[52] 287 U.S. 45, 69-71 (1932) (emphasis added). The U.S. Supreme extended the right to representation to non-death penalty cases in its landmark decision in Gideon v. Wainwright, 372 U.S. 335 (1963).

[53] United States v. Cronic, 466 U.S. 648, 658 (1984) (holding that the denial of counsel during a critical stage of the defendant's trial violated his rights under the Sixth Amendment).

[54] Douglas, 372 U.S. at 357 (holding that defendants have right to counsel in any appeal as a right).

[55] Evitts v. Lucey, 469 U.S. 387, 393 (1985) (citing Griffin v. Illinois, 351 U.S. 12, 20 (1956)).

[56] Douglas Vick, *Poorhouse Justice: Underfunded Indigent Defense Services and Arbitrary Death Sentences*, 43 BUFF. L. REV. 329, 357 (1995).

[57] ABA GUIDELINES, INTRODUCTION (Direct appeal counsel "must be intimately familiar with technical rules of issue preservation and presentation, as well as the substantive state, federal, and international law governing death penalty cases, including issues which are 'percolating' in the lower courts but have not yet been authoritatively resolved by the Supreme Court.").

[58] *See, e.g.*, Kennedy v. Louisiana, 554 U.S. 407, 419 (2008) ("[T]he Eighth Amendment's protection against excessive or cruel and unusual punishments flows from the basic precept of justice that punishment for a crime should be graduated and proportioned to the offense.") (internal citations omitted).

[59] Spaziano v. Florida, 468 U.S. 447, 460 n.7 (1984) ("There must be a valid penological reason for choosing from the many criminal defendants the few who are sentenced to death.").

[60] *See, e.g.,* Panetti v. Quarterman, 551 U.S. 930 (2007); and *Ford v. Wainwright,* 477 U.S. 399, 409-10 (1986) ("[T]he Eighth Amendment prohibits a State from carrying out a sentence of death upon a prisoner who is insane.").

[61] Roper v. Simmons, 543 U.S. 551 (2005).

[62] Hall v. Florida, 134 S. Ct. 1986 (2014); and *Atkins v. Virginia*, 536 U.S. 304 (2002).

[63] *See e.g.,* TEX. CODE CRIM. PROC. ANN. art. 26.052 (Vernon 2015) (setting the procedure for assigning defense counsel on direct appeal and in state habeas proceedings, and identifying minimum attorney qualifications); *In re Dow,* Nos. WR-61,939-01 & WR-61,939-02, slip op. at 3 (Tex. Crim. App. Jan. 14, 2015) (holding lawyer in contempt for violating CCA rule limiting when stay of execution can be filed); Watkins v. Cruezot, 352 S.W.3d 493 (Tex. Crim. App. 2011) (trial judge could not, due to unavailability of mitigating evidence and passage of time, prevent prosecution from re-seeking death penalty at retrial); *Ex parte* Kerr, 64 S.W.3d 414, 419 (Tex. Crim. App. 2002) (permitting a second state habeas application because the first was not a "true writ" that attacked the conviction or death sentence).

[64] Smith v. Murray, 477 U.S. 527, 536-37 (1986) (finding appellate counsel in a Virginia capital case had waived novel legal issue by not raising claim at an earlier stage of appeal).