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A Tribute to William S. Geimer

Meredith Susan Palmer*

Truly, I say to you, as you did it to
one of the least of these my brethren, you did it to me.¹

Bill Geimer is not a man of material things. But somehow, in the material things that he chose to have around him – the mementos, the odd souvenirs, the offerings from students, clients, friends – I find the story of the man, the teacher, and the lawyer Bill Geimer is to me.

In my mind's eye, I see Bill's office here at Washington and Lee as I first saw it, as a hesitant first-year law student approaching the sanctum sanctorum of a faculty member. There is a desktop name plate, regular Army issue, decorated with grenades or something equally militaristic and intimidating. But next to that is a picture of Dr. Martin Luther King, with his stirring words evoking hope for justice and freedom on earth. And next to that, a membership certificate for the Lawyer's Alliance for Nuclear Arms Control, and a drawing of Quijote, lance raised to a windmill. How could this be? While reconciling the seemingly irreconcilable is the everyday task of the law student, no trick of logic could make these disparate pieces fit; one simply had to get to know the man.

That one could do so as a law student is itself part of what defines Bill Geimer. The student who came to know Bill heard a story of a kid from the rural south, off to a small state university to play basketball but who, like countless kids before him, spent a bit more time playing than studying. Come Graduation Day, with no game plan, he joined Uncle Sam's family. A grounding in tanks, guns, and tactics preceded duty with the military police, but some-

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1. *Matthew* 25:40.

thing else happened during those years. Assigned to assist with an investigation, he finds an aptitude for the law, an appreciation of justice, and a burning sense of the unfairness of justice denied. The young man who returned from service to go on to a distinguished career as a law student at the University of North Carolina was a man with a game plan, and a mission. It was no surprise that Bill's mission as a lawyer was not in the office towers of Atlanta or the corporate boardrooms of Wall Street, but among the plain folks of Fayetteville, North Carolina, and later in the community of migrant farm labor working and living hard under the hot Carolina sun.

I see another memento, this time in Bill's home. It's an odd piece of, well, let's call it folk art. Crudely carved, frankly ugly. Taste is a delicate thing, so one observes diplomatically that it is an "interesting" object. There's a story, of course, a story of a client for whom Bill had worked, putting together the paperwork to get a fledgling arts-and-crafts shop off the ground. This client, like many Bill served, claimed not to have the cash to pay. But, the client said, he could give Bill this valuable piece of work. Barter being a fundamentally more honest exchange and thus appealing to Bill, the transaction was concluded. Not until Bill brought his sculpture home did he discover the price tag stuck to the underside, for something substantially less than the agreed-upon fee. He kept the awkward thing, price tag intact, I think as a reminder of his own fallibility, of the ingenuity of the ordinary man, and of the need to forget neither.

Another memento, in some ways the most important to this former student, is a large, faded, well-handled poster on the professor's office door. A young man in Carolina Blue goes up for a shot, stretching for the basket, with seconds left on the clock. Anyone who knows Bill Geimer knows that he is devoted to Carolina basketball. In fact, Bill may have spent so much time watching the Tar Heels play that he began to confuse teaching with coaching. As a former student of Bill's, I'm not sure that was a bad thing.

One of the first things Coach Bill did in our first-year Civil Procedure class was to break the class into four- or five-person "law firms." For the rest of the semester, we worked through all the steps of a case, from client interviews to depositions to settlement negotiations to voir dire to arguments. (The case, as I recall, was a dispute between a farm laborer and his employer over some employment terms, and you can guess who wore the white hat in that scenario.) The exercise ensured that we had a chance to learn some strategy, to scrimmage, and to play on the freshman team before we ever suited up for a JV or varsity game. Our Coach taught us the vocabulary, the language of the game. We learned, for example, that a demurrer was simply a lawyer's way of saying, "So what?" We learned how to tell the judge we hadn't been paid: "My witness Mr. Green has failed to appear." We learned that, despite the

arcana of the Federal Rules, a lawyer's duty was to state a claim "forcefully asserted, and plausibly maintained." The point is, we *learned*.

And like any good coach, Bill reinforced us when we got it right. I asked a classmate for his recollections of Bill Geimer, and I think Bill would be happy to hear his answer: "It was never scary to go to his class." Or, maybe not until awards day. At the end of each academic term, Bill would single out individual students for "awards" of his own creation. Some were mildly embarrassing, some were funny, some were enigmatic, but all showed a perceptiveness and understanding that recognized us as very human players in the law school game. And so, I'll conclude with an award of my own: For the tough love of the Army officer, the idealism of Dr. King, for Quijote's spunk, for service to "the least of these," for sportsmanship, for dedication to star players and benchwarmers alike, for commitment to winning even – or especially – against long odds when the stakes are at their highest, the Dean Smith award goes to "Coach" Bill Geimer.

Scott E. Sundby*

A Quiet Hero

Bill Geimer is one of the quiet heroes of my life. Now, anyone who is familiar with Bill might find it rather astonishing to see the word "quiet" used in a description of Bill. Certainly, the Attorney General's Office would not consider Bill to be a "quiet" person after his many vocal protests against the injustices of the criminal justice system. Nor would any court that has been at the receiving end of one of Bill's concise and powerful critiques be likely to choose "quiet" from a list of adjectives to describe Bill. Indeed, one reason Bill is my hero is because I have never known him to shy away from speaking out against injustice no matter the personal cost or the criticism he might receive in return. He has been the outspoken voice of those whose voices otherwise would not have been heard – Death Row's condemned, the migrant workers toiling in the fields, the oppressed of other countries.

So why "quiet"? Because Bill has carried out his personal mission for justice without any effort to seek publicity or personal reward. If Bill had wanted to, I have no doubt that he could have steered himself into high-profile cases that would have earned him headliner credit on Court TV. Or, as anyone who has read his poignant prose knows, he could have covered himself

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with law review glory if that were the path that called to him. It is not the hyperbole of a Tribute that leads me to say that I have never encountered a legal mind that so wonderfully combines incisive analysis with heartfelt passion. Yet, Bill has given his talents and energy not according to where the honors and awards were to be found, but, quite simply, based on where he was most needed.

This is not to say, of course, that Bill has not had his rewards or recognition; it's simply that his accolades generally have come in the form of an overworked public defender's "how can I ever thank you" rather than a bronze plaque with a Latin engraving. I cannot begin to recount how many times I have met lawyers who upon learning that I am at Washington and Lee immediately say with admiration resonating in their words, "Oh, you must work with Bill Geimer." This is usually followed by a story of how they called Bill at eleven o'clock on the night before trial and how Bill patiently spent hours talking with them about a problem that they had not thought about until that night. And, of course, one can only begin to imagine the courage that Ronald Watkins took from knowing as he walked to the electric chair on March 25, 1998 that even if the Commonwealth of Virginia deemed him no longer worthy of being treated as a human being, Bill and his wife Elizabeth believed with all their hearts in his redemption and had worked tirelessly for clemency as his friends and not out of some lawyerly duty. While their efforts did not stave off the executioner, how their love and friendship grew for Ron stands as a remarkable and moving testament to belief in the nextinguishable goodness of the human soul and the need to never give up on Hope.

By focusing on Bill's work on the behalf of others, I hope that I am not understood in any way as shortchanging his service as a teacher and scholar. After all, how many professors can claim to have written a piece that inspired a nationwide study of the death penalty?² Having co-taught with Bill in the clinic that he founded to help attorneys appointed in capital cases, I also can personally attest to his brilliant teaching ability. He has a true teacher's gift of explaining complex legal rules in a clear and interesting way without losing sight that the "rules" affect real people's lives. If the reader of this Tribute had the proverbial nickel for every time I crossed the hallway to seek guidance

2. Bill's landmark study with Jon Amsterdam of how capital juries decide death penalty cases is a magnificent, pioneering empirical work. Instead of relying on legalistic assumptions of how juries decide between life and death, Bill and Jon actually went into the field and interviewed jurors. See generally William S. Geimer & Jonathan Amsterdam, *Why Jurors Vote Life or Death: Operative Factors in Ten Florida Death Penalty Cases*, 15 AM. J. CRIM. LAW 1 (1988). Their study gave rise to the Capital Jury Project, a nationwide study that has involved interviewing hundreds of jurors; as has so often happened, Bill's works greatly assisted my own scholarly efforts, as I became the California investigator for the Capital Jury Study.

on how to teach a particular topic, this Essay's readership would be a wealthy one indeed.

I will miss hearing Bill's laugh coming from across the hallway more than I can ever express. Bill not only became one of my most treasured colleagues, he has become one of my best friends. And, as I said in the beginning of this Essay, I view Bill as one of my true heroes – a quiet one, but as countless individuals can readily attest, not an unheard one.

Kevin M. McNally*

Against the wind. We were running against the wind. We were young and strong, we were running against the wind. I'm older now, but still running against the wind.³

I must confess that when I first learned of Bill's intention to retire, my reaction was not selfless. We need him too much to let go that easily. There's a gale still blowin'. When I learned that he was moving from one beautiful locale to another (British Columbia), the sin of envy overtook me. But calm reflection leads me to realize that these modest rewards are a meager prize, considering this decent man's contribution to education, advocacy, and solving social problems, particularly the death penalty, over the years.

I first met Bill Geimer at the annual capital punishment conference sponsored by the Legal Defense Fund at Arlie House, in Warrenton, Virginia, each year. In 1987, he invited me to speak at a conference on indigent representation in capital cases. Four years later, I lectured on ethics and capital defense at Washington and Lee's "Defending a Capital Case in Virginia III," returning to this favorite location two years later, again at Bill's invitation. These were always terrific seminars in a terrific location with terrific people. Bill was, guess what? A terrific host.

Sad to say, Virginia vies with Texas for the title of "Death Penalty Capitol" of the United States; I would say the "Death Penalty Capitol of the Universe," but then there is China. As founder and Director of the Virginia Capital Case Clearinghouse at Washington and Lee, Bill has been on the front line of one of the great public policy battles of our time. One could not wish for a better location for Bill to spread the seeds of effective assistance of counsel. His tireless commitment to this issue, in Virginia and nationally, has

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3. BOB SEGER, *Against the Wind*, on AGAINST THE WIND (Capitol Records 1985).

been a critical contribution to "bringing life" (no pun intended) to the Sixth Amendment, making him a major national voice demanding competent capital defense.

As a capital trial lawyer, I have come to be fascinated over the years with the question of why death qualified juries so often reject the death penalty. After all, citizens are required to "swear allegiance" to execution as a form of punishment before trials even begin. Beyond that, only the most aggravated and depraved killings reach the final stage, where life hangs in the balance. Given such a structure, one would expect a life sentence to be a rarity. On the contrary, even in the most hardened capital punishment jurisdictions, juries routinely reject the death penalty. Why? As I began to research this question, I discovered that none other than our own Bill Geimer was the first to look into this issue and to publish the results of his research.⁴ Bill's other commendable passion has been the rights (I should say lack thereof) of juveniles,⁵ interesting to me as my spouse is in charge of the defense of juvenile criminal defendants in Kentucky.

Bill not only contributes to the discussion of tactics and competence in defending against the threat of execution, he creates public dialogue. Few have made such contributions as Geimer did in *Law and Reality in the Capital Penalty Trial*.⁶ Publishing a mini-debate about the value/danger of using mental health professionals in a capital trial was a tremendous advancement in the level of dialogue amongst the capital defense bar.⁷ Reference to the "legal and practical dangers associated with having the client talk to any mental health professional" was prescient if one is conversant with cutting-edge developments in capital prosecutions today.⁸ New prosecution techniques always require new defense thinking. Bill was always thinking new thoughts. His *Reality in Sentencing Act* was not only creative, but one of the first common sense summaries of how to obtain a life vote.⁹

4. William S. Geimer & Jonathan Amsterdam, *Why Jurors Vote Life or Death: Operative Factors in Ten Florida Death Penalty Cases*, 15 AM. J. CRIM. LAW 1 (1988).

5. See William S. Geimer, *Juvenileness: A Single-Edged Constitutional Sword*, 22 GA. L. REV. 949 (1988); William S. Geimer, Book Review, *In the Interest of Children: Advocacy, Law Reform and Public Policy*, 35 CATH. U. L. REV. 663 (1986); William S. Geimer, *Ready to Take the High Road? The Case for Importing Scotland's Juvenile Justice System*, 35 CATH. U. L. REV. 385 (1986).

6. William S. Geimer, *Law and Reality in the Capital Penalty Trial*, 18 N.Y.U. REV. L. & SOC. CHANGE 273 (1991).

7. *Id.* at 291-92.

8. See generally Scott Sundby, *The Jury as Critic: An Empirical Look at How Capital Juries Perceive Expert and Lay Testimony*, 83 VA. L. REV. 1109 (1997).

9. See Geimer, *supra* note 6, at 288-89 (offering hypothetical statute).

Bill's writings have pulled the veil back from the nonsense about capital defense that too often finds its way into law. No one else wrote about the tired old excuse for being a potted plant: "I was afraid of damaging rebuttal."¹⁰ As Bill points out, that is an excuse to do nothing at every capital trial.

It took courage for Bill to write (including naming names) about members of our professional speciality who would actually trash their own clients before a jury and later claim it was "tactical."¹¹ As he pointed out, attempting to bond with jurors at the client's expense isn't exactly a client-focused tactic. Beyond that, Bill said the unspeakable truth in public: It is unethical to be incompetent.¹² He had the nerve to suggest that we have (as we certainly do) an ethical duty to report incompetence. As he knew, we ignore this Canon. So dedicated to uplifting our professionalism is my friend that he didn't hesitate to talk about his own mistake as a young trial lawyer.¹³ Of course, it was probably the only one he made until retirement that is.

You'll miss him. He's older now but the rest of us will try to figure a way to drag this terrific lawyer back into the storm if we can even get him to the lower forty-eight. We need him.

Roger D Groot*

Bill Geimer's life and mine have been intertwined for over thirty years. We were law students together in the 60s and since 1980 have been faculty colleagues. Throughout the 80s and 90s we taught Criminal Law and Criminal Procedure to virtually every student who came through the law school. In 1990 we co-authored *Trial of Capital Cases in Virginia*. Bill founded the Virginia Capital Case Clearinghouse in 1989 and was its Director until 1999; I became the Director in that year. Yet, Bill and I are very different people and it is precisely our differences that have made me treasure our relationships and, I believe, have served so well the many students we have taught.

I have never been able quite to see the world the way Bill sees it and, I assume, he can see my world no better than I can see his. Bill's perceptions have at times been revelations, equally as often they have left me shocked,

10. *Id.* at 290.

11. William S. Geimer, *A Decade of Strickland's Tin Horn: Doctrinal and Practical Undermining of the Right to Counsel*, 4 WM. & MARY BILL OF RTS. J. 91, 151 (1995).

12. *Id.* at 161.

13. *Id.* at 178.

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fascinated, confused, frustrated, and *yea*, even angry. But, those perceptions have always been valuable to me because they have for most of my professional life forced me constantly to rethink and retest the assumptions from which I draw conclusions.

This has also been Bill's great, and often unappreciated, gift to generations of law students. For almost twenty years, Bill and I taught Criminal Law to entering law students; at mid-year we swapped students and taught Criminal Procedure during the spring term. Thus, my Criminal Law students learned Criminal Procedure from Bill and vice versa. The contrast between us in style, approach, and points of emphasis is significant. I am more analytical; Bill is more critical. Analysis and critique are both important, but analysis is, after all is said and done, merely a learned skill. Critique is more profound – it causes discomfort through its questioning of conventional truth and it creates intellectual expansion through reevaluation of that truth. I therefore humbly defer here to Bill, who did something more valuable for our students than I did.

But, there should be no misunderstanding. Bill is a lawyer's lawyer. When he was a candidate for a faculty position here, we received a letter recommending him from a very conservative judge before whom he had practiced. The judge, after the obligatory reference to his disagreement with Bill's political views, wrote several pages praising Bill's trial skills, his preparation, and his devotion to his clients. The qualities noted by the judge are those, critique notwithstanding, that Bill has tried to instill in his students. His position has always been that the need for change is patent, but until change comes the lawyer and the client must live in a world they never made. That means the lawyer must assiduously research, investigate, and prepare, and must be able effectively to advocate the client's case within the system as it is.

Others will write in general about Bill's commitment to equal justice. They will write in particular about his contributions to effective representation of capitally charged defendants. They will (at least, they should) note that the Commonwealth owes Bill an enormous debt for that work – a debt that will never be paid because those who should pay it cannot even understand that it is owed. I will agree with all of that because, no matter how strong the words, they cannot be strong enough. But I wanted to write about my Bill Geimer – long-time friend, valued colleague, extraordinary teacher, skilled lawyer, and tireless advocate.

I do not look forward to life unspiced by frequent doses of Bill Geimer, but that time has come. Go in peace my friend, keep the faith, and continue to wear your heart on your sleeve.

Liz Murtagh*
Ross Haine**

I want to live in a country that has socialized medicine and no death penalty.

Bill Geimer, Washington and Lee University School of Law (whenever asked)

Retire? Bill's not the sort. Slow down, maybe. Change base, maybe. Formally retire from the law faculty of Washington and Lee? O.K. So Bill moves north and switches sides of the continent.

We were, and are, Bill Geimer's students. He was our first exposure to law school, 8:00 a.m. on Monday, the first day of classes. He said he wanted to catch us before our minds became warped by the law. We're glad he did. As it turns out, we both have devoted our professional lives to criminal defense of the indigent. This was not what we planned before we went to law school. It's funny, looking back, how the little things can alter major life courses. Who is to say how our professional lives would have gone if Bill had not caught us before warp set in?

One lesser-known aspect of Bill's tenure at Washington and Lee School of Law has been his advocacy of children's rights in the criminal justice system. We both learned about the status of children in the courts through Bill's courses and seminars. We found out that individual rights guaranteed by the Constitution do apply in theory and should apply in practice to children. We learned that we could make a difference in an unfortunate child's life. Liz has focused her practice on the representation of juveniles.

The passion of Bill's devotion to those charged with capital crimes in Virginia is legendary. With the formation of the Virginia Capital Case Clearinghouse, Bill has done more than any other one person to improve the representation of those facing the death penalty in Virginia. We have a unique perspective. We were there to see the "before," and we were there during the "after." We have seen the change first hand, up to and including the passage of statutory minimum requirements for capital defense attorneys. Trust us – we were there, we saw it change – it would not have changed like it did without Bill.

Having said that, don't look to Bill for confirmation. He will only tell you of the frustrations and inequities of capital defense work in Virginia. And here we share something deep with Bill, for we, too, have witnessed a friend

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die at the hands of the state. Nothing in this profession can compare to the frustration and helplessness of watching a friend, a live and healthy human being, strapped down and killed by a power we are powerless to prevent. This makes grieving hard. We still grieve the loss of our friend Dennis, and we imagine Bill still grieves the death of Ronnie. This work is more than just a job. We like to think that Bill's work is a fitting memorial to our friend.

Speaking of friends, Bill is our friend. We came back to Lexington to stay on Memorial Day in 1991 on a wing and a prayer. We rented and moved back into our old log cabin from law school, on Sugar Creek at the foot of House Mountain, about a mile down the road from Bill and Elizabeth's house. Bill was, quite literally, the first person we saw when we got back. He pulled his blue pickup truck into our driveway and welcomed us back as neighbors – not as former students, not as fellow lawyers, but as neighbors. We were studying for the Virginia Bar that summer and Bill offered us employment interviewing former capital trial jurors as part of a research project he was doing. We set our hours, so we could make enough money to buy groceries while we studied for the bar exam. The point is, he was there when we needed the help.

That summer was also the time we agreed to house sit for Bill and Elizabeth when they would go on trips. They had just bought their hot tub and installed it on their back deck. As consideration for the bargain, we were given unlimited use of the hot tub while house sitting. We remember summer nights when we would buy a bottle of champagne, sit in the hot tub under the stars, and look up at House Mountain. My, how we shared secrets and dreams, for we were younger then, and newly married. Thanks, Bill.

Friend, take care. We miss you.

David Bruck*

Those of us who have spent our working lives dealing with the return of capital punishment know Bill Geimer as a lawyer's lawyer. Directing Washington and Lee's Virginia Capital Case Clearinghouse, teaching hundreds of students and practicing lawyers how to represent clients facing the death penalty, and writing with great passion and insight of our nation's neglect of the right to counsel, Bill Geimer staked out difficult terrain and waged an admirable fight to defend it.

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There are over 700,000 lawyers in this country, and the best of them tend to congregate by the tens and hundreds of thousands in those areas of practice where there's money to be made. The defense of capital cases is not, to put it mildly, one of those areas. And in many parts of the country, Virginia included, the same arrangements of political power that revived capital punishment after its near-disappearance in the 1960s and early 1970s have produced a resource-starved non-system for providing legal representation in capital cases.

As a result, the very litigants who need (and should be entitled to) the most skilled and dedicated legal representation actually make do with some of the worst. The lawyers who *prosecute* death penalty cases are full-time public employees who specialize in what they do, and they have all the investigative and scientific resources of the state at their disposal. On the defense side, by contrast, capital clients are almost always indigent, and court appointments in such cases do not usually pay enough to meet a lawyer's overhead. In such a "system," a skilled capital defense bar never develops, because it is simply not economically possible for any appreciable number of lawyers to gain the expertise and experience that's required. Still, the courts have to appoint *someone*, and if no one truly qualified is available, well

It is as though the health care system has decided to draft chiropractors to do brain surgery – and then, confronted with the resulting mess, the legal system implements one "reform" after another to prevent the maimed patients from bringing malpractice claims. As Bill Geimer demonstrated in his *A Decade of Strickland's Tin Horn*,¹⁴ our modern system for providing counsel is not so different from what the Supreme Court struck down in the first of the Scottsboro cases¹⁵ – a persistent violation of society's duty to provide a defense adequate to ensure that the law "hears before it condemns."¹⁶

To document this shameful record, as Bill Geimer has done, would be contribution enough. But through his years at the Clearinghouse, he and his students actually intervened in case after case, to try to make up by persistence and wit the shameful deficit that our legal system continues to run in the representation of capital defendants.

If you have never done such work, you probably don't realize how hard it can be. Setting out from a law school to provide support and information to practicing lawyers in county courthouses, you quickly find that the worst lawyers also tend to be the last ones to recognize what they don't know and to accept help from anyone else. No one learns in law school (W&L's Clear-

14. See generally William S. Geimer, *A Decade of Strickland's Tin Horn: Doctrinal and Practical Undermining of the Right to Counsel*, 4 WM. & MARY BILL RTS. J. 91 (1995).

15. Powell v. Alabama, 287 U.S. 45 (1932).

16. *Id.* at 68.

inghouse excepted) about the ghastly, existential horror of capital cases in which the immediate cause of a defendant's execution is his court-appointed lawyer's failure to raise the right objection, on the right grounds, at exactly the right time during trial or appeal. In Virginia and across much of the South, these cases have become commonplace.¹⁷ That was the dreadful knowledge that Bill Geimer imparted to his students, and with them, worked to pass along to lawyers before it became, once again, too late. It's a haunting kind of mission, and people who do it have to develop a rare blend of diplomacy and dogged persistence.

There are few, if any, law school projects like the one that Bill Geimer developed at the Virginia Capital Case Clearinghouse. Expertise in capital litigation has tended to concentrate at the back end of the process, in post-conviction litigation, after hundreds and thousands of death-eligible cases have been winnowed down to a few actual death sentences.¹⁸ While finding adequate representation for those already on death row has proven a daunting challenge,¹⁹ the challenge of improving representation at the trial level is so vast that few nonprofit or academic institutions have even tried to address it.

Bill Geimer's work with the Clearinghouse at Washington and Lee has been a remarkable exception to that record. And when this country's final experiment with homicide-as-punishment has run its course, as it surely will, Bill's work there will be remembered. He'll be remembered for the good he did, and also for the lesson he taught – to his students and to the rest of our profession – that a lawyer should go where the need is and work there for justice.



17. *See, e.g.,* *Smith v. Murray*, 477 U.S. 527 (1986).

18. James S. Liebman, *The Overproduction of Death*, 100 COLUM. L. REV. 2030, 2129-36 (2000).

19. *See Murray v. Giarratano*, 492 U.S. 1 (1989) (accepting Virginia's claim that death row inmates have no constitutional right to counsel for collateral review).

ARTICLES
