

Edds: Luck, Not Due Process, Saved Condemned Man

Author will discuss her analysis of the Earl Washington Jr. case at March 19 BLI in Abingdon

by Dawn Chase

An Expendable Man: The Near-Execution of Earl Washington Jr. By Margaret Edds. New York University Press, \$27.95.

This story, stripped to its bones, sounds straightforward: In 1983, Earl Washington Jr., a mildly mentally retarded man from Fauquier County, confessed to raping and murdering a nineteen-year-old mother of three in Culpeper the year before—a confession he recanted by the time he got to trial. He was convicted and sentenced to death.

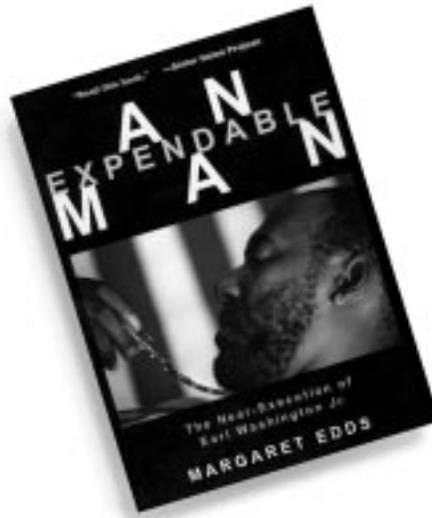
During the appeals process, DNA tests of evidence from the crime scene ruled out Washington completely. Governor James S. Gilmore granted him an absolute pardon, and Washington was released from prison on February 12, 2001, after serving almost eighteen years in prison, more than half of them on death row.

Based on that streamlined account, the justice system appears to have worked.

But Margaret Edds's tracing of the events that transpired from the rape and murder of Rebecca Lynn Williams to the day Earl Washington left Keen Mountain Correctional Center as a free man draws a different conclusion.

Edds, an editorial writer for the Norfolk *Virginian-Pilot*, was drawn into the Washington case when the paper decided to oppose the death penalty on its opinion pages.

Concisely and dramatically, the book identifies several points when police, prosecutor and the state attorney general's office—as well as Washington's own lawyers—should have questioned his confession, but did not.



It describes differing and contradictory accounts offered by the first officer to arrive at the murder scene; inadequate documentation of the police interviews that led to the confession; details in the confession that didn't match with the crime; woefully ineffective defense counsel at the trial; missing genetic evidence; and a failure to disclose to Washington's lawyers the existence of DNA tests that exonerated him.

Only a remarkable synchronicity of events and people saved Washington from the electric chair and eventually freed him.

There is no individual “villain” singled out in this book. The fault, Edds writes, lay in the system. Those who believe that it's and t's are carefully dotted and crossed before the state kills a human being will emerge from this book shaken.

Edds puts it this way in the book:

“The story of Earl Washington Jr. is more than an account of what happened to one

man. It is a lesson in the frailty of human institutions The criminal justice system may, as former Virginia Governor Jim Gilmore once said, do ‘exceedingly well.’ But it is still subject to flawed memory, rumor, inexact science, mistaken judgment, and at times outright deceit.”

In an interview, Edds said her research led her to conclude that “it is possible for the system to fail even when the people are generally well-meaning.”

The people who pulled Washington out of the shadow of the electric chair and eventually won him his pardon included:

- Marie Deans, a nonlawyer, who was paid \$13,000 a year by the Southern Coalition on Jails and Prisons to serve as an advocate for prisoners facing execution. She pulled together the pro bono legal team that took up Washington's appeal.
- Joe Giarratano, a fellow death-row inmate and nonlawyer, who launched Washington's appellate defense with a class-action suit that challenged Virginia's failure to provide lawyers for *habeas* appeals of capital cases. He filed it on behalf of Washington.
- New York attorney Eric Freedman, who was pulled into the case by Giarratano's suit. He came on the scene three weeks before Washington's scheduled execution date. Until then, Washington had no post-conviction legal representation.
- Richmond attorney Gerald T. Zerkin, a *habeas* expert who now works for the Eastern District of Virginia's federal public defender's office. He served as the

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Richmond point person for the team, and provided guidance based on his extensive experience.

- Lawyer Barry Weinstein, who came to Virginia as the first director of the Virginia Capital Representation Resource Center. He arrived determined to replicate his success as a public defender in Dade County, Florida, but could not adjust to the legal culture here. “He remained the outsider, more emotional in his opposition to executions, and unable or unwilling to hide his disgust with Virginia’s mannerly, smug confidence in the superiority of its institutions,” Edds writes. He, along with Deans, served as the human connection with Washington, visiting him frequently to keep him informed about his case. Both Weinstein and Deans suffered from post-traumatic stress disorder as a result of their work with death-row inmates.
- Manassas trial lawyer Robert T. Hall, whose careful review of forensic reports in the case detected previously overlooked evidence that led to a federal appeal and postponed the execution for twenty-two months. During that period, DNA testing was developed that exonerated Washington.
- Gail Starling Marshall, who became deputy attorney general when Attorney General Mary Sue Terry resigned to run for governor. Part of Marshall’s new job was to review all death penalty cases, and what she read about Washington’s case made her question his guilt. She conducted her own research, and took her findings to her boss.
- Stephen D. Rosenthal, who briefly succeeded Terry as attorney general. Marshall’s skepticism led him to approve DNA testing of the evidence. That sped the case up so that then-Governor L. Douglas Wilder could be approached to commute Washington’s sentence to life in prison. Wilder did so,

on his last day in office. “Perhaps Wilder’s successor would have approved a test; but perhaps not. If not, Washington surely would have died,” Edds writes.

- Ofra Bikel, a documentary filmmaker who, while working on a story on DNA and capital cases for the PBS series *Frontline*, was handed a forensic report that eliminated Washington as the source of semen on a key piece of evidence. That report had been denied to the defense team years earlier.
- Governors Wilder and Gilmore, both lawyers, who expended political capital by, in Wilder’s case, reducing Washington’s sentence and, in Gilmore’s, pardoning him. They didn’t do it happily, and Washington’s defenders express frustration that Gilmore didn’t proclaim him innocent of the crimes against Williams. But “without Wilder, Earl Washington probably would be dead, and without Gilmore, Washington might be imprisoned for life,” Edds writes. “He owes them much.”

Edds offers suggestions for improving the system: Put more resources into defending accuseds at the trial stage, conduct thorough investigations for mitigation, teach police officers how to prevent false confessions, videotape police interrogations and adopt the American Bar Association’s guidelines for capital cases.

She especially urges those involved in death cases—including the courts—not to rely on “faith in the system.” Judges and lawyers tend to have “a belief that the work that came before us was trustwor-

thy.” But inaccurate information throughout the case contributed to Washington’s conviction. Vigilance and skepticism are more likely than blind faith to catch inconsistencies and mistakes, she said.

Virginians are proud of their system, and rightfully so, Edds said. Virginia had fewer lynchings than other states in the South, for example. “We insisted on the rule of law.”

But part and parcel of that pride is “an unwillingness to admit failure,” she said.

Washington’s attorneys have filed a civil suit on his behalf, and Edds has been told that discovery is shedding more light on the details that led to Washington’s death sentence. That information currently is under a protective order, and the attorneys cannot discuss it.

Why should Virginia lawyers read this book?

Jerry Zerkin fielded that question. “Because it’s a fascinating story—how someone who confessed to a crime turned out to be innocent . . . It’s rare that you have an episode like that in your backyard where you probably know some of the players.”

The book carries an important message, Zerkin said. “Earl Washington is alive today, is not in prison, is married, is a productive citizen because he’s damn lucky, not because the system works.” In addition to the luck, DNA testing saved him. “Absent DNA, Earl would have been executed.” ♪



Margaret Edds will be the luncheon speaker at the Virginia State Bar’s Bar Leaders Institute on March 19 in Abingdon. For more information, call (804) 775-0521 or check the VSB Web site at www.vsb.org/clba/bli04.html.