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Foreword

Andrea D. McNairy

Gregory Anderson

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FOREWORD

Recently, the issues of the death penalty and the law have recaptured America’s attention, consequently rekindling an already passionate debate in legal, academic, and political communities. While the debate over the moralities and justifications of the practice continues, the discussion often focuses on a smaller chasm of the issue, that of capital punishment and mental capacity. The emerging area of mental capacity, including matters such as maturity, mental impairment, and mental illness, continues to grow as science and education increasingly better equip us to understand these limitations.

With recent Supreme Court decisions addressing such issues on the front pages of newspapers, national attention to diminished capacity matters, and the growing popularity of post-conviction DNA testing programs such as the Innocence Project, it is no wonder that the issues of mental capacity, capital punishment, and the law have returned to dinner-table discussions and office water-cooler conversations. The legal and constitutional issues are as diverse as the opinions of the people, governments, and international organizations themselves. It is an issue that is not limited to the United States, but rather, it is a global controversy, often between countries around the world. As such, the development of the death penalty, as it relates to those with diminished capacities, shapes not only the policy and practice of death penalty application in the United States, but also the policy and practice of countries around the world.

Because capital punishment and mental capacity is such a controversial area of the law, care must be taken in the development, discussion, and implementation of such policy. Education and understanding are the keys to any debate, and as such, The Saint Louis University Public Law Review has attempted to contribute to the education and understanding of these controversies with this issue. A diverse group of scholars who endeavor towards assisting the Public Law Review in the education and understanding of the death penalty and mental capacity submitted their work for this issue:

Ronald J. Tabak is the chair of the 2005 Task Force on Mental Disability and the Death Penalty created by the American Bar Association’s Section of Individual Rights and Responsibilities to consider the subject of mental disability and the death penalty. In his article, he discusses the current state of the 2005 Task Force Recommendations in several professional organizations, as well as reasons why the Recommendations command serious consideration. James Hooper addresses society’s systemic skepticism of mental illness from
an ethical standpoint. Betsy Malloy, Rhonda Cress, and Neil Grindstaff discuss the challenges facing mental health courts, Title II of the Americans with Disabilities Act of 1990, and the inaccessibility of mainstream courts to the mentally ill. Eileen Ryan and Sarah Berson discuss some of the complications faced in attempting to exempt the mentally ill from the death penalty, and they advocate, from both a practical and medical perspective, that any such exemption should be confined to the psychotic mentally ill. Peter Hodgkinson, Founder and Director of the Centre for Capital Punishment Studies at the University of Westminster School of Law in London, along with Nicola Browne, Seema Kandelia, and Rupa Reddy, provide an international perspective to the issue. They discuss the role of physicians and psychiatrists in the capital punishment process in several different countries, the implications for both practitioners and capital defendants with mental health issues, and the protocol developed by the Centre that focuses on these issues which is currently being implemented in Jamaica.

The Saint Louis University Public Law Review would like to take this opportunity to thank the authors who shared their insights and talent with us, as well as the Public Law Review staff and board whose tireless effort and devotion made publication of this issue possible. Specifically, we would like to thank Chief Justice Michael Wolff of the Missouri Supreme Court for providing the Introduction and both Professor Peter Salsich and Professor Roger Goldman for their guidance and assistance. Special thanks to Susie Lee and the faculty and staff of Saint Louis University School of Law.