

**PENNY J. WHITE**  
**University of Tennessee College of Law**  
**Elvin E. Overton Distinguished Professor of Law**  
**Director, Center for Advocacy & Dispute Resolution**  
**Interim Director, UT Legal Clinic**

**TEACHING EXPERIENCE:**

Elvin E. Overton Distinguished Professor of Law, University of Tennessee College of Law, 2009-present  
Professor of Law, University of Tennessee College of Law, 2007-2009  
Associate Professor of Law, University of Tennessee College of Law, 2000-2007

Faculty, Winter Trial Advocacy Workshop, Harvard Law School, January 1997-2018  
Faculty, Georgia State University Summer Legal and Policy Study, Rio de Janeiro, Brazil 2009  
Faculty, Downing College, Cambridge Summer Session, 2008  
Faculty, Duke Law School International Human Rights Program, Summer Session, Geneva, Switzerland, 2002

Guest Lecturer, Special Course on Judicial Independence in Death Penalty Cases, Yale Law School, 2001-2018; Yale University On-Line Death Penalty Course 2009  
Visiting Professor of Law, University of Denver College of Law, 1999-2000  
William J. Maier, Jr., Visiting Professor of Law, West Virginia University College of Law, 1998-1999  
Visiting Professor of Law, Washington and Lee School of Law, 1997-1998  
Faculty, National Judicial College, University of Nevada, 1993- present  
Adjunct Professor, University of Tennessee College of Law, 1990-1996  
Adjunct Professor, East Tennessee State University, Departments of Political Science and Criminal Justice, 1982-1990

**ADMINISTRATIVE EXPERIENCE**

Director, University of Tennessee College of Law Center for Advocacy and Dispute Resolution, 2006-present (Interim Director until 2008)  
Interim Director, University of Tennessee College of Law Legal Clinic, 2015-2018  
Visiting Director, Virginia Capital Case Clearinghouse, Washington and Lee School of Law 1997-98

**LEGAL EXPERIENCE**

Associate Justice, Tennessee Supreme Court, 1994-1996  
Judge, Tennessee Court of Criminal Appeals, 1992-1994  
Judge, Circuit Court, First Judicial District, Tennessee, 1990-1992  
Private Practice, Johnson City, Tennessee, 1981-1983; 1985-1990 (briefed and argued *Houston v. Lack*, 487 U.S. 266 (1988))  
E. Barrett Prettyman Fellow, Georgetown University Criminal Justice Clinic, Georgetown University Law Center, 1983-1985

**EDUCATION:**

Masters of Law, Georgetown University Law Center, 1987 (E. Barrett Prettyman Fellow)  
Doctor of Jurisprudence, University of Tennessee College of Law, 1981 (Order of the Coif)  
Bachelor of Science, East Tennessee State University, 1978 (summa cum laude)

## **PROFESSIONAL HONORS AND AWARDS: (last 15 years)**

Harold C. Warner Outstanding Teaching Award, University of Tennessee College of Law (2018)  
Governors' Award, Knoxville Bar Association (2017) (highest award given by KBA Board of Governors)  
Bass, Berry & Sims Faculty Award, University of Tennessee College of Law (2016)  
Advancement of Justice Award, National Judicial College (2014)  
University of Tennessee Jefferson Prize (2012)  
University of Tennessee National Alumni Association Outstanding Teacher Award (2012)  
2012 *Dicta* Award for best published article, Knoxville Bar Association (2012)  
Harold C. Warner Outstanding Teaching Award, University of Tennessee College of Law (2010)  
V. Robert Payant Award for Teaching Excellence, National Judicial College (2010)  
Marilyn V. Yarborough Award for Writing Excellence, University of Tennessee College of Law (2009)  
Carden Award for Outstanding Achievement in Scholarship, University of Tennessee College of Law (2008)  
Carden Award for Outstanding Service to the Institution, University of Tennessee College of Law (2007)  
Bass, Berry & Sims Award for Outstanding Service to the Bench and Bar, University of Tennessee College of Law (2006)  
Forrest W. Lacey Award for Outstanding Contribution to University of Tennessee College of Law Moot Court Program, 2013-2014; 2012-13, 2005-06, 2002-03, 2001-02  
Bernstein-Richie Award for Extraordinary Service to University of Tennessee Legal Clinic, 2002

## **PUBLICATIONS:**

### ***Law Review Articles***

The Other Costs of Judicial Elections, 67 DePaul L. Rev. 369 (Winter 2018)  
If It "Aint" Broke, Break It: How the Tennessee General Assembly Dismantled and Destroyed Tennessee's Unique Judicial System, 10 Tenn. J. Law & Policy 329 (2015)  
A New Perspective on Judicial Disqualification: An Antidote to the Effects of the Decisions in *White and Citizens United*, 46 Ind. L. Rev. 103 (2013)  
Relinquished Responsibilities, 123 Harvard L. Rev. 120 (2009)  
Treated Differently in Life but not in Death: The Execution of the Mentally Retarded After *Atkins v. Virginia*, 76 Tenn. L. Rev. 685 (2009)  
Using Judicial Performance Evaluations to Supplement Inappropriate Voter Cues and Enhance Judicial Legitimacy, 74 U. Mo. L. Rev. 635 (2009)  
*The Appeal to the Masses*, 86 U. Denver L. Rev. 251 (2008)  
A Response to Professor Fitzpatrick: The Rest of the Story, 75 Tenn. L. Rev. 501 (Spring 2008)  
The Aftermath of *Republican Party of Minnesota v. White*, Pound Foundation (Summer 2007)  
"He Said, She Said," and Matters of Life and Death, 19 Regents U. L. Rev. 387 (Fall 2006)  
A Matter of Perspective, 3 University of North Carolina First Amendment L. Rev. 5 (Winter 2004)  
Some Appeasement for Professor Tushnet, 71 Tenn. L. Rev. 275 (Winter 2004)  
"The Good, The Bad, and The (very, very) Ugly" (and its postscript, "A Fistful of Dollars"): Musings on *White*, 38 U. Richmond L. Rev. 626 (March 2004)  
Symposium: Preserving the Legacy: A Tribute to Chief Justice Harry L. Carrico, One Who Exalted Judicial Independence, 38 U. Rich. L. Rev. 615 (March 2004)  
Legal, Political, and Ethical Dilemmas to Applying International Human Rights Laws in State Courts, 71 U. Cinn. L. Rev. 937 (Spring 2003)  
Mourning and Celebrating on Gideon's Fortieth, 72 U. Missouri-Kansas City L. Rev. 515 (Winter 2003)  
Rescuing Confrontation, 54 S.C. L. Rev. 537 (Spring 2003)  
Judging Judges: Securing Judicial Independence By Use of Judicial Performance Evaluations, 24 Fordham Urban Law Journal 1053 (February 2002)

Errors and Ethics: Dilemmas in Death, 29 Hofstra L. Rev. 1265 (Summer 2001)  
A Response and Retort, 33 Conn. L. Rev. 899 (Spring 2001)  
Newly Available, Not Newly Discovered, 2 J. of App. Prac. and Proc. 7 (Winter 2000)  
Can Lightning Strike Twice? Obligations of State Courts After *Pulley v. Harris*, 70 Col. L. Rev. 813 (Summer 1999)  
Master, Justice, Chancellor Kent: His Legacy For Today's Judges, 74 Chi-Kent L. Rev. (1999)  
If Justice Is For All, Who Are Its Constituents?, 64 Tenn. L. Rev. 259 (1997)  
"It's a Wonderful Life," or Is It? America Without Judicial Independence, 27 U. Mem. L. Rev. 1 (1996), partial reprint in 80 Judicature 174 (Jan. - Feb. 1997)  
Yesterday's Vision, Tomorrow's Challenge: Alternative Dispute Resolution in Tennessee, 26 U. Mem. L. Rev. 957 (1996)  
A Survey of Tennessee Supreme Court Death Penalty Cases in the 1990s, 61 Tenn. L. Rev. 733 (1994)  
A Noble Idea Whose Time Has Come, 18 Mem. State L. Rev. 223 (1988) (master's thesis)

### **Books**

Tennessee Capital Case Handbook (Tennessee Association of Criminal Defense Lawyers) (rev'd. edition 2014)  
Tennessee Capital Case Handbook (Tennessee Association of Criminal Defense Lawyers) (2010)

### **Chapters in Books**

Introduction to *Gideon v. Wainwright*, in Readings in Persuasion: Briefs that Changed the World (2012)  
Tennessee's New Abolitionists, Chapter 6, Judicial Independence and the Death Penalty (University of Tennessee Press) (2010)  
Presiding Over a Capital Case: A Benchbook for Judges, Chapter 1, Capital Cases and Federal Constitutional Issues; Chapter 10, Federal Habeas Corpus (William J. Brunson, et al, eds., National Judicial College) (2009)  
Introduction to Capital Litigation: Overview and History of Capital Jurisprudence in the United States Supreme Court, Chapter 1, Capital Litigation Improvement Initiative Benchbook for State Trial Judges (2009)  
Review of State Death Sentenced by Federal Courts: The Impact of Federal Habeas Corpus on State Death Penalty Cases, Chapter 10, Capital Litigation Improvement Initiative Benchbook for State Trial Judges (2009)  
Judicial Independence and Capital Punishment in Tennessee, Chapter 6, Tennessee's New Abolitionists: The Fight Against the Death Penalty in the Volunteer State (2009)  
Several Chapters in Encyclopedia of American Civil Liberties and Rights (Otis H. Stephens & John Scheb, eds.)(2006)  
The Improvement of the Administration of Justice, Chapter 33, The Continuing Evolution of the Federal Rules of Evidence (7<sup>th</sup> ed. 2001)  
Employee Rights From the Government Perspective: An Overview From the Practicing Attorney's Viewpoint, in Communicating Employee Responsibilities and Rights (Osigweh ed., 1987)

### **Other Publications in smaller journals and magazines**

"A Far Less Perfect Union," Case in Point 36 (2017-18)  
"There's a New Kid in Town," Part III, Tennessee Trial Lawyer (Summer 2011)  
"There's a New Kid in Town," Parts I & II, Tennessee Trial Lawyer (Winter/Spring 2011)

Virtual Cross-Examination, Dicta (April 2009)  
An Independent and Impartial Judiciary: The New Urgency, Dicta (February 2009)  
Judicial Disqualification after *White* – Dual Duties, 11 Tort Source 1 (Fall 2008)  
Judicial Campaign Oversight Committees’ Complaint Handling in the 2006 Elections: Survey and Recommendations, 91 Judicature 235 (Mar - April 2008) (co-authored with William Fortune)  
Capital Punishment: Challenges and State Court Obligations, National Center for State Courts Trends Report (2000), at <http://www.ncsc.dni.us/KMO/Projects/Trends/99-00/Index.htm>  
Surviving the Politics of Judging, 20 J. of Nat’l Assn. of Admin L. Judges 149 (Spring 2000)  
Judicial Independence: Second Steps, 38 Judges Journal 5 (Summer 1999)  
Judges’ New Role in Preserving an Independent Judiciary, 14 NJC Alumni 9 (1998)  
Judicial Courage and Judicial Independence, 16 J. of Nat’l Assn. of Admin. L. Judges 61 (1996)  
Ten Things They Never Taught You in Law School, 30 Tenn. Bar J. 20 (May - June 1994)

### ***Publications for State Court Judges***

Tennessee’s Municipal Court Judges Benchbook (2004-2006)  
Tennessee General Sessions Court Judges Benchbook (2002- 2005)  
Post-Conviction Manual for Trial Judges (National Judicial College, University of Nevada 2001)  
Tennessee Trial Judges Benchbook (2000)  
Sentencing Manual for State Court Judges, National Judicial College (1998-99)

### ***Other Significant Writings***

Authored Petition for Certiorari in *Leath v. State*, a case challenging Tennessee’s sequential verdict system as violating the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution  
Authored Petition for Certiorari in *Van Tran v. State*, a case challenging Tennessee’s application of *Atkins v. Virginia*, which bars the execution of people with intellectual and developmental disabilities (filed July 2007, pending in the United States Supreme Court)  
Authored Petition for Certiorari in and argued *Houston v. Lack*, a case establishing the mailbox rule for prisoners filing pro se habeas petitions, *Houston v. Lack*, 487 US 266 (1988)  
Authored Supreme Court rules on alternative dispute resolution, post-conviction procedure; helped author procedures and rules for Tennessee Judicial Evaluation Program

### ***Published Opinions***

Authored approximately 200 reported and unreported opinions as an appellate judge between 1992-1996; examples include *McClung v. Delta Square Ltd. Partnership*, 937 S.W.2d 891 (Tenn. 1997); *Meighan v. U.S. Sprint Co.*, 942 S.W.2d 476 (Tenn. 1997); *Ramsey v. Beavers*, 931 S.W.2d 527 (Tenn. 1996); *Ray, by Hoilman v. BIC Corp.*, 931 S.W.2d 527 (Tenn. 1996); *Wimley v. Rudolph*, 931 S.W.2d 513 (Tenn. 1996); *McClellan v. Board of Regents*, 921 S.W.2d 684 (Tenn. 1996); and *Phipps v. State*, 883 S.W.2d 138 (Tenn. 1994)

### **SERVICE TO PROFESSION AND COMMUNITY: (partial listing, last 10 years)**

Member, American Judicature Society, Center for Judicial Independence Advisory Committee  
Member, American Bar Association, Jury Commission  
Co-Chair, NITA and Tennessee Court Improvement Project, Trial Advocacy Skills for Childrens’ Lawyers  
Co-Chair, Legal Services Training Committee, American Bar Association Litigation Section  
Co-Chair, Task Force on Access to Justice, American Bar Association Litigation Section  
Co-Chair, Task Force on Litigation Essentials, American Bar Association Litigation Section  
Co-Chair, Task Force on Jury Innovation, American Bar Association Litigation Section

Member, American Bar Association Advisory Committee for Department of Justice Funded Project  
Co-Chair, Task Force on the Independence of the Judiciary, American Bar Association Litigation Section  
Barrister, Hamilton Burnett Inn of Court  
Member, Board of Directors, Legal Aid of East Tennessee  
Past Member, Board of Directors, American Judicature Society

**SERVICE TO UNIVERSITY OF TENNESSEE COLLEGE OF LAW: (past and present, partial listing)**

Committee Member, ABA Self-Study Committee  
Chair, Pro Bono Committee  
Committee Member, Academic Leadership Committee  
Committee Member, Strategic Planning Committee  
Committee Member, Facilities Committee  
Committee Member, Governance Committee  
Committee Member, Facilities Committee  
Committee Member, Dean's Search Committee  
Committee Member, Adjunct Faculty Committee  
Committee Member, Appointments Committee; Search Committees  
Coach, Jerome Prince Evidence Moot Court Team  
Faculty Advisor, Hamilton Burnett Chapter of the American Inns of Court  
Faculty Advisor, *Tennessee Journal of Law and Policy*

**SPEECHES, SYMPOSIA, PANEL DISCUSSIONS: (partial listing, last 10 years)**

Clifford Symposium, DePaul College of Law, Judicial Independence, April 2017  
Ingram Symposium, Santa Clara School of Law, Judicial Selection and Independence, January 2017  
Carson-Newman College, Constitution Day, The Constitution, Separation of Powers, and Judicial Independence, Tennessee, September 2014  
College of Veterinary Medicine, Annual Conference, "It's Ruff Out There: Analyzing Some Legal Issues Affecting Veterinarians," Tennessee, February 2011  
UT Centripetals, "Money, Sex, and Special Interests: A Crisis in Today's Courts," UT, January 2011  
South Carolina Law Review, "Judicial Independence and Recusal Post-*Caperton*," South Carolina, September, 2010  
SEALS, "*Caperton* Revisited," Florida, August 2010  
ABA Standing Committee on Legal Aid and Indigent Defense, National Indigent Defense Symposium, "Unique Ethical Dilemmas in Capital Representation," Tennessee, May 2010  
Harvard Law School, Harvard Law Review Supreme Court Review, Massachusetts, November 2009  
Center for Political Accountability, Zicklin School of Business, Baruch College, CUNY, "American Justice For Sale," New York, September 2009  
Memphis Bench-Bar Conference Panel Discussion, "The Pros and Cons of Merit Selection v. Election of Judges," Florida, April 2009  
University of Missouri Law Review Symposium, "Using Judicial Performance Evaluations to Supplement Inappropriate Voter Cues and Enhance Judicial Legitimacy," Missouri, February 2009  
Tennessee Law Review Symposium, "Mental Retardation and the Death Penalty," Tennessee, February 2009  
Vanderbilt Law School Constitutional Law Society, "Recent Supreme Court Decisions," October 2008  
Keynote Address, National Association of Women Judges' Annual Conference, "We the People,"

Pennsylvania, November 2007  
 North Carolina Judicial Conference & Bar Association Annual Convention, “Professionalism Challenges,” North Carolina, June 2007  
 Brevard County Bar Association, Keynote Address, “Liberty Under Law: Empowering Youth, Assuring Democracy,” Florida, May 2007  
 Austin College Law Symposium, Keynote Address for Texas appellate court and students, “Broken Trust Broken Promise? How Threats to Judicial Independence May Threaten the American Experiment,” Texas, April 2007  
 Syracuse College of Law & Institute for the Study of Judiciary, Politics, “The Media’s Effect on Judicial Independence: A Kaleidoscopic View,” New York, February 2007  
 National Judicial College, Justice Jackson Lecture, “Judicial Accountability, Fairness, and Independence,” October 2006  
 Oregon Judicial Conference, Courts in the 21<sup>st</sup> Century, The Journalist, the Professor, & the Judge: Three Views of Why Judicial Independence Matters & How We Avoid the Traps & Obstacles to Achieving It, “A Deja View of Judicial Independence,” October 2006  
 Regents University Law School, Symposium on Confrontation Clause, October 2006  
 Northeast State Community College, Constitution Day Lecture, September 2006  
 Illinois Judiciary Public Confidence Symposium, February 2006  
 National Habeas Corpus Conference, Keynote Address, Pittsburg, August 2005  
 First Amendment Law Review Symposium on Judicial Speech, Chapel Hill, March 2004  
 SEALS, Panel on Judicial Independence and Selection, Amelia Island, Florida, July 2003  
 Symposium Honoring Chief Justice Harry Carrico, Judicial Independence in the States after *White*, Richmond, March 2003 (available on University of Richmond College of Law website)  
 Inter-American Commission on Human Rights Working Session on the Implementation of International Human Rights Obligations in the Inter-American System, American States, State Court Obligations under International Human Rights Law, Washington D.C., March 2003  
 Symposium Celebrating *Marbury v. Madison*, A Some Appeasement for Professor Tushnet, Knoxville, February 2003 (available on University of Tennessee College of Law website)  
 Duke Law School, International Moot Court Competition, Keynote Address for participants, February 2003, 2004, 2005, & 2006  
 American Bar Association Annual Meeting, Tips From the Trenches, Washington D.C., August 2002  
 Duke Law School International Human Rights Program, Hurdles to Applying International Law in American State Courts, Geneva, Switzerland, July 2002  
 Ohio Public Trust and Confidence Conference, Keynote Address, Restoring Confidence in the Judiciary, January 2002

**JUDICIAL AND LEGAL EDUCATION PRESENTATIONS: (partial listing in alphabetical order)**

***National Programs***

National Judicial College, Scientific and Forensic Evidence for Judges, on-line course for all state court judges, 2014-present  
 National Judicial College, General Jurisdiction, Evidence, Criminal Procedure, 1993-present  
 National Judicial College, Advanced Evidence, 2010-present  
 National Judicial College, Evidence in a Courtroom Setting, 2013-present  
 National Judicial College, Evidence for Military Judges, 2008, 2010, 2015  
 Capital Law Improvement Initiative, National Judicial College, Consultant and Presenter, North Carolina, Arkansas, Tennessee, Oklahoma, Arizona, Nebraska, Alabama, 2006-07; 2010-11; 2013; 2015; 2017

Southern Society of Adventist Attorneys, Ethics; Negotiations, North Carolina 2012; Florida 2013  
National Administrative Law Judges Annual Conference, Evidence for the ALJ, New Mexico,  
September 2011  
Capital Law Improvement Initiative, National Judicial College, Consultant and Presenter,  
Alabama, Arizona, Nebraska, Oklahoma, North Carolina, Tennessee, 2006-07; 2010-11; 2013;  
2015, 2017  
National Association of Unemployment Insurance Appeals Professional, Evidence, Tennessee, June 2012  
National Administration of Law Judges Annual Conference, Evidence for the ALJ, New Mexico,  
September 2011  
National Conference of Appellate Court Clerks, “Who’s Defending the Judiciary?” South Carolina, June  
2012  
American Bar Association, Appellate Judges Conference, Judicial Independence, August 1998  
Board of Contract Appeals, Washington, D.C., Judicial Independence, June 1998  
Bulgarian Judiciary, American Justice System, August 2002

### ***State Judicial Programs***

Multiple Judicial Programs in the following states on various topics including evidence, criminal procedure, professional ethics, negotiation, trial advocacy, capital litigation, high-profile litigation, pretrial litigation, and judicial ethics:

Alabama, Alaska, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New York, New Hampshire, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, Wisconsin

### ***State Legal Programs***

Multiple Legal Education Programs in the following states on various topics including ethics:  
Alabama, Arizona, Arkansas, California, Colorado, Florida, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Minnesota, Nebraska, Nevada, North Carolina, Ohio, Oklahoma, Oregon, Tennessee, Vermont, Virginia, Wisconsin, Wyoming