention of the National Association of School Psychologists, Orlando FL.

- Reschly, D. J. (1998, April). *Special education categorical diagnoses: Communicating too little and too much*. Paper presented as part of symposium, "Boxes, little boxes, no more little boxes: A shift from categorical to noncategorical needs-based special education." Annual Convention of the National Association of School Psychologists, Orlando FL.
- Reschly, D. J. (1998, April). *Profile analysis: Reification of error*. Paper presented as part of symposium, "A critical appraisal of *Kaufman's Intelligent Testing with the WISC-III*." Annual Convention of the National Association of School Psychologists, Orlando FL.
- Reschly, D. J. (1998, April). *Debate: School psychology and mental health: Is it time to sever the connection*. (with Irwin Hyman). Annual Meeting of the Trainers of School Psychologists, Orlando FL.
- Reschly, D. J. (1998, August). *School psychology: Is there evidence of change?* Annual Convention of the American Psychological Association, San Francisco.
- Reschly, D. J. (1999, August). *Dilemmas for psychologists who determine disability status in educational settings*. Annual Convention of the American Psychological Association, Boston.
- Reschly, D. J., Ikeda, M. (2000, March). *Comparisons of school psychologists with and without IQ: Roles, assessment practices, and job satisfaction*. Annual Convention of the National Association of School Psychologists, New Orleans, LA.

- Reschly, D. J., & Hosp, J. (2000, August). *Regional and Setting Differences in School Psychology Practice*. Annual Convention of the American Psychological Association, Washington DC.
- Reschly, D. J. (2001, April). *Minority overrepresentation: New legal requirements, alternative criteria, and solutions*. Mini-skills Workshop, Annual Convention of the National Association of School Psychologists, Washington DC.
- Reschly, D. J. (2001, April). *Black School Psychologists: Roles, Satisfaction, Assessment Practices, and Reform Attitudes*. Poster, Annual Convention of the National Association of School Psychologists, Washington DC.
- Reschly, D. J. (2001, August). *Black School Psychologists' Evaluations of Reform Themes and Special Education Acceptability*. Poster, Annual Convention of the American Psychological Association, San Francisco.
- Reschly, D. J. (2001, August). *Reform-Revolution Revisited: Outcomes Criteria and School Psychology Change in the 21st Century*. Invited address, Division 16 at the Annual Convention of the American Psychological Association, San Francisco.
- Reschly, D. J. & Rosenfield, S. (February, 2002). *Minority Overrepresentation: Legal Issues and Intervention Alternatives*. Annual Convention of the National Association of School Psychologists, Chicago.
- Reschly, D. J. (February, 2002). *State and National Disproportionality Patterns by Disability and Sociocultural Group*. Mini-skills Workshop,



Annual Convention of the National Association of School Psychologists, Chicago.

- Reschly, D. J., & Harry, B. (April 2002). *Minority Overrepresentation in Special Education: The NRC Report*. Council for Exceptional Children, New York.
- Reschly, D. J. (2002, August). *Symposium organizer and chair, The National Research Council Report on SSA Eligibility in MR and paper Combining Information on Intelligence and Adaptive Behavior in Eligibility Decisions*. Annual Convention of the American Psychological Association, Chicago.
- Reschly, D. J., Hosp, J. L., & Schmied, C. M. (February 2003). *And Miles to Go....State SLD Requirements and National Recommendations*. International Conference of the Learning Disabilities Association. Chicago
- Ysseldyke, J. E., Reschly, D. J., & Vanderwood, M. (April 2003). Full-day Workshop on Assessment. National Association of School Psychologists Annual Convention. Toronto.
- Reschly, D. J. (2003, April). *Redefinition of Learning Disabilities*. Council for Exceptional Children Annual Convention, Seattle.
- Reschly, D. J. (March 2003). *Demise of IQ-Achievement Discrepancy: What Are the Alternatives*. National Association of School Psychologists Annual Convention, Dallas
- Reschly, D. J. (March 2004).
- Reschly, D. J., Ysseldyke, J. E., & Vanderwood, M. (April 2004). Full-day Workshop on Assessment.

National Association of School Psychologists Annual Convention. Dallas.

- Reschly, D.J. (April 2004). *Trends in State SLD Criteria*. Presented as part of the Symposium, NRCLD's Classification Studies, Focus Groups, and State Surveys. Council for Exceptional Children Annual Convention. New Orleans.
- Reschly, D. J. (June 2004). *Alternative Approaches to Disability Classification*. Third Anglo-American Conference on Special Education and School Reform. Cambridge England.

*Note: Refereed presentations at national learned society meetings 2005-2006 to be added*

- Reschly, D. J. (2007, April 19). *Specific learning disabilities identification policies: Choices and consequences*. Paper Annual Convention of the Council for Exceptional Children, Louisville, KY.
- Reschly, D. J. (2007, March 29). *Paradigm shift and beyond: Improving results for all*. Invited general session address, Annual Convention National Association of School Psychologists, New York City.
- Reschly, D. J., & Patton, J. M. (2007, March 30). *Overrepresentation policy, prevention, early intervention/treatment, and system change*. Invited 4 hour pre-convention workshop Annual Convention National Association of School Psychologists, New York City.
- Reschly, D. J. (2007, August 19). Organized symposium, *Controversies in determination of mental retardation in death penalty appeals* and presented paper, *Misunderstandings in death penalty appeals: Varying MR conceptions and*

*criteria*. Annual Convention American Psychological Association, San Francisco.

- Reschly, D. J. (2009). *Consequences of school psychologists' decisions: Death penalty and SSI outcomes*. Annual Convention of the National Association of School Psychologists, Boston.
- Reschly, D. J. (2009, August 7). Organized symposium, *Death Penalty Court Decisions and Mental Retardation Classification and Research*, and presented paper, *Authoritative Conceptions of Mental Retardation and Atkins Decisions*. Annual Convention of the American Psychological Association. Toronto.
- Reschly, D. J. (2009, August 6). *School psychology paradigm shift: or Cronbach's two disciplines of scientific psychology*. Annual Convention of the American Psychological Association. Toronto.
- Reschly, D. J., & McGraner, K. L. (2010, March). *Improving teacher preparation with evidence-based innovation configurations in reading and math*. Annual Convention of the Council for Exceptional Children, Nashville, TN.
- Reschly, D. J., & Gresham, F. M. (2010, August). *Standard of practice and Flynn Effect testimony in death penalty appeals*. Annual Convention of the American Psychological Association, San Diego.
- Welsh, J. S. & Reschly, D. J. (2011, February 23). *Survival skills for litigation: Preparation, testimony, and the Daubert challenge*. Invited Workshop, National Association of School Psychologists, San Francisco.
- Oliver, R. M., & Reschly, D. J. (2011, February 25). *State SLD identification policies: A changing*

*landscape since the reauthorization of IDEA 2004.* Poster Annual Convention National Association of School Psychologists, San Francisco.

- Reschly, D. J. (2011, April). *Evaluating teacher effectiveness: What does it mean for special educators.* Annual Convention of the Council for Exceptional Children, Washington DC.
- Welsh, J. S. & Reschly, D. J. (2012). *Survival skills for litigation: Preparation, testimony, and the Daubert challenge.* Invited Workshop, National Association of School Psychologists, Philadelphia.
- Welsh, J. S. & Reschly, D. J. (2013). *Survival skills for litigation: Preparation, testimony, and the Daubert challenge.* Invited Workshop, National Association of School Psychologists, Seattle.

### **Other Presentations**

Colloquia at the following universities (listed in chronological order)

University of Wisconsin-Eau Claire, University of British Columbia, University of Utah, University of Oklahoma, University of Arizona, Wichita State University, Memphis State University, James Madison University, University of Georgia (twice), Pennsylvania State University (twice), New York University, University of Pittsburgh, University of Oregon (twice), Indiana State University, Illinois State University (twice), Louisiana State University, San Diego State University, University of California-Riverside (twice), Ohio State University, Syracuse University, University of Kentucky, Governor's State University (IL), Northern Illinois

University, Vanderbilt University, University of South Carolina, Mississippi State University, University of Texas (twice), University of Minnesota, Iowa State University, City University of New York-Queens, University of Iowa, University of Otago (NZ), Massey University (NZ)

Colloquium topics have included empirical studies on bias in assessment, legal issues, mild mental retardation classification issues, and school psychology professional issues.

**Keynote Addresses and Workshops in 47 States  
(Over 300 presentations)**

- Reschly, D. (1976, February). *Use of behavioral consultation techniques in interventions for chronically disruptive students*. Presentation. Iowa Department of Public Instruction Workshop for School Psychologists.
- Reschly, D. (1976, August). *Issues in the classification, assessment, and interventions for children with emotional disabilities*. Presentation. Iowa Department of Public Instruction Workshop for School Psychologists, Waterloo, IA.
- Reschly, D. (1976, October). *Adaptive behavior assessment and interventions with mentally retarded students*. Presentation. Iowa Department of Public Instruction Workshop for School Psychologists, Ames, IA.
- Reschly, D. (1976, November). *Behavioral consultation in schools*. Presentation. Iowa Department of Public Instruction Workshop for School Psychologists, Des Moines, IA.
- Reschly, D. (1976, November). *Recent research in intellectual assessment*. Presentation. Metropoli-

tan Nashville Inservice Meeting for School Psychologists, Nashville, TN.

- Reschly, D. (1977, April). *Behavioral consultation with parents and teachers*. Presentation. University of Wisconsin-Eau Claire, Sixth Annual School Psychology Institute, Eau Claire, WI.
- Reschly, D. (1977, May). *Nonbiased assessment and school psychologists*. Presentation. Michigan Association of School Psychologists.
- Reschly, D. (1977, May). *Legal challenges to school psychological assessment*. Presentation. Area Education Agency IX, Davenport, IA.
- Reschly, D. (1977, October). *Adaptive behavior assessment with the mildly retarded*. Presentation. Area Education Agency VII, Waterloo, IA.
- Reschly, D. (1977, November). School Psychologists and assessment in the future. P. O. Wagner Memorial Address, Ohio School Psychologist Association.
- Reschly, D. (1977, December). *Nondiscrimination in placement: The challenge to school psychologists*. Presentation. South Dakota Association of School Psychologists, Vermillion, SD.
- Reschly, D. (1978, February). *The measurement and use of adaptive behavior in special education classification and programming*. Presentation. Special Study Institute for Intern School Psychologists, Division of Special Education, Ohio Department of Education, Columbus, OH.
- Reschly, D. (1979, January). *Assessment of adaptive behavior in mental disabilities diagnosis and programming*. Presentation. Area Education Agency VI, Marshalltown, IA.

- Reschly, D. (1979, April). *Nonbiased assessment and mild mental retardation*. Presentation. Area Education Agency V, Ft. Dodge, IA.
- Reschly, D. (1979, May). *Measurement and use of adaptive behavior*. Workshop. Council Bluffs Public Schools and Iowa Department of Public Instruction, Council Bluffs, IA.
- Reschly, D. (1979, July). *What's new in assessment*. Colloquium. University of British Columbia, Vancouver, BC.
- Reschly, D. (1979, October). *Bias in assessment: What are the issues?* Keynote address. Georgia Association of School Psychologists Fall Workshop.
- Reschly, D. (1979, September). *University personnel as a support system for psychological research in the schools*. Presentation. Iowa Department of Public Instruction Workshop for School Psychologists.
- Reschly, D. (1979, December). *Bias in assessment: What are the issues?* Keynote address. Iowa Educational Research and Evaluation Association.
- Reschly, D. (1980, April). *Bias in assessment: Differing conceptions and empirical results*. Colloquium. University of Utah, Salt Lake City, UT.
- Oakland, T., & Reschly, D. (1980, April). *Nonbiased assessment*. Preconvention Workshop. National Association of School Psychologists Annual Convention, Washington, DC.
- Reschly, D. (1980, April). *Overview of PL 94-142*. Presentation. Morningside College, Sioux City, IA.

- Reschly, D. (1980, April). *Characteristics of handicapped children*. Presentation. Morningside College, Sioux City, IA.
- Reschly, D. (1980, May). *Adaptive behavior and nonbiased assessment*. Workshop. University of Wisconsin-Eau Claire, Ninth Annual School Psychology Institute.
- Reschly, D. (1980, May). *Bias in assessment: Differing conceptions and empirical results*. Key-note address. South Carolina Association of School Psychologists Spring Convention.
- Reschly, D. (1980, May). *Adaptive behavior: Background, assessment, and practices*. Workshop. Iowa Department of Public Instruction Special Institute.
- Reschly, D. (1980, June). *Nondiscriminatory assessment: Quality indicators*. Workshop. Indianapolis Public Schools.
- Reschly, D. (1980, June). Invited participant, Spring Hill Symposium on the Future of Psychology in the Schools. Minneapolis, MN.
- Reschly, D. (1980, July & August). *Psychoeducational assessment*. Workshop. Louisiana State Department of Education.
- Reschly, D. (1980, September). *Trends in school psychological assessment*. Keynote address. Association of School Psychologists.
- Reschly, D. (1980, October). *Nondiscriminatory assessment*. Workshop. Colorado Society of School Psychologists Fall Convention.
- Reschly, D. (1980, October). *Recent research on test bias*. Colloquium. University of Oklahoma.



- Reschly, D. (1980, November). *What's right about school psychology*. Keynote address. Oklahoma School Psychological Association Fall Convention.
- Reschly, D. (1980, November). *Nonbiased assessment*. Workshop. Oklahoma School Psychological Association Fall Convention.
- Reschly, D. (1980, December). *Nonbiased assessment*. Workshop. Illinois Department of Education and Illinois School Psychologists Association, Suburban Chicago.
- Reschly, D. (1981, January). *Nonbiased assessment*. Workshop for Illinois School Psychologists Association and the Chicago Public Schools.
- Reschly, D. (1981, January). *Empirical studies of test bias*. Colloquium. University of Arizona.
- Reschly, D. (1981, January). *Nonbiased assessment*. Workshop. Arizona State School Psychologists Association.
- Reschly, D. (1981, February). *School psychology and the issue of bias*. Colloquium. Wichita State University, Wichita, KS.
- Reschly, D. (1981, February). *Research on SOMPA*. Workshop. Wichita Public Schools, Wichita, KS.
- Reschly, D. (1981, February). *Trends in psycho-educational assessment*. Workshop. Heartland Area Education Agency 11.
- Oakland, T., & Reschly, D. (1981, April). *Nonbiased assessment*. Preconvention Workshop. National Association of School Psychologists Annual Convention, Houston, TX.

- Reschly, D. (1981, May). *Nondiscriminatory assessment*. Workshop. Texas Psychological Association.
- Reschly, D. (1981, May). *Research on performance of minorities on standardized tests*. Colloquium. Memphis State University.
- Reschly, D. (1981, July). *Trends in research, court opinions, and legislation regarding bias*. Colloquium. James Madison University Annual Summer Institute for School Psychologists.
- Reschly, D. (1981, August). *Psychoeducational assessment*. Workshop. Louisiana State Department of Education.
- Reschly, D. (1981, September). *Assessment of social skills*. Workshop. Iowa Department of Public Instruction.
- Reschly, D. (1981, October). *Current trends in school psychology*. Keynote address. Oklahoma School Psychology Association Fall Convention.
- Reschly, D. (1981, October). *Behavioral consultation*. Workshop. Oklahoma School Psychology Association Fall Convention.
- Reschly, D. (1981, November). Invited participant. Olympia Conference on Planning the Future of School Psychology.
- Reschly, D. (1981, November). *Nonbiased assessment*. Workshop. Florida Association of School Psychologists.
- Reschly, D. (1982, January). *Professional issues related to assessment of adaptive behavior*. Workshop. Grant Wood Area Education Agency 10, Cedar Rapids, IA.

- Reschly, D. (1982, April). *Current developments in school psychology*. Continuing Education Presentation. Mississippi Bend Area Education Agency 9 School Psychologists.
- Reschly, D. (1982, April). *Fair and useful assessment for minority students*. Workshop. Illinois State Board of Education, Mt. Vernon, IL.
- Reschly, D. (1982, April). *Placement bias litigation and psychoeducational assessment*. Invited paper. Buros-Nebraska Symposium on Measurement and Testing.
- Reschly, D. (1982, May). *Discrimination in special education assessment: Myth and reality*. Colloquium. University of Georgia.
- Reschly, D. (1982, September). *Assessing adaptive behavior*. Inservice. Arrowhead Education Agency.
- Reschly, D. (1982, October). *Nontest based assessment of children*. Workshop. North Carolina School Psychology Association Fall Conference, Wrightsville Beach, NC.
- Reschly, D. (1982, October). *School psychology today: Progress, not impasse*. Colloquium. Pennsylvania State University.
- Reschly, D. (1982, October). *Use of social competence data in classification/placement and program planning/intervention decisions*. Workshop. Sixteenth Annual Pennsylvania School Psychologists Conference.
- Reschly, D. (1983, January). *School psychology in the decade ahead: Old problems, new solutions*. Keynote address. New Jersey Association of School Psychologists Winter Meeting.

- Reschly, D. (1983, January). *Use of social competence information in classification/placement decisions*. Seminar. New York City Association of School Psychologists.
- Reschly, D. (1983, January). *Use of social skills and adaptive behavior data in programming: IEP objectives and least restrictive environment*. Keynote address. Cuyahoga Special Education Service Center, Cuyahoga, OH.
- Reschly, D. (1983, March). *Beyond test bias: Appropriate assessment and programming for handicapped minority students*. Keynote address. Mississippi Association for Psychology in the Schools Spring Meeting.
- Reschly, D. (1983, April). *Recent developments in ability testing*. Presentation. Iowa Psychological Association Continuing Education, Ames, IA.
- Reschly, D., & Fleig, G. (1983, May). *Conflicting assessment information: Separating the wheat from the chaff*. Invited workshop. Fourth National Institute on Legal Problems of Educating the Handicapped.
- Reschly, D. (1983, June). *Learning problems: Handicaps or cultural differences? Appropriate assessment for minority students*. Workshop. Central Ohio Special Education Regional Resource Center, Columbus, OH.
- Reschly, D. (1983, September). *Screening and monitoring referrals*. Workshop. Schaumburg Public Schools, Schaumburg, IL.
- Reschly, D. (1983, October). Keynote address. Georgia Association of School Psychologists, Rock Eagle, GA.

- Reschly, D. (1983, October). Keynote address. Washington Association of School Psychologists, Wenatchee, WA.
- Reschly, D. (1983, October). *Recent advances in assessment*. Workshop. AEA VII staff, Waterloo, IA.
- Reschly, D. (1983, November). Keynote address. North Dakota and Northwest Minnesota School Psychologists, Moorhead, MN.
- Reschly, D. (1983, November). *Assessment of adaptive behavior*. Keynote address and workshop. South Carolina Association of School Psychologists Fall Convention.
- Reschly, D. (1983, November). Assessment for the Teaching/Learning Process. Keynote address at the Ontario Institute for Studies in Education International Symposium on Exceptional Students, Toronto, Canada.
- Reschly, D. (1984, February). School Psychology Workshop. Gary, IN.
- Reschly, D. (1984, February). School Psychology Workshop. NSSEO Inservice, Palentine, IL.
- Reschly, D. (1984, March). *Current issues and recent advances in assessment of the handicapped*. State of Virginia Department of Education Workshop for Related Services Personnel.
- Reschly, D. (1984, April). *Recent developments in ability testing and nonbiased assessment*. Seminar. Iowa Psychological Association Continuing Education, Ames, IA.
- Reschly, D. (1984, May). *Beyond test bias and minority overrepresentation*. General Session

Address. Fifth National Institute on Legal Problems of Educating the Handicapped, Chicago, IL.

- Reschly, D. (1984, May). *Assumptions in placement bias litigation: A research agenda in mild mental retardation*. First Annual Pittsburgh Symposium on Research with the Handicapped, Pittsburgh, PA.
- Reschly, D. (1984, May). *Adaptive behavior and social skills in classification and placement decisions*. Thirteenth Annual School Psychology Institute, University of Wisconsin, Eau Claire, WI.
- Reschly, D. J. (1984, July). Mild mental retardation: An international perspective. Paper presented at the VII International School Psychology Colloquium, Orleans, France.
- Reschly, D. (1984, September). *Choices and alternatives for compliance with psychoeducational legal requirements*. Iowa DPI Conference on Reevaluation of Assessment Practices.
- Reschly, D. (1984, September). *Due process and testing practices*. AEA7, Waterloo, IA.
- Reschly, D. (1984, September). *Social competence: Research and interventions*. Kentucky Association of School Psychologists, Lexington, KY.
- Reschly, D. (1984, October). *Avoiding placement bias litigation: Lessons from Larry P., PASE, and Marshall*. Presentation. National Association of Directors of Special Education.
- Reschly, D. (1984, October). *Potpourri of school psychology issues*. Iowa School Psychology Association.

- Reschly, D. (1984, October). *Social skills assessment and intervention*. Northern New England School Psychology Conference.
- Reschly, D. (1984, November). *Adaptive behavior research, assessment, and training*. Florida Association of School Psychologists.
- Reschly, D. (1984, November). *Social competence: Adaptive behavior and social skills*. Tennessee Association of School Psychologists.
- Reschly, D. (1984, November). *Understanding psychoeducational assessment evidence*. Workshop. Due Process Hearing Officers, Virginia Department of Education.
- Reschly, D. (1984, November). *Fair and useful assessment: Current trends*. Workshop. Washington Public Schools, Washington, DC.
- Reschly, D. (1984, December). *Legal influences on intellectual assessment*. Colloquium. University of Arizona, Tucson, AZ.
- Reschly, D. (1984, December). *Trends in assessment*. Workshop. Clark County Public Schools, Las Vegas, NV.
- Reschly, D. (1985, May). Colloquium. University of Oregon, Eugene, OR.
- Reschly, D. (1985, May). Workshop and Keynote Address. Oregon School Psychologists Association, Portland, OR.
- Reschly, D. (1985, June). Presentation. State Department Conference on Identification and Assessment, Maryland State Department of Education, Baltimore, MD.

- Reschly, D. (1985, October). Workshop. Florida State Department of Education, Tampa, FL.
- Reschly, D. (1985, October). Colloquium. School Psychology Faculty and Students. Indiana University, Bloomington, IN.
- Reschly, D. (1985, October). *Social competence*. Workshop. Canton, OH.
- Reschly, D. (1985, November). Address. University of Arizona Conference on Assessment of Minorities, Tucson, AZ.
- Reschly, D. (1986, January). *Assessment of adaptive behavior*. Presentation. South Suburban (Chicago) Special Education Cooperative, Chicago, IL.
- Reschly, D. (1986, February). *Non-biased assessment*. Colloquium. Illinois State University, Normal, IL.
- Reschly, D. (1986, March). *Adaptive behavior assessment*. Keynote address. Minnesota Association for Education of Mentally Retarded Students.
- Reschly, D. (1986, April). *Assessment of social competence for classification and programming*. Workshop. Wisconsin School Psychologists Association.
- Reschly, D. (1986, May). Keynote address. Minnesota Department of Education Conference on Special Education Assessment, Minneapolis, MN.
- Reschly, D. (1986, May). Keynote Address. Arizona Association of School Psychologists Spring Convention, Phoenix, AZ.



- Reschly, D. (1986, June). Address. New Jersey Conference on Special Education, Newark, NJ.
- Reschly, D. (1986, July). *Continuing education videotapes for school psychologists*. Arkansas State Department of Education.
- Reschly, D. (1986, September). Two-day RE-AIM workshop. Atlantic, IA.
- Reschly, D. (1986, September). Two-day RE-AIM workshop. Des Moines, IA.
- Reschly, D. (1986, October). Keynote address and workshop. Arkansas School Psychology Association, Little Rock, AK.
- Reschly, D. (1986, October). *MD data analysis*. Iowa Association of School Psychologists, Altoona, IA.
- Reschly, D. (1986, November). *Mental retardation classification criteria*. Workshop. Minnesota State Department of Education, Minneapolis, MN.
- Reschly, D. (1986, November). *Assessment of adaptive behavior*. Workshop. Minnesota State Department of Education, Brainard, MN.
- Reschly, D. (1987, January). Workshop & Keynote Address. Northern Ohio School Psychology and Special Education meetings, Richfield, OH.
- Reschly, D. (1987, January). *RE-AIM Continuing Education Presentation*. Cedar Rapids, IA.
- Reschly, D. (1987, January). *RE-AIM Continuing Education Presentation*. Elkader, IA.
- Reschly, D. (1987, February). Workshop. Northwest Ohio School Psychologists, Wapakoneta, OH.

- Reschly, D. (1987, February). Workshop. West Central Ohio SERCC, Bluffton College, Bluffton, OH.
- Reschly, D. (1987, March). *Large scale training and evaluation of the impact of behavioral consultation*. Colloquium. Louisiana State University, Baton Rouge, LA.
- Reschly, D. (1987, April). Invited Address. Seminar for Federal Judges sponsored by the Danforth Foundation, Park City, UT.
- Reschly, D. (1987, May). General Session Address. Eighth National Institute on Law and Education of the Handicapped, Scottsdale, AZ.
- Reschly, D. (1987, June). *Behavioral consultation*. Workshop. New Jersey School Psychologists, Freehold, NJ.
- Reschly, D. (1987, September). Keynote address. Minnesota State School Psychologists Meeting, Minneapolis, MN.
- Reschly, D. (1987, October). *Adaptive behavior*. Keynote address and workshop. Nebraska State School Psychologists Fall Convention, Lincoln, NE.
- Reschly, D. (1987, November). *Behavioral consultation*. Workshop. Egg Harbor, NJ.
- Reschly, D. (1987, December). Keynote address and workshop. New Jersey Association of School Psychologists, Clark, NJ.
- Reschly, D. (1988, January). Assessment issues and legal developments. General Session Address. CEC-MR International Conference, Mental retar-

dation: Emerging challenges for the future, Honolulu, HI.

- Reschly, D. (1988, March). *Assessment and legal issues*. Presentation. Iowa Conference on Futures in Mental Disabilities.
- Reschly, D. (1988, May). *Why the sky fell on IQ testing, but only in California*. Colloquium. University of California-Riverside, Riverside, CA.
- Reschly, D. (1988, May). *Preparation for the 1990s revolution in the practice of school psychology*. Colloquium. San Diego State University, San Diego, CA.
- Reschly, D. (1988, May). *Tangible evidence vs expert opinion: The psychologist's contribution to legal proceedings*. Presentation. Iowa Psychological Association.
- Reschly, D. (1988, June). *Expanding special Olympics opportunities to junior and senior high school students with mild mental retardation*. Joseph P. Kennedy, Jr., Foundation Symposium, Arlington, VA.
- Reschly, D. (1988, October). Keynote address and workshops. Virginia Association of School Psychologists-Virginia Psychological Association Fall Convention, Norfolk, VA.
- Reschly, D. (1988, October). Keynote address. Indiana Association of School Psychologists, Indianapolis, IN.
- Reschly, D. (1988, November). *Adaptive behavior*. Workshops and Keynote address. Fall Conference of Florida Association of School Social Workers, Orlando, FL.

- Reschly, D. (1988, November). Workshop. School Psychologists, Bakersfield Public Schools Administration Center, Bakersfield, CA.
- Reschly, D. (1988, December). Presentation. Arkansas Department of Education Staff, Little Rock, AK.
- Reschly, D. (1989, January). *Terminology and classification in mental retardation*. Invited presentation. Committee on Terminology and Classification – Mental Retardation, National Headquarters of the American Association on Mental Retardation, Alexandria, VA.
- Reschly, D. (1989, January). Seminar for administrative law judges. University of Iowa, Iowa City, IA.
- Reschly, D. (1989, February). Keynote address. Utah Association of School Psychologists, Salt Lake City, UT.
- Reschly, D., & Stumme, J. (1989, March). *The school psychologist in the courtroom*. Pre-Convention Workshop (full day). National Association of School Psychologists, Boston, MA.
- Reschly, D. (1989, April). *Minority overrepresentation in programs for the mildly handicapped*. Keynote address. Arkansas Department of Education Conference, Little Rock, AK.
- Reschly, D. (1989, June). *Behavior consultation and school psychology in the 1990s*. Two-day workshop. California Department of Education, San Jose, CA.
- Reschly, D. (1989, July). Presentation. School Psychologists, California Department of Education, Lake Tahoe, CA.

- Reschly, D. (1989, August). Presentation. School Psychologists, California Department of Education, San Diego, CA.
- Reschly, D. (1989, August). Presentation. School Psychologists, Tampa, FL.
- Reschly, D. (1989, August). Presentation. School Psychologists, Clearwater, FL.
- Reschly, D. (1989, September). *Assessment and intervention in adaptive behavior and social skills*. Presentation. Psychologists. Little Rock, AK.
- Reschly, D. (1989, October). Colloquium. Ohio State School Psychology Program, Columbus OH
- Reschly, D. (1989, November). Keynote address and workshop. British Columbia Association of School Psychologists, Vancouver, BC.
- Reschly, D. (1989, November). Presentation to faculty representing 11 Ohio university school psychology programs regarding NASP approval procedures, Columbus, OH.
- Reschly, D. (1990, January). *Adaptive Behavior: Definition, assessment, and developing interventions*. Presentation. Iowa Department of Education, Des Moines, IA.
- Reschly, D. (1990, March). Keynote address. Connecticut Symposium on Special Education, Hartford, CT.
- Reschly, D. (1990, March). *Special education law and practice*. Workshop. ED Law Institute, Costa Mesa, CA.
- Reschly, D. (1990, April). Keynote address. Adaptive Behavior Conference, St. Paul, MN.

- Reschly, D. (1990, May). *Found our intelligence: What do they mean?* Invited Presentation. Invitational Conference Center for Applied Psychological Research, Memphis State University, Memphis, TN
- Reschly, D. (1990, June). *Presentation on social competencies*. Pinellas School Officials, Tampa, FL.
- Reschly, D. (1990, September). Colloquium. Riverside County School Psychologists Association, University of California-Riverside, Riverside, CA.
- Reschly, D. (1990, September). Keynote address. San Bernardino County School Psychologists Association, San Bernardino, CA.
- Reschly, D. (1990, September). *School psychology national standards*. Testimony. Oregon Teacher Licensing Commission, Salem, OR.
- Reschly, D. (1990, October). Keynote address. Oklahoma School Psychological Association Fall Meeting, Oklahoma City, OK.
- Reschly, D. (1990, October). *NASP program approval procedures and trends in graduate education*. Presentation. Faculty representing universities in northern California, San Jose, CA.
- Reschly, D. (1990, November). *Evaluation of the Iowa Renewed Services Delivery System*. Invited address. Iowa Educational Research and Evaluation Association, Des Moines, IA.
- Reschly, D. J. (1991, February). *Behavioral models and the 1990s school psychology revolution*. Colloquium. Syracuse University, Syracuse, NY.

- Reschly, D. J. (1991, February). Keynote address. 20th Annual School Psychology Institute, University of Wisconsin-Eau Claire, Eau Claire, WI.
- Reschly, D. J. (1991, February). *School psychology program approval and accreditation: Current standards and trends*. Colloquium. Southern California Consortium of School Psychology Faculty, Los Angeles, CA.
- Reschly, D. J. (1991, April). *The research base for delivery system reform and 1990s changes in school psychological services*. Keynote Address. New Jersey School Psychology Association, Newark, NJ.
- Reschly, D. J. (1991, May). Psychological and educational research and the legal basis for ADHD in the Education of Children with Disabilities Act. Invited Address, Institute on Law and Education of the Handicapped Phoenix
- Reschly, D. J. (1991, August). *Interventions for social skills and adaptive behavior deficits*. Continuing Education Workshop. Loess Hills Area Education Agency, Council Bluffs, IA.
- Reschly, D. J. (1991, August). *Evidence for changes in the delivery system and the roles of support services providers*. Continuing Education Workshop. Pine County Special Services Cooperative, Pine City, MN.
- Reschly, D. J. (1991, September). *The two disciplines of scientific psychology and the struggle for the future of school psychology*. Colloquium. University of Kentucky, Lexington, KY.
- Reschly, D. J. (1991, October). *The 1990s and school psychology*. Keynote address. Alabama

Association of School Psychologists Annual Convention, Gulf Shores, AL.

- Reschly, D. J. (1991, October). *Preparation of expert witness testimony for when (not if) school psychologists appear in legal proceedings*. Workshop. Alabama Association of School Psychologists Annual Convention, Gulf Shores, AL.
- Reschly, D. J. (1991, November). *Trends in research and legal analyses of bias in assessment and classification*. Keynote address. Tennessee Association of School Psychologists Annual Convention, Chattanooga, TN.
- Reschly, D. J. (1992, January). Keynote address. Illinois Directors of Special Education, Bloomington, IL.
- Reschly, D. J. (1992, January). Colloquium. Psychology Department, Illinois State University, Normal, IL.
- Reschly, D. J. (1992, February). Keynote address. Alaska School Psychology Association, Anchorage, AK.
- Reschly, D. J. (1992, March). *NASP training program standards and preparation of program approval applications*. Workshop. National Association of School Psychologists, Nashville, TN.
- Reschly, D. J. (1992, October). Colloquium. Indiana State University, Terre Haute, IN.
- Reschly, D. J. (1993, March). *The future of assessment*. Debate. National Association of School Psychologists, Washington, DC.
- Reschly, D. J. (1993, March). *Functional assessment for classification and intervention*. Pre-



convention Workshop. National Association of School Psychologists, Washington, DC.

- Reschly, D. J. (1993, April). *Assessment as it relates to diagnosis and 1990s trends*. Oklahoma School Psychological Association Continuing Education, Oklahoma City, OK.
- Reschly, D. J. (1993, May). *Social skills intervention with survivors of traumatic brain injury*. Keynote address. Phoenix, AZ.
- Reschly, D. J. (1993, June). Colloquium. University of Oregon, Eugene OR.
- Reschly, D. J. (1993, June). Workshop. California Summer Institute, Fresno, CA.
- Reschly, D. J. (1993, August). *Behavioral consultation for school psychologists*. Continuing education presentation. Consortium of northern California counties, Red Bluff, CA.
- Reschly, D. J. (1993, October). Continuing education presentations. Orlando, FL.
- Reschly, D. J. (1993, October). Keynote address. Michigan Association of School Psychologists. Traverse City, MI.
- Reschly, D. J. (1993, November). Keynote address and workshop. Florida Association of School Psychologists, Miami, FL.
- Reschly, D. J. (1993, November). Continuing education presentation. Illinois school psychologists. Galesburg, IL.
- Reschly, D. J. (1994, February). *Behavioral problem solving*. Workshop. Psychologists in the High Plains Educational Cooperative, Garden City, KS.

- Reschly, D. J. (1994, March). *Minority assessment issues and the identification of children and youth with ADHD*. Colloquium. San Diego State University, San Diego, CA.
- Reschly, D. J. (1994, April). *Minority overrepresentation in mild disabilities: Expanded educational opportunities or denial of equal rights?* Colloquium. University of California-Irvine, Irvine, CA
- Reschly, D. J. (1994, April). *Re-learning social skills: Children and adolescents with traumatic brain injury*. Presentation. Columbus, OH.
- Reschly, D. J. (1994, September). *Behavioral problem solving*. Workshop. Central Illinois School Psychologists, Galesburg, IL.
- Reschly, D. J. (1994, September). Workshop. Michigan Psychologists, Detroit, MI.
- Reschly, D. J. (1994, October). Colloquium. Penn State School Psychology Program University Park, PA.
- Reschly, D. J. (1994, October). Continuing Education Presentation. Pennsylvania Association of School Psychologists, University Park, PA.
- Reschly, D. J. (1995, May). System Reform and Roles of School Psychologists. Mid-Eastern Pennsylvania School Psychology Association.
- Reschly, D. J. (1995, September). *Interventions for Children and Youth with ADHD and Conduct Disorders*. North Dakota Association of School Psychologists, September, 1995.

- Reschly, D. J. (1996, January). Pre-convention workshop and Keynote Address. Minnesota Association of School Psychologists, St. Cloud, MN.
- Reschly, D. J. (1996, February). Avoiding Due Process Hearings. School Administrators of Iowa, Des Moines.
- Reschly, D. J. (1996, March). *System Reform and the Problem of Minority Overrepresentation in Special Education Programs*. Keynote Address, California Association of School Psychologists.
- Reschly, D. J. (1996, April). Pre-Convention Workshop and Keynote Address. Tri-State (ID, OR, WA) School Psychology Conference, Portland, OR.
- Reschly, D. J. (1996, August) Behavioral Consultation. Sacramento Public Schools School Psychologists.
- Reschly, D. J. (1996, October). Legal Constraints on Disciplining Students with Behavior Disorders. Iowa Behavioral Initiative Fall Conference.
- Reschly, D. J. (1996, October). Conducting Section 504 Hearings. Iowa Association of School Boards Workshop.
- Reschly, D. J. (1997, June). Outcomes Criteria and Behavioral Intervention: The Keys to School Psychology in the 2000s. Continuing Education Conference for the State of Washington and the Washington Association of School Psychologists, Seattle.
- Reschly, D. J. (1997, September). Behavioral Consultation as the Base for System Reform. LaGrange Area Special Education Services Cooperative, Chicago.

- Reschly, D. J. (1997, October). Legal, Policy and Assessment Issues. Major address at the State of Iowa sponsored conference, Iowa's Culturally and Linguistically Diverse Children with Special Needs, Iowa City, IA.
- Reschly, D. J. (1998, March). Disproportionality: Questions, Statistics, Rationale, and Solutions? Keynote Address at the Twelfth Annual Conference on the Management of Federal/State Data Systems, WESTAT and OSEP, Bethesda, MD.
- Reschly, D. J. (1998, August). Analyses of Overrepresentation: Different Approaches and Different Outcomes. BEUNO National Conference, Sponsored by the University of Colorado, Vail, CO.
- Reschly, D. J. (1998, September). The Demise of the Old-time Religion and the System Reform Imperative. Iowa Department of Education inservice for special educators.
- Reschly, D. J. (1998, October). Securing the Future of School Psychology Through Data-Based Decision Making. Clark County School Psychologists, Las Vegas.
- Reschly, D. J. (1998, October). School Psychology and Leadership in System Reform and Workshop on Disproportionate Minority Representation in Special Education, South Carolina Association of School Psychologists, Columbia SC.
- Reschly, D. J. (1998, October). School Psychology in the 2000s. Keynote Address, Maryland Association of School Psychologists, Baltimore.

- Tilly, W. D. III, Reschly, D. J., & Knoster, T. (1998, November) Using functional assessment to improve the special education process. National Association of State Directors of Special Education Annual Conference, Baltimore.
- Reschly, D. J. (1998, November). School Psychology: Change or Stagnation, Keynote Address for the Mid-South (TN, AL, and MS) Biannual Conference on School Psychology, Tunica, MS.
- Reschly, D. J. (1999, January) Shifting from the old-time religion: Reform trends and system design alternatives. University of Oregon and Willamette Valley special educators. Eugene, OR.
- Reschly, D. J. (1999, January). System Reform in Special Education and School Psychology. South Carolina state-wide conference for directors of special education. Columbia, SC
- Reschly, D. J. (1999, February). The Charge for School Psychologists. Metro Nashville Public Schools Inservice for School Psychologists. Nashville, TN.
- Reschly, D. J. (1999, February) System Reform in Special and General Education. Inservice for general and special education personnel in the Dubuque (IA) Community Schools and the Keystone Area Education Agency
- Reschly, D. J. (1999, March) Design of system reform waivers for performance. Horry County (SC) Public Schools, Myrtle Beach.
- Reschly, D. J. (Multiple Occasions) Special Education Overrepresentation: Assessment Reforms and System Change. Alliance Project Seminars, Los Angeles March, 1999; Nashville, November

2000; Miami, January 2001, Honolulu, February 2001;

- Reschly, D. J. (April 2000). Keynote Address. System Reform and the Future of School Psychology. Tennessee Association of School Psychologists.
- Reschly, D. J. (June 2000). Classification Criteria in a Problem Solving System. Area Education Agency 5, Marshalltown, IA.
- Reschly, D. J. & Fagan, T. K. (November 2000). The Past and Future of School Psychology. Mid-South Regional School Psychology Conference, Mobile Alabama.
- Reschly, D. J. (March 2001). State-wide Testing and Students with Disabilities. Law and Education Conference, Washington DC
- Reschly, D. J. (June 2001). Avoiding Stereotypes: Overrepresentation Statistics, Risk or Composition? Council for Exceptional Children, IDEA Summit, Washington DC
- Reschly, D. J. (July 2001). Overrepresentation, It's Not What You Think It Is: Equal Treatment Studies. US Department of Education, Office of Special Education Programs, Project Directors Summer Meeting. Washington DC
- Reschly, D. J. (August 2001). Keynote address, System Reform and the Design of Services for Students with Learning Disabilities. Minnesota Special Education Director's Conference, Grand Rapids MN
- Reschly, D. J. (August 2001). Reaction paper, *Minority Overrepresentation: The Silent Contributor to LD Prevalence and Diagnostic Confusion*.

US Department of Education, Office of Special Education Programs. Learning Disabilities Summit.

- Reschly, D. J. (September 2001) Keynote Address, System Reform, Learning Disabilities, and the Future of School Psychology. Kentucky Association of School Psychologists, Louisville KY.
- Reschly, D. J. (October, November, December 2001). Disproportionate Representation: Facts, Myths, and Solutions. US Department of Education, Improving America's Schools Regional Conferences. Mobile, Reno, San Antonio.
- Reschly, D. J. (October 2001). Keynote Address, Overrepresentation Patterns and LD Classification Issues: Converging Trends to System Reform. Tennessee Association of School Psychologists, Nashville  
Reschly, D. J. (December 2001). Continuing Education Workshop, Metro Nashville Public Schools, "Converging Themes: Overrepresentation, MR and LD Classification Issues, and System Reform"
- Reschly, D. J. (February, 2002). National Academy of Sciences Study on Disproportionality of Minority Students in Special Education. U.S. Department of Education, Office of Special Education Programs, Joint Personnel Development/ State Improvement Conference, Crystal City, VA.
- Reschly, D. J. (February, 2002). Invited Testimony, Minority Students in Gifted and Special Education. President's Commission of Excellence in Special Education, Houston.
- Reschly, D. J. (March, 2002). Minority Students in Gifted and Special Education. Mid-South Regional Resource Center, Nashville, TN.

- Reschly, D. J. (March, 2002). Minority Students in Gifted and Special Education. WESTAT Conference for State IDEA Data Managers. Washington, DC.
- Reschly, D. J. (April, 2002). Summary of Testimony: Research Recommendations. President's Commission of Excellence in Special Education, Nashville.
- Reschly, D. J., (April, 2002). System Reform Principles: The New Special Education Establishment. Innovations Conference, Kansas City.
- Reschly, D. J., (October, 2002). Reforms in Special Education Eligibility Criteria. Missouri Council of Special Education Administrators, Columbia, MO.
- Reschly, D. J. (July 2002). Legal Issues in School Mental Health Services. Memphis City Schools.
- Reschly, D. J. (October 2002). Mild Mental Retardation Identification. National Organization of Social Security Claimants' Representatives. San Francisco.
- Reschly, D. J. (October 2002). Keynote, RTI and Special Education Reform. 4th Annual Golden Empire Special Education Partnership Conference, Bakersfield, CA .
- Reschly, D. J. (November 2002). Response to Intervention. Northwest Ohio SERRC, Kitland, OH.
- Reschly, D. J. (February 2003). Keynote: SLD Identification and RTI. (psychologists, special educators, and principals) Charleston, SC.
- Reschly, D. J. (June 2003). Disproportionality Statistics and Interventions. IDEA Partnerships



2nd National Summit on Implementation of IDEA 1997. Arlington, VA.

- Reschly, D. J. (October 2003). Keynote. RTI and Special Education Reform. Kern County School Psychology Conference, Bakersfield, CA.
- Reschly, D. J. (October 2003). Keynote. RTI and Special Education Reform. Washington Association of School Psychologists, Spokane, WA.
- Reschly, D. J. (October 2003). Keynote. RTI and Special Education Reform. Pennsylvania Association of School Psychologists.
- Reschly, D. J. (November 2003). Keynote Address. Keynote. RTI and Special Education Reform Florida Association of School Psychologists. Tampa
- Reschly, D. J. (September 2003). Keynote: The Dog Catches the Truck: What Next? National Innovations Conference. Charleston, SC.
- Reschly, D. J. (January 2004). Keynote. RTI and Special Education Reform. Bremerton Public Schools, Bremerton, WA.
- Reschly, D. J. (March 2004). Keynote. RTI and Special Education Reform. West Central Ohio SERRC, Wapakoneta, OH.
- Reschly, D. J. (March 2004). Keynote: RTI and Special Education Reform. Clark County School District, Las Vegas, NV.
- Reschly, D. J. (April 2004). Colloquium: Disproportionality Causes and Solutions. University of Texas, Austin, TX.
- Reschly, D. J. (October 2004). Keynote: Special Education Overrepresentation: Causes and Solu-

tions. Mississippi Department of Education. Tunica, MS

- Reschly, D. J. (October 2004). Keynote: School Psychology and the Future. Mid-South Regional Conference on Psychology in the Schools. Memphis, TN.
- Reschly, D. J. (November 2004). Problem Solving and Key Intervention Principles. Clark County School District Related Services Personnel. Las Vegas NV
- Reschly, D. J. (February 2005). Keynote: Problem Solving and SLD Identification. School Psychology Institute, Normal IL.
- Reschly, D. J. (February 2005). Keynote: RTI at Three Tiers of Intervention. Pennsylvania Training and Technical Assistance Network. Hershey, PA
- Reschly, D. J. (February 2005). Response to Intervention. West Chester, PA Schools.
- Reschly, D. J. (July 2005). Keynote: Preparation of School Personnel for RTI. Florida Department of Education Summer Institute for the Florida Association of Student Services Administrators. Stuart, FL.
- Reschly, D. J. (July 2005). Keynote: Alternatives for SLD Identification. National Association of School Psychologists Summer Institute, Las Vegas, NV.
- Reschly, D. J. (August 2005). Keynote: IDEA Reauthorization and RTI Principles. Wyoming School Psychologists Summer Institute. Jackson Hole, WY.

- Reschly, D. J. (August 2005). Keynote: RTI and Prevention of Prevention of Special Education Disproportionality. Louisiana Fall Pupil Appraisal Institute. Baton Rouge, LA
- Reschly, D. J. (August 2005). Fall In-service: RTI and Improving Classroom Results. Westside School District, Omaha NE.
- Reschly, D. J. (September 2005). Keynote: RTI and General Education Reforms. Oregon Confederation of School Administrators. Eugene, OR.
- Reschly, D. J. (September 2005). Keynote: Improving IEPs and Special Education Outcomes. Illinois Alliance of Administrators of Special Education. Chicago.
- Reschly, D. J. (September 2005). Keynote: RTI in General, Remedial, and Special Education. National Innovations Conference, Lansing, MI.
- Vanderbilt University, Kennedy Center for Research on Human Development, Developmental Disabilities Grand Rounds, *Persistence of Minority Overrepresentation in Mild Mental Retardation Despite Court, Legislative, and Social Science Prohibitions.* Nashville, TN, November 2, 2005.
- Reschly, D. J. (October 2005). RTI and Identification of SLD. South Carolina Special Education Administrators Conference, Columbia, SC.
- Reschly, D. J. (October 2005). State policy and RTI. Ohio Department of Education, Columbus, OH.
- Reschly, D. J. (October 2005). Keynote Address. RTI and the Future of School Psychology. North Carolina Association of School Psychologists Fall Conference. Charlotte NC.

- Reschly, D. J. (November 2005) Response to Intervention. Mississippi State Department of Education, Jackson, MS.
- Reschly, D. J. (January 2006). Keynote: Reducing Disproportionality through Early Identification-Treatment and Special Education Exit Criteria. Texas Council of Administrators of Special Education, Austin, TX.
- Reschly, D. J. (February 2006). Keynote: RTI and Special Education System Reform. Minnesota Council for Exceptional Children Winter Conference. Rochester MN.
- Reschly, D. J. (February 2006). Aligning Assessment with Improving Special Education Outcomes. Presentation to South Carolina Department of Education Staff, Columbia, SC.
- Reschly, D. J. (February 2006). Keynote: RTI and School Psychology Services. Mid-Winter Conference, Calhoun Intermediate School District, Marshall, MI.
- Reschly, D. J. (March 2006). Keynote: RTI and Learning Disabilities Identification. IDEA Partnership Regional Meeting. Miami, FL.
- Reschly, D. J. (May 2006). Keynote: Problem Solving. Illinois Problem Solving Conference, DeKalb, IL.
- Reschly, D. J. (May 2006). Keynote: Understanding RTI: What It Is and Why It Works. LRP National Institute on Legal Issues of Educating Individuals with Disabilities. Orlando, FL.

*Note: Presentations 2007-2011 to be updated*

- Reschly, D. J. (2009, October 3). *Overcoming Barriers to Effective Implementation of Response to Intervention*. Council for Learning Disabilities National Conference Keynote Address,. Dallas, 2009
- Reschly, D. J. & Smartt, S. M. (2009, May 24). *Barriers to scientifically-based reading instruction*. Invited address, B. F. Skinner Lecture, Association for Applied Behavior Analysis International, Phoenix
- Reschly, D. J. (2010). *Teacher preparation and research-based principles of tiered instruction*. Invited keynote address, Wing Conference on Effective Educational Practices, Berkeley, CA.
- Reschly, D. J. (2011, February 7). *Mild intellectual disability: Characteristics and controversies*. Vanderbilt University Grand Rounds, Department of Hearing and Speech Services.
- Reschly, D. J. (2011, March 24). *Special education: Sky is falling or best is yet to be?* University of Iowa, Center for Disability Research and Education.
- Reschly, D. J. (2011, April 28). *Innovation configurations: Helping pre-service and in-service teachers implement effective classroom practices in urban schools*. Conference Great Teachers for Our City Schools National Summit, Denver, CO.
- Reschly, D. J. (2011, May 20). *Psychological testimony in death penalty appeals due to intellectual disability*. Annual Conference of the Tennessee Association of Criminal Defense Lawyers. Knoxville.

- Reschly, D. J. (2011, June 1). *Improving mathematics achievement through response to intervention*. District Teacher In-Service, Boone Co, KY, Florence, KY.
- Reschly, D. J. (2011, June 13). *Developing great teachers for all schools*. Metro Nashville Public Schools.
- Reschly, D. J. (2011, July 20). *Improving the efficacy of teacher preparation programs: General and special education*. Invited paper on Office of Special Education Programs Panel, *Improving the efficacy of teacher preparation programs*. OSEP Project Directors Summer Meeting, Washington DC.
- Reschly, D. J., Holdheide, L. R., & Hougen, M. (2011, July 20). *Improving teacher preparation: Including knowledge and skills in evidence-based practices*. Invited Workshop at OSEP Project Directors Meeting, Washington DC.
- Reschly, D. J. (2011, October). *Issues in the implementation of RTI multiple tiers*. Keynote address, North Carolina School Psychologists Association, Winston-Salem, NC.
- Reschly, D. J. (2011, November 14). *US death penalty and the continuing dilemma of mild intellectual disability*. Colloquium, Department of Psychology, University of Otago, Dunedin, NZ.
- Reschly, D. J. (2011, November 22). *Closing gaps with response to intervention*. Keynote Address, Annual Educational Psychology Forum, Auckland, NZ.

**University/Department Service (Since 1975)**

- Chair, Iowa State University School Psychology Program Committee, 1975-1998
- Chair, ISU Psychology Department Teaching Evaluation committee, 1977-1980
- Member (elected), ISU Psychology Promotion and Tenure Committee, 1978-1981; 1984-1989, 1991-1997.
- Member, ISU College of Sciences and Humanities Promotion and Tenure Committee, 1982-1983
- Member, ISU Department Affairs Committee, 1977-1983
- Member, ISU Department of Psychology Graduate Program Committee, 1985-1997
- Member, ISU College of Liberal Arts and Sciences Representative Assembly (elected to represent department), 1987-1995; Executive Committee, 1992-1994; Chair, Executive Committee, 1994-1995
- Chair, ISU Faculty Search Committees, 1979; 1982; 1985; 1986; 1988; 1990, 1992, 1995
- Chair, ISU Department Head Search Committee, 1987-1988 (appointed by Dean, College of Sciences and Humanities)
- Member, ISU Psychology Department Grievance Committee, 1983-1988
- Member (elected), ISU Department of Psychology Executive Committee, 1988-1992; 1995-1997
- ISU Department of Psychology Faculty Enhancement (Chair, 1996-1997)

- ISU School/Counseling Diversity Search Member 1994-1996
- Member, ISU University Committee on Handicapped, 1979-1989
- Member, ISU Department of Psychology Faculty Development Committee, 1992-1996
- College of Liberal Arts and Sciences Committee on Faculty and Alumni Recognition (1992-98) (Chair, 1993-1998)
- ISU Provost's Ad Hoc Committee on Selection of University Distinguished Professors (Chair, 1994)
- ISU Ad Hoc Grievance Committee, Professional Studies in Education (Chair, 1994)
- ISU Ad Hoc Committee on Behavior Management, Department of Curriculum and Instruction (1995)
- ISU College of Liberal Arts and Sciences Associate Dean Search Committee (1994)
- ISU College of Liberal Arts and Sciences Five-Year Strategic Plan Writing Committee (1994-95)
- ISU Graduate College Premium for Academic Excellence Committee, 1997-1998
- ISU Co-Chair, College of Education and College of Family and Consumer Sciences Task Force on Collaborative Programs and Services, 1996-1998.
- Vanderbilt University Committee on Peabody College Undergraduate Programs, Member, 1998-2000
- Vanderbilt University Committee on Promotion and Tenure Grievances, Member, 1999-2002



- Vanderbilt University Ad Hoc Committee on the Human Development Counseling Program, Chair, 1998-1999
- Vanderbilt University Department of Leadership and Organizations Chair Search, Member, 1999-2001
- Vanderbilt University Search Committee for Kennedy Center Director, Co-Chair, 2000-2001
- Vanderbilt University Search Committee for Dunn Family Chair in Psychoeducational Assessment, Chair, 1999-2006
- Vanderbilt University Council on Teacher Education, 2000-2007
- Vanderbilt University, Chair Search Committee, Counselor Education 2001-2002
- Vanderbilt University, Member Mental Retardation Search Committee 2001-2002
- Vanderbilt University Chair Department of Special Education, 1998-2006
- Vanderbilt University Dean's Cabinet, 1998-2006
- Vanderbilt University Faculty Senate, 2007-2010
- Faculty Senate Committee on Professional Ethics and Academic Freedom, (Chair, 2008-2009)
- Vanderbilt University, Peabody College Promotion and Tenure Committee, 2008-09.
- Vanderbilt University, university-wide Promotion and Tenure Committee, 2009-2013 (Chair 3,486 2010-11 and 2011-12)

**Professional Service and Leadership (Sample Activities)**

- Editor, 1979-1981, School Psychology Review
- Editorial Board Memberships:
  - School Psychology Review, 1974-2000
  - Journal of School Psychology, 1982-1996
  - School Psychology Quarterly, 1984-1990 (Associate Editor, 1991-1994)
  - Journal of Psychoeducational Assessment, 1983-1988
  - Exceptional Child Quarterly, 1983-1988
  - Canadian Journal of School Psychology, 1990-
  - Contributing Editor, EDLAW Briefing Papers, 1990-1995
  - Journal of Learning Disabilities 1998-
- Ad Hoc Reviewer
  - Journal of Consulting and Clinical Psychology
  - American Psychologist
  - Exceptional Child
  - American Educational Research Journal
  - Review of Educational Research
  - American Journal of Mental Retardation
  - Journal of Educational Psychology
  - School Psychology International Psychological Bulletin
- President, National Association of School Psychologists (NASP), 1984-1985
- Chair, NASP Program Approval, 1989-1992

- Member, American Psychological Association Committee on Psychological Tests and Assessment, 1991-1994.
- Site Visitor, American Psychological Association Doctoral Program Accreditation
- Chair, NASP Publications Committee, 1982-1984, 1986-1988
- Member, NASP Accreditation, Certification and Graduate Training Committee, 1976-1980
- President, 1974-1975, Arizona Association of School Psychologists
- Member, NASP Executive Board, 1976-1978, 1981-1986
- Member, American Psychological Association, Division 16 Task Force on School Psychology Reform, 1990-1992
- Member, American Psychological Association (APA) Task Force on Children, Youth, and Families, 1981-1983.
- Member, APA Division 16 Committee on Testing Issues, 1982-1984
- Member, APA Division 16 Convention Program Committee, 1981-1985
- Member, APA Division 16 Task Force on the Future of the Practice of Psychology in Education, 1983-1985
- Chair or Member of numerous committees for the Arizona Association of School Psychologists and the Iowa School Psychologists Association
- President, Iowa School Psychologists Association, 1994-1995

- Member, National Academy of Sciences Panel on Goals 2000 and the Education of Students with Disabilities (7 meetings in 1995-1996)
- Member, State of Iowa Task Force on Mental Disabilities Classification Criteria 1995 1996
- Member, State of Iowa Task Force on Disproportionate Representation of African-American Students in Programs for Students with Disabilities 1995-1997
- External Reviewer, Lehigh University Personnel Preparation Grant, Preparing School Psychologists to Provide Services to Children with Developmental Disabilities
- Member, Iowa Department of Education Task Force on Assessment of Outcomes for Students with Disabilities, 1995-1997.
- Member, Seven Person Writing Team, *Assessment and Eligibility in Special Education: An Examination of Policy and Practice with Proposals for Change*, National Association of School Psychologists under contract with the Office of Special Education Programs, U. S. Department of Education, 1994
- President, President-Elect, and Past-President, Society for the Study of School Psychology, 1995-1998; 2001-2004
- President (1998-1999) and Board Member (1996-1999) Council of Directors of School Psychology Programs
- Member, National Academy of Sciences Panel on Overrepresentation of Minorities in Special Education, member 1999-2001

- Chair, National Academy of Sciences Panel on Disability Determination in Mental Retardation, 2000-2002
- Member, Office of Special Education Programs SLD Summit. November, 2003, Washington DC.
- Member, Disproportionality Determination Task Force, Office of Special Education and WESTAT, 2003.
- Co-chair, Division 33 (Mental Retardation and Developmental Disabilities) Program. American Psychological Association Annual Convention (Toronto 2003)
- Member, Executive Board, Higher Education Consortium in Special Education, 2002-2005.
- President, Division for Research, Council for Exceptional Children, 2005-2006.
- Invited testimony, US Commission on Civil Rights, December 3, 2007.
- US Department of Education, Institute for Educational Sciences, Task Force on the Evaluation of the Office for Special Education Programs Personnel Preparation and Doctoral Leadership Grants, 2008-2010.
- Member, Institute for Educational Sciences Proposal Review Board (Special Education), 2009-2012
- Co-chair, Transformation Leadership Group: Special Needs Students. Metro Nashville Public Schools, 2009-2012.
- Advisory Member, State of Wisconsin Governor's Panel on Educational Reform, March 30, 2011.

- External Review Team and author of chapter on special education, Webster Co. Parish Public Schools, April-October, 2011.
- Advisor, statistical analyses, and reports on special education disproportionality, Clark County School District, 2003-2012

### **Expert Witness and Case Consultation**

1. *\*AZ v. Coleman*, 1972; (State Court Tucson, AZ; No. 20854). (Expert Witness Testimony). (State)
2. *Marshall v. Georgia* 1983; (Federal District Court); Savannah, GA. (Report and expert witness testimony). (Federal)
3. *Bradley, v. Robb*, 1985; (Federal District Court); Richmond, VA. (Expert witness testimony). (Federal)
4. *S-1 v. Turlington*, 1986; (Federal District Court); Miami, FL. (Report and expert witness testimony). (Federal)
5. *Little Rock v. Pulaski Co.*, 1986. (Federal District Court); Little Rock, AR. (Expert witness testimony). (Federal)
6. *Egg Harbor Township Board of Education v. S.O.*, 1992 (Federal District Court) (Expert witness testimony). (Federal)
7. *Coalition to Save Our Children v. Board of Education*, 901 F. Supp. 784 (D. Del. 1995), aff'd 90 F.3d 752 (3d Cir. 1996). (Report and expert witness testimony). (Federal)
8. *Campaign for Fiscal Equity, Inc. v. State*, 719 N.Y.S. 2d 475, 485-487 (Sup. Ct. N.Y. Ctny.2001) (Report and expert witness testimony). (State)

9. *Harper et al. v. Patterson et al.*, 2003 (GA State Court, Civil Action No. 2:99-CV-0200 WCO); Elijay, GA. (Expert witness testimony) (State)
10. \**Darick Demorris Walker v. William Page True*, United States District Court for the Eastern District of Virginia, Alexandria Division, Case No. 1:03-cv-00764 (CMH). (Report and expert witness testimony in 2005; Executed May 20, 2010). (Federal)
11. *School Districts' Alliance for Adequate Funding of Special Education v. The State of Washington*. State of Washington, Thurston County Superior Court, NO. 04-2 02000-7 (Report and expert witness testimony in November 2006) (State)
12. \**Kevin Green v. Gene M. Johnson*, US District Court, Eastern District of Virginia, No. 2:05cv340. (Report and expert witness testimony in October, 2006, Executed May 27, 2008 ). (Federal)
13. *Consortium for Adequate School Funding in Georgia, Inc., et al. v. State of Georgia et al.* (Expert witness, completed deposition, case dropped).
14. \**Penry v. Texas*, Death Penalty Appeal (Consultant, 2006-2008. Case Settled LWOP).
15. \**John Lionel Neal Jr. v. State of Alabama, 28th Judicial Circuit Court, Baldwin Co., No. CC 87-520.60*. (Consultant to Petitioner, 2006-2008, Case Settled LWOP).
16. \**Winston v. Kelly*, US District Court, Western District of Virginia, Roanoke, Case No. 7:ev00364. (Report and expert witness testimony in November 2008, Case Settled LWOP). (Federal)

17. \**Rollins v. Tennessee*, Circuit Court of Sullivan County, TN, Second Judicial District at Blountville. (Evaluation, Report and expert witness testimony October, 2009; Case Settled Life Sentence). (State)
18. \**Chase v. Mississippi*, Circuit Court, Copiah County, MS. (Expert Witness Report and testimony August 2010, Execution Pending) (State)
19. \**Keen v. State of Tennessee*, Criminal Court of Shelby County Tennessee at Memphis Division 8. No. P-25157. (Expert Witness Report August 2010, Trial pending)
20. *S.R v. El Campo Independent School District et al.* Civil Action in District Court, Southern District of Texas. (Expert Report March 2011, Case settled)
21. \**State of Tennessee v. Willie Clyde Puckett*, Sullivan County Criminal Court, No. S54,153. (Expert Witness Report May 2011, Case Settled LWOP)
22. *Amber Blunt, et al. v. Lower School District, et al.* US District Court for the Eastern District of Pennsylvania, Civil Action No. 07-3100 (HB), Decision 10-20-2011. (Expert Witness Report & Deposition, June-July, 2011).
23. \**State of Tennessee v. Jawaune Massey*, Sullivan County Criminal Court No. S52,127. (Evaluation, Report, Testimony 2012, Case Settled Life Sentence). (State)
24. \**Chalmers v. Tennessee* (Evaluation, Report 2012-2014, Pending).
25. \**John Henretta v. Tennessee* (Evaluation, Report 2012, Case Settled LWOP)



26. \**David Jackson v. US* (Consultant 2013, Evaluation, Case Settled LWOP)
27. \**Pervis Payne v State of Tennessee* (Evaluation, Report 2012, Case Pending)
28. \**State of Texas v. Stanley R. Robertson* (Report 2011, Expert Report witness testimony 2013, Case Settled LWOP).
29. \**State of Tennessee v. Lasergio Wilson* (Evaluation, Expert Report 2013, case pending)
30. \**US v. Chastain Montgomery* (Report 2013, Expert report and witness testimony in October, 2013). (Case Settled LWOP) (Federal)
31. \**State of Tennessee v. Calvin Rogers*, (Expert Report 2013, expert testimony 2013-14, Case Settled LWOP). (State)
32. \**State (GA) v. Favors*, 2014 (Evaluated Gregory Favors, Case Settled LWOP)
33. \**US v. Naeem Willians*, 2014 (Consultation, brief evaluation)
34. \* *People (CA) v. Townsell*, 2014 (Consultation, reviewed records, pending)
35. \**US v. Guerrero* 2013-2014. N0 1:08-cr-00259-pmp (Evaluation, Report, Case settled LWOP)
36. \**Eaton v. Wilson (WY)*, No 09-cv-00261-J, 2014 (Evaluation, Report, Case settled LWOP)
37. \**KY v. Allman*, 2014 (Evaluation, Case settled LWOP).
38. \**Odom v. TN*, 2014 No 91-07049 (Evaluation, Pending).

39. *\*Rice v. TN*, 2014, No. 01-0035 (Evaluation, Pending).
40. *\*Caruthers v. TN*, 2014 (Evaluation, Report, Case Pending).
41. *\*Corey Johnson v. VA*, 2014, (Evaluation, Report, Case Pending).
42. *\*AZ v. Boyston*, 2014, No CR 2004-007442-001, (Evaluation, Report, Case Pending).
43. *\*US v. Ronell Wilson*, 2014, No 04-CR-1016 (NGG). (Record Review, Consultation, Report, Case Settled LWOP).
44. *\*SC v. Brown*, 2014 (Evaluation, Report, Testimony, LWOP). (State)
45. *\*TX v. Allen* 2014-2015 (Evaluation, Report, Case Settled LWOP).
46. *\*Tuilaepa v. US*, 2014-2015, (Evaluation).
47. *\*TX v. Adams*, 2014-2015, No 1372221. (Evaluation, Report, Case Settled LWOP).
48. *\*AR v. Friar*, 2015, No CR-2013-75 (Consultation, Record Review, Case Settled LWOP).
49. *\*KY v. Taylor*, 2015, (Evaluation, Report Pending)
50. *\*US v. Bolton*, 2015, (Evaluation)
51. *\*People (CA) v. Griffin*, 2010-2015, (Report 2010, Testimony May 2015, Judicial decision for LWOP, reversing death penalty sentence).
52. *\*Lard v. Arkansas*, 2015 (Evaluation, Report, Testimony, Decision Pending)
53. *CJEFF v State of Connecticut*, (Report, Deposition, Testimony [April, 2016], Decision Pending).

54. \**State of Texas v. Charles E. Brownlow Jr.*, 422 Judicial District of Kaufman County, Kaufman TX. (Evaluation, report, testimony (May 16-17, 2016)).

\* Death Penalty Cases

Summary: Expert witness in 15 state courts and 11 federal courts. Have never been denied expert witness status.

\* Cases involving mild intellectual disability and death penalty issues

Consultant Activities (Sample Activities)

- Baltimore Public School Psychological Services, 1972-1974
- National Follow Through, 1971-1975
- Pima County Pluralistic Assessment Project, 1973-1975
- Iowa Department of Education Nonbiased Assessment Project, 1976-1979;
- Iowa Department of Education Adaptive Behavior Project, 1980-1982;
- State of Georgia, 1980 (Handbook for School Psychologists)
- Illinois-Indiana Race Desegregation Center, 1981-1982
- Florida Atlantic University SOMPA Standardization Project, 1982-1983
- University of California-Berkeley Nondiscrimination Assessment Project, 1982-1985
- Chicago Public Schools, 1984-1986
- Charles E. Merrill Test Division, 1983-1986

- Psychological Corporation, 1984, 1986, 1988
- Minnesota Department of Education, 1986-1987 (MR Classification Criteria)
- Florida Department of Education, 1986-1989 (MR Classification Criteria)
- ETS-NASP, 1989-1991 (regarding bias in the National School Psychology Licensing Examination)
- Administrative Law Judge, State of Iowa (Hearings Regarding Education of the Handicapped), 1989-1998
- Consultant, American Association on Mental Retardation Committee on Classification in Mental Retardation, 1989-1992.
- Consultant to Board on Testing and Assessment, National Academy of Sciences, Issues Related to the Appropriate Assessment of Minority Children and Youth with Disabilities, 1994.
- State of Florida, Development of Criteria for Identification of Learning Disabilities and Mild Mental Retardation, 1995-1997.
- Consultant to Department of Psychology, Minot State University, Development and Need of School Psychology Graduate Program Opportunities in North Dakota, May, 1994.
- Consultant, U. S. DE Office of Special Education Programs and U.S. DE Office for Civil Rights, Task Force on Over-representation of Minority Students in Special Education Programs, 1993-1995
- Member, U. S. Department of Education, Office of Special Education Programs, Task Force on

Educational Outcomes for Students with Disabilities, March, 1994

- Member, Ford Foundation Task Force, Equity and Educational Assessment, May, 1996
- Grant Review Panel, U.S. Department of Education, Behavior Disorders Prevention and Intervention
- National Association of School Psychologists Panel, *Blueprint for School Psychology in the 21st Century (July, 1996 to March, 1997)*.
- State of Iowa Committee on Implementation of the Federal Education of the Handicapped Act 1979- 1983
- National Advisory Panel for Buros-Nebraska Institute of Mental Measurements, 1981-1988
- Erlbaum Series Advances in School Psychology, 1983-1991
- United States Department of Education Task Force on At Risk Students, 1984-1986
- Guilford Press Child Practitioner Series, 1985-1991
- United States Department of Education Project: Research Integration on Handicapped Students, 1985-1988
- State of Georgia Advisory Committee on Student Assessment, 1986-1996
- State of Iowa Task Force on Special Education Reform, 1989-1991
- Member, United States Department of Education Task Force on ADHD Assessment and Interventions, 1991-1992

- Grant Review Panel, ADHD Grant Competition, United States Department of Education, Office of Special Education Programs, 1991
- Consultant, National Center for Educational Outcomes, University of Minnesota and U.S. Office of Special Education Programs, 1995-1998
- Consultant, State of Kansas Board of Regents, Wichita State University Proposal re: School Psychology Doctoral Program 1996
- Member, Leadership Council, State of New York, Department of Education, Division of Vocational Education and Special Education, 1997-2003
- Consultant, (Pro bono) European Roma Rights Center, Budapest, 1999- (Evaluations and consultation regarding Roma children placed in special education programs in Ostrava, Czech Republic.)
- Williamson County Schools, Franklin TN, School Psychology Department, 1998-2000
- Consultant, Florida Department of Education. Project on Identification of Educable Mental Retardation. 2000-2001.
- State of Tennessee Department of Education Task Force on IDEA rules revisions, 1999-2001
- Minneapolis Public Schools, Waiver Project Evaluation, December, 2001.
- Consultant, New York Department of Education Disproportionality Task Force, Presentation to State Board, December 2002
- State of Indiana Disproportionality Project. 2000-2003

- State of Missouri Department of Education, Division of Special Education, Criteria for Disability Determination, 2002-2004
- Grant review panels, Office of Special Education Programs, several grant competitions 2002-2013
- Clark County School District (Las Vegas), Disproportionality Analyses and reports, 2003-2015.
- Connecticut Department of Education, 2003-2005, Mental retardation criteria and manual.
- Member, National Advisory Committee, Voyager Learning Inc., Dallas, TX, 2008-
- Hancock County Schools (Georgia), Achievement gap and disproportionality. 2008
- Jefferson County School District (Louisville, Kentucky). Achievement gap and disproportionality. 2009-10

#### Awards/Honors

- Distinguished Service Award, "Outstanding Services in the Editing and Design of the School Psychology Review," National Association of School Psychologists, 1980
- New Jersey Association of School Psychologists Award for "Outstanding Contributions to the Development of School Psychology," 1983
- Distinguished Service Award, "Dedicated Service and Leadership as President," National Association of School Psychologists, March, 1987
- Fellow, Division 16 (School Psychology), "In recognition of outstanding contributions to the science and profession of psychology," American Psychological Association (Elected in 1985)

- Charter Fellow, American Psychological Society, 1989
- James B. Stroud Award, "Outstanding contributions to the practice of school psychology," Iowa School Psychologists Association, October 1989
- Distinguished Service Award, "Design and administration of the NASP program approval service," National Association of School Psychologists, 1990
- Fellow, Division 15 (Educational Psychology), "In recognition of outstanding contributions to the science and profession of psychology," American Psychological Association (Elected in 1990)
- Distinguished Professor of Liberal Arts and Sciences, a career title representing, "...the highest academic honor bestowed by Iowa State University," May, 1991
- Dorthy H. Hughes Memorial Award for Distinguished Service in Educational and School Psychology by the Department of Applied Psychology, New York University, May, 1994
- Charter Member, Iowa Academy of Education (one of 15 persons appointed by the FINE Foundation as Charter Members)
- Outstanding Alumnus Award, College of Education, University of Oregon, 1996
- Cited in 1999 as in top five of school psychologists providing service to the profession as editor, associate editor, or editorial board member on school psychology journals
- National Association of School Psychologists Lifetime Achievement Award, "In Recognition of



Outstanding Achievement and Distinguished Service to the Profession of School Psychology, March, 2000

- Vanderbilt University Opportunity Development Center Award for “Exemplary Effort in Support of the University’s Commitment to Promoting Opportunities for Persons with Disabilities, October 2004
- National Association of School Psychologists “Legend in School Psychology Award” March 27, 2007