

Washington & Lee University School of Law  
**Washington & Lee University School of Law Scholarly  
Commons**

---

Faculty Scholarship

---

1-1-2007

## A Man Standing High, November 15, 2005

Andrew W. McThenia

*Washington and Lee University School of Law*, [mctheniaa@wlu.edu](mailto:mctheniaa@wlu.edu)

Follow this and additional works at: <http://scholarlycommons.law.wlu.edu/wlufac>

 Part of the [Biography Commons](#)

---

### Recommended Citation

Andrew W. McThenia, Jr. *A Man Standing High, November 15, 2005*, 64 Wash. & Lee L. Rev. 41 (2007).

This Article is brought to you for free and open access by Washington & Lee University School of Law Scholarly Commons. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of Washington & Lee University School of Law Scholarly Commons. For more information, please contact [osbornecl@wlu.edu](mailto:osbornecl@wlu.edu).

"Teaching Each Other: Judges, Clerks, Jurors and Malefactors Define the Guilt/Innocence Jury," in *Learning the Law: Teaching and Transmission of Law in England 1150-1900*, pages 17–32 (edited by J. Bush & A. Wijffels, Hambledon Press 1999).

Review of L. Boatwright ed., *Inquests and Indictments from Late Fourteenth Century Buckinghamshire*, *Law and History Review*, vol. 17, pages 171–172 (1999).

"When Suicide became Felony," *Journal of Legal History*, vol. 21, pages 1–20 (2000).

"Petit Larceny, Jury Lenity, and Parliament," in *'The Dearest Birthright of the People of England': The Jury in the History of the Common Law*, pages 47–61 (edited by J. Cairns & G. McLeod, Hart Publishing 2002).

---

Uncas McThenia\*

*A Man Standing High*  
*November 15, 2005*

*Thoughts written while trying to come to  
terms with the death of my best friend*

Roger traveled in a lot of different circles, and many of them included some pretty strong women. Elle Dod and my wife Anne were talking about that yesterday. Elle, who is Roger's coffee drinking companion and the wife of his hunting buddy Rader, said that Ellen got him in the morning, Mellie Strickler got him for lunch at Woods Creek, Elle got him after hunting, and then he made it home to Ellen again for the evening. He somehow managed to fit the rest of us in as well. And the rest of us is a pretty long list:

- generations of students,
- colleagues here for 33 years,
- a staff at the law school which was absolutely devoted to him,
- scholars around the world,
- the death penalty defense bar,

---

\* James P. Morefield Professor of Law, Emeritus, Washington and Lee University School of Law.

- the Virginia Judiciary,
- old Marine Corps friends from his days in Vietnam,
- a Chapel Hill crowd from his law school days,
- prisoners who might now be on death row but for his representation,
- hunting buddies from here to South Dakota, where while on sabbatical one year he worked as a hunting guide,
- the Virginia Bar Association,
- the through hikers on the Appalachian trail who knew him under the trail name of Grey Ghost, as I recall, when he walked from Springer Mountain, Georgia, to Mount Katoin, Maine, on another sabbatical,
- the congregation of Christ Episcopal Church which he served faithfully in numerous capacities for some 31 years,
- his home town—Buena Vista, and its citizens whom he served as a member of City Council,
- English legal history scholars,
- Hospice,
- Ducks Unlimited,
- The Maury River Fiddlers Convention,
- the janitorial staff of Lewis Hall—the only folks who got to work earlier than Roger

And the list goes on. All these circles swirl around the one which was the most important in his life—a wonderful family: His mom, sister, and brother-in-law, and his Aunt Helen in Amsterdam. He had the good sense to marry into the Kentucky Herndon family. And Ellen may well be the secret source of his wisdom. The family grew with Donna, Stephanie, Michael, two sons-in-law Eric and Mark, three granddaughters here and another who is due to arrive on the outside in February, all of whom he was hoping to turn into duck hunters.

Roger has been a lot of things for me—colleague, mentor, counselor, and most important a friend.

But I was always a little jealous of his many successes and it gives the evil side of me some satisfaction to know that now and again he did get his comeuppance. His brief and successful entry into elective politics was by no means all of his own doing. He relied shamelessly on his family's good reputation in Buena Vista. Ellen knows most everyone there, having taught two generations of young children. And Donna knew all those folks plus everyone else who was unknown to Ellen. Stephanie and Michael were extremely well known for their academic and athletic prowess. So if the truth be told, Roger rode into office on the coattails of his family. But he did mount

a serious, if ineffectual, door to door campaign. One night he approached the house of a prospective voter in town and a young mother struggled to get to the door carrying one crying baby on her hip and another on her opposite shoulder. Just as Roger started to launch into his good government speech, a voice came from the back of the house asking the woman at the door "what's going on?" She looked at Roger and said disdainfully, "aw it ain't nothing" as she slammed the door.

I have always been envious of his gift as a teacher. Way back when we were young, we taught a course together called suretyship and mortgages. (Known to the students of that era as S and M.) We always had fun working together until the end of the term when the student evaluations were compiled. He always got his A plus, and I struggled along at the C level. I finally got even one year, however, by leaving him all the exams to grade as I went off to Canada to teach. There was a mail strike in Ontario so he couldn't get the exams to me in time to meet the Dean's deadline for turning in grades.

I followed him as the Director of the Legal Assistance Program at the Alderson Women's Prison. The inmates always assumed I was an older student and wondered when Professor Groot would be returning. I did have one case in which I thought I could finally get out from under the shadow of this man. One of the inmates had requested that the program file a habeas motion for her. (For those of you who are smart enough not to have gone to law school, that means she wanted to claim that she was illegally incarcerated.) Roger had—quite properly—refused her request at an earlier time. The precedent in the Southern District of West Virginia was clear and adverse. Our client had been upset with the program and with Roger for its refusal to file the motion. Shortly thereafter, however, on my watch, we got lucky with a Fourth Circuit panel and a decision came down which wiped out the adverse District Court precedent. There was a brief window of time during which we had the law on our side. So we filed the motion and the Bureau of Prisons caved in. As I met our client to tell her of her impending release and to brag about our great victory, she, the same lady who thought she had been abandoned by the Alderson program, said, "Professor Groot taught you well, didn't he." And he did. He taught me many things. Humility, unfortunately, was not one of them.

And I take a certain amount of credit for insuring that we here at Washington and Lee got more of him than we either deserved or had any right to expect. Over the years, I used to get calls from folks in the law teaching trade inquiring about Roger as a prospective dean. I hope, David, that you or any former, sitting, or prospective deans in the audience will not take this story too personally—but my responses to the inquirers generally killed any chance that Roger would ever be selected for the job for which he was being

considered. I said that he is absolutely incapable of lying or otherwise dissembling in any way. Furthermore, I said that if you do not want to hear a straight answer, never ask him a question. Without fail that always terminated the conversation and his deanship chances. But that is the Roger I know.

And I think that is why he has meant so much to me in my life and in the lives of so many others who have been fortunate enough to walk the earth with this giant of a man. But what is as deep as his honesty is an incredible strain of compassion. And somehow those two qualities are connected at the same source—at a mysterious place in the center of his heart—which is also pretty big as befits a man of his stature.

And every one who has ever been his student has finally seen beneath that Marine Corps demeanor which Victor Cardwell, a former ACC football player, said terrorized him and generations of students at 8:00 every morning. It didn't diminish the terror, but they were on to him! That compassion is reflected in so many ways—from inquiring about a sick friend or relative to getting out of bed in the middle of the night to go bail out a student who was in the pokey after being charged with DUI. I wonder how many times the deeds to those Glasgow lots have been used as collateral to secure the release of law students from Rockbridge County's finest hotel?

But where it is really reflected is in his death penalty representation. At the time of life when most lawyers are slowing down, Roger was taking up a new vocation as an incredible capital defense lawyer.

This new vocation is, I think, something that comes from his heart and his study of the Hebrew and Christian scriptures. We have had some very interesting talks about that. He was so clear in his own mind from reading the prophetic stories of the Hebrew scriptures that what God wants for the world is shalom—that time and place where the lion and the lamb can lie down together and both get a good night's sleep, a world marked by justice. In the Christian scriptures he always returned to Matthew 5. And I think the engine that drove his work in recent years was his belief that Jesus meant what he said in Matthew 5:17. "Do not think that I have come to abolish the law or the prophets. I have come not to abolish but to fulfill." And Roger knew that Jesus' fulfillment was in submitting to a particularly heinous form of capital punishment carried out by the Roman authorities—known as crucifixion. On three occasions in the last year or so I have heard him offer powerful testimony of his belief that Matthew 5 leaves no warrant for capital punishment.

But the most powerful statement is in his life and work. Thanks to his honesty and compassion, there are five persons who will not be on death row in large part because this transplanted Texan believed—as is proclaimed in the

*A TRIBUTE TO ROGER D. GROOT*

45

Dylan Thomas poem, the title of which he hung in the VC3 office—that  
DEATH SHALL HAVE NO DOMINION.

\* \* \*

Last Sunday he and I were scheduled to meet for the Blue Grass Mass at Christ church, a worship service he had been instrumental in designing. He didn't show up, the first time he stiffed me in all the years I have known him. But now I know he had more pressing business to attend.

We grieve now my friends. And for Ellen and the family it is awful, but my prayer is that in God's time the grief will give way to mourning and we will all celebrate the life of a beloved friend who died as he lived—experiencing the gift of life in the fullest way possible. We may even laugh some day when we think of that nine-point buck that jumped out of the woods as the sheriff's office was picking him up to bring him home.

As I was rereading his favorite Gospel and thinking about him last night my eye stopped on this:

"[W]hereas anyone who keeps the law and teaches others so, will stand high in the Kingdom of Heaven." Matthew 5:19.

Roger you will always stand high.

THANKS BE TO GOD FOR THE LIFE OF  
ROGER DOUGLAS GROOT

