

**University of North Carolina**  
**School of Law**  
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*Chapel Hill, North Carolina 27599-3380*

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*J. Dickson Phillips Distinguished Professor of Law*  
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**CURRICULUM VITAE**

**Robert P. Mosteller**

Born May 25, 1948, Vale, North Carolina

Married to S. Elizabeth Gibson (law professor at UNC Law School)  
Two Adult Children -- Daniel and Benjamin

Address: 113 Wild Iris Lane  
Chapel Hill, N.C. 27514

Present Position: J. Dickson Phillips Distinguished Professor of Law, UNC School of Law  
Associate Dean for Academic Affairs 2010-2013

Previous Position: Harry R. Chadwick, Sr. Professor of Law, Duke University Law School,  
Durham, N.C.  
Associate Professor 1983-87  
Professor since 1987  
Senior Associate Dean for Academic Affairs 1989-1991  
Chair of Duke University Academic Council 1998-2000  
Wayne Morse Chair of Law and Politics, University of Oregon, fall 2002

Previous Employment: Public Defender Service, Washington, D.C.  
Chief of Trial Division 1982-83  
Director of Training 1980-82  
Staff Attorney 1976-82

Law clerk for J. Braxton Craven, Jr., United States Court of Appeals for  
the Fourth Circuit 1975-76

Education: B.A. (History), University of North Carolina at Chapel Hill 1970  
President of Phi Beta Kappa  
Frank Porter Graham Award  
Attorney General for the Student Body  
Order of Golden Fleece, Order of Holy Grail

J.D., Yale Law School 1975

Masters in Public Policy, Kennedy School of Government, Harvard University 1975

## Articles

*Paul Giannelli's Scholarship of Measured Wisdom, Sophistication, and Significance, and a Man of Diligence, Humor, and Graciousness*, 68 CASE W. RES. L. REV. 805 (2018).

*N.C. Innocence Inquiry Commission's First Decade: Impressive Successes and Lessons Learned*, 94 N.C. L. REV. 1725 (2016).

*Pernicious Inferences: Double Counting and Perception and Evaluation Biases in Criminal Cases*, 58 HOW. L.J. 365 (2015).

*"Potential Innocence": Making the Most of a Bleak Environment for Public Support of Indigent Defense*, 70 WASH. & LEE L. REV. 1345 (2013).

*Responding to McCleskey and Batson: The North Carolina Racial Justice Act Confronts Racial Peremptory Challenges in Death Cases*, 10 OHIO ST. J. CRIM. L. 103 (2012).

*The Sixth Amendment Rights to Fairness: The Touchstones of Effectiveness and Pragmatism*, 45 TEX. TECH L. REV. 1 (2012).

*Confrontation in Children's Cases: The Dimensions of Limited Coverage*, 20 J. L. & Pol'y 393 (2012).

*Failures of the American Adversarial System to Protect the Innocent and Conceptual Advantages in the Inquisitorial Design for Investigative Fairness*, 36 N.C. J. INT'L L. & COM. LIT. 319 (2011).

*The Racial Justice Act and the Long Struggle with Race and the Death Penalty in North Carolina*, 88 N.C. L. REV. 2031 (2010) (with Seth Kotch).

*Protecting the Innocent: Part of the Solution for Inadequate Funding for Defenders, Not a Panacea for Targeting Justice*, 75 MO. L. REV. 931 (2010).

*Why Defense Counsel Cannot, But Do, Care About Innocence*, 50 SANTA CLARA L. REV. 1 (2010).

*Revealing and Thereby Tempering the Abuses of Government Created Evidence in Criminal Trials*, 75 BROOK. L. REV. 1277 (2010).

*The Danger to Confidential Communications in the Mismatch between the Fourth Amendment's "Reasonable Expectation of Privacy" and the Confidentiality of Evidentiary Privileges*, 32 CAMPBELL L. REV. 147 (2010) (with Kenneth S. Broun).

*Giles v. California: Avoiding Serious Damage to Crawford's Limited Revolution*, 13 LEWIS & CLARK L. REV. 675 (2009).

*The Special Threat of Informants to the Innocent who are not Innocents: Producing "First Drafts," Recording Incentives, and Taking a Fresh Look at the Evidence*, 6 OHIO ST. J. CRIM. L. 519 (2009).

*Exculpatory Evidence, Ethics, and the Road to the Disbarment of Mike Nifong: The Critical Importance of Full Open-File Discovery*, 15 GEO. MASON L. REV. 257 (2008).

*The Duke Lacrosse Case, Innocence, and False Identifications: A Fundamental Failure to "Do Justice,"* 76 FORDHAM L. REV. 1337 (2007).

*Testing the Testimonial Concept and Exceptions to Confrontation: "A Little Child Shall Lead Them,"* 82 IND. L.J. 917 (2007).

*Police Deception Before Miranda Warnings: The Case for Per Se Exclusion of an Entirely Unjustified Practice at a Particularly Sensitive Moment*, 39 TEX. TECH L. REV. 1239 (2007).

*Finding the Golden Mean with Daubert: An Elusive, Perhaps an Impossible, Goal*, 52 VILL. L. REV. 723 (2007).

*Confrontation as Constitutional Criminal Procedure: Crawford's Birth Did Not Require that Roberts and Wright Had to Die*, 15 J. L. & Pol'y 685 (2007).

*Softening of the Formality and Formalism of the "Testimonial" Statement Concept*, 19 REGENT U. L. REV. 429 (2007).

*Davis v. Washington and Hammon v. Indiana: Beating Expectations*, 105 MICH. L. REV. FIRST IMPRESSIONS 6 (2006), <http://students.law.umich.edu/mlr/firstimpressions/vol105/mosteller.pdf>.

*Evidence History and Rumblings in the Future of Proof*, 3 OHIO ST. J. CRIM. L. 523 (2006).

*Crawford's Impact on Hearsay Statements in Domestic Violence and Child Sexual Abuse Cases*, 71 BROOK. L. REV. 411 (2005).

*“Testimonial” and the Formalistic Definition—The Case for an “Accusatorial” Fix*, 20 CRIM. JUST. 14 (Summer 2005).

*Encouraging and Ensuring the Confrontation of Witnesses*, 39 U. RICHMOND L. REV. 511 (2005).

*The Confrontation Clause Radically Redefined by Crawford v. Washington*, at 6, N.C. BAR J. (Winter 2004).

*Admissibility of Fruits of Breached Evidentiary Privileges: The Importance of Adversarial Fairness, Party Culpability, and Fear of Immunity*, 81 WASH. U. L.Q. 961 (2003).

*New Dimensions in Sentencing Reform in the Twenty-First Century*, 82 OR. L. REV. 1 (2003).

*Victim Impact Statements: Hard to Find the Real Rules*, 88 CORNELL L. REV. 543 (2003).

*The Maturation and Disintegration of the Hearsay Exception for Statements for Medical Examination in Child Sexual Abuse Cases*, 65 LAW & CONTEMP. PROBS., Winter 2002, at 47

*Cowboy Prosecutors and Subpoenas for Incriminating Evidence: The Consequence and Correction of Excess*, 58 WASH. & LEE L. REV. 487 (2001).

*With Disdain for the Constitutional Craft: The Proposed Victims’ Rights Amendment* (co-authored with H. Jefferson Powell), 78 N.C. L. REV. 371 (2000).

*The Unnecessary Victims’ Rights Amendment*, 1999 UTAH L. REV. 443

*Victims’ Rights and the Constitution: Moving from Guaranteeing Participatory Rights to Benefiting the Prosecution*, 29 ST. MARY’S L.J. 1053 (1998).

*Moderating Investigative Lies by Disclosure and Documentation*, 76 OR. L. REV. 833 (1997).

*Victims’ Rights and the United States Constitution: An Effort to Recast the Battle in Criminal Litigation*, 85 GEO. L.J. 1691 (1997).

*Syndromes and Politics in Criminal Trials and Evidence Law*, 46 DUKE L.J. 461 (1996).

*Popular Justice*, 109 HARV. L. REV. 487 (1995) (reviewing GEORGE P. FLETCHER, WITH JUSTICE FOR SOME: VICTIMS’ RIGHTS IN CRIMINAL TRIALS (1995)).

Commentary, *Interpretation of Federal Rule 801, Symposium on Hearsay and Implied Assertions: How Would (or Should) the Supreme Court Decide the Kearley Case?*, 16 MISS. C. L. REV. 21 (1995).

*Remaking Confrontation Clause and Hearsay Doctrine Under the Challenge of Child Sexual Abuse Prosecutions*, 1993 ILL. L. REV. 691

*The Effect of Victim-Impact Evidence on the Defense*, 8 CRIMINAL JUSTICE, Spring 1993, at 24

*Child Abuse Reporting Laws and Attorney-Client Confidences: The Reality and the Specter of Lawyer as Informant*, 42 DUKE L. REV. 203 (1992).

*Legal Doctrines Governing the Admissibility of Expert Testimony Concerning Social Framework Evidence*, 52 LAW & CONTEMP. PROBS., Autumn 1989, at 85

*Child Sexual Abuse and Statements for the Purpose of Medical Diagnosis or Treatment*, 67 N.C. L. REV. 257 (1989).

*Simplifying Subpoena Law: Taking the Fifth Amendment Seriously*, 73 VA. L. REV. 1 (1987).

*Discovery Against the Defense: Tilting the Adversarial Balance*, 74 CALIF. L. REV. 1567 (1986).

## **Books**

MCCORMICK ON EVIDENCE (7th ed. 2013) (with Broun *et al.*) and 2016 Supplement (General Editor) [MCCORMICK ON EVIDENCE (8th ed. 2019 (forthcoming) (General Editor)].

MCCORMICK ON EVIDENCE: STUDENT EDITION (7th ed. 2014) (with Broun *et al.*) and 2016 Pocket Part (General Editor).

CASES AND MATERIALS ON EVIDENCE (8th ed. 2014) (with Broun & Giannelli).

PROBLEMS IN EVIDENCE (6th ed. 2011) (with Broun, Giannelli & Richter).

NORTH CAROLINA EVIDENTIARY FOUNDATIONS (with Imwinkelried, Beskind & Baddour) (3d ed. 2014) and 2018 Pocket Part.

## **Book Segments**

*Failures of the Prosecutor's Duty to "Do Justice" in Extraordinary and Ordinary Miscarriages of Justice*, in *THE PROSECUTOR IN TRANSNATIONAL PERSPECTIVE* (Erik Luna & Marianne Wade eds., 2012).

*The U.S. Perspective on the Judicial Role in Sentencing: A Story of Small Victories and a Call for Partial Solutions in a Difficult Environment*, in *THE JUDICIAL ROLE IN CRIMINAL PROCEEDINGS* (S. Doran & J. Jackson eds., 2000).

*The Uses and Abuses of Syndrome and "Group Character" Evidence in American Criminal Trials*, in *PROCEEDINGS OF THE FIRST WORLD CONFERENCE ON NEW TRENDS IN CRIMINAL INVESTIGATION AND EVIDENCE 193* (J.F. Nijboer & Reijntjes eds., 1997).

### **Encyclopedia Entries**

"Evidence (United States)," *ENCYCLOPEDIA OF LEGAL HISTORY* (2008).

"Victims' Rights," *ENCYCLOPEDIA OF AMERICAN CIVIL LIBERTIES* (2006).

"Discovery in Criminal Cases," *ENCYCLOPEDIA OF CRIME AND JUSTICE* (2002).

"Victims' Rights," *ENCYCLOPEDIA OF CRIME AND JUSTICE* (2002).

"Double Jeopardy," *ENCYCLOPEDIA OF AMERICAN CONSTITUTIONAL LAW* (Supplement 1991).

"Speedy Trial," *ENCYCLOPEDIA OF AMERICAN CONSTITUTIONAL LAW* (Supplement 1991).

### **Reporter**

*MANDATORY JUSTICE: EIGHTEEN REFORMS TO THE DEATH PENALTY, THE CONSTITUTION PROJECT, DEATH PENALTY INITIATIVE* (2001) (co-reporters with Susan Bandes and Stephen Saltzburg).

### **Courses Taught**

Evidence

Constitutional Criminal Procedure Seminar

Criminal Procedure-Investigation

Death Penalty Clinic

Advanced Evidence Issues in Criminal Cases with Children as Victims and Witnesses

Seminar

Criminal Law  
Criminal Litigation Clinic  
Trial Practice

**Selected Activities**

Participant and Commentator, Criminal Justice Roundtable, Vanderbilt Law School, Nashville, Tenn., Nov. 6-7, 2015.

Presenter, The Taslitz Galaxy: A Gathering of Scholars at Howard Law School, Washington, D.C., Sept. 19, 2014.

Testimony before the Subcommittee on the Constitution, House Judiciary Committee in Opposition to House Joint Resolution 40 Proposing a Victims' Rights Amendment to the United States Constitution, Rayburn Building, Washington, D.C., April 25, 2013.

Presenter, "Potential Innocence': Making the Most of a Bleak Environment for Public Support of Indigent Defense," at Symposium – *Gideon* at 50: Reassessing the Right to Counsel, Washington & Lee Law School, Lexington, Va., Nov. 8-9, 2012.

Keynote Speaker, "*The Sixth Amendment Rights to Fairness: The Touchstones of Effectiveness and Pragmatism*," at Symposium – The Sixth Amendment, Texas Tech Law School, Lubbock, Tex., March 30, 2012.

Presenter, "Statements of Children" at Symposium – *Crawford* and Beyond III, Brooklyn Law School, Brooklyn, N.Y., Nov. 11, 2011.

Presenter "Protecting the Innocent: Part of the Solution for Inadequate Funding for Defenders; Not a Panacea for Targeting Justice" at Symposium – Broke and Broken: Can We Fix Our State Indigent Defense Systems?, University of Missouri Law School, Columbia, Missouri, Feb. 26, 2010.

Commentator on Panel at Symposium -- Prosecutorial Power: A Transnational Workshop, Washington & Lee Law School, Lexington, Virginia, April 1-2, 2010.

Presenter Failures of the American Adversarial System to Protect the Innocent and Advantages in Inquisitorial Design to Investigative Fairness" at Symposium -- The Future of Adversarial Systems, University of North Carolina School of Law, Chapel Hill, N.C., April 6, 2010.

Presenter at The Confrontation Clause and Forfeiture by Wrongdoing Symposium, Lewis & Clark Law School, Portland, Oregon, Jan. 30, 2009.

Presenter AALS Conference on Evidence on Soft Science and Non-Science: Controlling

Expertise in the Courtroom, Cleveland, Ohio, June 4, 2008.

Presenter at Citizen Ignorance, Police Deception, and the Constitution, Texas Tech Law School, Lubbock, Texas, April 6, 2007.

Presenter at the Section on Evidence Program, "Children and Evidence Law: Special Rules of Competence, Hearsay and Confrontation, Association of American Law Schools Annual Meeting, Washington D.C., Jan. 4, 2007.

Presenter at Expertise in the Courtroom: Scientists and Wizards, Villanova Law School, Villanova, Pennsylvania, Oct. 21, 2006.

Presenter at *Crawford, Davis* and The Right of Confrontation: Where do We Go from Here, Regent Law School, Virginia Beach, Virginia, Oct. 14, 2006.

Presenter at *Crawford* and Beyond, Brooklyn Law School, Brooklyn, New York, Sept. 29, 2006.

Keynote Speaker on the Future of Evidence Law and *Crawford* at Ohio Judicial Conference, Columbus Ohio, Sept. 15, 2005.

Commentator at Symposium: *Crawford* and Beyond, Brooklyn Law School, Brooklyn, N.Y., Feb. 18, 2005.

Presentation on "The Confrontation Clause Radically, but Incompletely, Redefined by *Crawford v. Washington* at North Carolina Criminal Evidence Seminar, UNC-Chapel Hill, May 21, 2004.

Public Lecture: "New Dimensions of Sentencing Reform in the Twenty-first Century," University of Oregon Law School, Eugene, Oregon, Oct. 29, 2002.

Presentation on Hot Topics in the Law of Evidence: Privileges, AALS Conference on Evidence, June 4, 2002, Alexandria, Virginia.

Presentation on Use of Information by Experts at Festival of Legal Learning, UNC Law School, Chapel Hill, N.C., Feb. 8, 2002.

Presentation to Faculty Workshop on recommendations for, and the status of, death penalty reform, UNC Law School, Chapel Hill, N.C., Sept. 14, 2001.

News Conference participant announcing recommendations to help avoid unjust executions, proposed by the Death Penalty Initiative of The Constitution Project, Dirksen Building, Washington, D.C., June 27, 2001.



Moderator and Organizer of Joint Program of Evidence and Criminal Justice Sections, "What Have We Learned About Children as Victims and Witnesses in Criminal Trials?," Association of American Law Schools Annual Meeting, Jan. 4, 2001, San Francisco, CA.

Testimony before the Subcommittee on the Constitution, House Judiciary Committee in Opposition to House Joint Resolution 64 Proposing a Victims' Rights Amendment to the United States Constitution, Rayburn Building, Washington, D.C., Feb. 10, 2000.

Dynamic Trial Practice Program with Professor Ed Imwinkelried, North Carolina Bar Association, Cary, N.C., Oct. 15, 1999.

Presentation on Hearsay and Opinion Evidence at North Carolina Conference of Superior Court Judges, Greensboro, N.C., Nov. 13, 1998.

Presentation on *North Carolina Evidentiary Foundations* at North Carolina Association of Public Defenders, Boone, N.C., Oct. 29, 1998; North Carolina Academy of Trial Lawyers Program on Practical Evidence, Raleigh, N.C., Sept. 25, 1998.

Presentation to the Faculty of the Washington and Lee College of Law on the proposed Victims' Rights Amendment, Lexington, Virginia, Oct. 12, 1998.

Team Leader and Presenter on DEBATES/DEBATES, a program aired on PBS during Oct. 1998. The topic of the debate was "Should we have a Victim's Rights Amendment?" New York, N.Y., Oct. 6, 1998.

Presentation on the Unnecessary Victims' Rights Amendment at Symposium on Crime Victims' Rights, University of Utah Law School, Salt Lake City, Utah, Sept. 17, 1998.

Presentation on "Syndrome and 'Group Character' Evidence in Criminal Trials" at 1998 Judging Science Program, Private Adjudication Center, Duke Law School, Durham, N.C., May 29, 1998.

Presentation on "Syndromes and Politics in Criminal Trials and Evidence Law" at 1998 Judicial Conference of the United States Court of Appeals for the Armed Forces, Marvin Center, George Washington University Law School, Washington, D.C., May 7, 1998.

Testimony before the Senate Judiciary Committee in Opposition to Senate Joint Resolution 44, Proposing a Victims' Rights Amendment to the United States Constitution, Dirksen Building, Washington, D.C., April 28, 1998.

Speaker on "The American Perspective on the Judicial Role in Sentencing" at The Judicial Role in Criminal Proceedings: An International Conference, Belfast, Northern Ireland,

April 18, 1998.

Speaker on “Movement of Victim’s Rights from Participatory Rights to Benefitting the Prosecution” at Symposium on The Death Penalty: 25 Years After Furman v. Georgia, St. Mary’s Law School, San Antonio, Texas, March 6, 1998.

Presentation on “The Proposed Victims’ Rights Amendment -- The New Goliath” at 18 Annual Capital Punishment Training Conference, Airlie Conference Center, Warrenton, Va., Aug. 2, 1997.

Presentation to Faculty Workshop, Proposed Victims’ Rights Amendment, UNC Law School, Chapel Hill, N.C., March 17, 1997.

Presentation on “Syndromes and Politics in Evidence Law and Criminal Litigation” at AALS Workshop on Evidence: New Perspectives on Scientific and Character Evidence, Washington, D.C., Oct. 26, 1996.

Presentations on “Syndrome and ‘Group Character’ Evidence in Criminal Trials” at Texas Criminal Justice Conference, Dallas, Texas, May 16, 1996.

Presentation on “Uses of Syndrome and Group Character Evidence in American Criminal Trials” at First World Conference on New Trends in Criminal Investigation and Evidence, The Hague, Netherlands, Dec. 3, 1995.

Presentation on “Preparation and Presentation of an Expert Witness” at North Carolina Academy of Trial Lawyers Conference on Death Penalty Litigation, Greensboro, N.C., Sept. 23, 1994.

Presentation on “Ethical Requirements of Child Abuse Report and Representation of Child Victims” to North Carolina Guardian Ad Litem Training Seminar, Administrative Office of the North Carolina Courts, Chapel Hill, N.C. on October 8, 1993 and Raleigh, N.C. on Dec. 3, 1993.

Presentation on “Child Hearsay” at Sixth Annual North Carolina Criminal Evidence Seminar, UNC-Chapel Hill, April 16, 1993.

Presentation on “The American Experience in Child Sexual Abuse Litigation: Major Innovations that Pose Fundamental Challenges to Hearsay and Constitutional Doctrine” at Conference on Reform of Evidence, Society for the Reform of Criminal Law, Vancouver, British Columbia, Aug. 6, 1992.

Presentation on “Victim Impact/Victim Worth Evidence” at North Carolina Academy of Trial Lawyer Conference on Death Penalty Litigation, Greensboro, N.C., Sept. 11, 1992.

Presentation on “Psychiatric Evidence in Criminal Cases: The New (and not-New) Syndromes” at District of Columbia Judicial Conference, Washington, D.C., June 13, 1991.

Presentation on “Statements Made for Diagnosis or Treatment: Two Theories of Trustworthiness” at Second Annual Criminal Evidence Seminar, UNC-Chapel Hill, April 22, 1989.

Presentation on “Statements for the Purpose of Medical Diagnosis or Treatment” at North Carolina Academy of Trial Lawyers Practical Evidence Conference, Greensboro, N.C., Nov. 18, 1988.

### **Membership on Boards and Commissions**

President of the of Board of Center for Death Penalty Litigation, 1995-1998, 2002-2007, 2009 to 2014; Member of Board, 1999-2000, 2001-02

Co-Report for Death Penalty Initiative, The Constitution Project, 2000-01

Member of North Carolina Judicial Education Study Committee, 2000-02

Chair, Evidence Section of the Association of American Law Schools, 2000, Chair-Elect, 1999; Secretary, 1998; Member of Executive Committee, 1996-2001

Reporter for Criminal Justice Committee of Commission for the Future of Justice and the Courts in North Carolina, 1995-96

Member of the Executive Committee of the Duke University Academic Council, 1996 to 1998; Vice Chair, 1997-98; Chair, 1998-2000

Member of Duke University’s President’s Advisory Committee on Resources (PACOR), Duke University, 1996-98; Ex Officio, 1998-2000; 2001 to present

Member of Planning Committee, AALS Evidence Workshop, Spring 1996

Member of Board of Directors of North Carolina Legal Assistance Foundation, 1992-98

Member of Board of Duke Private Adjudication Center, 1994-2000

Chair of Faculty Hearing Committee, Duke University, 1992-94; 2001 to 2002

Member of North Carolina General Statutes Commission, 1988-90

### **Pro Bono Litigation**

Counsel of record in *State v. Oliver*, death penalty case in which a new sentencing hearing was ordered on defendant's Motion for Appropriate Relief, April 4, 1994 and sentences of life imprisonment imposed on November 8, 2001.

### **Amicus Briefs**

*Pena Rodriguez v. Colorado*, No. 15-606 (U.S. Supreme Court 2015) (with Lisa Kern Griffin et al.)

*State v. McGrady*, No 72 PA 12 (N.C. Supreme Court 2014) (with Donald Beskind et al.)

*State v. Augustine, Golpin & Walters*, 139 PA 13 (N.C. Supreme Court 2014).

*Melendez-Diaz v. Massachusetts*, No. 07-591 (U.S. Supreme Court 2008) (with Mnookin et al.)

*Howerton v. Arai Helmet, Ltd. et al*, No. 383PA03 (N.C. Supreme Court 2003) (with Beskind, Twiggs & Trehy).

*State v. Forrest*, No. 270A04 (N.C. Supreme Court 2005) & on remand from the United States Supreme Court (N.C. Supreme Court 2006).

### **Bar Memberships**

North Carolina  
District of Columbia  
United States Supreme Court  
United States Court of Appeals for the Fourth Circuit  
United States Court of Appeals for the D.C. Circuit  
United States District Court for the District of Columbia