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Introduction

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Introduction

This is the final issue of the *Capital Defense Journal* that it will be my privilege to introduce. At the end of this academic year, leadership of the Virginia Capital Case Clearinghouse will pass to the very capable hands of my colleague and friend, Professor Roger D. Groot. On this occasion, before highlighting some of the content of this issue, I want to express my appreciation to several people. Being a part of the struggle to make the right to counsel meaningful has been the most rewarding and frustrating experience of my professional life. I have many to thank for affording me the opportunity to participate.

First, the students who have passed through this program since its doors opened in 1988. The ability and value of law students in capital defense is under-utilized and under-appreciated in many circles. These students, against heavy odds, have produced legal work that has helped save lives. More importantly, I think, they have understood and appreciated the essence of the Sixth Amendment to the United States Constitution better than many in our profession who have been around longer and should know better. To a person, from the original band of nine who embarked on uncharted waters, to all who have yearly refined and extended the help available to capital defense, to the current competitively selected leaders, I am most grateful.

Second, I leave with the knowledge that there is a now a courageous and competent capital defense bar in Virginia. Many people have had a part in this development over the last decade. Often at great personal and financial sacrifice to themselves and their families, and with no understanding or appreciation from an ignorant and fearful public, these lawyers have never lost sight of the simple truth that the job of defenders is to defend. In the turmoil of mailing and faxing memoranda and bench briefs, and holding brainstorming sessions in an effort to arrange for our clients to get off Virginia's genteel railroad to the death house, I have not taken the time to tell the attorneys with whom we work how much I admire and respect them. I do so now. Like any profession, ours has those who should not be involved in defense. But their numbers are dwindling.

Finally, I have not adequately expressed my appreciation to Washington and Lee University. I expect members of the legal profession to have a commitment to justice. I also take care that the students selected for this program are concerned with justice. No such commitment is part of the formal charter of a university. It is, therefore, even more laudable that the university has given its unfailing support to the program over the years. Washington and Lee is a private institution. As such, it has no direct responsibility to assist attorneys in the courts of the Commonwealth. It is certainly under no obligation to assist those who represent the most despised within our borders. Yet, the Virginia Capital Case Clearinghouse is one of only two organizations to which an attorney appointed to a capital case may turn for help. It is the only one concentrating on trial level assistance. By its support, I think the university demonstrates both a commitment to a unique form of legal education for some of its students, and a commitment to the rule of law. I am very proud of my school. All of these people, the students, the defense lawyers, the law school and university administrators, are heroes to me. I wanted them to know that.

Now to this issue of the *Capital Defense Journal*. It is typical, in many respects of earlier ones, reporting the efforts of courts to manipulate the law to preserve death sentences. I have written a brief, bitter, but truthful essay illustrating the courts' damage to the rule of law in two areas by reference only to the cases reported in this issue. But the legal climate assessed in this issue is somewhat more favorable in some hopeful respects. For the first time in more than eight years, the Supreme Court of Virginia in *Atkins v. Commonwealth*, reversed a death sentence! At this writing the United States Supreme Court has heard argument in two Virginia capital cases, *Strickler v. Greene* and *Lilly v. Virginia*. There is reason to believe that something good will come from one or both of those cases. The Court has also accepted *Williams v. Taylor* and I have reason to hope that the Fourth Circuit's twisted view of the right to counsel will be corrected in that case.

On the negative side, the Supreme Court of Virginia, backed up by the Fourth Circuit, continued its hyper-technical application of procedural bars to avoid addressing serious constitutional claims. These are described in the summaries of *Swisher v. Commonwealth*, *Kasi v. Commonwealth*, *Yeatts v. Angelone*, and *Sheppard v. Taylor*. A trio of cases, *Hedrick v. Commonwealth*, *Reid v. Commonwealth*, and *Cherrix v. Commonwealth*, expose even more clearly than before the deficiencies in Virginia's application of the "vileness" aggravating factor. This is an old issue, but these opinions may increase the chance that the United States Supreme Court will one day take notice.

The three student articles in this issue will also be useful. Two of them detail excellent research on what persuades capital jurors and what does not, how to communicate effectively with the jurors, and the way aggravating and mitigating factors play into juror decision making. The third, while not directed at day-to-day practice, provides encouragement to beleaguered

defenders in a state that seeks to kill almost one person a week. It details the growing isolation of the United States in the world community because of the death penalty, and in particular the refusal of other countries to extradite suspects to face it. Of particular interest in that article is the fact that part of the reason some nations refuse extradition is that our vaunted criminal justice system does not contain adequate safeguards for an accused person.

Please continue the struggle for justice. I know that you will.

William S. Geimer, Director
Professor of Law

ARTICLES
