



Winter 1-1-2007

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Recommended Citation

A Tribute to Roger D. Groot, 64 Wash. & Lee L. Rev. 3 (2007).

Available at: <https://scholarlycommons.law.wlu.edu/wlulr/vol64/iss1/2>

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WASHINGTON AND LEE LAW REVIEW

Volume 64

Winter 2007

Number 1

A Tribute to Roger D. Groot

Stephen M. Johnson*

In memory of a great teacher . . .

"Mr. Groot," I said, "I'm having a little problem with so-and-so who's not doing his job."

I explained the problem.

Mr. Groot sat there behind his desk and looked at me—no nods, no blinks, no changes in facial expression.

I said, "I guess I could do this, or that, or this other thing to encourage him to get back on track."

Mr. Groot sat there behind his desk and looked at me—no nods, no blinks, no changes in facial expression.

I said, "Thanks for your help, Mr. Groot."

At this, he nodded.

Brian C. Murchison**

When Professor Roger Groot died suddenly in the fall of 2005 while hunting in Rockbridge County, he had served on the faculty of Washington and Lee's law school for more than thirty years. This extraordinary man had influenced countless students, and their grief at his death mirrored the reaction

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of his colleagues in the academy and attorneys in the criminal defense bar around the country. Roger Groot was a titanic figure in those worlds, but he was equally admired by Virginia judges consulting his writings on the labyrinths of criminal law, and by scholars in the great English universities who admired the originality of his work on topics of legal history.

He was a man of the outdoors, a tracker of game, a walker of trails. But he was also at home in the indoor precincts of argument and decision—the classroom, where he brought each class hour to a perfectly timed conclusion; the library, where he wrote his books in bracing style, engaging many of the day's great issues; and the courtroom, the place to which his varied paths so often led.

He received his bachelor's degree at Vanderbilt and his law degree at Chapel Hill, where he graduated first in his class. He served for six years in the Marine Corps, with a stint as a captain in Vietnam. He never flaunted these accomplishments, but they surely schooled him in the contingencies of life and death and the powers and needs of the human heart.

His career as a law professor was legendary. He expected his students to be highly prepared, as the best lawyers always are, and he honed their talents with wit and candor. But his gifts as a teacher were not confined to the sparkling classrooms on Lewis Hall's third floor; the crowded, smaller, messier spaces on "level two"—the clinics—were home to him as well. He steered first the Alderson Legal Assistance Program, serving women inmates of a federal prison in West Virginia, and then the Virginia Capital Case Clearinghouse, providing assistance to lawyers assigned to death penalty cases. He developed what he called the "taught clinic," approaching live cases as opportunities to teach all the dimensions of responsible lawyering. No student who ever worked side-by-side with Roger in one of these programs will forget the training received from this teacher-scholar who just happened to be a brilliant lawyer.

He was also a watchful, caring colleague to those of us who were junior to him. He came to our classes, read our articles, and supported us when we were unsure of the future. He bolstered us with humor and mocked the world when it needed mocking. He spoke movingly of the passage of time and the love he had for his family. He was a loyal and forgiving friend.

At Washington and Lee, Roger was always the first to arrive in the morning; by 7 a.m., his office door was open and his light was on. It was comforting to know that he was there, that the coffee was brewing, that the law school was open for business. These days, it is very hard to walk past that door and try to come to terms with his absence. We take strength in the certainty

that this was a life truly well-lived, and that we at Washington and Lee had the bright good fortune to cross his path and learn from his example.

Frank O. Bowman, III*

Honest to God, the first memory I have of Roger Groot is of a very large man with a nearly shaven head ambling past the faculty library on the top floor of Lewis Hall wearing a satisfied grin and chuckling to himself about having just verbally disemboweled some first-year criminal law student. I had only recently joined the Washington and Lee faculty for a one-year visit, and I was not at all sure what to make of this imposing and singular character. Twelve years later, now that he is gone, I still don't know quite what to make of Roger. Nor do I know how to fill the hole my friend's passing has left.

The scientists tell us that every human being is unique. I suppose that from a purely biochemical point of view they're right. But in truth there are precious few really unique people. Considered dispassionately, almost all of us are variations on some type or other, not hugely different than any one of a hundred other people occupying roughly the same station in life. Roger was one of the glorious exceptions. I can't do justice to Roger here. All I can do is tell you a few things about him and hope they convey the flavor of the man.

In the first place, he may have been the smartest person I have ever met. And if he wasn't the smartest, he is certainly in the top three, and the names of the other two don't come immediately to mind. If you split your life as I have between trial and appellate courtrooms and the legal academy, you meet a lot of awfully bright folks. What distinguished Roger's mind was not only the fierce intelligence he brought to bear on narrowly legal questions, but also the breadth of his intellectual attainments and the catholicity of his interests.

Several generations of Washington and Lee students can attest to Roger's insistence on attention to the nuances of legal English. His appreciation for the fine points of language was not merely a pedagogical quirk. He was a naturally accomplished linguist, with an undergraduate degree in Russian and a battlefield knowledge of Vietnamese. He spoke Dutch to his relatives in Europe. And, incredibly, when he became interested in the workings of

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Twelfth and Thirteenth Century English juries of presentment, he taught himself to read the archaic and idiosyncratic law Latin in which the old jury rolls were written so he could judge for himself what they were up to. Accordingly, in addition to being the leading academic authority on the nuts and bolts of modern Virginia criminal law¹ and a nationally recognized expert on the Byzantine nuances of American death penalty practice, he became a legal historian of international reputation who feuded genteelly with Oxford dons over early English jury practice and the evolution of the common law of larceny.²

He was an accomplished amateur medievalist. Among my mementos of Roger is a manuscript of an article discussing the legend of Tristan and Isolde he wrote years ago but never published. But, of course, Roger's interests were never completely highbrow. Late one evening a couple years back, sitting in his front room nursing something with ice in it, he told me that he once set out to write murder mysteries set in the Middle Ages along the lines of the Brother Cadfael series by Ellis Peters. When I asked him what came of it, he responded with a snort, a slightly sheepish grin, and the observation that, "I found out I can't write dialogue." I'll bet he could, at least better than a good many folks whose efforts in that line sit on bookstore shelves. And I would give a lot to read a medieval mystery story by Roger Groot. But he imposed even higher standards on himself than he demanded of others, so no Groot mystery with dialogue he thought second-rate would see the light of day.

So far, I could be describing any one of the better class of legal academics. But despite Roger's intellectual power, one of the great things about him was that he mixed as easily, and maybe better, with the folks at the skeet range, the local coffee shop, or the church vestry meeting as with the denizens of the faculty lounge. He was able to talk to anyone regardless of education or station in life. In fact, "able" is really the wrong word, because it implies a certain condescension, a skill cultivated by members of the elite to communicate with the lower orders. Roger was, emphatically, not a hoity-toity academic snob. The citizens of Buena Vista, Virginia, do not value that sort of thing in their city councilmen. Roger's snobbery, if he had any, was of the reverse kind—the common man's suspicion of smart people who think a little too well of themselves and look down on those whose sturdy good sense and patient industry account for most of the world's work.

1. See ROGER D. GROOT, *CRIMINAL OFFENSES AND DEFENSES IN VIRGINIA* (Thomson West 2005) (the bible of Virginia criminal law since its first publication in 1984).

2. Professor Groot's work in legal history is expertly described by David Millon later in this Tribute.

Roger's pleasures were as varied as his interests, but a good many of them were stereotypically male pastimes involving a gun or a rod. Yet, although I'm sure there were exceptions, as a rule women loved Roger. My wife Robin, who often takes a jaundiced view of lawyers, both practicing and academic, took to him immediately. I noticed the same thing over and over. I think women of all ages responded to Roger's combination of strength, intelligence, southern courtliness, and the almost awkward gentleness I have often noticed in men whose business when young was to kill other men. Roger was above all a gentleman, treating women both as equal persons and as ladies due the admiration and courtesies that title called for in an earlier time.

As Uncas McThenia observed at Roger's memorial, Roger was surrounded by strong women. I have had the honor of knowing only one of them, his wife Ellen. I don't know enough of their story together to presume to say more than this. So far as I can tell, Ellen was the only living person whose word was law to Roger. And I think Roger lived every day still surprised that this lovely, graceful, wise woman should have chosen to take up with a big ungainly Dutchman like himself.

What made Roger so memorable was the presence in a single man of so many apparent incongruities. The big, gruff, crew-cut, tobacco-chewing, suspender-wearing, shotgun-toting Southerner sharing tea and Latin disputations with Oxford academicians. The tough, proud ex-Marine captain determined that the government should not execute even the most vicious killers and that "death shall have no dominion." Most poignantly for the Washington and Lee community, the awe-inspiring classroom martinet who cared more deeply for each of his students than perhaps any other teacher I have ever known.

Roger was a character. And he knew it. And he reveled in it. In some ways, he was his own greatest creation. He loved being "Groot." He loved the fact that in Lexington being "Grooted" was a verb. I did not know him when he was young, so I can't say whether he consciously created his own legend. I know that he savored it. The last time my family and I stayed with Roger and Ellen in Buena Vista was not long after Roger had been the subject of a roast at the law school. The event was taped. And though I don't remember exactly who suggested doing so, my kids and I went into his basement and sat with him and watched the tape. Roger loved every minute. In anyone else, the delight he took in this would have seemed a vanity. But not with Roger. As imposing a man as he was, he was in some part always just a great big kid, for whom being himself was, as he was known to say, "finer'n frog hair."

Roger was also a product of place. As great a treasure as he was and would have been to any law school wise enough to have hired him, nowhere

else in America could he have created the life he led at Washington and Lee. For Roger to be "Groot" required a small place with students who were both very smart and sufficiently imbued with Southern values to bear with Roger's authoritarian classroom demeanor until they figured out what he was trying to do to and for them. For Roger to be happy personally required a law school that valued intellectual rigor in its faculty, had good hunting and fishing nearby, and was right across the valley from a place like B.V. For Roger to have found the crusade against the death penalty that engaged his later years required a school, rare indeed in these days, that would encourage its most senior faculty to run live-client clinics like the Alderson Legal Assistance Program and the Virginia Capital Case Clearinghouse.³ Roger's was not the only way to live at Washington and Lee, of course. Several generations of students were fortunate to pass through Washington and Lee when it was home not only to Roger, but also to teachers with quite different virtues: Uncas McThenia, Lash LaRue, Bill Geimer, Rick Kirgis, Ed Henneman, and Tim Phillips, to name only those who have taken senior status or passed away since my time in Lexington. Together with Roger's hunting partner, Lyman Johnson, and my friends Scott Sundby, Sally Wiant, Ann Massie, Joan Shaughnessy, David Millon, Brian Murchison, Sam Calhoun, and many others, they were not so much a faculty as the superstructure of a community quite unlike any other I have known in three decades of studying, practicing, and teaching law.

This leads me to make, for Roger's sake, one observation that does not relate entirely to him. Though Roger was surely one of the best and most nationally and internationally well-regarded scholars among Washington and Lee's coterie of outstanding legal academics, he never saw the law as a narrowly academic pursuit or law schools primarily as vehicles for the production of academic writing. During a long career on the seemingly limited stage afforded by Washington and Lee, he embraced virtually all the roles a lawyer can play and was, in the end, at once a great scholar, a great teacher, a great counselor, and a great advocate. As he looked toward his own retirement, he worried that the trend in modern legal education is increasingly toward devaluing the practice of law and the teaching of young lawyers in favor of a status-driven exaltation of scholarship over every other consideration. Perhaps the most striking thing about Roger as a teacher was his love of his students, his concern for their individual welfare, and his consciousness that he was teaching

3. Over the years the Virginia Capital Case Clearinghouse has been run by Roger, Scott Sundby, Bill Geimer, and currently David Bruck. The Alderson Legal Assistance Program, before its demise in the face of Bureau of Prisons recalcitrance, was run by Roger, Uncas McThenia, and others.

not merely a subject but a method of intellectual discipline, a way of being both a lawyer and a moral human being, a way of living a life in the law.

Though I am only a sort of distant cousin of the Washington and Lee family, my observations from afar suggest that in chasing the will-o-the-wisp of rankings glory, some of the special qualities of the Washington and Lee community are being lost, or are at the least at risk. The greatest tribute Washington and Lee could pay to the uniqueness of Roger Groot would be a self-conscious effort to maintain its own uniqueness as a place that has always kept the humanity of those who teach, learn, practice, and are subjected to the rigors of the law at the center of its mission.

Before I started writing this appreciation of Roger, I sat down and re-read the website created by Washington and Lee the day after his death for the reminiscences of his students. And just as I had the first time I scrolled through it, I cried for the loss of this great good man, and then laughed out loud at some story of something he said or did, and then did both together. Nothing I can say here, and I suspect that nothing that will be written in these formal tributes to Roger, will begin to express who he was or what he meant half so well as those spontaneous jottings of the students whose lives he touched. If I have any consolation to offer the students who loved Roger, it might be this: He taught the way he taught because he believed it was good for you, knowing full well that many students would fear him and some would dislike him forever. But he was never indifferent to his effect. Unlike some in our profession who either do not care what students think or care only insofar as student opinion is reflected in end-of-semester student evaluations, Roger cared deeply about the process of legal education, about the students he taught, and about the profession they would join. And he knew that he was having an effect. He knew from watching you grow in law school and thereafter that he was touching lives. He knew from the public and private expressions of many of you that his own gruff form of love was often returned. And I can say to you with absolute certainty that he loved being loved back.

I used to joke with Roger that we were living life in different directions. I started out as a trial lawyer and spent nearly seventeen years in and out of courthouses before moving into a second career as a teacher and legal academic. I left the courtroom largely because my appetite for forensic axe fights dwindled over the years. Where I once got twitchy if more than a few weeks had passed since my last trial, a time came when the thought of another round of sleepless nights preparing followed by long days contending with a cranky judge and obdurate opponents lost its savor. Roger, on the other hand, left the real battlefields of his youth for the law school experience that he famously did not find to be stressful and thereafter for the relative serenity of a

career as a drill sergeant of the legal mind. Yet late in life he discovered the courtroom, first as a legal resource for capital defenders, and gradually as an advocate in his own right. Characteristically, he skipped over all the apprenticeship phases of trial work and stepped straight into the cockpit of the most intense form of courtroom warfare. I was not nearby when he did these cases and so did not see first-hand what they may have cost him. I do know from talking with him, however, that whatever the wear and tear, he loved the work—the intellectual and moral challenges, the greatness of the matter at issue, the inherent drama of the mixture of law and death, and the camaraderie of the criminal trial bar. Though Roger was older than I by more than a decade, the pleasure and satisfaction he so plainly found in courtroom work reminded me of myself and my friends when we were eager young prosecutors and defenders twenty years ago.

But then much of Roger's charm always rested in the combination of curmudgeonly demeanor and youthful, almost impish, delight he took in so many things. He did not grow dull or withdrawn or cynical or uninterested as the years went by. Instead, though his crewcut may have shaded imperceptibly greyer, he stayed colorful and brave and passionate and loyal, and well, just Groot. And so because I cannot quite imagine a world without Roger in it, I imagine that he is not gone. I imagine that, like Merlin who also lived his life backwards, Roger, too, is merely ensorcelled. Hunkered down against the cosmic storm in a well-provisioned hunting shack in a corner of the universe well stocked with game, with something to dip and something to sip, and a few good friends. Telling stories and growling a little and laughing at the foibles of his fellow men and enjoying being Groot. Waiting for the weather to break and for Ellen to call him home to supper.

Beverly M. Davis*

Long Live the Lion

Most everyone reading this already knows Roger Groot's reputation as a giant in the legal field. But only a select few were able to be co-counsel with Roger for the preparation and trial of a capital murder case. The experience will be with me forever.

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Through the years I had attended most, if not all, of the Capital Defense Workshops and Seminars, the great majority of which included Roger as an instructor or speaker. I rarely was able to understand completely the complex subjects Roger would cover. Not because he was difficult to follow, but because I was always amazed at how he could intermingle the fact patterns and rulings of decades of cases in order to bring the defense bar up to date on the most recent state and federal rulings and how they affect and change the procedure and law associated with representing a client facing the greatest of all punishments. Roger would always get a strong round of applause at the conclusion of his "talks." (That is what Roger told me he prepared them all to be.) He enjoyed it throughout our trial experience when I would later say "talk to me."

When Roger called me to inquire if I would be interested to be his co-counsel in a federal capital murder case out of Danville, I almost dropped the phone. All I could say was "Yes, sir." He told me that I would need to move for his admission to the Federal Court. A couple of days later I was sitting in a federal courtroom waiting on The Honorable James C. Turk to take the bench, whereafter I would move to admit the legendary Roger Douglas Groot to practice law in the Western District of Virginia. I told Roger that I was highly honored to be the one moving his admission. Roger said, "Just don't mispronounce my name." Afterward Judge Turk came off the bench to shake Roger's hand and heartedly wished him a good experience, and said "glad to have you Professor Groot."

During the early stages of trial preparation I was looking over my shoulder at the coach on the bench, something our Mitigation Investigator, Rhonda Quagliana, referred to as "performance anxiety." (Rhonda confided in me that she had it too. She used it to do a great job for us.) I worked my ass off trying to keep up with the numerous daily e-mails. Mostly I would pick the phone up and call Roger so as not to create a paper trail of my comparative ignorance. I would look right above my phone when calling Roger. That is where I taped up the first e-mail Roger ever sent me which outlined all of the phone numbers to reach him. He concluded that e-mail with: "Call me anytime—let's kick some government butt."

When I began practicing law at 25, my mentor, partner and father, Dick Davis, threw me to the wolves early with the many jury trials he was working. (I learned from the absolute best.) I was also fortunate enough before to be co-counsel on two federal capital murder trials with Jimmy Turk. But to follow up those professional experiences with being Roger's co-counsel, on that stage, is too fortunate to contemplate. The performance anxiety soon faded after conversations with Roger wherein, although he had spent his fair share of time

in a courtroom, he was humble enough to admit that what he had seen for decades on paper rarely had been what was planned to play out in the courtroom. I told him that important events in trials that I had seen play out in courtrooms rarely made their way to paper. He said that somewhere in there was a "happy medium," and that he was excited about working with me. "We'll make a good team," he said. Whenever during the process a tough decision presented itself though, I would say to Roger, "I'm just co-counsel—you're lead counsel." I'd then hear him over the phone spit tobacco juice into a cup, and say, "Oh, no you don't. We're in this thing together." Roger was the team captain; he never came across as the overbearing head coach.

Roger loved teaching but one of his greatest assets is that he never stopped being a student himself. Roger would always listen to others. Having David Bruck and "Washington and Lee's Virginia Capital Case Clearinghouse students" on call gave Roger, and me, great comfort. David's insight was especially revered by Roger.

At first blush, the Assistant U.S. Attorneys were not intimidated by Roger even though their office had to deal with his indirect involvement in numerous previous capital trials. They both intimated early on, in so many words, that no law professor was going to push them around. Well, Roger may not have been able to push them around too much, but he sure as hell kept them busy having to paper trail their case in response to his multiple pre-trial motions. After our first hearing in which Roger orally articulated his initial motions, both Jake Jacobsen and Tony Giorno knew that this was no ordinary law professor they were dealing with. They both grew to not only overwhelmingly respect Roger but to admire him personally as a complete man.

As most are aware, the Western District of Virginia has gone paperless. All motions that are not filed *ex parte* are to be filed electronically using the court's electronic case filing (ECF) computer program. The system allows for 24/7 motion and response filing. Roger filed one pre-trial motion and within an hour or so was met with a stinging motion in response by AUSA Giorno. No later than when I was able to completely read the government's response did my computer "ding," alerting me that I had another e-mail; it was Roger's response to the government's response; after I read Roger's most intelligent retort, I called Roger. I asked, "How long did it take you to formulate your response after reading Giorno's?" "Four nano-seconds," Roger said,

Several weeks before the beginning of trial, Roger sent me a copy of Scott Sundby's new book, *A Life and Death Decision—A Jury Weighs the Death Penalty*. I called Roger and told him that I appreciated him sending me the book, and that I looked forward to reading it after our trial. Roger said, "Read it now." I told him I had too much to do preparing for the government's

witnesses to read a book. Roger told me that there was no more important preparation in the representation of our client than for me to read Sundby's book. (We had a wonderful fact investigator, Pete Sullivan, on the case.) I could take some time off. I finished the book in the next three nights. It was difficult to put down. Scott Sundby greatly opened my mind to the intricacies of a life versus death jury. When I finished the book, I flipped through the forward pages that I had neglected to previously read. There I found an inscription from Roger to me. "June 15, 2005 To Bev: My blocking back. Roger."

The federal capital murder trial Roger and I were preparing to try was scheduled to last five weeks. It was a joint trial with a death authorized co-defendant represented by Jimmy and Bill Cleaveland. Roger and I had hotel rooms and a suite set up as our "war room." We worked twelve to seventeen hours a day. We ate practically every meal together. I knew Roger's personality before trial, but in the war room, I really got to know him. Roger never seemed to be too exhausted. He was energized every morning and every evening. Sometimes I was able to coax him into a bourbon before 10:00 p.m., but that was only if his Atlanta Braves were on television. But at 10:00 p.m., Roger would start winding down. It was then that I would hear a good ol' boy tell stories interwoven with life lessons and humor: stories of Vietnam, cases gone by, hunting trips, sporting events and family. We laughed a lot. (Roger called me and Tom Scott, a prior co-counsel, "junior partiers." Tom and I drink our bourbon mixed with diet coke instead of on the rocks like Roger.)

Roger prided himself on preparing for and selecting the death eligible jury. He worked tirelessly with our top-notch jury consultant, Jeff Frederick, on the juror questionnaires and voir dire questions. But as preparations go, the voir dire we were getting ready for was very intense. The week-long proceeding averaged twelve hours a day in the courtroom, with meetings prior to and after court. During a break in the proceedings, around day three or four, Roger was having a cracker and snuff break outside while sitting on the side street with Jeff. I walked up and Roger said, "Bev, you better be enjoying yourself, because this is my last rodeo. After this, I'm done." My only comeback, through Jeff's chuckle, was that Roger had better get me out of the mess he got me into before he decided he was going to hang up his cleats. Roger then said, "I'd rather be grilling some first year student on the rule in Shelly's case."

Roger loved creating the record. He could read the court reporter's transcript of his own oral presentations while giving them. He also possessed a photographic memory. He would cite obscure statutes and rulings off the cuff in the heat of battle. Roger told me he could see the pages he had studied in his mind's eye, "that's all."

Three days into voir dire, Roger and I were thrown a curve ball when we were given discovery which would dramatically change the way we would have to try our case if the late disclosure of information became admissible. Roger and I worked on a Motion to Exclude or in the alternative Continue the case. There was one paragraph Roger drafted which, although simple, jumped out at me as an example of Roger's big picture game plan while putting together a capital defense:

Death Penalty cases are different from other cases in that every stage of the case must be prepared in consideration of a possible penalty trial. The guilt/innocence phase defense must be molded so that it will not enhance the likelihood of a death sentence in the event of conviction. Voir dire must be conducted in a way that considers both the defendant's guilt/innocence defense and the structure of his mitigation case.

Easier said than done but no more efficiently stated.

Roger was a calculating trial attorney. He told me that he was going to cross-examine the investigators and detectives and that I was going to more than likely cross most of the lay witnesses (snitches). I asked him why, and Roger said "because the detectives and investigators are less apt to lie." If cameras were allowed in federal court, you would be able to watch and hear Roger follow the bouncing ball to perfection. The detectives and investigators were his puppets. After one cross of a detective, Roger came back to counsel table and asked, "Did he even lay a glove on me?"

Roger had me cross-examine one of the two co-defendants in the case. ("You block, I'll run the ball," he said.) Rogers's beloved wife, Ellen, attended the trial that day. The co-defendant testified on direct all morning—whereafter I crossed all afternoon. Back in the war room, after Roger had wine and dined the love of his life, Ellen commented, "Bev, I believed that boy until you got to ask him some questions." Roger laughed and said, "Don't let it go to your head, Bev, Ellen has always been a sucker for direct."

Roger had me do the opening statement. (My brother and partner, Richie, calls it "opening argument.") Roger wanted to do the closing argument. He said, "You pick the fight; I'll finish it." On the night before Roger's closing, we called Tony Anderson. Tony gave Roger a pep-talk for the ages over the speaker phone. When we hung up with Tony, Roger said, "I don't believe I should say M.F. tomorrow as many times as Tony just did."

After the jury was excused to begin deliberations, Judge Glenn Conrad came off the bench to congratulate all counsel. Judge Conrad was gracious to everyone, but went out of his way to let Roger know that it was an honor for him to have presided over one of Roger's cases. Roger as well congratulated Judge Conrad for a well run trial. Witnessing the professional admiration that

they both shared for each other only solidified the fact that my participation in the case was a once in a lifetime experience.

After the trial and considerable legal wrangling by all parties, our client was spared the death penalty. The relief Roger felt was monumental. The hug he gave me was strong, and he got one back in return. While packing up our belongings, Roger jokingly said, "I wonder who is going to unfortunately get whacked so that we can do this again."

I'll never forget that Sunday evening telephone call. On the other end: "Bev, this is Mike Groot." I knew right then Roger was dead. Mike and I spoke about his dad; when I hung up the phone, I went to a dark room and tried to comprehend life without Roger. My loss, great as it was, paled to his family's. I knew what Ellen, Mike, his daughters, Stephanie and Donna, and his grandchildren meant to Roger. I had tried to convey to Mike how much his father loved his entire family. Mike said, "Fortunately for us, dad let us know that all the time."

One of the hardest things I have had to do in my career is to go to Roger's office and pack up some of his files. Roger's longtime assistant, Darlene Moore, was so kind to me. She could tell I was hesitant to go through Roger's office. She left me alone to take it all in. I was humbled to sit at Roger's desk and view the scene that Roger left. Books were opened and turned upside down; sticky notes and Plastiklips outlined important sections of paperwork. Duck decoys galore. I didn't want to touch anything. After some time, with Darlene's help, I fully packed up my Suburban with boxes and boxes of Roger's files, but as I left Washington and Lee, I couldn't have felt anymore empty.

J. Amy Dillard*

Always Mr. Groot

In January 2006, several weeks after Mr. Groot's death, a law school classmate and dear friend called me at seven-thirty on a Saturday morning. He said, "Get up, sugar, I need you to come up here for the day. We're running the beagles, and I'm going to miss Roger." Of the many things Mr. Groot was to

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me, he was never "Roger." He was not a man with whom I "beagled"⁴ and hunted, but he was that to my friend, Joe Michael. So I loaded my dog in the Jeep and set out for Boonsboro, Maryland, to spend an unusually sunny January day remembering Mr. Groot. Once there I encountered folks who loved dogs and being outdoors, who appreciated all types of whiskey, and who could hold a deep conversation but slip into eerie silence when watching for the rabbit. Joe and I had known the same man, albeit through very different relationships. They were hunters together, and photos from the past fifteen years show them tired and dirty and happy. I knew Mr. Groot in a more traditional way, as teacher, mentor and colleague. We both shared with Mr. Groot the comfort of silence and the pleasure of a good laugh. Midday, when Joe crept up behind me and said, softly if somewhat sternly, "He's never coming back," I could almost hear Mr. Groot laugh and say, "Well, he's got that one right."

I consider myself one of the many unremarkable students that Mr. Groot plucked from obscurity. When he offered me a job working for the Alderson Legal Assistance Program during my first law school summer, he ended the offer with, "You got lucky." Never did he utter a more prescient statement. I owe most of my success as a criminal defense lawyer to the time I spent with Mr. Groot during two summers and two semesters working in the Alderson program. We traveled the long, lonely rode between Lexington and the prison, and he taught me how to be a lawyer from the classroom he conducted during those drives. Like most others who knew him, I admired his sense of humor, his work ethic and his dark, brooding depth. It was in his dark depth that I glimpsed him as a real person and found the connection that lasted beyond my school days.

On our first drive to Alderson, I asked Mr. Groot if I should participate in the Law Review write-on competition. He said that law journals were for folks who wanted to teach, and then he turned to me, while driving, and looked me right in the eye. "You want to be a lawyer, right?" There was no answer but "yes," and in fact, that was all I wanted to be. I surely did not want to be a law student. I wanted to be a lawyer, a criminal lawyer. I did not spend the long week on the write-on; I worked on my new Alderson cases instead.

I ended up on the defense side, after applying to both public defender offices and Commonwealth's Attorney's offices. Mr. Groot always told us that the only place we could do any real good was in a prosecutor's office. But quietly, he told me I didn't have the stomach to prosecute, and he was right. He was a regular confidant in my work, listening to me garble criminal

4. See WEBSTER'S THIRD NEW INT'L DICTIONARY 190 (Philip Babcock Gove ed., 1981) ("[T]o hunt game with a beagle or a pack of beagles.").

procedure questions and statutory interpretation arguments with great patience. He never gave me an answer, only direction. Even in our practitioner-to-practitioner relationship he taught me to value my own ability to sit quietly and work through the difficult problems.

The arc of our relationship took a real turn when I quit practicing law and, ironically, took a teaching job. I tell my Law Review write-on story each time a student asks whether she should participate. Frankly, Mr. Groot always seemed a little disappointed in my choice, but he was incredibly supportive, telling me which criminal law book to teach from and sharing exam problems with me. I had a breakdown sometime during my first year of teaching. I walked into my Criminal Law class where a student was unprepared, and I had to "Groot" him in my Socratic classroom. I did not feel very good about it afterwards, as the "Grooting" did not quite fit my personality, and I thought the whole class was a failure. I picked up the phone and dialed Mr. Groot's number, but I hung up before he answered. I knew enough to know that he would remind me that I was the teacher and that there could never be much room for me to fumble and feel bad. I was in charge, and I needed to teach in whatever way worked for me. I like to think that I have done a much better job since I had that realization.

During the Fall of 2005, Mr. Groot and I spent a good bit of time on the phone working on a capital case that I have had for several years. At one point, he and I bickered over which of us represented the craziest capital defendant in Virginia, and when his defendant was found competent and pled, he graciously gave me the prize. I decided to take a novel approach with my case and draft some new legislation that would protect my client and the community. Mr. Groot reviewed my work, made many comments and suggestions, reviewed it again, and so on until we thought it was as good as it could get. When I asked him at the end of our work if he really understood what I was trying to accomplish, he said, "Yes, and you're doing a heck of a job saving this guy's life." High praise, and I felt like a first-year law student for a flash, but then I returned to being an equal, which was what he always wanted, I think.

He would think it a bit hackneyed that I have his quotes on teaching from the recent alumni magazine cut out and tucked into the corner of my Washington and Lee diploma. He would laugh at how often my students stare at his bobblehead doll when we work across my desk. I always tell them that he's bobbling at me, not them. And he would find it fitting that my mother, days after his death, dug out a graduation photo of me and him. (Mr. Groot, just off the trail for a few days, was terribly sunburned and too skinny.) My mother sent it to me with a note that said, "Human life is precious, but more precious still is the immortality of the spirit."

William S. Geimer*

This tribute is all wrong. We should by all rights be celebrating the remarkable achievements of this man, in life and in law, as he retires amid a chorus of cheers from colleagues and students. A huge tent should be set up near the Liberty Hall Ruins. There should be feasting and testimonial after testimonial. There should be a second, informal gathering at his river house. He should then spend many years outwitting deer and wild turkeys, continuing to mentor defense attorneys across the Commonwealth and constructively meddling in Mike's law practice. That is what should be. This is all wrong, and my friend's untimely passing still hurts.

It is nevertheless fitting that there be a tribute recorded here, even under these circumstances. It is particularly appropriate that it be in an issue of the Law Review. Among his many contributions to the school, Roger's guidance enhanced the quality of this journal.

There are so many things in the life of this good friend to which tribute should be paid that one hardly knows where to begin. I hope that most of them at least will be mentioned by those who have been asked to write here. I am confident that will happen. Consequently, I will confine my contribution to two very special aspects of Roger's life that are particularly meaningful to me—his opposition to the death penalty and his bond with "ordinary" folks.

The first point I can express briefly or in volumes. I have devoted most of my professional life, and a great deal of my personal life, to fighting the abomination that is the death penalty. I have done this inside and outside the legal system. Nothing I have accomplished—nothing—compares to the contribution Roger made. Roger and I worked together for years and were in absolute agreement on this issue. But my passion and my anger at injustice prevented me from doing what Roger was able to do. He moved the mainstream. With that legendary work ethic and attention to detail, he moved judges; he moved the standard jury instructions; he got more out of students and defense lawyers than they ever thought they could give. He even found a way to try cases himself, and he did so brilliantly. He did it all in a manner that would make General Lee proud—seldom giving offense, but never compromising principle. When the death penalty passes from the scene, and soon it surely will, it will be in great measure because ordinary citizens, and

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people in power, turned against it. Roger Groot will be remembered as one of a very, very small group who set the stage for this development. He could speak to them. He could lead them. It is impossible to express the depth of my respect for him and my gratitude for what he has done.

The other part of Roger's life that means so much to me is his ability to stay close to what really matters: family and regular folks. Roger and I knew each other in law school in the late 1960s. I was two classes ahead of him at the University of North Carolina School of Law at Chapel Hill. It's the last time I was ever ahead of him in anything. We reunited when I had the great honor to join him on the law faculty here in 1980. I quickly learned that it was no accident that Roger and Ellen chose to live in Buena Vista rather than Lexington.

Soon after I arrived, I began to learn more about the worth of small town values. I began to go almost every week with the Groots to see Mike play football, both junior varsity and varsity, for Parry McCluer High School. It was easy to see that the football team was in truth a total civic enterprise. Here was a small town, with a small school, overachieving mightily. It seemed that everyone in town had some involvement. The away games also taught me a lot about other rural communities near my new home. Ever seen a junior varsity game at Riverheads High School?

Years later, Roger was "instrumental" in bringing about the Maury River Fiddlers Convention. My wife had the honor to loan some of the seed money, and I got to be emcee for a couple of years.

Roger and Ellen introduced me to good, decent non-academics in Buena Vista with whom I still maintain contact. What was so special to me about all this? It was the inspiration of a friend with genuine academic credentials who was not swept up in academic pretentiousness. Roger was a genuine scholar. He read early English criminal trial rolls in the original Latin, for heaven's sake! He could easily have kept company exclusively with those who think great thoughts and parse the theoretical nuances of the law. His example, like that of our late colleague Tim Philipps, was particularly meaningful to this graduate of East Tennessee State, who had the great fortune to be invited to academia only when two faculty members left unexpectedly late in the year. I didn't have the credentials to be pretentious. Roger did, but he chose to remain real. To be sure, we had some fairly esoteric discussions. In capital defense, you have no choice but to be creative. But as we delved deeply into the law, it was comforting to see Roger periodically readjust his chewing tobacco.

I believe Roger's life outside law school has a greater message for those inside, students and faculty alike. All law—doctrine, theory and practice—arises from the conduct of ordinary folks going about their daily lives. If we

lose contact with those folks, our teaching and writing will truly be much sound and fury, signifying very little at best. I believe there is a very real connection between Roger's extraordinary scholarly and pedagogical achievements and his work in the Buena Vista Lion's Club. I don't profess to understand it fully, but I am convinced that we should all recognize it and seek to learn from it.

In spite of the loss we all feel, we should remember and celebrate our friend's life in the way he lived it—simply, with humor and passion and concern for one another. Raise a glass, not a goblet, to a life well lived.

Lyman Johnson*

Roger

Roger and I were colleagues at the Law School for over twenty years and hunting partners for about seventeen of those years. I have written about our hunts before and probably will do so again sometime because they were so much fun. But as my tribute to Roger for the Law Review, I offer the remarks I gave to the University faculty on March 6, 2006. I tried in those few words to show the remarkable breadth of Roger and also tried to capture his great devotion to those people and causes he cared so much about. Here is my tribute to Roger—colleague, partner, friend.

Roger Groot gave his heart and soul to Washington and Lee for thirty-two years. Roger was intellectually gifted and was well-educated at Vanderbilt and the University of North Carolina School of Law at Chapel Hill, where he graduated first in his class. Yet, a Texan, Roger also had the enduring common sense and down-home practical judgment of a man brought up close to the land. His lifelong love of the outdoors not only meant he was pretty handy—for instance, he always carried a pocket knife which he used in artful ways—but being outside also gave him great pleasure, and it refreshed his body and mind to take to the woods or field for a day of hunting. Even more rejuvenating was the time he hiked the Appalachian Trail and his yearly trips to the South Dakota prairie. Roger liked the simple but sublime delights he found outside—the break of day, the array of sounds, the smells and sights so unlike those indoors, and the pleasant tiredness of hard physical exertion.

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Roger surprised in other ways as well. For all his remarkable academic and lawyerly accomplishments—he was, after all, an acclaimed scholar in both English legal history and criminal law, and he achieved nationwide fame for his capital defense work—he was more at ease with common folk than with the trappings of academic achievement or power. He cared deeply for those who had few allies. He served them tirelessly in so many ways, and he championed their interests with a steely determination that even opponents admired. His victories sometimes included the saving of lives from the death penalty; they always included the giving of that sweet comfort of finally having one tough hombre on your side.

Roger was hard-working and fastidious in his approach to law because he knew that the stakes are high and that justice is not just an abstract ideal but is a state gained or lost based on what we do every day. Whether defending a death penalty client where the government seeks the ultimate sanction or calmly reassuring an inmate at Alderson Women's Prison that he would take care of the family matter she was fretting about, Roger knew that clients want a lawyer who treats them like their cases are the most important ones he ever had. Roger's specialty was delivering the highest quality of representation to those at the lowest rung of society—the oppressed and afflicted.

Perhaps Roger's grave sensibility concerning high stakes was shaped by combat in Vietnam. There, as a Marine Captain, Roger prepared and reassured young men—some as green as college freshmen—who faced death every day and who, with utter trust, placed their lives in the hands of "Captain Groot." As with thousands of law students to follow, he knew that to help them, and those many others who, in turn, would one day rely on them, he had to toughen them up, drive out sloppy practices and a "who cares" mindset and instill an ethic of duty, service, bravery and zeal.

Roger contributed so much to Washington and Lee because he had so much natural energy and talent to give, and because he believed so passionately in what we do here. He turned the lights on in the morning and shut off the coffee at night; he worked so hard. Before we ever spoke of such things, he believed in our "mission." He believed in giving every student who came here, whether born into privilege or poverty, the opportunity to have their minds trained and their character molded by devoted teachers. He believed in giving to a student as much as he or she cared and dared to seek. He deeply loved, and thought it a high privilege to serve, what he considered to be a great University. He never spoke a word against it.

Roger had no greater love at Washington and Lee than his students. Students themselves eventually figured this out, even the quaking first-year

law students who lost sleep and breakfast at the prospect of being singled out for close questioning—that is, "Grooted"—in an eight in the morning Criminal Law class for what must have seemed the longest, loneliest fifty-five minutes of their lives. Roger loved to liken the first semester of law school to boot camp. Students, tried by fire, came to appreciate that Professor Groot had such high hopes and expectations for them that anything less than their very best was unacceptable. If drawing that out required that, as with young Marines, he be relentlessly demanding, or if it necessitated cajoling, chastising and seemingly never being satisfied, then that's how he would be. And he was, as legend rightly has it. His students flourished under his teaching. They are his educational legacy.

Roger also was a great colleague. On any issue, you knew where he stood because he made it crystal clear, in well-honed prose or booming voice. Incapable of hiding the ball himself, he could be impatient with those who did. With a hunter's keen eye, he could spot dissembling at fifty yards through the thickest rhetorical cover. He valued a spirited debate where the evidence and arguments were well-presented and carefully weighed. Although a man of strong views, Roger listened closely to colleagues, seeking always to learn what they thought was best for Washington and Lee, that alone being his touchstone for decisions. He especially enjoyed an untenured professor's willingness to speak up and add to the mix, taking on the old war horses if need be. To Roger, that showed independence and courage, traits he valued in a colleague.

He also liked to hear or tell a good story, humor in any form and peppering his conversation with expressive sayings. How many professors, when asked what he and a few other professors were doing as they talked together over coffee in the Faculty Lounge, would say, "We're just standing around telling lies." Or, when cheerfully greeted by a first-year law student with a "Hi," responded, "How are you?" To which, when the new law student said, "Wonderful," Roger replied, "That'll change." Roger enjoyed humor because he had immense warmth and humanity.

When Roger died, Lewis Hall sagged a good bit, as if a pillar had been struck down. But Roger would ask us to re-shoulder the load and to soldier on to do good work in the days ahead. Thank you, Roger, for showing us how to do just that.

Rick Kirgis*

Imagine a rough-hewn Texan who is an expert on the history of English criminal law. Imagine someone bred in a small town in the middle of nowhere who is comfortable reading Latin and speaking several languages. Imagine an avid hunter who is as contented in the library as he is in the tree stand. Imagine a tough Marine veteran who is passionate in his efforts to save convicted first-degree murderers from the death penalty. Imagine a renowned law professor who prefers living in a nearby small factory town to living in his college community because the people are more genuine in the factory town. And imagine the multilingual legal scholar/practitioner who cares enough about his town to serve faithfully in the thankless job of city council member. Add devoted husband and father to the list, and you have Roger Groot.

For a few years, shortly after I joined Roger on the Washington and Lee faculty, we had offices near each other but separated from the other faculty offices. We spent a good deal of time talking about the law and about the Law School. Roger could be sharply critical of some of the goings-on at the Law School. Sometimes we disagreed. Never—not once—did I have any doubt in these discussions that he put what he genuinely regarded as the Law School's best interests above his own interests.

When one of our discussions was over, I would be left wondering how I managed to lose the argument quite so decisively. Many a student met a similar fate in class when the discussion concerned criminal law or criminal procedure.

Roger's selfless devotion to the Law School and his willingness to come to the aid of a friend were clearly shown while I was serving as Dean of the Law School. In the middle of a semester, the faculty member who was teaching Insurance became critically ill and could not finish the course. Nobody else on the faculty had ever taught Insurance. While I was sitting in the Dean's office trying to figure out what to do, Roger and Uncas McThenia appeared at my door and volunteered to teach it as an overload for the remainder of the semester. Uncas was an experienced Contracts teacher, so he had some expertise that could be used in the Insurance course. Roger had no leg up at all. Nevertheless, I knew that Roger (and Uncas) would put in the effort necessary to do a fine job with the Insurance course. And so they did. I remain grateful to this day.

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Roger devoted much of his time in his last several years to defending capital murder cases at the sentencing stage. To him, as to me, the death penalty cannot be justified morally. To him, that connoted a duty to represent those convicted of capital murder in order to keep them from being executed, even when it meant that a large segment of the public would look at him practically as a co-conspirator in the crime. His success at keeping his clients out of the electric chair was the stuff of many a news story. True to form, he took pride in his accomplishment when a client was spared execution, but he never boasted about how he had done it.

Roger was taken from us without warning. When we in the Law School community heard of his passing, it seemed as though our world had changed in an instant. In a very real sense, it did. There was a hush over the Law School for many days afterward. Nobody quite knew how to cope. I still don't.

Lewis H. LaRue*

Roger Groot

I cannot give an objective assessment of this man. His personality was too large for me to get an easy grasp of it. For those who wish to learn more about him, I recommend that they begin by reading the comments that his former students have posted on our Law School's web page. One who reads these comments can learn something about his excellence as a teacher. While the student testimony goes into matters that I did not observe, I did know him for thirty-two years as a colleague and a friend, so I have memories that I cherish and that I wish to share. But I claim no objectivity. I cannot assess Roger Groot; I can only assess our relationship and its effect on me.

On the day of the ceremony that honored his memory, I sat on the platform with Uncas McThenia and Lyman Johnson, and the most prominent among the many thoughts that ran through my mind was that my relationship with Roger had been different than theirs had been. Lyman spoke about hunting with Roger and about what he learned from that experience. Uncas spoke about Roger's religious sincerity and about those outside the Law School world who knew Roger in his non-academic life. I cannot claim to have known him as

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they did. We never went hunting together. And we never jointly participated in a congregation. Our relationship started with and grew out of our joint devotion to the intellectual side of the law.

Strangely enough, our intellectual companionship began when we discovered our joint fascination with the task of parsing statutory language. We were both unusual (some would say weird) in finding the careful analysis of complex statutory prose to be an addictive task. The more knotted the language, the more we enjoyed untangling the syntax and glossing the semantics. And we also shared a dislike of those who floated above the language of a statute and thought deep thoughts that were unconnected to the text.

Please understand that neither of us indulged in the heresy of textualism; we also loved arguing the history and policy of a statute. But we discovered a common bond in our belief that lawyers and judges who used the history and policy of a statute without having first precisely located the textual difficulties that one should use history and policy to illuminate were making a serious mistake. Such innocent souls were searching in a haystack without knowing whether they were trying to find a needle or a ring.

There is no doubt that most would believe that building a friendship on such a foundation is both strange and unusual, but it did have one benefit. As we moved forward in our years together at Washington and Lee, we moved with absolute confidence in a common intellectual agenda that for both of us was also a moral agenda. Indeed, we both believed that reading a statute with intellectual skill was a moral act, and we were both tempted to judge those who were intellectually sloppy of also being morally sloppy. Since our friendship was built on the hard rock of intellectual rigor, it was firm. I had seen the skillful care that he brought to statutory language; I had seen the serene poise with which he accepted the consequences of his analysis even when he discovered that those consequences were unpleasant. So I never doubted that he would bring similar competence and integrity to questions of law school governance. Roger and I certainly needed to have confidence in each other, since we regularly differed on questions of governance, and while this is not the time and the place to revisit history, there is one story that I can safely tell.

When Barry Sullivan was Dean, Roger and I decided to arrange a party for him to congratulate him on a successful first year. This project required us to schedule a meeting with him so that we could discover what days might be open on his calendar. We scheduled a meeting, but through our social clumsiness we failed to explain why we wanted to meet with him. When we walked into the Dean's office, he was visibly uneasy; when we told him why we were there, he started laughing. As one can imagine, we were startled by

this response, so he quickly explained. "I had assumed that you were coming to complain about something I had done, and I figured that if the two of you agreed that I had erred, then I was really in big trouble, since I have never seen you agree on anything."

At first I thought that Barry had indulged in some Irish hyperbole, since I knew that Roger and I bore no hostility toward each other over matters of law school governance. But I quickly realized that our Dean was right; we did disagree regularly. Yet we also promptly moved on from whatever it was we were arguing about and went to the next argument; neither of us ever felt the need to add to the new argument the fact that we had disagreed on past arguments. As a consequence, it was as though each time we were disagreeing for the first time.

Since our deepest ties were intellectual, I freely acknowledge that others saw parts of him that I did not see, but there was a side to him that I was able to see because of our common background as officers in the United States Marine Corps. When Roger was in the Marine Corps, he was posted to Vietnam, where he served in combat. I was never in combat (I was a legal officer), but like all Marines, I went through the training to be an infantry officer, and I knew many who had served in combat. Indeed, I was fortunate enough to know some of them well enough to be with them when their defenses were down and thus to learn something about what combat does to the soul.

Every man and woman who has been in combat reacts differently, both short term and long term, but from my observations, no one comes out unmarked. Some form of melancholy, and there are many forms it can take, inhabits a corner of their soul. In dealing with his melancholy, Roger was lucky; he had Ellen. Yet one can see the traces if one looks at the photographs. Have you ever seen a photograph of him in which he looks at ease with the event? Most people who look uneasy when they are photographed do so because they are too self-conscious, but Roger did not suffer from that malady; he was among the least self-regarding of the men whom I have known. Instead, the photographs show a man who is not wholly present, a man who is always remembering something far away.

I have often thought that his melancholy explained something about the way he taught, but I cannot puzzle out the details. As his students have known, he was one of those demanding teachers who also has a gruff style, and since he was physically imposing, most, if not all, students were initially terrified. However, if you read the student comments, it is also clear that they generally learned that his manner was more bark than bite and that he cared deeply about them. (As my wife often said, he was really a teddy bear beneath that grizzly bear costume.) Washington and Lee has been blessed with many teachers who

have had a deep love for the institution, for their profession and for their students, and Roger Groot was certainly a member of this group. Yet he needed to maintain a distance; he could never be wholly at ease.

Perhaps it is best to leave these things unexplained. It will be enough to say that I loved him as a brother. We both grew up in the small town south: Roger in the oil fields of Texas, I in the coal fields of West Virginia. We both grew up in towns where the civil religion was Stoicism. We both were of an era when military service was expected of a young man, and we both chose the rigorous regime of a Marine. To deal with a harsh world, we both constructed a rigorous intellectualism as a way of warding off irrationality. In a very different way, we were both religious. In our conversations, there was much that could stay unspoken. I will miss him.

Ann MacLean Massie*

ROGER DOUGLAS GROOT: A PERSONAL MEMOIR

This morning, sitting in my office, I was startled by the rather distant sound of a male voice in the hall. For the tiniest instant, the intonation and inflection sounded much like Roger's. When will I get over expecting to hear him in the hall, regaling colleagues with a humorous anecdote, or to see him, coffee mug in hand, with that cat-that-caught-the-canary look on his face, heading towards me on his way back from class as I have just come dragging up the stairs in the morning?

There is not much one can add to the outpouring of countless encomia since Roger's death, except, perhaps, to share our personal memories, which together add shape and color to his legacy. I came to the Law School in the summer of 1985, appointed by Dean Rick Kirgis on a half-time basis. I was to teach Civil Liberties in the fall (Lash LaRue was the new Law Center Director) and Criminal Procedure: Investigation, then the required first-year course, in the Spring, when Roger Groot went on leave. I met The Legend that first nervous day in July. He was warm and welcoming and jocular, and not at all the gruff, intimidating figure I'd pictured in my mind after hearing the tales. Roger became my instant mentor. As I selected textbooks, tried my hand at a

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syllabus and attempted to master the mazes of Lewis Hall, he was somehow always there, interested but never intrusive, constantly encouraging and supportive.

After I'd taught my very first class, Roger and Joe Ulrich took me to lunch. Together they were the essence of the collegiality that pervaded the faculty and made Washington and Lee such a special place to work. One of the great treats from that time was brown bagging in the Faculty Lounge, listening to Roger and Joe and Uncas telling stories. Roger could regale endlessly with tales of clinic clients from the "Big House" at Alderson Women's Prison (he once gave me a glossary of prison lingo), of close shaves riding with cops on the night beat in Norfolk or of priceless classroom moments, never-to-be forgotten by the subjects of his grilling. Though we laughed, it was always apparent how very much Roger cared for his students. He had a well-thought-out philosophy of teaching, which he personified as well as anyone I have ever known.

Roger also took quite seriously his role of mentoring his juniors. One day, in that first class I taught at Washington and Lee, a student made an absolutely outrageous comment. I knew better than to let it throw me, but the other students were alarmed on my behalf. When the class was over, they went straight to Roger. (Students always went straight to Roger with matters that troubled them; who better on the faculty to set things right?) Within five minutes he was in my office, making sure I was not upset, assuring me that my students were appalled by what had happened and were on my side. Another time, about a year later, in response to a student's question about a case, I made an unintended double entendre that brought down the house and turned my face beet red—I was grateful it was the end of the hour! Roger was in my office almost as soon as I got upstairs, laughing his head off. Nothing in the Law School escaped his notice!

Shortly after I came onto the faculty full-time ("You're my last old-lady vote for the year; we need some younger folks around here," Roger told me), the Law School came up with the "Support Committee" system for the tenure process. Roger was opposed, on principle. The policy was actually set to begin the following year, but I told Dean Randy Bezanson that I'd like a committee of Roger and Brian Murchison. (Both Roger and Brian had been mentors to me from day one, anyway.) Randy tried to talk me into someone else, and I said to Roger, "You don't have to do this; I know you voted against it." But he said, "I told the Dean, if I'm going to be on anyone's committee, it might as well be yours." Roger was always a team player—it was the good of the institution that mattered to him, not whether his own preferences were followed. Needless to say, he was a superb confidant and guide during those years, and, as a member

of my tenure committee, insisted on an early disposition. It was always a great comfort to have Roger on your side!

Most of our conversations were fairly brief and took place in the Faculty Lounge or the hall, although there were times when we'd sit in each other's offices and share concerns or just visit in the comfortable way that friends do. But however casual those contacts might have seemed, Roger knew his friends. One day, when I was especially worried about one of our children (those teenage years!), Roger looked at me in the hall and said, "Hey, are you all right?" Of course, the very question brought forth tears, and I blurted out the problem to a sympathetic listener who had been down that road. It was so good to have a friend!

Now, with Roger's death, I find myself grateful beyond measure for having known him, yet crying again. It was *so* good to have *such* a good friend!

Mary Zanolli Natkin, 85L*

Roger and Me

We were unlikely friends. An ex-stockbroker, I came to law school with little interest in criminal law or procedure, especially at eight in the morning with an ex-Marine who had a reputation for making students cry. But I came away from those classes with undying admiration for Roger Groot's ability to convey to nascent lawyers what it means to practice law. He taught us independent thought, judgment and problem solving through the lens of criminal law, but those lessons reached far beyond the substance of the course. Sure, he could be a little cutting in his response if your thinking was sloppy or if you were ill prepared. From the first day of class, he told you the truth whether or not you were ready to hear it. He understood your struggle and would help you think through a problem, but he would not coddle you or condone a lack of effort. He knew that law would present us with both opportunity and responsibility, and he demanded our best on behalf of our future clients.

There is an old saying about leaders: A good leader inspires others with confidence in him, but a great leader inspires others with confidence in

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themselves. To me, nothing describes Roger better than this truism. Leadership was one of Roger Groot's many gifts. He was masterful at getting us to open our eyes to our best personal and professional selves. He certainly could be relentless in that pursuit. He kept us in his sights and pushed, prodded and praised as times dictated. Students of his may take some comfort in knowing that he was no less demanding of his colleagues at the Law School or in practice.

My fondest memories of him rest with the Alderson Legal Assistance Program, as that was the program in which we worked together most closely. He was tireless and ever present, in spite of his demanding course schedule and other academic and community pursuits. He left for the prison with students at six-thirty Thursday mornings, bought lunch for them at the Big Wheel and stayed with them late in the evening to discuss their cases, to work on petitions or to prepare for immigration and parole hearings. He was funny and gentle in the way that big, tough Texans can be. His work with Alderson, and later the Virginia Capital Case Clearinghouse, allowed students and colleagues to see that side of him, in addition to the fierce Groot intellect and drive that we already knew so well.

Roger knew a lot of people from all walks of life. What has struck me over these past few months are the stories people tell about him. His friendship and guidance were intensely personal and meaningful to each of them. Dozens of people—saints and sinners alike—have told me that Roger Groot was their best friend. And I am sure that is the truth. Roger was inimitable. He is irreplaceable. I am so grateful to have been his friend.

Scott E. Sundby*

ROGER GROOT: LARGER THAN LIFE

Prior to Roger's passing, I had used the cliché "he's larger than life" on a number of occasions to describe someone without ever really appreciating its meaning. Now that Roger is gone I find myself becoming almost irrationally protective of the phrase, because I finally understand what the phrase means. It means Roger Groot. Not only because Roger was one of the most remarkable

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people I have ever met, who seemed to accomplish more in one day than any ordinary human being could hope to achieve in a month, but also because although he is gone, he is still very much with me.

Little did I imagine when I initially met Roger that he would have this lasting effect on me. When I first saw him with his suspenders and ex-Marine crewcut I thought that he and I would have little in common other than sharing the same hallway. Has there ever been a clearer lesson to not judge a book by its cover? Beneath those suspenders beat a heart full of compassion and a noble will to fight for the underdogs of this world. I learned to trust his judgment and to value his opinion in a way that I have with few others. And most importantly to me, I came to know that he would always be there as my friend, whether it was with wise advice, a friendly smile or a greeting in a voice that could carry across three county lines. He was a comforting presence because I always knew that he would never turn his back on me no matter how badly I stumbled.

Something very interesting has happened since his death. As the days have passed I find his comforting presence undiminished. That probably sounds awfully New Age, and Roger no doubt would wince and make some witticism if he were here. But it is true. I find myself on many days picturing him in my mind, and I can still feel the confidence that he inspired in me. Indeed, of all his many talents, perhaps that was his greatest: The ability to make everyone—his colleagues, his students, his friends—believe that they could succeed at whatever they tried if they only were willing to take the risk. And if you took that risk, you knew that Roger would be with you every step of the way. It is because I can still feel his reassuring presence despite his passing, and I know that I will feel it for the rest of my life, that I finally have come to understand the phrase "larger than life."

When Roger stepped down as Director of the Virginia Capital Case Clearinghouse, I was asked to write something as part of the clinic's tribute to him. I wanted to capture as much as I could of how incredibly gifted he was as a scholar, a teacher and a lawyer, so I wrote a classified advertisement to look for his exact replacement.

**HELP WANTED:
PROFESSOR GROOT REPLACEMENT NEEDED**

Professional qualifications must include encyclopedic knowledge of criminal law, criminal procedure, death penalty law, and the law of evidence dating back to the 13th century. Thorough comprehension of forensics and mental health issues an absolute must. Complete mastery of litigation skills based on personal experience is essential, both trial and

post-conviction. Must be one of the three people on the globe who understands both the topics of double jeopardy and habeas corpus. In addition, applicant must possess ability to communicate complex ideas in an effective manner. These communication skills must be such that they inspire confidence among seasoned lawyers and judges while also reaching those who are still learning the law.

Applicant must possess fiery passion for justice and a belief in the role of defense attorneys as the voice for those at their most vulnerable. Ability to become justifiably indignant over arrogant prosecutors and overbearing judges is indispensable. Only those with endless patience and a bountiful sense of humor even in the darkest of times need apply. Crew cut and suspenders mandatory; flamboyant tie optional.

To someone who has never met Roger, such a description must seem like it describes a person who could never exist. But he did, and I will always be grateful that I knew him as both a treasured colleague and a trusted friend.

Joseph Ulrich*

An Ideal Colleague

Roger Groot was my colleague for twenty-six years. Such a relationship was very beneficial. To know Roger was to respect him for his superior intelligence, his moral commitment to excellence in all activities in which he engaged and his untiring efforts to make Washington and Lee a better place for all its constituencies. My focus is on the latter.

Roger was old fashioned in his views of what a faculty member should be and do. To some degree, his Marine background seems to have been instructive—great personal discipline directed toward the accomplishment of the organization's mission. Roger may have been the star of his team, but he was a quintessential team player, and like one of his heroes, Michael Jordan, he worked to improve the performance of all the other players around him. Not for him was the prevalent perspective of law teacher as "free agent" who views his current connection as transient, just a convenient base to seek a greater monetary advantage. Teaching excellence, collegial reciprocity and the willingness to help those in the Law School community doesn't increase your

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market worth, but Roger never paid much attention to mere trends. He marched to his own value system.

Roger's reputation as a superb classroom teacher was well deserved. He had a style all his own, one which he honed but never changed. Some students didn't like what he did. Roger was well aware of this, but he refused to alter his method, for he had no desire to seek the lowest common denominator in teaching or anything else. I often asked him to make guest appearances. Roger, unlike some others, always complied, and his presentations were well constructed and habitually contained a memorable message. For example, in an Antitrust class he did a marvelous job of demonstrating why the Sherman Act, a statute aimed at increasing business competition, imposed criminal penalties for price-fixing, a form of theft. When the corporate types in the class were dismissive of this characterization, Roger noted that such attitudes reflected the need to emphasize the seriousness of this crime, and that the threat of anal gonorrhea was quite likely to deter the potential white collar thief. I've wondered often how many of the young lawyers in class that day recalled Roger's pungent message and found a place for it in their advice to straying business clients. It certainly made an impression.

Roger's willingness to spice up a colleague's class carried over to his willingness to assist others with a scholarly project or anything else he could help you with. There is a proclivity today among faculty members not to communicate with their own colleagues who do not work in the same field. Roger thought that this modern tendency was a mistake, and he indicated this opinion by his actions. He always offered interesting and helpful comments on projects I asked him to look at, and what sticks in my mind is how quickly he responded.

Helping other faculty members with scholarly endeavors ought to be a standard part of collegial responsibility. Roger's sense of commitment to the Washington and Lee community went well beyond this. He offered help of various kinds to all community members. When students had brushes with the law, Roger invariably gave them a hand. When staff members needed legal assistance, they asked Roger for help, and he responded quite effectively. When this faculty member was involved in a contentious divorce, Roger offered either to mediate or arbitrate. Considering that he knew both of us quite well, and that the risks to him must have been quite obvious, this was an exceptionally generous offer. Such unselfish use of the time of a busy man seems most admirable.

In many ways Roger Groot was a very lucky man. He was recognized as an exceptional law professor. Of far greater importance to him, however, was his family. You knew how satisfied and pleased with his life he was from the

way he talked about Ellen and his three children, Michael, Stephanie and Donna. He was proud to be an integral part of his family. His feeling for family carried over to his colleagues at work. Roger viewed all of us as part of his extended family, and the members of this community were much better off because he did.

David Millon*

Roger Groot, Legal Historian

Many of Roger Groot's professional and public service accomplishments are well known. He was, of course, a dedicated and inspirational teacher and mentor, in the classroom and in the clinic. A passionate opponent of capital punishment, he labored zealously and effectively to save criminal defendants from the death penalty. His treatise *Criminal Offenses and Defenses in Virginia* is a bible for judges and lawyers throughout the Commonwealth. He was a leader of the Virginia Bar Association. For several years he was a member of the city council in Buena Vista. Before law school, he served with courage and distinction as an officer in the U.S. Marine Corps.

Maybe all that should have been enough, but there was still more. As an historian of English law, he made conspicuous contributions of enduring scholarly value. A small but energetic community of English legal historians thrives on both sides of the Atlantic. Within this scholarly fellowship Roger was well known and highly respected for a number of pathbreaking articles, especially three classic pieces on the early criminal jury. I suspect that many of those who celebrate Roger's accomplishments as a teacher, scholar of today's criminal law, and advocate for capital defendants have only the vaguest awareness of his historical work. This is unfortunate, because the work is important and he was proud of it.

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Roger did not come to Washington and Lee as a professor of criminal law. Instead, in the years following his arrival at Washington and Lee in 1973, he taught various property law courses. In addition to the first-year required course, he also taught Real Estate Transactions, Land Use Planning, and a course called Suretyship and Mortgages. He was, however, interested in legal history and taught his property courses from an historical perspective. Lash LaRue remembers that Roger "was one the few people I have known with whom I could share a conversation about land tenure in medieval England."⁵ (This may explain Roger's affection for the obscure technicalities of the Surety and Mortgages course, which he remembered fondly long after it was defunct.) He began teaching criminal procedure in 1977 and added the substantive criminal law course in the following year. It should come as no surprise that his approach to these subjects was informed by a strong interest in history.

What should surprise us is how little time it took Roger to publish two articles of fundamental importance to our understanding of the origins of the criminal jury. When he turned his historian's gaze to criminal law, he was not content to study some development of relatively recent vintage, say, three or four hundred years ago. Instead, he went all the way back to the beginning, to the jury's emergence in the first decades of the thirteenth century as the normal vehicle for deciding questions of guilt and innocence in criminal cases.

This development is of great historical interest because England took a path different from that of the rest of Europe, relying on jury verdicts rather than confession (and, eventually, torture) to determine guilt.⁶ Choices had to be made after the Fourth Lateran Council in 1215 banned clerical participation in ordeals. At that time, ordeals were used throughout western Europe to judge accused criminals.⁷ In England, a defendant would be required to grasp a red hot lump of iron; if later examination indicated that the wound had festered it was taken as a message from God that the defendant was guilty. Or an accused would be thrown into a pond; if he or she floated rather than sank, amounting to rejection by the water, again there was a divine indication of guilt. If, though, the result of an ordeal was to be taken as an expression of divine judgment, there could be no faith in the process if there was no priest to offer the requisite blessings and prayers. Some other procedure for deciding questions of guilt would be needed instead. The decision in England was to turn to juries of lay men drawn from the localities where the crime in question

5. Personal communication.

6. For continental developments, see JOHN H. LANGBEIN, *TORTURE AND THE LAW OF PROOF: EUROPE AND ENGLAND IN THE ANCIEN RÉGIME* (1977).

7. See generally ROBERT BARTLETT, *TRIAL BY FIRE AND WATER: THE MEDIEVAL JUDICIAL ORDEAL* (1986).

had occurred. This proved to be of momentous importance, because it meant that ordinary people rather than ministers of the king would have the final say in determining the fate of those accused of crime.

How this came to be—in comparison to the very different approach adopted in continental Europe—is an urgent historical question. Roger's answer appeared in two parts, in a pair of articles published in the *American Journal of Legal History* in 1982 and 1983.⁸ He argued that before 1215 juries were already being used to perform a function not too different from a final judgment of guilt or innocence. By the final decades of the twelfth century, public prosecutions were initiated by juries of lay men ordered to "present" or identify people suspected by the local community of criminal activity. These jurors were then asked further to give their opinion about the validity of the community's mistrust. Only if the jurors expressed their own suspicion would the accused then be sent to the ordeal. If instead the jury said it did not suspect the accused that would be the end of the matter. Roger identified a similar pattern in private criminal prosecutions, those initiated by the accusation of a private party. In such cases the accused had a right to demand a jury's verdict on the merits of the accusation. Again, only if the verdict were unfavorable would the accused then be put to the ordeal.

These jury determinations did not have the finality of post-1215 verdicts because a jury's endorsement of community suspicion still resulted in the ordeal. They were in this sense merely medial. Nevertheless, and this was Roger's central point in these articles, by 1215 the jury was being used to perform an adjudicative (as opposed to merely accusatory) function, and its judgment on the merits was given substantial credence in both public and private criminal prosecutions. In this context, it was then a small step to accord full determinative weight to these verdicts. "Because the English had this ready, developed substitute for the ordeal, they were spared the search for an alternative."⁹

The trial jury with full power to convict did not emerge fully formed in 1215. As Roger showed in a third article,¹⁰ the developmental process was fitful and complicated. Initially, jury verdicts that previously would have led to the ordeal—because of the jurors' belief in the accused's culpability—did not result in conviction and the punishment usually reserved for felony, typically death by hanging. They were, however, the basis for imposition of a fine in

8. *The Jury of Presentment Before 1215*, 26 AM. J. LEGAL HIST. 1 (1982); *The Jury in Private Criminal Prosecutions Before 1215*, 27 AM. J. LEGAL HIST. 113 (1983).

9. *Jury of Presentment*, *supra* note 8, at 24.

10. *The Early Thirteenth-Century Criminal Jury*, in *TWELVE GOOD MEN AND TRUE: THE CRIMINAL JURY IN ENGLAND, 1200-1800* (J.S. Cockburn & Thomas A. Green eds., 1988).

certain kinds of cases, with the accused imprisoned until payment was made. For the first time, then, verdicts were treated as a sufficient basis for legal sanction. The first truly convicting juries appeared in 1220 but were limited to a particular class of cases. Very soon thereafter the jury was used more generally, though there were differences among judicial sessions until the jury was accepted as the usual vehicle for deciding criminal cases in the first years of the 1220's. As Roger noted, this development depended on the creation of mechanisms to require accused persons to put their fates in the hands of juries. It depended also on the royal justices' willingness to honor the judgments of lay men even when the result was acquittal. What otherwise might have been problematic was no doubt less so because of the well established pre-1215 practice of terminating prosecutions on the basis of medial verdicts of acquittal.

Together these three papers trace in meticulous detail a story of great importance to Anglo-American legal history. One cannot fully appreciate Roger's achievement, however, without an understanding of his method. There exists a continuous though incomplete record of cases in the king's courts from the last decade of the twelfth century. The early records are written on parchment in a hand that can be difficult to decipher. The language is Latin, and the individual case records are generally terse and formulaic. As such, they are often opaque and don't necessarily include information that might be of interest to today's historians. Much that was obvious to contemporaries and would be important to us was not written down.

Roger took a fresh look at materials that many others have studied and found a more complex picture of the early jury's activities than anyone else had seen before. By paying careful attention to idiosyncratic factual details in individual cases and comparing a large number of these cases with each other, Roger was able to see evidence of regular practices that previous scholars had not noticed. It is as if he assembled the pieces of a puzzle to reveal patterns that otherwise would have remained invisible. He had to be able to read Latin, because, while a substantial body of the earliest records has been transcribed and published, much of this is not translated. He had learned Latin in high school (he studied Russian as an undergraduate), but the phrases of the early thirteenth-century court clerks are very different from the diction of Caesar or Cicero. It is thus all the more remarkable that Roger's scholarship depended so heavily on meticulous parsing of elliptical Latin texts.

Roger's articles are important not only because they trace the process of transition from trial by ordeal to trial by jury. It reminds us that the criminal jury's remarkable power over the criminal law—expressed in the finality of its judgments of acquittal even in the face of contrary judicial opinion—has been central to the jury's nature since its inception. Thomas A. Green, John P.

Dawson Collegiate Professor of Law at the University of Michigan and himself the author of a path-breaking book in the criminal jury's early history,¹¹ emphasizes this aspect of Roger's work in his assessment of its importance:

Roger's pioneering explorations of early pre-trial process, and especially his discovery that a more complex process than we had supposed existed for the sifting of defendants on the basis of evidence, allowed a more informed assessment of the significance of, e.g., the fairly frequent acquittals by early trial juries. These acquittals, in cases where defendants had already been sifted in this fashion, suggested how strongly trial jurors resisted convicting (and thereby effectively condemning) defendants except for what jurors deemed the most serious offenses, or where the evidence met an extremely high standard. Indeed, they suggested that the practice of occasional nullification of the law took hold at the very outset of the trial jury's history.¹²

I suspect but don't know with certainty that it was fascination with this power—the power of "common folk who could say no to the king"¹³—that led Roger to go back to the beginning and undertake his remarkably ambitious exploration of this evidentiary forest. I think he admired the men who exercised this power in the face of authority and still more the legal system that invested them with it. Many years later, when he was defending people caught in Virginia's voracious capital punishment machine, Roger saw in the jury a mechanism that invested ordinary people with the capacity to obstruct the state's mightiest power, its power to kill. The inhumanity of the death penalty revolted him, but investing the state with such massive power offended him at a basic level. The humanitarian impulse I think was at least in part religiously motivated. The distrust of state power seemed to me to have been imbibed during a childhood spent in the open spaces of South Texas.

Roger's best known historical work will probably always be his pathbreaking articles on the origins of the criminal jury. There was more, though. His paper on the early history of suicide as a felony, together with another scholar's article on medieval suicide law, occasioned a colloquium held at Magdalen College, Oxford in 1999. This was not a large gathering but it included most of the leading British legal historians. I recall that Roger was nervous before his departure. I think he felt humbled both by the grandeur of the venue and also by the illustrious company. In the event his presentation

11. VERDICT ACCORDING TO CONSCIENCE: PERSPECTIVES ON THE ENGLISH CRIMINAL TRIAL JURY, 1200-1800 (1985).

12. Personal communication.

13. *Early Thirteenth-Century Criminal Jury*, *supra* note 10, at 35.

was well received, and the paper was later published in a special issue of the *Journal of Legal History* devoted to suicide in medieval England.¹⁴

Roger was a regular participant at legal history conferences in this country and in Britain. His Washington and Lee students would have recognized him: the same white button down shirt and suspenders and the same direct, at times gruff, but fiercely articulate manner of speech. I have wondered what British legal historians thought of this large man with the gentle southern accent, military haircut and upright bearing, and razor-sharp intellect. I think they soon learned that the obvious differences between them and him were only superficial. His work earned their respect and the warmth of his personality made him many friends. Andrew D.E. Lewis, Professor of Comparative Legal History at University College London, recalls "a large presence that contrasted surprisingly with a delicate personality."¹⁵ The reference, I think, was to a warm and open disposition that seemed at odds with the imposing physical aspect.

At the time of his death, Roger was at work on an article studying the variety of punishments meted out in non-felonious cases—what would later be called misdemeanors.¹⁶ In contrast to felonies, in which the judicial response was standard, automatic, and very harsh, Roger found in the records that there was broad discretion to apply a range of sanctions, including the finding of pledges for good behavior, banishment from the defendant's county or town, and mutilation. Roger hypothesized that punishments were tailored according to the individual defendant's status in the community. If the community was willing to tolerate his or her continued presence, pledges might be sufficient. In small communities at least, "the local miscreants are known and can be avoided."¹⁷ In London, though, things were different. Criminals might more readily hide behind their anonymity. Accordingly, banishment or mutilation—cropping of an ear—would either remove potentially dangerous persons or put the community on notice of prior wrongdoing.

14. Volume 21, Number 1 was dated April 2000. Roger's paper, *When Suicide Became Felony*, appears at pages 1–20.

15. Personal communication.

16. Roger presented his findings at the 17th British Legal History Conference in London in July 2005. His talk was titled "Petty Thieves and Other Miscreants: 'Misdemeanours' in the Thirteenth Century." Unfortunately this work was not far enough along for posthumous publication. All that survives is a two-page abstract (on file with the author).

17. The quoted language appears in the abstract referred to in *supra* note 16.

There were additional articles on the origins of the criminal jury¹⁸ and papers on the early history of the crimes of rape¹⁹ and petit larceny.²⁰ All of these were based on meticulous study of opaque primary sources and all of them make important contributions. As with the jury articles, the work was never merely antiquarian. Roger had no interest in uncovering historical tidbits simply for their quaintness or their entertainment value. Rather, the detailed linguistic analysis and the many illustrations culled from the records were always in the service of larger questions of genuine historical importance. Taken together, Roger's legal historical scholarship is a weighty monument to an original thinker, a painstaking and dogged researcher, and a sorely missed member of the fellowship of English legal historians.

* * *

Roger D. Groot's Legal Historical Scholarship

"The Jury of Presentment Before 1215," *American Journal of Legal History*, vol. 26, pages 1–24 (1982).

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"Proto-Juries and Public Criminal Law in England," in *Die Entstehung des öffentlichen Strafrechts [The Emergence of Public Criminal Law]*, pages 23–39 (edited by D. Willowweit, Böhlau Verlag 1999).

18. *Proto-Juries and Public Criminal Law in England*, in DIE ENTSTEHUNG DES ÖFFENTLICHEN STRAFRECHTS 23 (Dietmar Willowweit ed., 1999); *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, at 17 (Jonathan Bush & Alain Wijffels eds., 1999).

19. *The Crime of Rape temp. Richard I and John*, 9 J. LEGAL HIST. 324 (1988).

20. *Petit Larceny, Jury Lenity, and Parliament*, in THE DEAREST BIRTH RIGHT OF THE PEOPLE OF ENGLAND: THE JURY IN THE HISTORY OF THE COMMON LAW 47 (John Cairns & Grant MacLeod eds., 2002).

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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,

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- 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

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



ARTICLES
