

## HOW STEVE ROACH, OF STANARDSVILLE, VIRGINIA, AND KINGMAN BREWSTER, PRESIDENT OF YALE UNIVERSITY, COMBINED TO TEACH ME ABOUT THE MEANING OF DEMOCRACY

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AT approximately 9:30 p.m. on December 3, 1993, Steve Edward Roach of Stanardsville, Virginia, fired a single unprovoked shotgun blast, at point-blank range, at his neighbor, Mary Ann Hughes, killing her instantly. It was the first and only violent crime of his life. Ms. Hughes had been one of Steve's few friends. She was over 70 years old. He was 17.

I represented Steve Roach for about three years after his conviction for the capital murder of Ms. Hughes, beginning with the habeas corpus petition filed on his behalf in the United States District Court for the Western District of Virginia.<sup>1</sup> And I was with him when he walked from his cell at the Greensville Correctional Facility to his death, on January 13, 2000.<sup>2</sup>

Steve was neither my first nor my last death penalty client. My law firm, Patton Boggs LLP, whose members are far from unanimous on the issue of capital punishment, provides unwavering support, both moral and material, to the Pro Bono Program that I have run for a quarter of a century. We serve clients who would otherwise be unable to afford to defend their legal rights. Steve was a firm client in all senses of the word, and we spared no effort that we would have used in representing any other individual or corporation.

Death penalty advocacy affects those who undertake it in many ways, including some that are intensely personal. I do not limit my reference to those lawyers who actually befriend their clients, and who may believe deeply and truly that those men

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1. See *Roach v. Angelone*, No. 97-0693-R, 1998 U.S. Dist. LEXIS 22492 (W.D. Va. July 29, 1998).

2. The citations to the *Roach* case are as follows. Roach's original conviction and sentence is at *Roach v. Virginia* (Greene County Cir. Ct. May 9, 1995) [hereinafter *Roach I*]. The affirmance of his conviction and sentence by the Virginia Supreme Court is reported at *Roach v. Commonwealth*, 468 S.E.2d 98 (Va. 1996) [hereinafter *Roach II*]. The United States Supreme Court denied certiorari. *Roach v. Virginia*, 519 U.S. 951 (1996) [hereinafter *Roach III*]. Roach then filed a petition for writ of habeas corpus in the Supreme Court of Virginia. The state habeas petition was disposed of in unreported orders, and the U.S. Supreme Court denied Roach's petition for writ of certiorari at *Roach v. Angelone*, 522 U.S. 1057 (1998) [hereinafter *Roach IV*]. We then sought habeas relief in federal court. The decision of the Western District is at *Roach v. Angelone*, No. 97-0693-R, 1998 U.S. Dist. LEXIS 22492 (W.D. Va. July 29, 1998) [hereinafter *Roach V*], and the affirmance by the Fourth Circuit is at *Roach v. Angelone*, 176 F.3d 210 (4th Cir. 1999) [hereinafter *Roach VI*], *cert. denied*, 528 U.S. 965 (1999) [hereinafter *Roach VII*]. Finally, we made a last-ditch second appeal to the Commonwealth Supreme Court on a procedural issue, which was denied by the Court in an opinion at *Roach v. Dir., Dep't of Corrs.*, 522 S.E.2d 869 (Va. 1999) [hereinafter *Roach VIII*].

(for they are virtually always men) are innocent victims either of a legal process gone awry, or of a social background that diminishes, even annihilates, their personal culpability. I confess at the outset of this essay that this is not my perspective, although I am a categorical opponent of the death penalty. I believe that the death penalty is indefensible on any level (including the theological), that its use demeans us as a society, and that it undermines the rule of law. But however a lawyer approaches the task of representing the condemned, and whether or not she or he shares my views on the unacceptability of capital punishment in general, this work tests us as lawyers as no other kind of case ever will. It causes us to observe from very close-up the awesome coercive power of the law, and the mechanisms that the law deploys to see that its will is done. And it gives us a unique opportunity to test claims about the foundations of the law and the democratic principles to which we all pay homage.

For me, the most dramatic and most meaningful events in connection with the Roach representation occurred on the day of the execution. That is the story I want to tell here. But a little background is required.

The arguments that my team and I made in support of Roach's federal habeas petition were standard weapons in the anti-death penalty arsenal. Our main focus was proportionality. Our client was sentenced only on the basis of future dangerousness. The County Attorney's proffer on vileness was turned away by the trial judge, who nearly refused the future dangerousness aggravator as well (he called the case "on the far spectrum," finally considering, in a half-hearted double-negative, that the fact that there was very little evidence of Steve Roach's future dangerousness "does not mean that it is not a jury question").<sup>3</sup> At trial, not one witness, opinion or lay, testified that Steve was dangerous. He had no record of criminal violence, and he was 17 years of age at the time of the homicide. It was hard to argue that he was the hardened, irredeemable career criminal for whom even its defenders maintain that the ultimate penalty should be reserved.

In addition to this critical issue, there had been a number of lapses during the trial, the first capital case presented to a jury in rural Greene County, Virginia, in more than five years. These lapses included a patently erroneous instruction concerning the need for unanimity at the penalty phase,<sup>4</sup> as well as other defects, such as an incoherent and inconsistent charge on the future dangerousness aggravator. Realistically, however, we had little confidence that these arguments could avoid tripping over the uniquely high procedural hurdles erected in Virginia. Unfortunately, we were right. We had a very sensitive federal district court judge in Chief Judge Samuel Wilson. Chief Judge Wilson was obviously troubled by this case and said four times in his 20-page opinion denying the writ that, had he been a member of the Greene County jury, he would not have sent Steve Roach to his

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3. *Roach I*.

4. The judge instructed the jury that its verdict for a death or life sentence had to be unanimous, when as a matter of law, a lack of unanimity for the death penalty would result in a life sentence by default.

death.<sup>5</sup> Yet he nevertheless found that the State procedural bars closed his courtroom to us on collateral review.<sup>6</sup>

After Chief Judge Wilson turned us down, we received the usual treatment from the Fourth Circuit, and our petition to the Supreme Court for certiorari was denied.<sup>7</sup> We assumed that our only remaining recourse lay with the Executive and began preparing our petition for clemency. None of this was a surprise, nor was it even much of a disappointment. We knew the long odds we faced as a matter of strictly-construed jurisprudence, but we had long believed that the unique facts of our case made it an attractive one for the use of clemency powers by any Governor, even one as eagerly pro-death penalty as James S. Gilmore.

I spent considerable time, both on the phone and on Death Row in Sussex, going over the clemency strategy with Steve, giving Steve an opportunity to talk through a number of issues of great importance to him. There are many aspects of our conversations that I am not today prepared to discuss in public. But at the end of our sessions, and with the usual high-quality input of my Patton Boggs team, we decided on a plan of action.

Meanwhile, we stumbled onto one of the very few pieces of good luck ever to come our way in the *Roach* case. In the spring of 1999, the Virginia Supreme Court decided the case of *Commonwealth v. Baker*,<sup>8</sup> in which it held that before a juvenile may be transferred for trial as an adult in Virginia, *both* of his parents must be provided with actual written notice of the hearing on the prosecutor's intention to do so.<sup>9</sup> Steve Roach's parents had not been living together at the time of his arrest, and his mother was not personally informed of the juvenile court hearing on the Commonwealth's motion for his transfer to adult court.

Although our submission was taken seriously, it ultimately failed. At oral argument, however, I felt that the Virginia Supreme Court, like Chief Judge Wilson in Roanoke, seemed uneasy executing a 17-year-old, with no substantial criminal record, for a single-shot, unpremeditated murder. It was clear to my team and me that, like Chief Judge Wilson, Justice Barbara Milano Keenan, the author of the unanimous Virginia Supreme Court opinion,<sup>10</sup> was implicitly inviting Governor Gilmore to give earnest consideration to using his clemency power in this case.

The final decision of the State Supreme Court came down in the first week of November, 1999,<sup>11</sup> and our execution date had been set for January 13, 2000. We had about ten weeks. Pursuant to my discussions with the client, we prepared our clemency petition not in the form of a legal brief, with citations to authority, but as a letter. The letter was on law firm letterhead, single-spaced, addressed "Dear Governor Gilmore," and ended not with "Respectfully submitted," but with "Yours sincerely." My thinking was that this was how the system should work. The courts, after all, had done their job, and had concluded (whether rightly or wrongly is no longer relevant) that there was nothing they could or would do to forestall Steve

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5. *Roach V*, No. 97-0693-R, at \*2, \*18, \*21, \*34.

6. *Id.* at \*34.

7. *Roach VI*, 176 F.3d at 226.

8. 516 S.E.2d 219 (1999) (per curiam).

9. *Id.* at 220.

10. *Roach VIII*, 522 S.E.2d at 869.

11. *Id.*

Roach's death. Although trained as a lawyer, the Governor was not a judge, and his job was to determine not whether the execution was permissible as a matter of law, but whether it was appropriate and right. Even the format of a typical legal brief, as well as its stilted style, could be helpful to our case only if, on some level, the Governor were to be persuaded that the courts had gotten it wrong. And I was not confident of our ability to demonstrate such a thing to a State elected official well-known for political and social conservatism.

I wrote Governor Gilmore a very deliberately non-legalistic, personally-inflected letter, of some 26 pages, reviewing the crime, canvassing Steve's life, and explaining how this teenager came to commit an act that resulted in his being sentenced to death. We attached 12 exhibits, detailing and documenting all of the factual statements that we thought might be questioned, and expressing the support of a number of organizations. One of these was the conservative Rutherford Institute, whose president, John Whitehead, took a personal interest in this case. I was not especially critical of trial or appellate counsel in my letter, although I believe to this day that literally fatal errors of judgment were committed at trial. At this late stage in the proceedings, it seemed to me simply inappropriate—and, more importantly, unhelpful—to make such arguments. These arguments might have been appealing to someone whose mind was open to the suggestion that the system had failed, but I did not believe that was a productive approach to James S. Gilmore, Governor of Virginia.

The Old Dominion has a number of quaint legal customs. I do not know of another State in which counsel for a death row inmate are given the opportunity for what is in effect an oral argument on their clemency petition before the Governor's legal staff. I was greatly encouraged when I received notice that we would be heard in the office in the State House next to the Governor's own office.

My friend and associate, Willa Perlmutter, the long-suffering second chair in this case, and I drove to the Governor's office in Richmond on the morning of January 5, 2000, eight days before the scheduled execution. We were simply amazed by our reception. We were met by four highly articulate lawyers, each of whom appeared to be intimately familiar with our client's case and with our submissions on his behalf. Not only were our interlocutors knowledgeable and interested, but each seemed extremely sympathetic. Three or four times, one of the Governor's lawyers preempted us and answered a question addressed by another of them to Willa or me, using virtually the same words and citing the same parts of the record that we would have deployed.

We emerged from the Richmond meeting, each afraid to say what we were thinking: if we had not just won the case, it could not be won. As I walked into my office in Washington, the phone was ringing. It was Steve, calling collect from Death Row. I tried very hard to manage the expectations I might be creating, but I could not help communicating to him that we were, for the first time, cautiously optimistic.

The point we had seemed to convey, and that the Governor's staff seemed to have internalized, was the absence of violent crimes in Steve's past. His entire record consisted of the burglary of an unoccupied house and two joy-riding incidents, in which he had stolen cars with keys left in the ignition, driven them a short distance, and abandoned them. It was also clear and undisputed that the Commonwealth's

and Greene County's attempts to provide Steve and his dysfunctional family with any sort of counseling or psychological or social service never left the starting blocks. Those efforts were laughably incompetent, to the extent that they can be said to have existed. Not even the basics of intervention, such as the attention of a County Social Services agency, were ever provided by the Commonwealth, despite ample evidence provided by numerous of its members that the Roach family was in serious trouble.

Now, I happen to own both a car and a home, and I would strongly prefer not to have the former stolen or the latter burglarized. These incidents were not pranks, and they were not harmless. But neither were they violent. Most assuredly, these crimes did not show the level of depravity or irremediability that demonstrates future dangerousness or that characterizes a vicious criminal worthy of society's ultimate punishment.

After the burglary, which was handled in the juvenile justice system, Steve was put on a form of probation that forbade him to carry a weapon for a number of months. Everyone, including the Police in Greene County (population 15,000<sup>12</sup>) treated that requirement as a formality unworthy of any attention at all. Steve, apparently along with nearly all male teenagers in that part of the Commonwealth, owned and was proud of owning firearms. In Steve's case, as in most, the firearm owned was a shotgun used for hunting. So lax and cavalier were the authorities that, just weeks before the murder of Ms. Hughes, there had been a rumor in town that some young men were sawing off the barrels of their shotguns to below the legal limit. Steve took his gun to the Sheriff's office to show that his was legal. A uniformed deputy on duty, who obviously knew Steve's situation including the terms of his probation, examined the gun, confirmed that its configuration was legal, and handed it back to him without further comment.

Given these facts, my team believed we had good reason to be hopeful. The trial judge, the author of the State Supreme Court opinions in the case, as well as the Chief Judge of the Federal District Court obviously had serious misgivings about the wisdom of executing Steve Roach. We believed that this was the perfect situation for the exercise of the executive's discretion to extend mercy. As we soon learned, we were, of course, deluding ourselves.

In Virginia, death row inmates are housed at the Sussex Correctional Facility, but they are not killed there. Executions take place 20 miles away, in a dedicated building in the middle of the enormous campus of the Greensville Correctional Center at Jarratt, just north of the North Carolina line, off Interstate 95. The process is uncannily scripted, and I am certain that all branches of our armed services would be green with envy at the efficiency and professionalism with which the Commonwealth dispatches its condemned prisoners.

I had been well prepared by Michelle Brace and her wonderful colleagues at the Virginia Capital Resource Center. I knew in outline how the day of the killing of Steve Roach—January 13, 2000—would proceed. I knew there was virtually no chance that we would hear anything from the Governor before that day. I knew that

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12. In 2000, the population of Greene County, Virginia was 15,244. U.S. Census Bureau State and County Quick Facts, Green County Virginia, *available at* <http://quickfacts.census.gov/qfd/states/51/51079.html> (last modified July 15, 2003).

executions take place at 9:00 p.m. I knew that I should plan to arrive at the prison after 3:00 p.m., because that is the time at which the family must take their final leave of the prisoner. Steve had been married while on Death Row, and I knew that his wife, Elasa, would want every possible moment with him.

While we were aware that the Governor would not issue a decision on the clemency petition before the day of the execution, no one had any idea at what time during the day we might hear from Richmond. I made sure that Governor Gilmore's office had my cell phone number, and I bought a device to keep the phone charged in my car. My loyal assistant back in the office—Sarah Sawle, today a graduate of the Georgetown University Law Center, who spoke with Steve by phone nearly daily over the last months of his life—never strayed from her desk. I set out for Jarratt at around 11:00 a.m. On the way down, I checked into a motel in Petersburg that was close enough to the prison to make a drive after the execution bearable, yet far enough away to be able to escape from the other participants in this drama. There was no word from the Governor during the long drive south. I pulled into the Greensville parking lot just after 3:00 p.m., in time to exchange quick words with Elasa and her family as they were leaving. We were less than six hours from the scheduled execution.

I was very familiar with the screening procedures on Death Row. I dutifully left all of my belongings, except for a pen, a pad of paper, my identification, and keys, in my car outside the main gates of the prison. I cleared security, together with Rev. Wendell Lamb, Steve's pastor and longtime friend, and Marta Kahn, a superb, committed attorney from the Resource Center who had known Steve since before I took the case. The prison staff were typically polite and respectful. They had a job to do, and they were excellent at doing it.

The holding facility for prisoners about to be executed consists of four cells and a common area. Steve was the only prisoner in residence, since his friend Christopher Thomas, another juvenile offender, had been executed three days before.<sup>13</sup> The common area included plastic bucket chairs for visitors, and a guard's desk, with the usual trappings. There was a telephone mounted on the wall just behind the desk.

Between 3:00 p.m. and 7:00 p.m., the phone must have rung 25 times. Each time, Wendell, Marta, and I jumped out of our chairs. Each time, the call was one of jarring mundaneness. We heard several discussions of the dinner menus the various guards would have when their shifts were over. And yes, they would stop off at the grocery on the way home. Meanwhile, we continued our conversations. We talked about sports. Wendell read to Steve from the Bible, and they prayed together. We reminisced about earlier visits, and Wendell and Steve got into a long and complex comparison of their memories of a church trip they had both gone on years before.

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13. In the entire decade of the 1990s, it is unlikely that 20 individuals below the age of 18 at the time of their offenses were executed in the world. In the first two weeks of 2000, the Commonwealth of Virginia committed this outrage not once, but twice. See Victor L. Streib, *The Juvenile Death Penalty Today: Death Sentences and Executions for Juvenile Crimes, January 1, 1973–June 30, 2003*, at <http://www.law.onu.edu/faculty/streib/juvdeath.htm> (last corrected July 1, 2003). No more than five countries currently provide for the capital punishment of juvenile offenders. James Alan Fox, *Take Death Penalty Off Table for Teen Murderers*, USA TODAY, Feb. 9, 2004, at 17A. All but one are fundamentalist Muslim regimes applying *sharia* law; the other is the United States.

We never lost the feeling that there was still hope; we had not heard from Governor Gilmore, but the phone would surely ring for us in just a moment.

At around 6:00 p.m., the guards asked Steve if he was ready for the traditional last meal. As I knew he would, Steve invited Wendell, Marta, and me to share it with him. Wendell and I accepted. Marta, understandably, was unable even to consider eating. The meal was French-bread pizza, cold by the time it arrived, and fried potatoes, with foil packets of ketchup. There was a pitcher of sweet tea and lemon pie for dessert. Steve commented that it had lived up to his hopes: it was the best meal he had had in his more than six years behind bars.

When the plastic plates were cleared, Steve wanted to talk with me alone. He told me that the guards would shortly take from his cell the cardboard box containing all his earthly goods. By prison rule, he would have to put his wedding ring in the box. He had inquired whether he could give the ring to Elasa during her visit earlier in the day, but the answer was a typically arbitrary and unequivocal negative. He was unsure whether he could rely on the promises that his belongings would be delivered safely to his family, and he really wanted Elasa to have the ring.

Evidently, Steve had also asked the guards what would happen if he gave the ring to his attorney, and they responded simply that they do not search lawyers as they leave the prison. Would I be willing to carry the ring to Elasa, on the assumption that our clemency petition was unsuccessful? Of course I would. I put the gold ring in my pocket. We continued to talk and to wait.

At 7:00 p.m., according to standard operating procedures, visitors must leave the Greensville Death Row for an hour, so that the prisoner can be prepared for his execution. The preparation includes a shower, a medical examination, and a new set of clothes (apparently the Commonwealth considers it unseemly to oversee the deliberate killing of someone who is dirty, ill, or wearing faded jeans), as well as the administration of a powerful sedative. Marta, Wendell, and I were required to leave not only the building in which the Row is housed, but the prison compound itself. We were taken by minivan to the main entrance, where the press and protesters were beginning to assemble.

The Governor had still not called. By now, our excuses were wearing extremely thin. A reprieve at the eleventh hour would make no sense in this case except as some kind of cruel trick. I wandered outside the building into the parking lot, and then, after pacing for awhile, reentered the lobby, which looks very much like the lobby of a cheap and busy motel. It was going to be a long hour of waiting.

Just as I was walking in, I heard the phone ringing on the main desk, next to the security guard's station. The attendant who answered the phone was obviously having trouble understanding the name of the person the caller was trying to reach. I heard a few "What's" and "Huh's," with annoyance and frustration. I have had a German name, difficult to pronounce, for many years, and I am used to this. I knew at once that this was the call from Richmond; the Governor's staff was asking for the prisoner's attorney.

I approached the desk and gave the attendant my name. The receiver was handed to me. The voice identified itself as belonging to Governor Gilmore's counsel. He made certain that I was who I said I was, and in a single sentence, delivered the message from Richmond: the Governor was declining to intervene. The execution would go forward as scheduled, in less than 90 minutes. I asked if I could see the

statement that Governors of Virginia traditionally issue in such cases. After some discussion, it was agreed that the statement would be faxed to me as soon as someone showed up who was able to operate the machine. But that would not happen right away—it would be ready for me to see after Steve Roach was dead.

Immediately, I called the Patton Boggs team, especially Willa and Sarah, waiting by the phones back in Washington. I thanked them on my behalf and Steve's, and I told them to go home. Their work was finished. We had exhausted our legal options. I then attempted to persuade the guards to let me back into the prison, although it was not yet 8:00 p.m. I invoked the call from Richmond, as if it gave me some kind of special status. Evidently, it worked. The guards showed me into the security area, and then went back to get Wendell and Marta, who were still sitting in the lobby.

I was halfway through the search when I suddenly remembered that I had Steve's wedding ring in my suit jacket pocket. I could not leave it in my car, since I had to have it with me to give back to Steve if we had gotten clemency. But I would surely not be permitted to take it into the prison now. I had to think fast. I slipped the wedding ring of my client, who would be dead in just over an hour, onto the middle finger of my right hand. No one noticed it. I was cleared to enter, with Wendell and Marta right behind. Not one word was spoken as we were driven to our destination.

Steve was on the phone with Elasa when I entered the cell block. I insisted that Wendell and Marta wait at the door. I approached the bars and told Steve that we had heard from the Governor and that our last hopes to save his life had been snuffed out. I then walked away, so that he and his wife could talk privately. The sedative had worked. He was heavily drugged, and I could hardly hear him, although Elasa clearly could. They began to sing hymns together, connected by the telephone line.

I can remember virtually every minute of the next hour, but I am not prepared to write about them. I will say that Steve had many times during my representation told me of his religious faith, which I happen not to share. He said that if he were to be executed, he would consider it to be not an end, but a beginning. He had always claimed that he would not want to say good-bye, and so, as the last of the 60 remaining minutes ticked away, I did not say good-bye to Steve. At five minutes to nine, he thanked me and my team for our work. We shook hands. I wished him well, although, in the context, I hardly knew what my own words might mean.

Just before 9:00 p.m., Steve was taken out of his cell by guards, specially dressed for the occasion in black, with neither name tags nor even insignia of rank on their uniforms. He shook their hands as they led him into the death chamber. I am told that this does not usually happen.

The execution itself was nearly an anticlimax. Steve's last words were a recitation of the 23rd Psalm with Rev. Lamb, his minister. He died quickly and undramatically, four minutes after he was strapped down onto the gurney. The public witnesses, the press, and everyone in attendance were somber and respectful.

Wendell and I wordlessly returned to our assigned minivan to take us back to the prison entrance. Steve and I had decided to issue a statement to the press in the

event of his execution, which I then did, reading it to the assembled media in the parking lot outside the main gate.<sup>14</sup>

At last, I was given a copy of the Governor's decision. It read, in full, as follows:

On December 3, 1993, while on probation, Steve Edward Roach brutally murdered Mary Ann Hughes during the course of a robbery. A jury convicted Roach of capital murder, robbery, and use of a firearm in the commission of murder, and sentenced him to death. Upon review of the case, the trial judge imposed the jury's sentence. The convictions and death sentence were upheld on multiple appeals.

Mrs. Hughes was a 70-year-old grandmother who lived alone and had befriended Roach, who was her neighbor. Roach admits that he shot Mrs. Hughes in the chest at point-blank range with a shotgun, walked past her body, and proceeded to steal her purse and car. The Virginia Supreme Court carefully considered the case and concluded that Roach's case presented substantial aggravating factors justifying the death penalty. The Court considered the fact that Roach had been found guilty of four felonies in the seven-month period prior to the commission of this offense, carried a gun in violation of the terms of his probation, and that all rehabilitative efforts had failed.

Upon a thorough review of the Petition for Clemency, the numerous court decisions regarding this case, and the circumstances of this matter, I decline to intervene.

The clemency process had been a sham. There had been no independent executive review. There was simply the unconsidered response of a politician committed to vengeance as a political principle.

The key half-sentence here—the only portion that does anything except recite the uncontested record—is this: “Roach had been found guilty of four felonies in the seven-month period prior to the commission of this offense, carried a gun in violation of the terms of his probation, and that [*sic*] all rehabilitative efforts had failed.” Virtually every word of this is false, and the record before the Governor demonstrated conclusively that it was false. His lawyers, with whom Willa and I had met and who had listened to us so carefully, surely knew this.

There were not “four felonies” of which Steve had been “found guilty.” In fact, there were none. To be guilty of a felony in Virginia, a juvenile must be tried as an adult. Steve Roach not only was not tried as an adult for the two joy-riding incidents and the breaking-and-entering (to bulk up his justification, the Governor considered this last episode to count as two felonies, since property had been stolen), but he was not tried at all. He pleaded out, and was given probation. He had not been “found guilty” of anything. While it is true that the carrying of the shotgun was a violation of the terms of the probation, Governor Gilmore's staff knew that the County Sheriff had been well aware that Steve had a shotgun and did nothing to stop or to deter him. The authorities on the scene considered this “violation” to have been trivial. Nor had he ever used any firearm in the

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14. The statement we issued is an Appendix to this essay. Steve and I also prepared a statement that he was going to release had we received clemency. I read that latter statement to the congregation at the memorial service for Steve, at Rev. Lamb's church in Charlottesville, on the following day.

commission of a crime, before the fatal night of December 3, 1993. The portrayal of Steve as a hardened and unreconstructed felon was a lie.

But what brought tears to my eyes, as I read it in the lobby of the Greenville Correctional Center, was Governor Gilmore's statement that "all rehabilitative efforts had failed." Over the course of his brief life, the Commonwealth of Virginia made absolutely no effort to "rehabilitate" Steve Roach, or to address the severely dysfunctional circumstances in which he lived. It did nothing to address the abusive conduct of his father, who happened to be an occasional employee of the Commonwealth. It did nothing to prevent his removal from school at age 15. It did nothing to address the periodic physical abuses of members of the family, many of which were properly reported to the police. It did nothing to provide counseling or support, or to show awareness of any kind, even after Steve had his early run-ins with the law, and even when the juvenile court in Greene County directed that Social Services pay attention to this family. His parents simply did not want to cooperate with Social Services, and the issue was never pursued.

That was, even giving the Governor the benefit of the doubt, the totality of the "rehabilitative efforts" whose failure Governor Gilmore proclaimed, as he authorized the killing of Steve Roach. Something failed—it is true—but it was not the "rehabilitative efforts" to which the Governor referred. Whatever it was that motivated James Gilmore to approve Steve Roach's execution, it was not that he was a career felon impervious to redemption. The decision could not be justified this way. Anyone with a passing familiarity with the facts of this case had to know that.

Steve Roach was not a model citizen. He stole cars and broke into a house—serious crimes. And, in a single moment one evening in December, 1993, for no apparent reason, he pulled the trigger of the shotgun he regularly carried with him. He deserved to be severely punished for what he did, and he knew that. He did not deserve to be executed for it. But the cynical, political approval of the execution by the Office of the Governor teaches the lesson I want to communicate in these pages.

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I had the good fortune to attend one of America's great universities—Yale—at a time of great turmoil and great excitement, graduating in 1969. In his Baccalaureate Address to my class, President Kingman Brewster (later President Carter's Ambassador to the Court of St. James) expressed some understandable frustration with our years together, but he also celebrated our shared experiences. I will never forget one part of that speech, words that as a lawyer I have tried always to keep in the front of my mind. He spoke to us of the importance of the rule of law, and defined that term for my class this way: "The essence of the rule of law is that authority can be asked to give reasons for its behavior. These reasons, in turn, can be held up to the light of the general understanding of the community whose constitution authorized the power."<sup>15</sup>

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15. Kingman Brewster, Jr., *The Morality of Reason*, Baccalaureate Address to the Yale College Class of 1969 (June 8, 1969), *reprinted in* *The Class of 1969: 25th Reunion Book* at 25-29.

This is, I think, as good a definition of the democratic ideal as I have ever encountered. What was most appalling about the execution of Steve Roach was precisely that authority did not give reasons—at least, it did not give true reasons—for permitting the killing to take place. Yet there is no vehicle for constitutional scrutiny of that decision in our system: executive clemency is discretionary, and no one can argue that it is ever owed as a matter of constitutional right. That breadth of discretion is tolerable only in a society entitled to be confident that its leaders will tell the people the truth.

In the death of Steve Roach, someone who took a human life for no reason, authority acted without regard to reason. That this should have happened in Mr. Jefferson's Virginia, "the Cradle of American Democracy,"<sup>16</sup> is all the more unsettling. And yet this illustrates more clearly than anything else the necessity that we members of the Bar take on these cases, that we ensure that the advocacy system is given the best opportunity to work efficiently, and that we insist with all of our ability, skill, and energy that Kingman Brewster's maxim be honored. At all times, but especially when it takes the ultimate measure of terminating the life of one of its citizens, a government must act deliberately and consciously, and must give due consideration to the justification and the consequences of its actions.

When Steve Roach shook the hands of his jailers on January 13, 2000 (leaving at least one near tears), and walked into the room in which lethal chemicals supplied by the Commonwealth of Virginia would be pumped into his veins, it was far too late for him to think about, much less to further, these goals. But it is not too late for those of us who saw what was happening, who were unable to prevent it, and who are now charged with learning, implementing, and passing on its lessons. Our obligation to do this will not be finally discharged until our country ceases the practice of killing people to show other people that killing people is wrong; a practice that we, nearly alone among developed nations, perversely continue to perpetrate in the name of justice and virtue, in the end betraying both.

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16. See Edwin Anderson Alderman, *Virginia: An Address Delivered in Response to the Toast "Virginia" at the Banquet Given by the Citizens of Petersburg, Virginia to the President of the United States and the Governor of Pennsylvania on May 19, 1909*, available at <http://www.ls.net/~newriver/va/aldeman.htm> (last visited Feb. 9, 2004) (reinforcing the term as a common nickname).

## APPENDIX

Statement of Steven M. Schneebaum  
Counsel for Steve Edward Roach  
Greensville Correctional Center  
Jarratt, Virginia  
January 13, 2000

Steve Edward Roach was put to death tonight by the Commonwealth of Virginia. He died at 9:04 p.m., Eastern Standard Time, on January 13, 2000. He was 17 years old when he committed the crime that led to his execution, and 23 when he died: the youngest person to be executed by the Commonwealth in modern times. As his lawyer, I witnessed his death. Steve asked me to make this public statement, which we discussed earlier this week at length, on his behalf.

It was important to Steve Roach that he be remembered, not just as the boy who killed Mary Ann Hughes, but also as the man who married Elasa Roach; not just as the teenager who committed a horrible crime, but also as the adult who accepted responsibility for it and begged the forgiveness of those he caused to suffer; and not just as someone who ended a life for no reason, but also as someone whose own life was ended to no one's benefit.

As Steve faced death, his thoughts were first of his wife, now his widow. They were then of Mary Hughes, his neighbor and friend, and of her family and community. They were of other young people, very much like Steve himself, who might have been saved from the consequences of broken youths by his participation and his example. He sincerely wished that James Gilmore, Governor of Virginia, had found it in his heart to spare his life, so that he might have been able to make some small effort to help to save the lives of others.

But the Governor chose not to intervene. So be it. Steve wanted to be certain that the reports of his death at the hands of the Commonwealth also reflected four of the beliefs that he carried with him to the very end: his love for and gratitude toward those who selflessly tried to prevent this from happening; his genuine remorse for the terrible act he committed; the confidence that in life he had secured the forgiveness of his God, even if he never quite persuaded himself that he was worthy of that forgiveness; and the certainty that the deliberate, methodical killing of children is inconsistent with the values of any civilized society. He knew that his apology, however heartfelt, would not fill the void left by Mary Hughes, but neither will his death.

Steve died without bitterness, but with a great deal of regret. He never understood what really happened in the instant in which he took the life of someone who loved him. And he was unable to grasp, even to his last breath, why we kill people to teach other people that killing people is wrong. The principal lesson he wanted his own death to communicate is that this makes no sense. Killing kids makes no sense, and it must be stopped. It is too late to save Steve Roach; it is not

too late to save the life of the next young man or woman who, in a moment of bewildered rage or utter confusion, commits an act totally out of character in its violence and awful in its result, yet which does not place its perpetrator forever beyond the power of redemption in this life.

Mary Hughes did not deserve to die. But Steve Roach wanted us who live after his death to know that he was not a monster: he was a human being, a young man, with flaws and with promise, who deserved to live.