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Introduction

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Since the last publication of the Capital Defense Journal the Commonwealth has executed four people. One claimed that the violation of the Vienna Convention on Consular Relations rendered his death sentence unfair. Two others asserted that a conflict of interest denied them the opportunity to have their clemency petitions considered and decided by a neutral decision maker in violation of due process. Ironically, on the day of Ronald Watkins' execution, the second death row inmate to question the executive's neutrality in light of his previous position as Attorney General, the Supreme Court decided *Ohio Parole Authority v. Woodard*, 1998 WL 129931 (March 25, 1997). Though a complex and fractured opinion, most agree that from it can be gleaned the requirement that clemency proceedings meet some minimal standard of fundamental fairness.

Thus, capital defendants in Virginia continue to advance serious questions of fundamental fairness. Appropriately, in each of the case summaries and articles in this volume of the Capital Defense Journal, the authors probe the issue of fundamental fairness, commend its presence when it is found, and criticize its absence when it is not. Thus, for example, the case summaries question the Fourth Circuit's ever-broadening *Strickland* standard for ineffectiveness, the unwillingness of the courts to engage in meaningful analysis of constitutional claims, and the increasing complexity and routine applicability of procedural default rules.

The articles in this volume could likewise be summarized as a quest for fairness. In "A Modest Proposal," the author explores the simple fairness of requiring that unadjudicated acts offered to prove future dangerousness, and thus authorize a death sentence, be proven beyond a reasonable doubt. In "Disparate Application of the Contemporary Objection Rule," the differing treatment of the manifest justice exception to the contemporary objection rule in capital and noncapital cases is contrasted. And in an article that contrasts capital jurisprudence in Virginia and Illinois, Virginia's twenty-one day rule is exposed for its potential effect on fairness in cases of those claiming to be actually innocent. Finally, the difficulty of achieving fairness when a capital defendant desires to die before exhausting legal remedies is explored in "Guilt and Innocence are Matters of Degree: Death is Final."

It is a most awesome task which the government assumes when it undertakes to take a life. In the end, those who request it, those who grant it, and those who carry it out will all be served by assuring that at each step, the process is permeated with fundamental fairness.

This Journal is dedicated to a few of those who are committed to the importance of fundamental fairness in capital litigation and who have labored to assure that the process is never convenient, never unchallenging, but always infiltrated with the intricacies of fundamental fairness: the members of the 1997-98 Virginia Capital Case Clearinghouse. Your commitment to fairness has been an inspiration to me.

Penny J. White
Acting Director