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Tribute to Professor David Bruck

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Tribute to Professor David Bruck

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Tribute to Professor David Bruck

Tribute to Professor David Bruck

Cristina Becker*

It is difficult to know how to begin a tribute to one of the best human beings I have ever met. David Bruck is thoughtful, radically kind, and a fierce advocate not only for his clients but also his students. His professorship at the law school created whole new generations of dedicated capital attorneys who work to save lives every day. He chose not to keep his knowledge close, but to invest in educating others so that they may continue his great work.

The first day I walked into Professor Bruck's capital clinic I knew nearly nothing about the history or application of the death penalty in the United States. That was quickly remedied. I immediately joined two trial teams and began researching and writing, not just about the law, but about human behavior, mental illness, and most of all, unconditional duty to our clients.

As a student I appreciated his approach to teaching—he was loud in his support, and gentle in his constructive criticism. Professor Bruck never tried to sugarcoat or minimize anything—not the facts of the crimes or the painful aftermath. He showed us that all of the acts were human acts, and our jobs were to understand why and how so that we could share that knowledge with the juries. The only way to obtain that information was to develop trusting relationships with our clients. We had to recognize their inherent dignity, pass no judgment, and listen. In other words, love them unconditionally. Little did I know I was going to be immediately put to the test.

During the winter break before my last semester at W&L, Professor Bruck invited me to observe a trial team consultation.

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It was an especially tough case out of Philadelphia, where I worked as a social worker before I started law school. I expected to stay silent and simply watch my professor wield his expertise. However, that was not to be. Not only did Professor Bruck encourage my participation, but my knowledge of Philadelphia neighborhoods became useful when the topic of the client's childhood and background arose. I spoke about my experiences in the client's neighborhood and soon after, the team asked me to perform mitigation work that included visiting the neighborhood and interviewing critical witnesses.

I had doubts about working on such a serious case as a law student, but Professor Bruck moved quickly to remove them. He reminded me of my specialized knowledge but more importantly, that the client and the team needed my help. I agreed to the job.

When I approached my other professors for permission to travel and make up clinic hours, I found that Professor Bruck had already spoken to them on my behalf. Soon after I was on a train to Philly and performing the most important work of my law school career. Before I met Professor Bruck I had no awareness of mitigation work. Six years later, I am an attorney and mitigation specialist at a national capital defense office. And I would not be here but for him. He changed the course of my life.

When I joined the clinic, Virginia ranked high amongst states that sentenced people to death; and the clinic never wanted for new clients. It is fitting that the year in which Professor Bruck retires, after dedicating his entire career to saving lives, the state legislature voted to abolish the death penalty. What a beautiful gift for the formidable David Bruck.

Tribute to David Bruck

C. Elizabeth Belmont*

By the time this goes to press, the Commonwealth of Virginia—the grimmest of the nation's grim reapers—will have

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ended the death penalty. In penning a tribute to David Bruck, my colleague and friend of nearly seventeen years, it is tempting to focus there. David's tireless work to eradicate the death penalty—and to bring whatever justice is possible to that most unjust of practices, so long as our nation clings to it—is well documented. Even now, as Virginia turns toward the light, David does not relent. Instead, he turns his steady attention toward Guantanamo and the federal realm, where cruelty has blossomed like an ink stain, a darkening Rorschach for our nation's basest instincts. But as a civil side lawyer, I think it best to leave such encomia to those of David's tribe better equipped to contextualize it. Instead, I would like to speak as David's friend. I would like to speak about David's heart.

Certainly, David has the heart of a teacher-warrior. And certainly that heart beats for justice. But today I am going to tell you about what I believe is that heart's wellspring: David's quietly joyful, deeply loving reverence for the beauty of life itself. Let me share a few examples to prove my case.

It is the morning of his daughter, Zoe's wedding. Zoe is the quintessence of the beauty that this life on Earth offers—and that is true even on the days when she is not a bride. But it is David who draws my attention. With his dear sister and dear son close at hand, and David himself poised to lead the ritual that will bind Zoe to her beloved, David seems utterly emptied of self. He instead is the quiet embodiment of the joy that comes from being in the presence of love.

Now it is afternoon, one among many. I walk into my kitchen fatigued from the day's work, only to be greeted by a cabbage the size of a basketball, or a vast palette of garlic varieties heretofore unheard of. The produce appears unbidden on my kitchen counter, accompanied by a wry note or a hand-drawn cartoon. Still life, with vegetables, conjured by David from the special soil he blended by hand for Bruckacre's garden. Surely even the least poetic among us can appreciate the metaphor of the gardener, coaxing joyous, nourishing bounty from well-tended soil. David is such a gardener, in both the literal and figurative sense. We—David's family, friends, and students—all benefit from his tending, and we all blossom under his care.

Now it is suppertime. More often in David's kitchen than mine, for David is a generous host, always ready to share the

gifts of his table and Bruckacre's sweeping views. David is a careful and fastidious cook, but somehow the messy warmth of his Hanukkah-season latkes captures me the most: David as the loving Zayde, telling tales as the oil hisses in the skillet and the kitchen fills with the fragrance of browning potato delights. In this space and these moments, David often seems at his happiest, for—as his students, clients, family and friends well know—David is one who is nourished by feeding others.

Now it is evening, more than a decade ago. We are gathered on my back deck to bask in the waning light of the summer sun as it slips behind House Mountain, when David quietly makes the impossible happen. I have never before seen my deeply performance-shy daughter play her flute outside the mandatory middle school gymnasium showcase. But then, somehow, above us, from the second-floor balcony, Juliet-like, there floats a duet for flutes: David's gentle, masterful playing coaxing along my daughter's own haltingly beautiful notes. In its own small way, the moment is weighty with the beauty of a miracle. David's heart has that knack—it coaxes small miracles out into the open.

To be in the presence of David's heart is a blessing indeed. We are grateful to you, David, for sharing those blessings with all of us.

Farmer Bruck

Johanna Bond*
J.D. King**

One day shortly after we arrived in Lexington, when our oldest children were about six and four years old, our friend David showed up on our porch. He was carrying a flat cardboard box that was about four inches tall and two feet wide. David, grinning like the Cheshire Cat, asked the kids to guess what was in the box. It is that moment most parents are familiar with when you worry that your dear friend has decided to give your

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small children a puppy or a BB-gun. David gently set the box down and invited the boys to peer into the box. Much to their delight, it contained about a dozen small, fluffy, yellow chicks. While we spent the next thirty minutes getting to know the chicks, it was clear that David was enjoying the visit as much as our children—and decidedly more than the chicks themselves. It was the first of many times that we would observe David's wonder and delight in nature.

Of course, David is world-renowned for his work on behalf of those facing execution at the hands of the state. He has dedicated his professional life to saving the lives of those condemned to die or facing the possibility of a capital sentence. Before David's arrival in Virginia, this state was at the top of the list of death sentences and executions. In the six years before he came to W&L, someone was sentenced to die in Virginia more than once every two months. In his almost two decades running the Virginia Capital Case Clearinghouse ("VC3") and assisting capital lawyers across the state, Virginia juries have handed down fewer than one death sentence each year, and nobody has been sentenced to death in almost a decade. And in 2021, Virginia finally abolished the death penalty, a move that few could have imagined when David arrived to take over VC3. It is the fitting culmination of David's work in Virginia, and we are thrilled that the seeds David has sown over a lifetime of work on this issue are now coming into bloom.

But we have long suspected that David's true calling and lifelong pursuit, less well-known to many, is his farming life. David is a farming hobbyist, growing endless amounts of kale, lettuce, cucumbers, and other assorted vegetables. We know this because he would often drop off buckets of cucumbers (truthfully, more than any family could consume) outside our office doors or leave bags of lettuce on our side porch at home. We were always grateful to be the beneficiaries of David's bountiful harvest.

It was not always smooth sailing, however. Although the vegetables presented "garden variety" challenges, the chickens offered more of an emotional roller-coaster ride, on which we gladly accompanied David. For a period of about six months, David's chickens were under siege by a predator who was stalking and slowly picking them off one by one. The chicken genocide tested David's resolve and his resourcefulness. After

multiple creative attempts to fence them in and save their lives, David ended up ordering a new shipment of chicks. The only problem was that he mistakenly ordered a shipment of mainly baby roosters, which he would not discover until they became teenage roosters. Needless to say, there were fewer eggs that year.

Whether fighting tirelessly for his death row clients, protecting his chickens, or toiling in the garden, David is committed to the cause. Through it all, he has been a faithful friend to both of us and we cherish our friendship with him. Because David does not own a TV, we continue to count on him showing up at our door for every big election, Superbowl, or World Series. We will miss him in Lewis Hall, but we will continue to enjoy every moment with him. We may even get him to teach us a thing or two about gardening.

A Tribute to My Father

Zoe Bruck*

I am both honored and daunted by this opportunity to share memories and lessons I have learned from my father, David Bruck.

My dad has been teaching at Washington and Lee University School of Law and running the Virginia Capital Case Clearinghouse (“VC3”) for sixteen years. During that time, I have graduated high school, college, and law school and am now over six years into my career as a Public Defender. I have traveled a similar path as many of his students. He forged this path and has supported me through it, as he has for many young lawyers.

When I was about four or five, I asked my dad if there was such a thing as a stealing lawyer. When he asked for clarification, I explained that maybe I would be interested in doing what he did but that I would be too sad if my client was executed. That is when he taught me what a public defender did. I am now past my “stealing lawyer” days and represent people

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charged with violent crimes. However, I do so in a district that does not pursue the death penalty.

I work in the same office where my dad began his career as a public defender. He represented defendants charged with the same crimes as my clients, but he did it in a time when our county's prosecutor still pursued death. My dad's tireless advocacy helped to put an end to that office's most horrible and inhumane pursuit. For this, as for so many things, I am lucky to follow in his footsteps. He helped to make our practices more just, and now I can be a public defender who represents those most in need, but who I know will walk away with their life.

From that early conversation as a child to today, my dad has never pushed me into this work, but I have had his unwavering and unconditional support. It is the same support that many of you have been lucky to have as his students. I have called him to celebrate victories and to mourn losses, but more often to vent about my frustrations with everyday injustices, draconian sentences, and dehumanizing prosecutors. Although my dad is someone who is called upon by defense lawyers all over the country for his advice and expertise, what I mostly talk to him about these days does not often have a succinct answer. His response to me usually boils down to one of a million ways of just saying, "I hear you, and I believe in you."

My dad would sometimes talk to me about his students' panic as they prepared to leave W&L and enter the work force. He lovingly brushed off those anxieties on the part of his students. When I was about to graduate from law school, I found myself dealing with the same dread. I tried to explain that his students actually might be scared of failing. However, while he listened and empathized with my fear, he gave it just a little credence. He believed—and still does—that righteousness will prevail, and so will those who pursue it. This belief is why he placed enormous responsibilities in his VC3 students. From sitting down to gather mitigation with someone whose life depended on it, to asking a student to drive his very aged and mostly working Subaru over precarious mountain passes while he took phone calls, he knew you could do it.

To all of my dad's students who have gone on to do capital or criminal defense work: I hope that you feel like you are still working in Professor Bruck's office. I hope that his compassion and wisdom stay with you in the jails and the courtrooms. As

criminal defense attorneys, we are all traveling together down a path that my dad helped forge through his litigation, his advocacy, and his teaching. We have been lucky to follow, and now we can lead, although he may still be two steps ahead.

Tribute to Professor David Bruck

Judy Clarke*

I write to join the “Tribute” to you, David, expressing my appreciation for the many years of friendship, and for the significant influence you have had on my life and legal career. You have inspired many folks to devote their legal talents to defending the poor against the power of the state, and to learn and tell the stories of those who have committed capital crimes.

I know you recall that we met during law school. You were the much more skilled and experienced 2L helping teach legal writing—and that very left-leaning liberal who worked in a machine shop to support your way through law school. I must acknowledge that you clearly failed at significantly improving my legal writing skills, but you did succeed in helping focus my legal career on defending those in serious trouble, and most in need, and the value of caring about what happened. The internship that you got for me—and the days of working as a legal intern at the Richland County Public Defender’s office certainly shaped the career I would pursue. Those daily trips to the Richland County jail to identify the individuals who needed the public defender and being given the responsibility of connecting with their families to help with bail provided a powerful insight into the humanness of those who have found themselves accused of crime and jailed. So, I thank you for that opportunity, and for helping set the path I would follow in the law.

We lost touch when Speedy and I moved to California—and reconnected briefly as your short-lived Canadian welding career ended and you returned to South Carolina to devote your many talents to fighting the death penalty. By then, I was with the

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federal defender office in San Diego, trying each day to remember the names and faces of all my clients—most of whom were charged with illegally entering the United States. We reconnected some years later at a legal conference when you introduced me to your new baby daughter—and now successful public defender—Zoe. You were, and are, such a proud dad.

I remember following the news media about Susan Smith, and the day Susan confessed to drowning her two young sons—hoping this troubled young woman would find capable legal representation—and then the relief on learning she would be represented by you. You have still never given a satisfactory answer about why you called me to join you in representing Susan. I was a happy-go-lucky federal defender, living in Spokane, Washington, with many clients to represent. But you, again, changed the course of my legal career with that call, and the ensuing six months of seeing up close the horrors the death penalty wrought on everyone involved.

Since that time, I have had the personal and professional pleasure to be your co-counsel, and to be on teams where your consultation and guidance was so impressive and necessary. I've had the chance to watch you work—and to learn from how you think. You have had a similar impact on so many folks both in Virginia and across the country. You have shaped the law, and you have shaped the careers of so many future and young lawyers. You will never take credit, but I am sure your sixteen years of work in Virginia and with VC3, and the lawyers you trained to take on the death penalty in Virginia, set the stage for Virginia's abolition of the death penalty.

You are always in search of a new and seemingly impossible challenge—and have recently found one by taking charge of one of the Guantanamo defense teams. You are unstoppable David Bruck; brilliant, thoughtful, compassionate about the rights of others, a mentor, and a giant in the law. This Tribute is so appropriate, and well deserved. I'm looking forward to seeing what the next decade brings.

A Tribute to David Bruck

Dawn M. Davison*

It may not have been the first time I visited the United States Court of Appeals for the Fourth Circuit, but the day has so thoroughly eclipsed any memories of possible prior visits that it may as well have been. I was a 3L, a member of the Virginia Capital Case Clearinghouse, and I had traveled to Richmond with some other clinic members to watch David Bruck make an oral argument to the court. David, for that is what we called him, had only been a clinical professor at W&L School of Law for a couple of years. He had moved to Lexington from South Carolina, and he still represented clients on South Carolina's death row. That day he was supposed to argue on behalf of one of them.

David had warned us that the judges in the Fourth Circuit come down from their bench and shake the hands of the attorneys after each argument. It was a gesture of civility that did not seem strange until I was seated in that courtroom waiting for the judges to enter. The room was cold and cavernous. The dark and looming judges' bench was set well-apart from the counsel tables by thick, old carpeting. The wooden benches for the public were more uncomfortable than church pews. The windows along one wall did not noticeably brighten the dark wood paneling which was decorated with oversized painted portraits of past judges, each white and male. The idea of the present judges coming down from that bench and walking towards us became unnerving.

Since that day, I have seen David argue a few times before different courts, and he comes across as he is—intelligent, unflappable, likeable, earnest, and persuasive. But I have no memory of David's argument that day, and it is entirely possible that he did not get the chance to argue. I remember him sitting at counsel's table in one of those swiveling and almost-reclining chairs that incongruously in the midst of great formality seem to invite counsel to put their feet up on the table and waiting

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attentively for an Assistant Attorney General from South Carolina to begin his argument.

Opposing counsel stepped to the podium and it became quickly apparent that he was struggling to find his words. I attributed it to nerves, perhaps about the untenableness of the position he was advancing or about his formidable opponent. I pitied him a bit. But as time passed, he did not find a rhythm and his argument became more labored—long pauses stretching out between stumbling words as he tried to explain to the Court why South Carolina ought to be allowed to kill David's client. I wondered if he might become so nervous that he would faint. And then he did, crumpling on that old and mercifully thick carpet.

The judges stayed behind their high bench. Their clerks did not move. None of us on those hard pews even stood up to get a better look. Human frailty was so out of place in that room that we did not recognize it. The only person who moved after counsel collapsed beside the podium was David. He was up and out of that swiveling chair and kneeling next to his opponent while the rest of us were still trying to understand what had happened. It was David who made sure the man was still breathing, who told the judges that he needed help, and, at least in my memory, prompted them to ask someone to call for that help. It was David who stayed with the man until someone arrived to help him, David who hovered nearby until they wheeled him out on a stretcher. The argument was postponed, court was recessed, and the judges made their way back to the antechamber to compose themselves before the next argument. When we left, the courtroom felt a little less imposing, like it had been softened ever so slightly.

Later David explained that the Assistant Attorney General had come up from South Carolina by himself, and there was no one else from his office there to support him. No one else to argue, and no one else to take care of him. David worried about the man's well-being even as he pressed for David's client's execution. David knew enough about his adversary and his history to have a pretty good idea of what had happened to him in the courtroom. I have been practicing capital habeas corpus law in Virginia for almost thirteen years, and I have had only four different opposing counsel. Still, if asked, I could not name

any of their alma maters, much less provide any useful information about their medical histories.

David went to the Fourth Circuit that day to remind the Court what we owe a man if we are going to insist on killing him, but that lesson had to be delayed for a couple of months. Instead, he did what he has always done: He showed us what reflexive human kindness and compassion looked like. Those qualities permeate his interactions with colleagues, opposing counsel, judges, clients, and students. And they are, perhaps even more than his insightfulness and perseverance, what make him a most extraordinary advocate. David taught us the value in keeping our common humanity at the core of our professional efforts. I am only one of many that continue to aspire to be more like him.

A Tribute to David Bruck

Bernadette M. Donovan*
Matthew L. Engle**

We are not religious people. When we decided to get married, we did not have a priest, rabbi, or imam to preside over our wedding. We had to ask ourselves, who is our pastor? The answer was obvious: David Bruck. The word “pastor” comes from the Latin for “shepherd.” And for years, David had shepherded Virginia’s capital defense attorneys, including us. Brilliant, wise, quick-witted, and preternaturally calm, David had led the fight against Virginia’s machinery of death. David exemplified all of our aspirations and values. And thankfully, he agreed to help us become a family. That is how David came to stand under a makeshift archway in a central Virginia field, making another sacrifice of his time and guidance.

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This is a tribute to our shepherd on his alleged retirement. But of course, David has not retired at all. David has just left Washington & Lee to guide another person faced with a different machinery of death. A master of impeccable timing, David “retired” just before the demise of Virginia’s death penalty and the end of W&L’s storied Virginia Capital Case Clearinghouse (“VC3”). For Virginia’s capital defense lawyers, this is a time of reflection. It’s a bittersweet time in which we are both relieved and reliving. We are relieved—even exhilarated—to witness the abolition of Virginia’s death penalty. At the same time, we are reliving our time as a community of advocates with a shared mission and our memories of the people we pointlessly lost along the way.

David understands the mission better than anyone. As capital defense lawyers, we do not represent a cause. We represent clients. A good capital defense attorney knows that he or she is fighting for a person’s life. The heart of our work is to know the person, hear his story, affirm his value, and show that value to the people who stand in judgment over him. Unfortunately, many lawyers fail to recognize that the client is the mission. Too many lawyers grow inured to their clients’ pain and build a hard shell around their empathy. Too many lawyers can be heard whispering in courthouses, speaking ill of their clients. Never David. David honors his clients in every moment. He protects not only their lives, but also their names. This is one of David’s most important examples, one we have tried to impart to our own students.

As Director of VC3, David helped us all better serve our clients. Under David, VC3 was a resource on which every capital defense team could rely. Anybody tasked with defending a capital case in Virginia could call VC3 and find David at the other end of the phone. No matter the issue—and we have called David with some patently ridiculous ones—David was there to help. No matter how busy he was, David took the time to answer our questions and give us his best advice. And for VC3’s lucky clinic members, David provided the opportunity to be taught and mentored by the best in the field.

As visiting professors co-directing VC3, we have often observed that it takes two of us to do a third of what David did. Before the demise of Virginia’s death penalty, we thought we might have some years to carry on VC3 after David’s departure.

Perhaps over time we could have learned to do half of what David did, but we will never know. Instead, we hold the reins of VC3 in its final year, a strange one marked by extremely low lows (pandemic, civil unrest) and now the highest high: repeal of the death penalty.

In VC3's last year, we want to celebrate David. Twenty years ago, when one of us (the older one) was a 2L clinician in VC3, then-Director Roger Groot created the Bill Geimer Award. Professor Geimer, of course, is another Washington & Lee legend, a staunch opponent of capital punishment, and the founder of the Clearinghouse. When he created VC3, Professor Geimer put in motion a chain of events that culminated this year in Virginia becoming the first southern state to abolish its death penalty.

For many years, VC3 worked closely with court-appointed attorneys to improve the standard of representation in death penalty cases. VC3 wrote constitutional and fact-based motions and harassed lawyers to file them, reviewed reams of records, identified and recruited experts to assist the defense, and conducted seminars where national authorities lectured on every aspect of capital defense. VC3 also fed a steady stream of extraordinarily talented attorneys into Virginia capital defense offices, including stalwart capital defenders Dawn Davison (who went to the Virginia Capital Representation Resource Center), Dan Goldman, and Kristina Leslie (who went to Capital Defender Offices), all of whom were trained by David. As the quality of capital representation in Virginia improved, the number of new death sentences plummeted. And then, in 2011, Virginia's own machinery of death simply ground to a halt. At this time of abolition, the Commonwealth has not imposed a new death sentence in a decade. None of this would have happened without David.

When Professor Groot created the Bill Geimer Award to honor his predecessor's legacy, he made clear that there would be a single criterion. The award would go each year to "a dedicated capital defender." That is, the award has not gone to Virginia's *best* capital defender every year. It is not bestowed on the basis of talent, or innovation, or even success. The Bill Geimer Award recognizes dedication to capital defense. Since taking over VC3 from Professor Groot in 2004, David has continued to present the award to another member of the

Virginia capital defense bar every year. At our annual Capital Defense Workshop, David would stand in front of a large audience and talk about the life-saving efforts of one of Virginia's most dedicated capital defenders, often someone he had personally trained and mentored, and invariably someone who had benefited from his counsel. But in an example of David's humility, he is both Virginia's best death penalty lawyer and Geimer-less himself.

As co-directors of VC3, we are taking this opportunity to give the final Bill Geimer Award to David Bruck. No one has been more dedicated to the defense of capital cases than David. Over the course of his career, David has saved countless lives. In direct representation, David has protected clients with loyalty and incomparable skill. He took a pay cut to accept appointment in the re-sentencing of Josh Andrews, ultimately resolving a case that seemed destined for a second capital sentencing trial. He saved an unknowable number of lives by winning arguments in cases such as *Skipper v. South Carolina*¹ and *Simmons v. South Carolina*² in the Supreme Court. But David also has had a hand in saving many other lives through his guidance and support for Virginia's death penalty teams. David has trained, mooted, and sometimes pointedly corrected all of Virginia's best capital defense attorneys. David is one of the main reasons that Virginia's death row became emptier and emptier, until it finally revealed itself to be an obsolete relic of a racist and unjust past.

We will end this tribute where we started: on a personal note. Not everyone gets to befriend their hero. In fact, doing so can be a risky proposition, because people are human, and humans can be disappointing. There is no such risk, however, in befriendng David Bruck. In a profession filled with braggarts and egomaniacs, David is humble and warm. Unlike many courtroom lawyers, David never speaks just to hear himself talk (though sometimes we wish he would, because we would delight in listening). In a Virginia bar filled with good ol' boy networks, David encourages younger lawyers regardless of their gender, race, nationality, or religion. And despite being at the top of our

1. 476 U.S. 1 (1986).
2. 512 U.S. 154 (1994).

community, David never looks down. Simply put, David is as good a friend as he is a hero.

So, here's your Bill Geimer Award, David. Nobody has deserved it as much as you. Thank you for your unparalleled dedication. Thank you for being so easy to look up to. Thank you for setting a standard that's impossible to meet. Thank you for being there for us on the happiest day of our lives. And thank you for correcting us in your direct and understated way as we sat facing each other in a canoe in our wedding outfits, posing for pictures, paddling cluelessly but diligently in opposite directions. It's hard to come up with a better metaphor than that.

David Bruck: Quiet Power

William S. Geimer*

The opportunity to pay tribute to my friend and colleague is an honor. We are part of a unique brother and sisterhood—the death penalty defense community, where David has no peer. I leave to other contributors here most of the formidable task of detailing David's accomplishments. I will outline only a few.

I want to take us back to an era that should not be forgotten in the Commonwealth and mention some of David's work that had a direct impact on the right to effective assistance of counsel here in the early years of Virginia Capital Case Clearinghouse ("VC3"), long before he became its director.

There are several good reasons to briefly revisit the early-to-mid-1990s. Doing so gives us a reminder of how long David has been effectively chipping away at the edifice of the death penalty. Thankfully, it has finally crumbled in Virginia. Revisiting that time also allows us to appreciate the work of those Virginia defense lawyers who took their role seriously in those bleak days, when some of their colleagues did not. It allows us to remember also the students, and "non-lawyers" like Marie Deans without whom we would not be where we are

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today. So bear with me for a while. Here is part of why we valued David so much before he arrived in Lexington.

In the early 1990s, when VC3 was new, judicial and governmental respect for fairness in capital cases was at a low ebb. Capital defense counsel have always been required to play by rules that they did not make. By the late 1980s, they had nevertheless played so effectively that the vast majority of death sentences were being overturned, largely at federal habeas. It appeared that courts and legislative bodies, in their desperation to have a death penalty, had constructed a selection system with rules they were unable to follow.

The response of hostile courts and politicians was simply to change the rules. For example, in *Teague v. Lane*,³ the U.S. Supreme Court established a bizarre calendar-watching game to determine whether death-sentenced prisoners would get the benefit of favorable changes in the law or just be executed while the guy in the next cell was spared. A few years later, led by Democrats and President Bill Clinton, Congress enacted the quaintly named “Antiterrorism and Effective Death Penalty Act.”⁴ The law established cruel time requirements that cleared the way for some state prisoners without lawyers to be executed. This and other legislative and judicial restrictions on state and federal habeas, demanded new and creative efforts and a new focus on not having clients sentenced to death in the first instance. The process of preserving unfairness had changed the rules. Saving lives now began to require focus on each individual trial.

In VC3, we quickly learned that capital defense counsel in the Commonwealth faced a particularly appalling level of injustice at the trial level. It was not unusual for a capital trial to begin on Monday and for the accused to be on his way to the death house by Friday morning. In the truest Virginia tradition, it was a “genteel railroad.” The Supreme Court of Virginia eviscerated the direct appeal stage with rigorous application of arcane procedural bars. As only one example, prosecutors could make outrageously inflammatory and false remarks to juries and if the accused did not object at the very moment of the

3. 489 U.S. 288 (1989).

4. Pub. L. No. 104–132, 110 Stat. 1214 (1996).

offending speech, it would not even be reviewed on appeal. This was called “procedural default.” What it meant was “We can’t bother to let your life slow down the train.”

David, who in addition to his trial and appellate practice, had already been a leader in teaching lawyers how to save lives at habeas, now became equally valuable as a trial level resource. I attended more than one conference where he spoke. I could hardly take notes fast enough. But it was not David’s presentations at conferences that provided a ray of hope. It was the example of his work.

We can all name a lawyer or two who we consider to be an exceptional trial practitioner. And the same is true for exceptional appellate lawyers. Seldom, if ever, are we talking about the same person. I have yet to meet someone who comes close to David’s standard of excellence at both levels.

David is a great trial lawyer. In 1995, David and his friend and superb co-counsel Judy Clarke, persuaded a South Carolina jury to spare the life of Susan Smith, a woman who strapped her two small children in a car seat and drowned them in a lake. Thereafter, Smith told the police that the children had been abducted by a black man. She made a tearful televised plea for their return. The case is well known. What is less well known is that the transcript of the Smith sentencing hearing served as a template for defense counsel all over the country, not for its rhetoric but for what it revealed about the kind of investigation that defense counsel must undertake if they are to fulfill their oath. It is not possible to overstate its value to us at that critical time in VC3, and to defense counsel in Virginia and across the country.

David is a great appellate lawyer. Even as the Rehnquist Court was strangling habeas, David’s incredible appellate advocacy in the United States Supreme Court gave us in Virginia some much-needed help for trials. All of his six victories helped us slow down the railroad in Virginia. One important example was *Simmons v. South Carolina*.⁵ Virginia was one of a few states who had taken up the Supreme Court’s offer in 1976 and revised its death penalty statutes to provide that a jury finding of “vileness” of the offense, or “future dangerousness” of

5. 512 U.S. 154 (1994).

the offender could justify a death verdict. This was essentially “fear and loathing.” Prosecutors could either rely on juror revulsion at the crime scene photos or convince them that the offender might one day come and do the same to them. In Virginia as in South Carolina, jurors in a future danger case were forbidden to know that if they did not return a death sentence, the sentence would automatically be life without parole. Thanks to David’s advocacy in *Simmons*, some men became entitled to new sentencing hearings. There was not a lot of “good law” in this era. In terms of practical effect, David was responsible for a disproportionate chunk of it.

I have often wondered what makes David such an extraordinary trial and appellate advocate. I am sure there is no single answer, but I think one factor is that he is what I would term “quietly effective.” He is passionate about justice but quiet in pursuing it. If you know David, I will wager you have never heard him raise his voice, much less shout. I believe that this contributes to his effectiveness when facing hostile judges, witnesses, and prosecutors. Quiet advocacy, supported by exhaustive investigation and research, implicitly conveys respect for one’s adversary. That in turn not only surprises those who are expecting a nasty exchange, it also makes it difficult for them not to return the respect. That same quiet effectiveness makes David a master teacher of both law students and lawyers.

David is a fellow Canadian. Since Elizabeth and I fled to that more civilized country some years ago, he has on occasion come to visit us in British Columbia. On his last visit, he told me that VC3 was getting close to reaching its goal—shutting down. I have been informed that his will happen at the end of this academic year. Somewhere, Roger Groot is smiling. I am smiling. We raise a glass in tribute to this quiet, decent, amazingly effective advocate.

I do not know how many of our students read these tribute pieces. I hope they read this one as they think about repaying loans, snagging clerkships, and becoming drudges in prestigious law firms. I hope they consider that there was once among them a *magna cum laude* graduate of Harvard who elected to go to law school in South Carolina and thereafter to devote his life to making the law meaningful for the least among us. Find David and ask him about it. I think he will tell you that it was a pretty good choice of a career path.

A Tribute to David Bruck

Dan Goldman*

A lawyer should go where the need is and work there for justice.

– David Bruck, *A Tribute to Bill Geimer*

Early in my third year at W&L, as a clinical student in the Virginia Capital Case Clearinghouse, I stood vigil with David Bruck and a few others as the Commonwealth of Virginia executed Teresa Lewis. I never knew Ms. Lewis, but her execution horrified me in its injustice. With an IQ of 72, Ms. Lewis was put to death for having orchestrated an insurance scam murder-for-hire of her husband and stepson. The men who actually planned and committed the murders received life sentences despite one's admission that he had himself seduced the painkiller-addicted and cognitively limited Ms. Lewis to accomplish his plot to get a share of the \$250,000 life insurance proceeds. We stood together outside the courthouse in Lexington, a candle burning, as we grieved the state killing of a poor woman none of us had met and reflected on this barbaric practice.

While I had always been philosophically opposed to the death penalty, it wasn't until that evening of September 23, 2010, that I was made aware of how deeply personal the defense of capital cases really is. As we read out the list of those Virginia had executed before Ms. Lewis, I watched David's face grimace at the last several names we read, a glint of recognition and personalized memory of each of those individuals with whom David so clearly felt a shared humanity. I will not say that I knew from that moment I wanted to defend capital cases—I don't think I dared—but I can say that I've looked back often on that moment for inspiration and motivation, the expression on David's face reminding me why I do this work. Love, mercy, and shared humanity require that I use what privilege I have to help

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those who have faced harsher odds and fallen to our worst instincts.

David was my clinical professor in VC3, the highlight of my W&L experience. He quickly became a friend, mentor, and role model for all I aspire to be as a lawyer. David's dedication, wisdom, and intellect, his compassion, decency, and humility combine to place him among the most effective advocates for the rights and dignity of the indigent-accused our profession has ever known. David has fought against meanness and apathy at all levels of our criminal legal system. From misdemeanor defense in his early days as a public defender in South Carolina to arguing at the Supreme Court on behalf of those under sentence of death, from dueling with corrupt and cruel prosecutors to rooting out cynicism and laziness from within the defense bar, David has made a career of raising standards and ensuring poverty is no bar to fairness. W&L and the practice of law writ large are better for having been graced with David's experience.

David has a remarkable way of convincing people to be of service, his aid to those in need multiplied through relationships he builds. Many a lawyer has taken a difficult case by David's example or persuasion, rising on behalf of otherwise neglected clients to seemingly insurmountable challenges and finding paths forward. During my time in VC3 and since, I have been consistently amazed by David's ability to negotiate between competing personalities to ensure that the clients' interests win out.

David is an expert at finding hope in the hopeless, a virtue crucial to counseling a client facing a death sentence to accept spending the rest of his life in prison. David taught me that we represent our clients not just in the current moment, but their very existence to make all future decisions. David counseled me that it is completely understandable for someone to say, when faced with the hypothetical decision of whether he prefers death or life imprisonment, that he would want death, but that very few stick to that belief through incarceration to the evening when they are strapped to a gurney or into a wooden chair to be cruelly killed. These guiding principles of our work have led me to put all my effort into saving my clients' lives despite the reverberating fear that I just cannot possibly know what it is like to face that choice.

I am grateful to be writing this essay as Virginia appears poised to abolish the death penalty thanks in no small part to my friend's dedication, wisdom, and compassion. David's legal career started in 1976, the year the death penalty was vengefully reinstated. Hundreds of condemned men and a handful of women had just been spared from state killing. But the fractured Supreme Court stumbled over itself to avoid agreeing to the stark truth that the death penalty is a tool of hateful, and often racist, oppression. Over the past forty-four years, David has done as much as anyone to fight back this archaic, arbitrary, and cruel punishment—this meanness—both through his own advocacy on behalf of the most marginalized among us, and in his tireless teaching of those of us who have dedicated our efforts to continuing the mission. Together, we are on the verge of seeing this fight to its end in the Commonwealth of Virginia, the American originator of capital punishment and the United States' most prolific executioner. David would never take credit for this feat, and it is not his credit alone, but he is certainly the reason why I and many others have worked in the trenches to defend those so easily despised by the great majority of our citizens.

On a drive back from Red Onion State Prison to meet a remarkably resilient young client who had just spent six years in solitary confinement, David introduced me to Bruce Springsteen's album *Nebraska*. I had never been a Springsteen fan, but hearing that album on that drive, interspersed with David's musings and wisdom from years of defending folks seemingly drawn from those songs, I found a soundtrack for this work. The final lines of the title track telling the story of Charles Starkweather, executed in 1959 for a killing spree across the northern plains:

They declared me unfit to live,
said into that great void my soul'd be hurled
They wanted to know why I did what I did
Well sir I guess there's just a meanness to this world.⁶

6. BRUCE SPRINGSTEEN, *Nebraska*, on NEBRASKA (Columbia Records 1982).

Those lines come to mind when I am asked why I do this work, and I think back to my time learning from David what these cases are really about. Violence begets violence. Cruelty perpetuates cruelty. It is our duty to fight back against that meanness in the world on behalf of those so violently and cruelly treated that they become our clients. I am endlessly grateful to David for showing me how to do this work and for helping guide us to where it is no longer needed. Thank you, my friend, and I look forward to celebrating the relief of this success with you soon.

Abolition Now: A Tribute to David Bruck

Brandon Hasbrouck*

It has been really difficult to find the words to honor David Bruck—his life and unshakeable commitment to abolition. The truth is, there are no words to capture David’s impact—on my life or the world. A relentless advocate for equal justice under law, David has spent—and has not slowed down!—over forty-five years fighting for the disfavored, the accused, the incarcerated, and the condemned. From the Supreme Court of the United States to the classrooms in Lewis Hall, David passionately and persuasively made his case: the arc of the moral universe bends towards justice *only* when there are abolitionists who insist that it swerves.

It is only fitting that today—February 5, 2021—Virginia lawmakers voted to abolish the death penalty; Governor Ralph Northam is expected to sign it into law.⁷ David’s life work. But more, as David would tell us, must be done. And that is, perhaps, the best place to reflect. On David’s vision. A vision of, as W.E.B. DuBois imagined, an abolition democracy: a democracy that is built on life-affirming political, social, economic, and legal structures; a democracy committed to racial justice and equality; and a democracy that no longer “treats you better if

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7. See Gregory S. Schneider & Laura Vozzella, *Virginia Legislature Votes to Legalize Marijuana, Abolish the Death Penalty*, WASH. POST (Feb. 5, 2021, 11:28 AM), <https://perma.cc/JBY3-FDRR>.

you are rich and guilty than if you are poor and innocent.”⁸ That work first requires dismantling systems of oppression; David, a system disrupter, has provided us a blueprint.

I had the privilege to have David as the chair of my tenure support committee. I believe it was the first time that David ever chaired a tenure support committee. I was honored. David is the Tom Brady of criminal defense work. Better looking and more accomplished, David was very active in my professional development. He read drafts of my work, observed my classes, and scheduled monthly dinners. After one of my Criminal Law classes, David sent me this note: “That class was spectacular. Wow. Just wonderful, start to finish.” There is no greater compliment.

We discussed everything—from the criminal legal system to abolition to our mutual disdain for the Confederacy. David was not shy—in faculty meetings, open forums, or during any of his public remarks—about Washington and Lee University’s role in maintaining America’s racial hierarchy. David, an activist committed to non-reformist reforms, was deeply frustrated with W&L’s incrementalism on racism. The time to do what is right is always right now, David reflected.

David challenged me to be bold in my thinking—to be transformative. To do the hard work of justice. To speak truth to power. To never lose sight of what comes before any reconstruction—abolition.

It is a life worth living. Indeed.

A Tribute to David Bruck

Laura G. Hastay*

Having the opportunity to work with David Bruck at W&L is one of the highlights of my legal career. I had an interest in injustice, capital punishment, and criminal defense practice,

8. Karl Vick, *Bryan Stevenson: We’re Taking the Wrong Approach to Criminal Justice Reform*, TIME (Feb. 20, 2020, 2:20 PM), <https://perma.cc/5YCC-H5A6> (quoting Bryan Stevenson).

* Principal, Laura G. Hastay, Attorney at Law, P.C. Class of 2006 & Former Virginia Capital Case Clearinghouse Clinical Student, Washington & Lee University School of Law.

and was fortunate enough to be a part of VC3, and to keep in contact with David post-graduation—he remains willing to provide advice and encouragement when I need it. David’s knowledge, work ethic, and inexhaustible energy are admirable and span across all categories of people he worked with: from helping attorneys represent their clients, to testifying before Congress to influence positive change in society, to literally saving clients’ lives. The energy and effort he put forth in these endeavors was (and remains) truly amazing to behold. He brought this passion into his students’ lives as well—he taught us how to understand issues and write about them, and exposed us to as many opportunities as possible, including attending motions hearings, meeting clients, putting on CLEs, interviewing jurors, and even travelling to the Supreme Court for oral arguments; no matter how packed his schedule was, he always made time for us. During my time working with David, I would always tell myself that if I could be even a fraction as dedicated as he is to being a voice for those who would otherwise be voiceless, I would be successful. And I have tried to use those lessons from David as my compass point—attempting to help others and make an impact in the lives of those less privileged than myself. David’s beliefs that no one should be judged solely by the worst actions in their life, and that every person has humanity worth respecting regardless of their crimes are principles that he embodies to his core. All of us at W&L who were privileged enough to work with David are very blessed indeed—thank you, David, for all you do.

A Tribute to David Bruck

Alexandra L. Klein*

One of the final things my grandfather told me was that he believed that what mattered most in the world was one’s influence on others. It was possible to measure a person’s path through the world by how that person inspired and encouraged others. Doing good, showing kindness, being honest, and

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relentlessly doing the next right thing influenced others, leaving a legacy that never goes away. These words bring to mind the entire arc of David Bruck's career, and indeed, who David is.

It is difficult to find the words to describe my gratitude for having known and learned from David. He is one of the best teachers I have ever known, both in the academic sense and by example as a human being. He is an exemplary lawyer, teacher, colleague, friend, and mentor. He is also a fundamentally good person, whose life and work tangibly make the world—and have made W&L Law—a better, more just place.

I first came to know David as a student enrolled in VC3 and in his Death Penalty course. David's views on capital punishment are not exactly a secret. During the first class, he expressed that he was happy to have students who were in favor of capital punishment so that we could have deeper, more nuanced conversations about the fundamentally important issues of the course. I do not know if he changed their minds. I do know that anyone who left the class had grave doubts about the wisdom and constitutionality of capital punishment in the United States. I will never forget our final class, during which David described what it was like to watch executions, and the sorrow on his face.

David is the kind of educator, colleague, and person that we should all aspire to be. As a professor, David held his students to a high standard. He never let us forget that the work we did affected people's lives and freedom. He warned his students early in the semester not to be discouraged by a significant number of comments, edits, and suggested changes on our memos. I had entered VC3 with a fair amount of confidence in my writing skills. David's edits demonstrated there was substantial room for improvement. Yet his criticism was never unnecessary or harsh. It encouraged the recipient to do better, try harder, and perfect every word. His criticism made his clinical students better writers and better attorneys.

David is generous with his time and expertise. I remember one day, when we were sitting in a meeting discussing VC3 cases, his phone rang. It was a defense attorney, seeking his advice on a difficult murder case. David, without hesitation, took the call. After securing the attorney's permission, he gestured for me to stay, and proceeded to listen, answer questions, and offer suggestions. That afternoon reflects who

David is in so many ways. He showed his students the importance of the work by doing it and by trusting us to do it, knowing that he held us to a high standard of excellence.

I know for a fact that I would not be where I am without David's encouragement and support. I had long had an interest in the legal issues around capital punishment. As I finished law school, I had an inkling that I wanted to be a law professor. One day, while talking, David asked me if I had ever considered teaching. When I admitted that I had, David encouraged me to do it. He generously read drafts of my first article, an issue I had come across in VC3, and offered useful feedback. True, he questioned the entire premise of my article, but his criticism challenged and inspired me in the same way it had when I was a clinical student.

I was terribly sad to learn that David was leaving W&L. I was unsurprised, however, to learn that his departure was due to the fact that he had agreed to take on an extraordinarily difficult capital case. There is nobody better to take on that challenge. The announcement he circulated was pure David in its kindness and humility. He touted the contributions of his students and W&L Law in the significant decline in capital punishment in Virginia and generously discussed his successors' abilities and talents.

What was left unsaid, because he is not the sort of person who would say it, was what *he* has accomplished. I will. Much of the decline of capital punishment in Virginia, which is poised to repeal the death penalty, as well as the rest of the United States, is due in no small part to the work David has done, and his unhesitating courage in pursuing that which is just, fair, and right.

The real tribute to David is not the words in this volume. Instead, it is the influence he has had. There are the lives he worked to save, both before coming to W&L, through his work in VC3, and more. And he inspired countless law students to do the work necessary to transform the world, no matter how difficult the task, or how long the path.

A Tribute to David Bruck

Emily Kuchar*

David Bruck is pure balm for the soul. His piercing clarity, paired with an ever-present calm, transfixed me during his lectures in the Death Penalty class I took in my 2L year. I'd taken it on a whim. Professor Bruck posed deep, searing problems and answers that had never really occupied my mind before I came to law school at age thirty.

I sat on an exercise ball at a desk outside David's office in the VC3 clinic for my 3L year. He was always patient and encouraging as I toiled for too long on simple projects, asked overworn questions, and let out my fears and worries about being forced to live in a cardboard box after law school.

Before I became a public defender, I had deemed myself not strong enough to hold that position. David convinced me to try. He was right to convince me, but I was not wholly wrong. Even in a wonderful office, that had once been led by David, I felt crushed by too many expectations and too many clients who needed too much. I had too little patience with the prosecutors I faced and lacked the grace to negotiate with David's skillful calm. I fiercely loved my clients but also lost patience with them many times and missed opportunities to listen and build with them. As I had started to feel a tiny toe-hold on the job, I would speak to my clients who were in jail and bristling at injustice and tell them that their case, their sentence, would be over—there was an end date. Even though what they were going through felt overwhelming, they would be back with their families, back to some form of autonomy again. It worked. It helped us manage the immediate problems and make the best of things.

It was not long after that that I joined the capital trials division for South Carolina. It was what I had wanted since taking David's class, but now the equation I had finally started to work out was demolished. The clients I met now, charged with capital murder, were not going back to life as they knew it.

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Something had happened from which there was no coming back. I felt paralyzed at moments, totally unsure of how to move forward myself, let alone help these men start to move forward with me.

I remembered a question that had bubbled up in Death Penalty class, one that surely arose every year: what if someone who has done the unthinkable and faces a life spent in prison at best, decides that death is the best choice for him? David's answer was so simple and sure. There is always a reason for these clients to choose life, each and every one of them. In the moment he said that, I decided to take that principle on faith. Not blind faith. In a class that David could have easily used to regale us with stories of bizarre cases, rabid prosecutors and judges, and personal victories against staggering odds, Professor Bruck centered every class on the law and history of the death penalty. The cases, studies, histories that we read and discussed showed us the deeply conflicted and hopelessly confused law of the death penalty and the dark, racist history that still echoes in every case, for every client. When Professor Bruck spoke in favor of life, despite all we had learned, it felt like a special truth born from his heart and soul and tested in the crucible of fighting for what most deemed lost causes.

As I faced clients in my new job who were angry, floundering, and grieving, I reached for that truth and for many other principles I learned from David. The journey I now embark on with each client is unique, difficult, uncertain, and painful. At many turns I am deeply unsure of the right path; at others I learn that I have made unhelpful or counterproductive choices. But after moments or even weeks of self-recrimination and doubt, I return to the touchstones that David passed down to all of his students. I fight for life, and believe that life—real, true, meaningful life—is possible in every case. It is a gift David did not just give to me to pass down to my clients, he gave it to me. He gave a difficult, fragile, nihilistic woman a reason to hold onto her own life and believe on faith that her clients are better with her than without her.

Tribute to David Bruck

Charu Kulkarni*

On a cold January morning in 2018, I was on my way to the Virginia Parole Board office in Richmond to represent a seventy-year-old client in a parole hearing. With me were Professor David Bruck, who was driving, and Ian Huyett, my teammate. I was a student attorney in the Virginia Capital Case Clearinghouse (“VC3”) Clinic, of which Professor Bruck was the director, and he would be supervising me as I advocated for my client to be paroled. As we made our way out of Lexington, I took out of my pocket the sheet of paper on which I had written a three-minute opening statement about why my client deserved parole after having spent thirty-nine years of his life imprisoned. I knew the facts of my case as any lawyer should, and I knew what I needed to say at the hearing, but I was consumed by the fear that saying one wrong thing could mean the difference between my client spending his remaining days in the care of his family or alone in a prison cell, awaiting the next parole hearing, and the next, and the next. Out of the corner of his eye, Professor Bruck saw me looking over my notes, and said with a smile, “Charu, you don’t need that. You are prepared.” I put the paper away, not entirely believing him. But sure enough, during the hearing, he just sat in the back of the room. David Bruck, a leading advocate in the national movement against capital punishment and a veteran of some of the most complex and high-profile capital cases in the country, who could easily have won parole for my client himself, had just trusted me with my client’s future.

I know David Bruck not just as someone with a great intellect and a tireless work ethic, but as a person whose life and work are firmly anchored in his values. He believes in the humanity of other people, be they his clients or the people in whose hands his clients’ lives rest. His career is a testament to the principle that everyone has a story, and that before pronouncing judgement on a life, we must try to understand that

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story in its fullness. Throughout his career, David has employed his powers of observation and his eloquence in argument to uncover and tell these stories. David's dedication to these values has not only shaped the careers of many of his students and inspired scores of lawyers working in the public interest, but also forms the core of the anti-death penalty movement in the United States and around the world. David was among the people who pioneered the use of mitigation evidence in capital trials in order to humanize defendants who would otherwise have been put to death by the state. As a teacher, David was committed to affirming others and helping people reach for the best within themselves. He took a keen interest in the people around him, inviting them to share their perspectives despite and sometimes even because of their differences with him. He often had students in his clinic who favored the use of the death penalty, and though he disagreed with them, he engaged with them as deeply and with the same kindness and care as any of his other students. As someone who was lucky enough to be his clinic student, all I had to do to learn from him was to watch how he went about his work and how he treated his students. There, I found enough and more to emulate.

I began law school having already set aside an impractical desire to become a historian, thinking—much to my family's relief—of pursuing a career in international business law instead. Knowing and learning from David Bruck has shown me what a lawyer working in the public interest can do to advance the cause of the most vulnerable and marginalized through committed advocacy. David's work has helped define and expand the contours of a dignified life in this world and for that, we celebrate him.

A Tribute to David Bruck

Kristina Leslie*

I first met David as a second-year law student in his introductory course to the death penalty. Immediately, I was

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struck by his compassion and warm demeanor. He encouraged the class to take advantage of his open-door policy, which, looking back, I likely abused. To this day, I don't know how David manages his demanding schedule and still makes time to guide his students and mentees.

Working in the Virginia Capital Case Clearinghouse was an incredible opportunity to see a legal giant like David in action. His encyclopedic knowledge of the law, tireless advocacy, and gentle natured approach with clients inspired me and continues to inspire us all. That is why he is fondly referred to as *The Professor* in the capital defense community and viewed, rightfully so, as a champion for our cause.

What I truly find most striking about David is his kindness. His humility. His commitment. His ability to meaningfully connect with others and create hope.

I will forever be grateful to David. His mentorship and guidance have profoundly impacted my life and legal career. Even after I left Sydney Lewis Hall, his door has remained open for the many professional and personal questions that I continue to have. I am honored to know him, proud to have been trained by him, and aspire to be the kind of advocate he challenges us to be.

Tribute to Professor David Bruck

Kamyle Li*

I am honored and humbled to write a tribute for Professor David Bruck. Professor Bruck has the rare ability to bring out the best in his students, through his relentless encouragement and in demonstrating unshakable trust in their abilities. The best part of my three years at W&L Law was joining his Virginia Capital Case Clearinghouse ("VC3"). When I was a young law student struggling to figure out my place within the legal profession, Professor Bruck recognized that I had the talent to be a successful mitigation specialist, before I really understood what mitigation meant.

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In one particularly difficult case, Professor Bruck realized that I was able to connect with a client and his family in a way the defense team had struggled to do for over a year. David encouraged me to work in tandem with the team's mitigation specialist and afforded me the opportunity to assist with interviews and investigations. That was an invaluable, hands-on experience, unique to his program. His trust in my ability as a mitigator gave me the confidence I needed to explore this nontraditional career path as a lawyer in capital defense.

Professor Bruck taught his students that capital defense is more than a courtroom battle between the prosecution and the defense. I learned on road trips with Professor Bruck—where I drove his Prius under strict instructions not to exceed 65 mph—that by taking a capital case, I was joining a community of defenders that included lawyers, social workers, psychologists, mitigation specialists, investigators, activists, and the clergy. In VC3, students quickly discovered we were David against Goliath, and collectively capable of incredible feats. Professor Bruck set the example for us by showing us how to work effectively within the community, respecting everyone's skills and abilities and bringing out the best in everyone. Many years later, I still occasionally call Professor Bruck during work road trips to check in and get advice.

I am grateful to Professor Bruck for his friendship and continued support. W&L Law and future students will miss his mentorship and wisdom, but to the extent that we can fill his shoes, Professor Bruck has left his indelible mark on his students. I know that all of his students will endeavor to meet the example and high standards that he set for us, to pass on to the next generation of lawyers and practitioners.

Tribute to Professor David Bruck

Kevin McNally*

Sitting around a swimming pool on a hot sunny July day in rural Virginia in the early 90s, leading federal public defenders

* Partner, McNally & O'Donnell, P.S.C. Member & Former Director, Federal Death Penalty Resource Counsel Project.

asked if David Bruck and I would create a Project addressing the defense needs in federal death penalty cases. There was a spanking new federal death penalty, but few federal defenders experienced in capital defense. David, heading efforts in South Carolina, was already a superstar in the capital defense community. I was thrilled to have this opportunity, but especially excited to work with “the” David Bruck.

I knew David as a colleague, but really not that much about his already impressive track record. I did not even know he was Canadian-born or that he was a Harvard grad and a reporter and columnist for *The Harvard Crimson*.⁹ In that role, he had interviewed Richard Nixon and George Wallace, among others.¹⁰ Although he comes from a family of means, I learned that David worked as a welder to pay for his own education.

I managed to read, over the years, a number of David’s publications including Washington Post articles about the four men Senator Strom Thurmond sentenced to death as a state judge¹¹ and about George Stinney, a fourteen-year-old electrocuted in South Carolina.¹² I found out that Justice Clarence Thomas’ misuse of the phrase “high tech lynching,” as well-known a quote as it is, was not original. It was David who first used the phrase.

I learned from David, as the rest of our community has, what a real lawyer is: invisible. Our attention should be on the controversy, he taught, not on the flamboyance of the mouthpiece. I will never forget his reaction to a lawyer flapping arms and spinning around at the podium in the well of the Supreme Court. It was dramatic, I suppose, but in a meaningless and absurd fashion. He was well on his way to

9. David’s many students at Washington & Lee might be interested in David’s column on boycotting final exams. See David Bruck, *A Proposal Concerning Exams*, HARVARD CRIMSON (Apr. 28, 1969), <https://perma.cc/G8F8-4ST6>.

10. See David Bruck, *Talking to Nixon*, HARVARD CRIMSON (Jan. 20, 1969), <https://perma.cc/289R-NQLC>; David Bruck, *Flying High and . . . Low with Wallace*, (Oct. 31, 1968), <https://perma.cc/MT8A-A7HS>.

11. David Bruck, *The Four Men Strom Thurmond Sent to the Chair*, WASH. POST (Apr. 26, 1981), <https://perma.cc/3GJG-4MTN>.

12. David Bruck, *Executing Teen Killers Again*, WASH. POST (Sept. 15, 1985), <https://perma.cc/GQ4B-5KQ5>.

defeat. In contrast, David argued seven death penalty cases in the United States Supreme Court and won all but one.

In this age of legal specialties, David moves seamlessly from trial to post-conviction. He led the way in creating, from whole cloth, our jurisprudence around the mitigating value of good jail behavior. He wrote and spoke about the possibility of redemption and about the due process right to truth in sentencing. Read *Skipper v. South Carolina*¹³ and *Simmons v. South Carolina*.¹⁴ To be sure, his clients have been notorious, Susan Smith (1995), Zayd Hassan al-Safarini (2003), Dzhokar Tsarnaev (2015), Dylann Roof (2017), but David is always the measured, thoughtful, unflappable, and unrelenting advocate.

There simply is no more committed and effective abolitionist. When David left South Carolina after twenty-eight years to move to W&L and became the Director of the Virginia Capital Case Clearinghouse, his colleagues joked about how long it would take him to kill the death penalty in Virginia. Although David is leaving W&L, he is not really retiring, and I doubt he ever will. He is headed to GITMO to represent Ramzi bin al-Shibh, hardly a retirement gig.¹⁵ No, it is the Virginia death penalty that is retiring. How fitting. Hopefully, that will be quickly followed by the demise of the federal death penalty. Yes, it takes a village, but every village needs a mayor, and he is ours.

The best thing about David is not his advocacy, not his commitment, not his classroom contributions, not his courtroom victories, but his humanity. “Colleagues describe Mr. Bruck . . . as courtly and soft-spoken as well as a good listener.”¹⁶ His kindness, patience and compassion sets him apart. His calmness in the midst of the raging storm is uplifting and reassuring. He is our “Cool Hand Luke.” Thank you, David.

13. 476 U.S. 1 (1986).

14. 512 U.S. 154 (1994).

15. See Carol Rosenberg, *A Veteran Defender Is Selected for Guantánamo's 9/11 Trial*, N.Y. TIMES (Apr. 12, 2020), <https://perma.cc/J9SV-KSXG>.

16. *Id.*

Tribute to David Bruck

Maisie Osteen*

As a law student with a long-standing interest in social justice, the opportunity to take a class from “the David Bruck” was very exciting. The course was advertised as a survey on death penalty jurisprudence in America. However, it was much more than that: it was also a space where students of varying ideologies could engage in deep conversation about moral justice. One memorable conversation concerned the Supreme Court case *Skipper v. South Carolina*.¹⁷ A student asked a question about a particular Justice’s position, and Professor Bruck’s answer was indicative of his humility. It was through Professor Bruck’s measured, insightful response—rather than what could easily have been well-deserved bragging—that the class learned he was the attorney who argued on behalf of Mr. Skipper, and ultimately, helped confirm a Defendant’s right to present evidence of good behavior during incarceration in support of mitigation.

While the powerful discussions that Professor Bruck fostered in his classroom helped shape my view of the criminal legal system, his mentorship has been even more impactful on my life. It was on his recommendation that I applied to be a public defender in Columbia, South Carolina. Professor Bruck previously led the office and was candid about the challenges I would face, but he was also encouraging and excited for the opportunity that the work would offer.

When I started as a public defender in South Carolina, it hardly seemed to matter that I was miles away from my mentor because his impact in that state was apparent. The veteran guard told numerous stories about the old days when David and his small team of colleagues—which included other legal giants like Judy Clarke—would zealously fight against a completely imbalanced system dedicated to rolling over the least

* Staff Attorney, Legal Aid Justice Center. Class of 2014, Washington & Lee University School of Law.

17. 476 U.S. 1 (1986).

advantaged in our society. During David's time, there were six¹⁸ attorneys as opposed to the roughly thirty-five that now defend Richland County. The courage and tenacity of David and his clients continue to drive high-quality representation amongst the Columbia defenders. The public defender's office also benefits from the Bruck legacy in another way. In 2017, David's daughter, Zoe, joined the office. Zoe and David share similar passion and skill. They both approach every case with deep curiosity and robust analysis, and every client with sincere kindness and dignity.

I am very thankful for the opportunity to share my appreciation for David. His inspirational career is rooted in a commitment to people. While David has handled a wide variety of cases, he has spent much of his life representing people that society has determined are undeserving of humanity. David's integrity, dedication, and compassion have left a profound impact on the lives of his students and clients and has forever changed the landscape of the criminal legal system. I cannot think of a better way to honor him than Virginia's recent resolution to abolish the death penalty.

David Bruck: A Riddle Wrapped in a Mystery, Inside a Sort of Box-Like Thing, Cloaked in Something Like a Big Sleeping Bag

Jonathan Shapiro*

Editor's Note: In fulfillment of our obligations under the Settlement Agreement dated February 16, 2021 (Paras. 23–30), the *Washington and Lee Law Review* sets out in full the correspondence concerning the recent unfortunate interaction between staff and the author. The opinions below are those of the author.

18. Number confirmed by John Delgado, another legal giant from the Bruck era.

* Professor of Practice, Washington & Lee University School of Law.

From: Bouchard, George <bouchard.g21@law.wlu.edu> Sent: Wednesday, December 23, 2020 9:57 AM To: Shapiro, Jon <ShapiroJ@wlu.edu> Subject: Washington and Lee Law Review - Tribute for Professor Bruck
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Hi Professor Shapiro:

I hope you are enjoying the holiday break! The *Law Review* is compiling a Tribute to honor Professor Bruck on his retirement. We would like you to contribute a short piece about your experience working with Professor Bruck or any other anecdotes you would like to share. Past contributions to similar Tributes have ranged between 500 and 1,500 words in length and have been relatively informal.

If you would like to be part of this endeavor, please send your contribution by Friday, February 5, 2021. If you need additional time or have questions, please let me know. Additionally, please share one or two additional names of people who you think would also enjoy contributing to this publication if any come to mind. Thank you!

Best,
George

From: Bouchard, George <bouchard.g21@law.wlu.edu> Sent: Wednesday, December 26, 2020 10:20 AM To: Shapiro, Jon <ShapiroJ@wlu.edu> Subject: Washington and Lee Law Review - Tribute for Professor Bruck

Dear Professor Shapiro:

On behalf of the *W&L Law Review*, I want to thank you so much for agreeing to write a few words (up to 1,500, on or before February 5 if possible) for our tribute to Professor David Bruck. The entire school community joins in this well-deserved celebration of a gifted and beloved teacher who has accomplished so much for legal education, for W&L, and for the cause of justice.

I think your idea of a short biography will fit nicely with the more traditional pieces we anticipate. We have received your

first chapter, addressing Professor Bruck's early life. Thanks, looks great! I particularly liked the title, "I Am Born," though that hints that you may be up against the word limit as you continue on. Marvelous anecdotes! I had no idea that Professor Bruck's shockingly white hair was the result of a childhood incident in which he was left unattended in a blizzard in Saskatoon! And that his life-long love of running had its roots in adolescent hijinks involving minor shoplifting! Delightful and unexpected! I look forward to further chapters.

From: Bouchard, George <bouchard.g21@law.wlu.edu> Sent: Wednesday, December 30, 2020 11:02 AM To: Shapiro, Jon <ShapiroJ@wlu.edu> Subject: Washington and Lee Law Review - Tribute for Professor Bruck

Dear Professor Shapiro:

We have received the second chapter of your tribute to Professor Bruck. Again, the title of this section, "The Education of David Bruck," is causing some small copyright concerns, but I am hopeful we can work through that.

Beyond that, however, our fact checkers cannot confirm that Professor Bruck was admitted to Harvard, as you assert, by claiming to have Native American heritage. I think it might be useful to drop a footnote citing the basis for that claim, as well as your claim that Professor Bruck often skipped class to play flute on Harvard Square "like many other fringe personalities and hippies of the day."

Further, our fact checkers were able to find a number of inciteful and skillfully crafted stories and opinion pieces in *The Harvard Crimson* under the by-line "David I. Bruck," including one in which he urged students to refuse to take their final exams in protest over the Vietnam war and one in which he interviewed then-President Richard M. Nixon on a campaign flight. That same "David I. Bruck" is listed in *The Crimson* as "Chairman of Editorial Staff." Are you quite certain that his position at *The Crimson* was in the Classified Advertising Department? We are puzzled and ask that you verify your sources.

Just a reminder. Due to space concerns as we discussed, we will now, unfortunately, need to limit your piece to 1,000 words.

From: Bouchard, George <bouchard.g21@law.wlu.edu>
Sent: Wednesday, January 4, 2021 6:07 PM
To: Shapiro, Jon <ShapiroJ@wlu.edu>
Subject: Washington and Lee Law Review - Tribute for Professor Bruck

Dear Professor Shapiro:

We have your third chapter, this one addressing Professor Bruck's legendary courtroom career shaping death penalty law in the United States. Unfortunately, the *Law Review* Board is uncomfortable with your proposed chapter heading, "Bruck of the Bailey." In the Board's view, comparing Professor Bruck with an elderly and prickly English barrister known for his defense of minor villains is a bit odd. Nor is the comparison apt. Yes, as you note, Rumpole did win the Penge Bungalow murder case. But truly, his accomplishments pale in comparison to Professor Bruck's life-long, exceptional and ground-breaking work.

In that vein, I am puzzled by your decision to focus on the *one* case Professor Bruck lost at the U.S. Supreme Court rather than his *six* victories there, including the transformative cases of *Skipper v. South Carolina* (1986), *South Carolina v. Gathers* (1989), and *Simmons v. South Carolina* (1994). It is true that these cases go back several decades but *Law Review* staff believes their weight is *not* "diminished," (your word) by the passage of time and your question, "but what have you done for me lately?"

From: Bouchard, George <bouchard.g21@law.wlu.edu>
Sent: Wednesday, January 20, 2021 10:54 AM
To: Shapiro, Jon <ShapiroJ@wlu.edu>
Subject: Washington and Lee Law Review - Tribute for Professor Bruck

Professor Shapiro:

To confirm, due to space limitations and upon advice of counsel, we are forced to limit your tribute to 250 words. Please acknowledge by return email.

Your last chapter submission (reviewing Professor Bruck's teaching career) entitled "David Bruck's Day Off," requires significant re-write. We are puzzled by your focus on all the time Professor Bruck has been, as you put it, "MIA, or, Missing in Academia," when he took leave to handle the death penalty defense of Dylann Roof (Charleston church shooting) and of Dzhokhar Tsarnaev (Boston Marathon bombing). Those absences from the classroom furthered, rather than diminished, Professor Bruck's value to the world of legal education and have inspired law students around the country.

You do note that Professor Bruck's advocacy has influenced scores of law students who have become zealous advocates for the poor in public defender offices across the nation. Some, in turn, have become legal educators themselves, influencing scores more. But it seems highly uncalled for to end the discussion of the Boston and Charleston cases with the comment, "Hey, I *win* my cases."

From: Bouchard, George <bouchard.g21@law.wlu.edu> Sent: Wednesday, February 7, 2021 11:00 AM To: Shapiro, Jon <ShapiroJ@wlu.edu> Subject: Washington and Lee Law Review - Tribute for Professor Bruck
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Sir:

Our decision to reject your recent submissions *in toto* was motivated in part by your grossly misplaced comments concerning Professor Bruck's decision to leave the classroom to take on the defense of one of the alleged 9-11 plotters held at Guantanamo Naval Base. This is hardly the "sun-and-Piña Colada-drenched Cuban vacation on the government's tab" you claim. Rather it is the continuation of a career-long fight against a morally corrupt penalty best waged in the very worst cases, a task Professor Bruck has attended to for his entire career. Bruck's leaving W&L for this important work leaves us sad yet proud.

In the future, please contact the *Law Review* only through counsel.

Disclaimer: If it was not already obvious to the readers of the above Tribute, this is a work of fiction. Mostly.

David Bruck: A Poet's Soul

Scott E. Sundby*

In jotting down thoughts about David for this tribute, I found myself constantly turning to characterizations and phrases that if one were to read them without context, you would think that I was writing a tribute to a Romance-era poet instead of a lawyer:

An ability to look into the darkest parts of the human soul and still find rays of light.

A stunning talent for seeing how the story of a moment can be the chronicle of a lifetime.

An insightfulness that lets him look at humankind's worst acts with unblinking clarity but see tragedy rather than horror.

And, in fact, you would not be wrong. What I have come to realize about David, first as a colleague and later to my great fortune as a friend, is that David is as much poet and balladeer as he is a brilliant legal tactician.

And this rare combination has made him one of the greatest lawyers of his era. He can weave precedent together into a sophisticated legal tapestry that will persuade a Supreme Court justice steeped in skepticism to vote to reverse a death sentence, and then turn around and find the heartfelt “story for life” that convinces twelve jurors from all walks of life to spare his client. Now, it is true that he has yet to do both of those in a single day, but there is still time.

* Professor of Law, University of Miami School of Law. The author taught at Washington & Lee from 1992–2010. While he was Director of the Frances Lewis Law Center, he brought Professor Bruck to W&L as the Scholar-in-Residence, a position that eventually led to Bruck joining the faculty; the author counts that as perhaps his greatest contribution to the W&L School of Law.

What makes his accomplishments all the more remarkable is that he began capital defense work at a time when there were no role models, no training conferences that explained how a lawyer was to obtain a life sentence. The Supreme Court had reinstated capital punishment in 1976¹⁹ and the judiciary and bar were largely flying blind in determining what this new era would look like. It was David and a small band of other committed lawyers who blazed the trail for the generation of capital defenders that followed, fighting for legal rules and carving out paths that made it possible to find the evidence and themes that resonated with jurors choosing between life and death. And what is truly remarkable is that David and his fellow travelers continued their journey despite meeting obstacle after obstacle and having to watch as the United States seemed to be on an inevitable upward trajectory of more and more death sentences. While today the death penalty is in dramatic decline, that drop in death sentences is the culmination of the countless battles waged earlier by David and his fellow trailblazers at a time when the legal battlefield was distinctly tilted against them.

Which brings me in closing to David's sense of humor and optimism. Behind his soft-spoken serious demeanor lies a wonderful wit that sustains him through the dark moments that inevitably are part of capital representation. And when combined with his belief in the innate goodness of the human soul, you have someone who can help others see that the person standing before them, a person who has done a terrible act, has a story that despite all of the tragedy and despair still deserves our hope and belief in redemption. You have a poet; you have an amazing defense attorney; you have David Bruck.

19. See generally *Gregg v. Georgia*, 428 US 153 (1976).