

No “show trials”—the importance of doing it right

by Jean P. Dahnk, 2003–2004 VSB President



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In the media furor following the capture of Saddam Hussein, network pundits pondered how the deposed dictator would be “brought to justice.” Experts suggested that Hussein might be tried in a U.S. court, perhaps even in U.S. District Court in Alexandria. More than one commentator wondered aloud if such a trial, in an American court, perhaps in a Virginia courtroom, would entitle the despot to counsel. The consensus seemed to assume that even a person accused of murdering and torturing his subjects elsewhere, if tried for his crimes here, would need and have the right to a lawyer.

Everyone accused of a crime has a right to counsel. Like other parts of the Bill of Rights, the right to counsel has become ingrained in our national identity to the point that it rolls casually off the tongue. Making that right meaningful, however, is no simple matter. The tasks of finding willing and skillful counsel for persons charged with the most horrific crimes and bearing the high costs of a sophisticated and protracted defense challenge us as a nation and here in Virginia. While the average nonlawyer may be able to recite Miranda warnings from memory, many would question the necessity of well-funded, court-appointed counsel, not to mention the investigators, psychiatrists and other experts needed to defend a case. Perhaps even less obvious is the need for a thorough and disciplined prosecution as a fundamental part of a fair trial. Finally, the public has come to take for granted the presence of a talented and independent judiciary.

Recent and widely watched trials in Virginia demonstrate each of these three elements—competent appointed defense counsel, skilled and principled prosecutors and a courageous and independent judiciary. Proceedings against suspected al Qaeda member Zaccarias Moussawi in Alexandria and now-convicted “snipers” John Allen Mohammed and Lee Boyd Malvo all have attracted international attention.

In the prosecution of the accused terrorist, national security interests test the ability of the government to conduct proceedings in the open. The judge’s efforts to enforce the rule of law are as critical as the patient and relentless efforts of appointed counsel to protect the rights of their client. The prosecution has labored under the burden of public, bureaucratic and political scrutiny while attempting to put forward a compelling case. The ability and

willingness of the court to impose sanctions on the prosecution in that case because of its refusal to follow the court’s direction served as a heartening counterpoint to the worrisome and progressive abridgement of individual rights made in the name of homeland security.

In each of the sniper trials, the attention of a community paralyzed by fear a year before—as well as the focus of an international community largely opposed to capital punishment—centered on Hampton Roads Virginia. In each of those cases the prosecutors were efficient, professional and compassionate to witnesses and families of victims. The defense teams labored doggedly to craft and deliver a real defense for each accused, never relenting and continually struggling to save their clients’ lives. The court, in each case, conducted the trials efficiently and with dignity, balancing the needs of the courtroom with the importance of public view of the trial.

Reasonable people can and do differ about capital punishment. Whether objections are founded on moral, ethical or political grounds, they are fundamentally questions for the legislature. Meanwhile, the importance of professionalism by prosecutor, defense attorney and judge in the trial of a capital case is underscored by the public’s general acceptance of the verdicts in the sniper cases. The fact that Mohammed was sentenced to death and Malvo received life without parole raised few eyebrows. Ultimately, our community, the nation and the world may be much more uneasy about capital punishment than about how that punishment itself was addressed in these trials.

We should remember and cherish our system, derived from the Constitution and nurtured in a Virginia tradition of fairness, due process and respect for the law. Equally important are the efforts of the individual Virginia lawyers and judges—prosecutors, defense counsel or members of the bench—who embrace these traditions and put them into practice in the toughest and most important cases. They set an example for the world that we should embrace with pride. Saddam Hussein would be fortunate to be tried here, and if that unlikely event should come to pass, Virginia-based federal judges, prosecutors and defense counsel will be ready. ☺