November 21, 2013

1214 W Graham Road
Richmond, VA 23220

Hon. Robert E. Payne
Senior Judge Virginia Eastern District
Spottswood W. Robinson III and Robert R. Merhige, Jr., Federal Courthouse
701 East Broad Street
Richmond, VA 23219

Via Hand Delivery

Subject: Richmond Courts & Richmond City Commonwealth's Attorney

Dear Judge Payne;

We write to you ex parte out of extraordinary need (as we will explain,) soberly, cautiously, and with reason borne on voluminous evidence. We are not attorneys. Furthermore, we do not have now, nor expect to have in the future, business before your court.

We are reaching out to you specifically because of a conclusion made by another Federal judge, the Hon. James C. Turk, in the Michael Wayne Hash murder case: *...the Court is disturbed by the miscarriage of justice that occurred in this case and finds that Hash's trial is an example of an extreme malfunction in the state criminal justice system."* (Attachment 01 Hash Memorandum Opinion.pdf)

Mr. Hash was convicted on manufactured evidence and spent 12 years in prison for a crime he did not commit. Yet, no court in Virginia's appellate system was able to recognize gross prosecutorial misconduct.

We write to you because we are more than just disturbed; we are alarmed at the number of strikingly similar cases surfacing in Virginia almost on a daily basis. We contend that in the City of Richmond, prosecutorial misconduct has become a matter of policy.

Allegations

The miscarriage Hash experienced pales before the number and kinds of offenses in the Richmond City courts that, in our opinion, suggest there is an actual conspiracy to deprive indigent defendants- particularly African Americans- of their right to due process:

1. Discovery is routinely denied by the Richmond City Commonwealth's Attorney. Brady violations are so prevalent that we have been appraised that an Assistant Commonwealth's Attorney in charge of gang prosecutions, Ann Cabell Baskervill, was recently dismissed by Commonwealth's Attorney Mike Herring precisely because she turned over certain files demanded by a Federal Grand Jury.

   We cannot confirm but we believe Baskervill turned over said files while invoking the 5th Amendment. We further believe that said files expose massive corruption within the Richmond Commonwealth's Attorney office.

   Accordingly, we suspect Ann Cabell Baskervill is being subjected to both informal defamatory innuendo and Bar complaints, specifically designed to cower her into silence.

2. As symptomatic of a culture of denying discovery, we have caught the Richmond court clerks attempting to withhold pertinent public documents from public inspection. Even more alarming is that while both defense attorneys and the public have restricted access to Juvenile & Domestic Relations (JDR) court files, prosecutors have unsupervised access to them at all hours of the day and night, including weekends.

3. Court-appointed attorneys of record have been unlawfully substituted without hearing, notice, or service with others willing to push pleas at the behest of the Commonwealth.

4. In the Ashley Williams child starvation case, the defendant was actually denied her right to her own privately retained attorney.

   The attorney denied had been previously removed from the Williams case via fraud on the court (as we will demonstrate,) for the sole purpose of depriving the defendant her very viable medical based defense. That defense inexplicably was never revived by subsequent attorneys resulting in Williams' conviction.

5. Autopsy reports can no longer be assumed to be the product of objective science. The Office of Chief Medical Examiner (OCME) has been fully politicized by Commonwealth's Attorneys secretly lobbying to have reports written to comport with prosecution theory. This is particularly disturbing in light that the State Crime Lab was embroiled in a similar controversy just nine years ago.

   At that time, independent auditors found that the crime lab's so-called errors resulted from "*pressures from outside the laboratory"* and "*excessive managerial influence from within the laboratory*." Innocent defendants were sent to prison based not on erroneous, but actually fallacious, test results. (See pg. 17 para 6 Attachment 02 ASCLD External Review Audit Report.pdf)

6. Court appointed attorneys are unduly influenced through the absence of a fair and objective appointment process. Court payment data obtained from the Supreme Court of Virginia shows an unnaturally wide gulf exists between the highest fee earners and the least. In comparison, this disparity was not found in data from neighboring Henrico County.

   The wide payment difference suggests that attorneys/ firms that are favored by the Courts are handsomely rewarded, and those who are not are denied appointments. (Attachment 03 City of Richmond Court Appointed Counsel by FY.pdf) (Attachment 04 Waivers for Abato & Davis.pdf) (Attachment 05 Henrico Court Appointed Counsel FY 2012.pdf)

   While our investigation does not have the resources, much less the authority, to adequately investigate the court's payment scheme, there is an undeniable appearance that said favored status is based on both personal judicial relationships with these firms and approval by the Commonwealth's Attorneys.

7. Devika Davis Esq., is an example of a lawyer who has been handsomely rewarded for her propensity to plead her clients guilty and also figures prominently in several of the cases we cite herein. Davis was the one time partner in Abato & Davis PC, and our data indicates is one of the top earners with the vast majority of appointments coming from the Richmond Circuit Court.

   Another is Johnson, Gaborik & Fishere-Rizk PLC who, in the first year of formation, was able to immediately earn $374,658.00, with approximately 70% of that coming from the Richmond Circuit Court.

Still another mid 2011 startup, Davenport & Poindexter, was able to immediately earn a total of $183,872.50 with nearly 60% coming from the Richmond Circuit Court.

The court-appointed fee schedule established by §19.2-163 makes these enormous earnings extraordinary:

a.) *In District Court, $120 per misdemeanor charge waived to an additional* $120 for cases *when the effort expended, the time reasonably necessary for the particular representation, the novelty and difficulty of the issues, or other circumstances warrant such a waiver or (ii) an amount up to $650 to defend, in the case of a juvenile, an offense that would be a felony if committed by an adult...*

b.) *In Circuit Court, $445 per felony charge punishable by 20 years or less waived to and additional $158 when as above, effort expended, or difficulty of issues... warrant the additional payment.*

c.) *In Circuit Court, $1235 per felony charge punishable by more than 20 years waiverable to an additional $850 also when as above, effort expended, or difficulty of issues ... warrant the additional payment.*

Indigent defense fees awarded by courts far above the statutory schedule are termed "super waivers." Davis, for example, once was awarded a $11,522.50 super waiver by a Petersburg court for a case originally begun by another attorney. Her client was nonetheless convicted.

Regardless of the disparities seen in the data, we have been repeatedly advised that Attorneys are told that Richmond indigent defense appointments are distributed on a rotational basis amongst all qualified attorneys that "express an interest." The records of payments we have received from the Supreme Court of Virginia show that this cannot be true.

The inequitable distribution of indigent defense appointments structurally incentivizes plea bargaining by virtue that quick case disposal increases both the velocity and volume of payments and, in our opinion, is the engine driving these magnificent earnings.

8. Overreliance on plea bargaining also benefits the prosecution by masking their frequent lack of evidence.

9. Our investigation further reveals that Richmond Commonwealth's Attorneys have direct indicted specifically to avoid judicial questions of probable cause (PC) that should arise during preliminary hearings. The result is that once the Commonwealth is vested in a case without sufficient PC, evidence must be manufactured and discovery denied in order to secure convictions.

10. Appointments are made and other significant hearings are held without notice, or service even though defendants have a right to be present at their own trial; trial being defined by the Virginia Judicial Ethics Advisory Committee as "*anything is to be done which may affect the defendant's interest.*" (See comments in Opinion 00-4 dated Issued: May 8, 2000 which cites Jones v. Commonwealth, 227 Va. 425 (1984) as case law.)

These problems are exacerbated by the fact that the public has no practical path through which to secure relief. Courts seldom hold prosecutors to even the narrow account afforded by Imbler v. Pachtman 424 U.S. 409, 430 (1976) and related case law, such as Connick v. Thompson 563 U.S. 131 S.Ct. 1350; 179 L.Ed.2d 417 (2011).

Furthermore, outside of criminal prosecutions, courts are not to entertain complaints about attorneys but direct said complaints to the Virginia State Bar. Unfortunately, our experience is that like the Office of Chief Medical Examiner and the State Crime Lab, the Bar has also been fully politicized and therefore corrupted:

1. In 2009, Virginians filed 4,120 Bar complaints against attorneys and prosecutors. Of those, less than 4% were sanctioned. (While it is possible a very small number could be prosecutors, it is doubtful and separate statistics are not available.) (Attachment 06 Virginia State Bar Statistics 2009.pdf)

   However, former Third District Committee Bar member, David P. Baugh Esq., has advised us that he resigned from his committee post specifically because of the corruption he witnessed; particularly the Bar's refusal to hold prosecutors to the same ethical standards as defense attorneys.

2. The Virginia State Bar is integrated with the Supreme Court of Virginia. Combined with the requirement that the Bar channel disciplinarily referrals through the problematic Richmond Circuit Court, the legal topography is obviously a perilous one to traverse by anyone seeking a redress of grievances.

3. Corruption within the Virginia State Bar has recently been exposed by the termination of its own investigator, James E. Whitener, a 28 year veteran of the Naval Criminal Investigative Service.

   Whitener was probing prosecutorial corruption in Russell County. His dismissal came at the behest of the very attorneys and prosecutor he was investigating. (Attachment 07 T-D Story Bar Investigator Fired for Investigating Prosecutor.pdf)

   Furthermore, the Bar has denied our query as to whether or not Whitener's investigation into the Russell County matter has continued under a new investigator. The Bar's response leads us to conclude that it has not. (Attachment 08 Email Exchange Hicks Blanton.pdf)

   However, the Virginia State Bar exonerated itself of any wrongdoing in firing Whitener, and was not shy in revealing this to the press. We have reason to believe that the subject of Whitener's probe was bribery. (Attachment 09 VLW Story VSB Clears Itself in Firing.pdf)

4. The actions of the Virginia State Bar in the Russell County matter do not surprise us. The Third District Section II Committee first made secretary, then chairwoman, the aforementioned Devika Davis, who along with her former law partner, Diane Abato Esq., were successfully sued in 2008 for allegedly taking client files from a law firm where they had previously been employed, Johnson Jones LLP (now defunct.) (See Richmond Circuit Court Case No. CL07004937-00.) The trial was by jury. The award is believed to have been substantial.

   Beginning immediately following the Johnson Jones victory, partner Vaughan Jones Esq. was subjected to a series of Bar complaints that regardless of merit, in our opinion, was engineered by Abato.

Jones was disciplined five times with the latest in 2012, after Davis had become secretary of the very committee to which he is subject. (Attachment 10 Vaughn Jones VSB History.pdf)

As we stated previously, Davis is also a central figure in other cases we will detail where she allegedly allowed an incarcerated client to sit in jail without a bond hearing for over a year, undermined an attorney client relationship, dismissed medical experts specifically ordered retained by her client, pushed pleas, shared co-counsel work product with prosecutors, and conspired with prosecutors to commit fraud on the court in order to have her co-counsel removed from a case.

It is also our opinion that Davis obstructed justice in the Ashley Williams child starvation case by either destroying or simply denying subsequent attorneys a set of privately purchased laboratory evidence, i.e. tissue slides, costing approximately $1000.00. The slides were not paid for by Davis, but by the client's original attorney, Pauline Ewald, Esq..

What kind of vetting process would allow an attorney under such a shadow judge other attorneys? Our query found that there essentially is none.

Furthermore, the Bar's representative stonewalled our inquiries into the circumstances surrounding Davis' appointment. (Attachment 11 Email Exchange Hicks Blanton2.pdf.)

Failure of the Media

In our opinion, the public has not put pressure on the Commonwealth's Attorney or the local courts because the major press does not report prosecutorial and judicial abuses.

We believe this abrogation of journalistic responsibility is partly due to preexisting prejudices regarding an assumption of defendant guilt. However, we have also found that in some instances, the media's legal advisors have business before the very courts their clients are to report.

When we sought to discover why two television stations did not report on a news conference we held regarding the Richmond courts, we discovered that WTVR 6 had such an advisor, Todd Stone Esq., with business before the court.

Additionally, the station's star feature reporter, Mark Holmberg, was himself in trouble with the law and his son had been charged with a number of felonies in Henrico County the previous year. (Attachment 12 T-D Story Hazelgrove Plea Deal.pdf) (Attachment 13 T-D story Holmberg DUI.pdf) (Attachment 14 T-D Crime & Police Reports.pdf)

Stone had negotiated a sweetheart plea deal for his client, William Lee Hazelgrove Jr., with Commonwealth's Attorney Mary Langer Esq., whereby his client would only be charged with a misdemeanor instead of a felony, and serve no time in jail. Langer will figure prominently in other cases cited in this letter.(Attachment 15 T-D Story Hazelgrove Suspended Sentence.pdf)

Another television station, WWBT 12, also had a legal advisor, Steve Benjamin Esq., with business before the Richmond court. (Attachments 16 WWBT Story Schneider Case Gag Order.pdf)

Benjamin was representing Todd Schneider, the former executive chef at the governor's mansion.

Benjamin complained to the Hon. Margret P. Spencer that the Attorney General was not obeying a gag order she had issued in the case. The AG had spoken at length about the case to both the Washington Post and on air with a local powerhouse talk radio station, WRVA 1140.

Judge Spencer, who, also figures prominently in the Ashley Williams child starvation case, is well known by us to be highly biased toward the prosecution, and to our knowledge, never sanctioned or otherwise compelled the AG to conform to her order.

The outcome for Schneider, like Hazelgrove, both of whom are white, stands in stark contrast to the treatment African-Americans receive from the Richmond courts and Commonwealth's attorneys.

Despite the embezzlement the court valued at $2300- clearly a felony- Schneider was given a misdemeanor plea deal, repaid the dollar equivalent of the embezzled foodstuffs, and served no jail time. (Attachment 17 T-D Story Plea Deal for Schneider.pdf)

Benjamin was careful to posture himself inoffensively for good reason. Prosecutors routinely try cases before the court of public opinion and do so with impunity. However, even without a gag order, defense attorneys who speak to the press have been known to be subjected to Bar complaints and even prosecutions pressed by the Bar itself. (Attachment 18 VLW Blog Horace Hunter VSB.pdf)

Note that Horace Hunter is African-American.

The City's single daily newspaper, The Richmond Times-Dispatch, is not much better at informing the public, possibly because its principle court reporter, Reed Williams, must divide his time between several surrounding venues as well as covering local sports. We do not view this resource allocation as indicative of any serious commitment to meaningful court reporting.

However, The Times-Dispatch does sometimes expose the inner workings of the courts, and even the Bar, piecemeal, such as its story on the James E. Whitener dismissal.

Yet, at other times, grossly one sided reporting takes on an appearance of propaganda.

In a Richmond Times-Dispatch story on the Brandon D. Cooper murder case, Commonwealth's Attorney Mike Herring was unchallenged when he stated, “Any accusation that Chris (Jones) engaged in unethical conduct, or was unethical, is patently reckless.” Herring's tone could be interpreted by some as threatening. (Attachment 19 T-D Story Brandon Cooper.)

Regardless of Mr. Herring's protestations, denying a defendant exculpatory evidence *is* unethical according to VSB Rule 3.3 a (2) and 3.4 (a). Furthermore, the Brady violations made by Jones were committed to provide cover for both the Commonwealth's lack of probable cause and Chris Jones' necessary efforts to build a case on suborned perjury. This was precisely the same method used to put the innocent Michael Wayne Hash away for 12 years.

Jones not only withheld a 911 recording that revealed their star witness did not see the defendant flee the murder scene as she later testified in court, Jones lied when he told defense counsel that the recording had no exculpatory content and therefore would be of no benefit to them. Jones also hid from the defense the fact that another prosecution witness was a regularly paid police informer.

Still, Times-Dispatch reporter Reed Williams left the reader with the impression that the Cooper case was an isolated incident.

Cooper's original 2012 conviction and 55 year sentence was overturned and a retrial was scheduled for late August 2013.

A Motion to Dismiss (MTD) was filed in the Cooper case August 2, 2013, based on prosecutorial abuse. As Hon. Bradley B. Cavedo was vacationing, the motion was not heard until August 16, 2013. It was our understanding that Cooper's defense attorneys were also to reveal extensive corruption by calling as witness the aforementioned former gang prosecutor, Ann Cabell Baskervill.

However, the opportunity for such motion to be argued did not arise. (Attachment 20 Cooper MTD.pdf) (Attachment 21 Cooper Hand Written Statement.pdf)

After exposure by Cooper's MTD, Commonwealth's Attorney Mike Herring replaced the original prosecutor, Chris Jones, with himself. It is also our understanding that Herring claimed to have multiple new witnesses previously unknown to the defense, and used this new discovery to coerce Cooper into taking a one-time take-it-or-leave-it plea deal.

As the retrial had been scheduled for the following week, the short notice conformed to a pattern we call "ambush discovery." Should they actually exist, the defense would have had little time to vet each of these supposed new witnesses.

The incarcerated defendant appeared in court clad in an orange jumpsuit and armed with not less than three lawyers: Jason Anthony Esq., David Baugh, and John Kenneth Zwerling Esq. of Alexandria. Zwerling appeared to take charge of the preceding.

After Zwerling motioned to Judge Cavedo for a delay so that he could meet with the defendant, Cooper followed a pattern we have too often observed: The defendant suddenly and unexpectedly accepted a plea deal.

Cooper's family, having been encouraged by the strength of the MTD, was shocked and dismayed. The plea deal reduced Cooper's original 55 year sentence to 14 years given a 41 year suspension.

Herring completely changed his tune in the subsequent Times-Dispatch story, characterizing the necessity of having to offer such a deal to Cooper as a "bitter pill," and blaming the responsibility for it not on his prosecutor, but on an unnamed witness. (Attachment 22 T-D Story Cooper Plea.pdf)

It is our opinion that given the revelations in the MTD, and the vindictive and coercive nature of the plea deal, Judge Cavedo should have denied the plea and directly dismissed the case with prejudice.

As it stands, a young man with whom the Commonwealth could not present any *factual* proof of guilt at trial, was put into a position of having to accept a plea out of justifiable fear. Additionally, it is our understanding that by state law, Cooper's plea makes him ineligible to file an appeal.

The truth is that Herring swallowed no bitter pill at all. He richly benefited as Baskervill's allegations of massive corruption was not revealed in open court. In our opinion, Herring and company will now have the opportunity to destroy Baskervill's professional reputation.

Incidentally, Cooper had been under nearly continuous prosecution for about ten years. A full page from the Circuit Court Information System shows case after case ended in either nolle prosequi (NP) or dismissal. (Attachment 23 Cooper CIS History.pdf)

Additional Cases

In another Richmond Times-Dispatch story about the Kevin Cunningham murder case, the Commonwealth sought to prejudice the jury toward the defendant by asking him on the stand if his firearm had been obtained illegally. Mr. Herring sought to brush over this improper questioning by telling the reporter that the incident was nothing more than a small counterintuitive technicality.

Mr. Herring was also reported as claiming that raising criminal history during examination *is* permissible. Of course, we all know it is not. The improper questioning resulted in a reversal on appeal. (Attachment 24 T-D Story Kevin Cunningham.pdf)

Any remaining notion that the Richmond Commonwealth's Attorneys are ethical should be dispelled by the India Scott child abuse case. Here, the very first charge made by prosecutors ended in a mistrial due to a discovery violation. The Commonwealth won a conviction in the second trial by impaneling an openly prejudiced juror.

During the second trial's voir dire, a prospective juror being examined by the aforementioned prosecutor, Mary Langer, admitted that he esteemed prosecutors so highly that he believed those charged with crimes had to be guilty by virtue that they had been charged.

The Hon. Richard D. Taylor permitted this prejudiced juror to be impaneled resulting in Scott being denied her due process. The conviction was overturned on appeal, only to see Scott suspiciously plead guilty on retrial.

We say suspiciously for why would a defendant appeal a conviction only to later plead guilty? While there is no doubt that Scott did injure her infant, there is good evidence that she suffered from postpartum psychosis. Scott had also been under prosecution for four years. (Attachment 25 India Scott Appeal Decision.pdf)

It is our opinion, based on our observations of the Circuit Court Information System that targeted defendants are repeatedly charged with crimes without probable cause and their cases drawn out until they are financially and emotionally broken.

Regardless of innocence, after such conditioning, defendants are much more likely to accept pleas offered by the Commonwealth.

In the Victoria Enriquez child abuse case, the Commonwealth pursued the defendant for a total of seven years. The first charge was for allegedly having burned her oldest son with cigarettes was in 2004. The Circuit Court Information System indicates that the case was NP'd on the very day of trial.

Neither Victoria nor her husband smoked and the alleged incident was claimed to have occurred four years prior. Incidentally, Enriquez and her husband are devout Muslims. The allegations were made by an ex-wife.

The Commonwealth came back at Enriquez again in 2010, charging her with malicious wounding and child abuse. The Hon. Beverly W. Snukals dismissed the charges *even before the defense presented their case*. The prosecutor, the aforementioned Mary Langer, was criticized by the judge for having absolutely no evidence with which to prosecute Enriquez. (Attachment 26 Com v Enriquez Excerpt.pdf)

It should be noted that the defense would have shown that the child was injured during the course of CPR performed by a very large and powerful male EMT. The origin of the emergency call was respiratory distress caused by an onset of pneumonia.

We have been appraised that during the course of the trial, an audio recording was played of an investigating detective, Edward Aeschlimann, interviewing Enriquez's husband. During the interview, Aeschlimann allegedly made an ethnically offensive comment.

When investigator Hicks attempted to garner a copy of the recording from the court file, no audio recording or transcript of same was available. Still, the attorney representing Enriquez in the child custody matter, Pauline Ewald, was present at the criminal trial and distinctly remembers it. (Attachment 27 Ewald Statement Regarding Det Aeschlimann.pdf)

Despite an absence of evidence, Enriquez was denied bail and was incarcerated in the horrible conditions of the Richmond City jail for 8 months. After the case was dismissed, it took still another year and 4 months for her children to be returned to her. It is our understanding that both Enriquez and her children were fully traumatized by the protracted separation.

During that custody period, it is our understanding that her children were placed in separate and culturally insensitive foster homes where they were allegedly fed pork and subjected to other experiences abhorrent to their Islamic faith.

While we do not have the authority or resources to verify Det. Aeschlimann's history, existing evidence warrants investigation. As ordinary patrol officers, Aeschlimann and his partner, Michael Couture, were involved in the shooting of an unarmed black male, Santanna Olavarria, in 2004.

Couture was controversially convicted of manslaughter for Olavarria's death. However, then recently elected Commonwealth's Attorney Mike Herring moved to dismiss all charges against Aeschlimann. Former Commonwealth's Attorney, David Hicks, opined that the Commonwealth's action was partly due to an "us against them" mentality. (Attachment 28 Style Story Herring Drops Case Against Aeschlimann.pdf)

In our opinion, Herring's motion warrants investigation in that while Couture is claimed to have fired once into Olavarria, Aeschlimann is reported to have fired four times. There is also an unconfirmed report of a fifth bullet being found in the rear driver's side door. (Attachment 29 CHPN Story Damning Transcript.pdf) (Attachment 30 CHPN Story Controversy Over Extra Bullet.pdf)

Couture appealed but the conviction was upheld. (Attachment 31 Couture Appeal Decision.pdf)

Aeschlimann was later promoted to detective.

The pattern of perfidy committed by the Richmond Commonwealth's Attorneys is not limited to charging defendants without probable cause, discovery violations, or open prejudice. Switching attorneys on young defendants is not beneath them, either.

In the juvenile case of Q.F., heard by the Hon. Bradley Cavedo, prosecutors Mary Langer and Julie McConnell Esq. attempted to substitute the attorney of record, Pauline Ewald, with another attorney willing to plead young Q.F. Guilty.

Judge Bradley Cavedo stopped the illegal substitution and ultimately the Commonwealth had to NP the case due to their gross lack of evidence.

We highly recommend that Your Honor review the brief and reply brief McConnell filed. We also highly recommend Your Honor query Judge Cavedo on the allegedly contemptuous representations made by McConnell to him in court. An affidavit from the juvenile's mother details her perspective of the day in question. (Attachment 32 Felicia Fitzgerald Affidavit.pdf) (Signed copy filed with Bar.)

The Q.F. case is particularly disturbing because the juvenile would have had to spend the rest of his life on a sex offender list for a crime he did not commit.

The Q.F. substitution is also not an isolated instance. The same attorney, Pauline Ewald, was removed from the Giovanni Garcia case without reason, notice, or service, much less a hearing, and replaced with the aforementioned Devika Davis. Ewald only discovered the substitution on the very day of trial.

Davis predictably pleaded her client guilty even though the victim had repeatedly testified that she could not identify Garcia. (Attachment 33 Ewald-Scruggs Email Exchange Concerning Relief From Garcia Case.pdf)

Our fear is that particularly with young defendants, it is not unusual for uncooperative attorneys of record to be unlawfully replaced when the state lacks sufficient evidence to win a conviction.

Attorney Devika Davis also allowed a client, Derrick Q. McCoy, to sit in jail for 15 months without a bond hearing. Davis attempted to convince McCoy to accept a guilty plea with a 19 year sentence but he refused. After strong demands from McCoy and his family, Davis did take the case to trial and won an acquittal.

Despite the ultimately just outcome, McCoy languished in jail for well over a year for an offense he did not commit. There was no concern from the Court or the defense counsel about undue continuances in a matter involving an incarcerated defendant. (Attachment 34 McCoy Case Detail CR11F05563-00.)

Again recall that Devika Davis is now the chairwoman for the Virginia State Bar Third District Committee Section II judging other lawyers.

Devika Davis was also appointed as co-counsel on the Ashley Williams child starvation case, without hearing, notice, or service, on January 12, 2011. This case is shocking in its ethical depravity. (Attachment 35 Williams Case Detail Partial.pdf)

The Ashley Williams Case

The Williams' case involves the death of an approximately 2 year old boy, DeSean (pronounced DayShawn.) who died in his home sometime during the night of May 31, 2009. Despite his failure to attain weight within the developmental norms established by the CDC, no clinic, hospital, or doctor ever diagnosed DeSean with a condition known as Failure to Thrive (FTT.)

DeSean was a Medicaid patient at the Manchester Pediatric Clinic. The primary care physician was Dr. Sandra Bell MD. Additionally, the child had ample contact with City agencies mandated by statute to report child abuse, such as the Department of Social Services.

Three other males in the extended family also suffer from FTT, and it is our understanding that these children were only diagnosed after their mothers sought medical care apart from the Manchester Pediatric Clinic following DeSean’s death.

One of America's preeminent pathologists, Dr. Cyril Wecht MD JD, opined that DeSean suffered from thymic involution resulting in a completely compromised immune system, sepsis, and FTT possibly caused by DiGeorge Syndrome.

Additionally, the villi in DeSean's digestive system were so atrophied he would not have been able to absorb sufficient nutrients no matter how much food he would have eaten. DeSean desperately needed to be hospitalized so he could be intravenously fed and administered critically needed antibiotics.

While there would have been no guarantee of survival, any road to recovery for this little boy would have been long, arduous, and enormously expensive. To no surprise, at Williams' trial, Dr. Bell testified that she did not hospitalize DeSean because Medicaid protocols did not call for it.

Our opinion is that DeSean's tragic demise was due to medical malfeasance brought about by a fatal combination of medical malpractice and Medicaid protocols.

None the less, without benefit of an autopsy report, prosecutors Mary Langer and Julie McConnell direct indicted Williams on July 6, 2009. Their probable cause was nothing more than a post mortem photo of DeSean.

When the preliminary autopsy report arrived later that fall with the indicated manner of death stated as undetermined, Langer secretly lobbied to have the report rewritten to comport with her theory that DeSean had been deliberately and selectively starved to death. This theory was ludicrous considering DeSean had three other healthy and normal weight siblings. (Attachment 36 Langer Letter to Dr. Kay.)

Langer's lobbying set in motion a series of Office of Chief Medical Examiner (OCME) consensus conferences that delayed the publication of the autopsy report until April 15, 2010. The long delay resulted in the original charge being NP'd in January 2010 out of speedy trial concerns. Still, the manner of death remained undetermined in the final and official report. (Attachment 37 OCME Consensus Conference Notes.)

In the intervening period, Langer attempted to sidestep the stated manner of death and secure an easy conviction by offering Williams a plea deal. However, the effort didn't go well when Williams' original attorney, Pauline Ewald, declined the deal.

Langer allegedly screamed curses and threw post mortem photos of DeSean at Ewald. The incident was memorialized by an email from Langer to Ewald apologizing for her behavior. (Attachment 38 Langer Apology Email.pdf)

Having no official part in the proceedings, Langer nonetheless began attending Williams' civil custody hearings in JDR court. This not only afforded Langer a preview of the medical defense Ewald was developing, she was also able to intervene in the civil matter by attempting to influence an expert witness, Dr. Michelle Nelson.

At the April 29, 2010 JDR custody hearing, a different medical examiner, Dr. Kevin Whaley MD, was substituted for the ME who had actually performed the autopsy on DeSean, Dr. Deborah Kay MD.

In what has been a Commonwealth pattern of producing discovery just moments before pertinent hearings, Ewald did not receive a copy of the autopsy report until the morning of April 29, 2010. However, the existence of Langer's OCME lobbying and the Consensus Conference Notes continued to be withheld from the defense.

As a participant in the OCME Consensus Conferences, it is our opinion that Dr. Whaley perjured himself when he stated to the court that the OCME's collective opinion was the exact opposite from what is witnessed by said notes. Furthermore, Dr. Whaley emphatically assured the court that the autopsy report would be changed. (Attachment 39 Partial JDR Hearing Transcript 4-29-2010.)

Despite the manner of death never being restated as homicide, Dr. Whaley repeated his unsupported testimony at the later felony murder trial in May of 2013.

Knowing full well that the OCME had settled the matter of the manner of death, Langer & McConnell, as officers of the court, sat in the JDR hearing observing Whaley's perjury, and took no action then or thereafter to correct his fallacious testimony.

As stated above, prior to the April 29th hearing, Langer repeated her pattern of secret lobbying by contacting Dr. Nelson and urging her to not recommend the return of Williams' other healthy and normal weight children. Langer justified the proposed denial by advising Dr. Nelson that Williams would soon be reindicted for murder.

Using threats of criminal prosecution to gain an advantage in a civil matter is a violation of Bar Rule 3.4 (i.) (Attachment 39 Partial JDR Hearing Transcript 4-29-2010.pdf)

Dr. Nelson's report did recommend that Williams' family should be reunited but only in the event that Williams was not reindicted.

As Langer promised, Williams was reindicted on June 8, 2010. Ewald, still representing Williams in the civil matter, was again reappointed as defense counsel. Ewald recruited as a defense expert witness the aforementioned pathologist, Dr. Cyril Wecht MD JD. A series of pretrial hearings were held over the summer and into the early autumn.

Just prior to the trial, originally scheduled for early December, 2010, Langer unleashed a barrage of filings we believe were intended to intimidate and distract Ewald from the immediate matter at hand- defending her client.

Langer filed a Bar complaint, a motion to compel discovery (MTC); a motion in limine (MIL) to disqualify Ashley's experts (based on such frivolity as the doctors were licensed out of state and one expert was a DO and not an MD,) and most audaciously, a motion to redact DeSean's autopsy report. (Court file.) (Attachment 40 Ewald Response to Langer VSB.) (Attachment 41 Williams Oppose MIL.) (Attachment 42 T-D Story DeSean's Weight.)

To make matters worse, as the trial neared, Ewald's father fell gravely ill and was hospitalized. Subsequently, Ewald asked for, and was granted, a continuance. However, at the adamant insistence of the Commonwealth, the Hon. Thomas N. Nance (deceased,) substituting for the Hon. Richard D. Taylor, imposed co-counsel on Ewald.

After the first co-counsel withdrew in late December 2010, Devika Davis was appointed by Judge Taylor without a hearing, notice, or service on January 12, 2010.

Ewald opposed the appointment because Davis' then law partner, Diane Abato, had been appointed back in 2009 as Williams' adult guardian ad litem (GAL.) Ewald's opposition was based on her understanding of VSB Rule 1.8 (b) (k) that extends one attorney's conflict of interest to all attorneys of the same firm.

Furthermore, Ewald alleges that Abato did not fulfill her statutory obligation under VA Code § 37.2-1003. Abato had not met Williams until Ewald had introduced them just prior to a JDR hearing in the spring of 2010.

Davis' defense was that even though Abato had been appointed GAL, Abato had never met Williams. Nonetheless, Abato did bill the court for four hours of GAL time even though Williams never received the GAL services she so desperately needed. (Attachment 43 Abato GAL Time Sheet.)

An interesting aside is that Abato was appointed by Judge Taylor even though the Supreme Court of Virginia has confirmed to us that Abato was not, and has never been, a certified adult GAL.

When the motions to dismiss the defense's medical experts and redact the autopsy report failed *twice*, with *two* different judges, our opinion is that Langer and McConnell sought to relieve themselves of Williams' medical defense. They accomplished this by having the attorney who had developed it dismissed via fraud on the court.

Davis filed a Motion To Withdraw (MTW) on March 7, 2011, and Judge Taylor heard it 24 hours later on March 9, 2011.

The speed at which Judge Taylor set the hearing is in our opinion indicative of his bias toward Davis: Supreme Court of Virginia Rule 1:7 requires 72 hours between filing a motion and the motion being heard. Additionally, Davis did not serve Ewald and only notified her by email the very morning of the hearing. (Attachment 44 Davis MTW No Service to Ewald.pdf)

Davis, justified her MTW in part by accusing Ewald of "pledging her fees" and self-admittedly did so without having any evidence. To support Davis' fallacious hearsay, McConnell defrauded the court by representing as *very* relevant case law, *U.S. v. Stitt,* 441 Fd. 3Rd 297.

Stitt is not a case about fee pledging. Stitt is actually a felon's failed appeal based on an argument that his attorney did not spend *enough* money to acquire sufficiently expert witnesses.

This glaring misrepresentation cannot be excused as mere error. McConnell is a professor of law at the University of Richmond. Lack of candor would be overly charitable. McConnell misrepresented Stitt because there is no relevant case law. (Attachment 45 Motions Com vs. Ashley Williams 3-09-2011.).) (Attachment 46 *U.S. v. Stitt,* 441 Fd. 3Rd 297.pdf)

We have expended many man hours searching for a prohibition on "fee pledging," but we have found none. Moreover, there was no need to pledge anything as two of the expert witnesses were working pro bono and the third, Dr. Cyril Wecht, was charging a greatly reduced fee that had been approved by the court.

Furthermore, Dr. Wecht, Dr. Manzella DO, and Dr.Cantor MD all provided affidavits affirming that Ewald made no unethical representations or offers to them. (Attachment 47 Wecht Affadavit.pdf) (Attachment 48 Manzella Affidavit.pdf) (Attachment 49 Canter Affidavit.pdf)

Davis also claimed that Ewald had not assisted her in becoming familiar with this admittedly highly complicated case. However, emails are extant that not only show Ewald had briefed and shared pertinent files with Davis, at one point Davis had actually expressed enthusiasm for the medical defense. (Attachment 50 Email Ashley Williams.pdf) (Attachment 51 Email Re Malnutrition.pdf)

McConnell also asserted in regard to fee pledging, that she (McConnell) had concerns that Ewald would not further interview witnesses. As Davis had made no mention of this issue in either her written MTW of March 7, 2011, or her representations before the court on March 9, 2011, McConnell's assertion is remarkable. In our opinion, it raises the specter of Davis having shared and misrepresented a confidential co-counsel work product- an email- with the Commonwealth. (Attachment 52 Email Chain Davis Ewald 3-7-2011.pdf page 2 para 4)

Accordingly, it is our conclusion, that in light of Davis dropping the strong medical defense after Ewald's dismissal, and McConnell's extraordinary remark about not further interviewing witnesses, inappropriate cooperation existed between Davis and the Commonwealth resulting in Williams being denied her due process.

In absence of any contrary evidence, the Court subsequently criticized Ewald for lack of candor, fee pledging, failure to cooperate with co-counsel, and faulty legal reasoning in her opposition to Davis' appointment. Ewald was dismissed just 21 days from trial, leaving Davis alone as Williams' sole defense counsel. (Attachment 45 Motions Com vs. Ashley Williams 3-09-2011.pdf) (Attachment 53 Email Re Scheduling.pdf)

Ewald was not just dismissed from the Williams case. On March 15, 2011, Ewald alleges that the Hon. Ashley K. Tunner told her "we have heard of your troubles up in the Circuit Court and the prosecutors have been complaining about you." Ewald was immediately relieved of all JDR cases and was referred to Lawyers Helping Lawyers even though she does not smoke, drink or use drugs.

It should be noted that said prosecutors would have had to be Mary Langer and Julie McConnell. Langer is the Supervising Deputy Commonwealth's Attorney in JDR and McConnell, while now a kind of adjunct, to our knowledge still works closely with Langer.

After Ewald's dismissal in 2011, Diane Abato, Davis' then law partner, appeared before Williams and announced that she was her lead counsel. Curiously, about seven months later, Abato disappeared again without any apparent leave in violation of Rules of Court 1:5. (Attachment 54 VDH Memo Lester Helen Regarding Abato.pdf)

The Abato-Davis partnership was obviously dissolved sometime between November 2011 and January 2012, because Davis incorporated herself on January 26, 2012. (Attachment 55 Williams Affidavit page 3 para 21-25.pdf) (Attachment 56 Abato & Davis PC.pdf)

Against Williams' expressed desires, Abato and Davis abandoned the medical defense and the expert medical witnesses. One of those experts, Dr. Cyril Wecht, directly advised investigator Perry Hicks that after Ewald's removal from the case, the only contact made with him regarding the case was a letter from a later attorney, Carey Bowen Esq., on July 24, 2012. Dr. Wecht stated that he had responded on July 31, 2012 affirming that he stood by his report which was very favorable to the defense. (Attachment 57 Wecht Report DeSean Williams.pdf)

According to Williams' affidavit, Davis had from the beginning worked to undermine Williams' attorney-client relationship with Ewald. Independent confirmation comes from recorded jailhouse telephone conversations later played in Court in 2012. In our opinion, the recorded conversations are not at all complimentary of Davis' professionalism. (Attachment 58 Tracks 01-08 Jail Telephone Conversations.) (Attachment 44 Davis MTW No Service to Ewald.pdf)

Davis was certainly less than truthful when she reassured Williams that she (Davis) would not "allow those people to railroad you." In just a little over 7 months, Davis not only dropped the medical defense, she pushed a plea deal at her. (Attachment 58 Track 04 I won't let those people railroad you.mp3 @ 02:34:42,) (Attachment 52 Email Chain Davis-Ewald 3-7-2011.pdf)

The medical defense was never revived by any attorney subsequent to Ewald's dismissal, and the aforementioned set of highly exculpatory tissue samples never resurfaced.

When investigator Hicks inquired of them, attorney Paul Gregorio Esq., assisting Joe Morrissey in the 2013 trial, was unaware of their existence.

It should be noted that the telephone conversations recorded in the city jail suggest Williams believed Davis had at will direct ex parte access to Judge Taylor. (Attachment 58 Track 03 Jail Telephone Conversations.)

As previously stated, DeSean had never been properly diagnosed with FTT, having a totally compromised immune system, or his body being overrun by a massive infection. Accordingly, Dr. Manzella felt that the primary care physician, Dr. Sandra Bell of the Manchester Pediatric Clinic, was guilty of medical malfeasance and should have been the individual prosecuted. (Attachment 59 Email Chain Manzella Cantor Ewald.pdf)

Ashley's sisters have privately stated to us that Davis had advised them that Ewald's medical experts were "quacks," and that Williams actually had no defense.

In our opinion, Davis's actions are indicative of her real interests residing with someone(s) or something(s) other than her client. The primary beneficiaries would have been the Commonwealth, Dr. Sandra Bell, and Richmond's Department of Social Services.

As previously stated, the case was allowed to languish over the course of the summer of 2011 until that autumn, when Williams, now incarcerated for a separate drug charge, accepted the plea deal pushed by Davis.

Around the same time that Davis was pushing the plea at Williams, Judge Taylor conveniently accepted an ex parte communication from an individual Ewald had accused of grand larceny, Nissi Ridley-Farrar (otherwise known as Ridley.) Judge Taylor exploited the opportunity by filing a Bar complaint against Ewald based in part on Ridley's unsupported allegations. Judge Taylor then shared the complaint with a State Police investigator, effectively shutting down a felony theft investigation. (Attachment 60 Taylor Bar Complaint.pdf) (Attachment 61 Ridley Letter to Judge Taylor.pdf) (Attachment 62 Richmond Circuit Court Cover Ltr 11-18-11.pdf)

In the complaint, Judge Taylor advised the Bar that he had not only dismissed Ewald from the Williams case, but other courts in Richmond had dismissed her from other cases, as well. He offered no reason or evidence for these dismissals, nor did he cite any violations of Bar rules.

It is our opinion that as then Chief Judge of the Richmond Circuit Court, it was Judge Taylor who engineered the dismissals from said "other" courts and denied Ewald further indigent defense appointments. Ewald continued to represent clients in other Richmond circuit and district courts without complaints from the bench. It should also be noted that Ewald was not having similar difficulties in other venues.

We believe Judge Taylor's correspondence made his motives far more transparent than he intended. He didn't provide under separate cover a transcript merely to reassure the Bar *his* conduct was ethical, but to smear Ewald with something that actually occurred under another attorney, Shannon Taylor Esq..

One of Shannon Taylor's incarcerated clients had threatened in writing to exercise her right to file a Bar complaint against her prosecutor, Tracy Thorne-Begland (now a Manchester District Judge.) Ewald was appointed after Shannon Taylor had won her election to become Henrico County's Commonwealth's Attorney.

In her letter, Ridley revealed her motives for contacting Judge Taylor were allegations against her of theft from Ewald of a retainer fee, practicing law without a license, and making claim to being a licensed private investigator:

1. An email from the client pegged the theft at $1500. Despite not having received the stolen payment, and the need for several hours travel time, Ewald fulfilled her obligation to represent the client. (Attachment 63 Ewald- Sandidge email exchange.pdf

2. Ridley makes claim to "sharing clients" and invoiced Ewald as if she were a lawyer or a licensed investigation firm. Ridley-Farrar even had an email account suggesting she was in legal practice, nridleylaw@gmail.com. (Attachment 64 Email to Craigs List.pdf)

3. Our opinion is that Ridley's resume was fallaciously embellished as we could find no record of "Mitigation Law" incorporated in Colorado. We also have reason to believe her other employment claims will not completely hold up under scrutiny, either. (Attachment 65 Ridley Resume.pdf)

4. Ridley is only a *registered* private investigator that must be employed by a *licensed* investigation company; her DCJS number begins with a "99" while a licensed investigation firm's number would begin with an "11." (Attachment 66 DCJS Search Screen for Ridley.pdf)

5. As to Ridley's claims to Ewald having professionally abandoning her daughter, Ridley had in fact emailed Ewald advising that her services would not be needed. (Attachment 67 Email Ridley Releasing Ewald.pdf)

Judge Taylor's VSB complaint letter is long on innuendo but short on facts. Because the only legal avenue to address concerns with attorney conduct is the Virginia State Bar, Judge Taylor should have directed Ridley to pursue her complaints directly with the Bar, which we have reason to believe Ridley well knew how to do.

Judge Taylor's inappropriately exploited the opportunity afforded by Ridley and, in our opinion, is strongly indicative of a personal vendetta against Ewald.

Having had a very viable defense dismissed against her will by her supposed legal representatives, Williams had no other choice but to take the Commonwealth's plea deal sometime toward the end of November, 2011. Hearing of the plea, Ewald fired off a complaint to the Judicial Review & Inquiry Commission (JIRC) regarding Judge Taylor's conduct.

However, the course of Williams case changed on February 24, 2012 when the Richmond Free Press published a story that raised strong questions of reasonable doubt. Davis was quoted as saying in regard to Dr. Wecht, "His opinion, in my view, was not based on science." (Attachment 68 Free Press Story Ashley Williams Case.)

Not only does Dr. Wecht have 50 years of pathology experience, examined or consulted in over 17,000 cases, he also has a law degree. Dr. Wecht's credibility is so high amongst network news organizations, he is routinely asked to comment on air about cases of national prominence. For this reason, Ewald called her assemblage of expert witnesses a "world-class defense." (Attachment 69 Dr. Cyril Wecht.pdf)

The February 28, 2011 presentence report hearing was turned upside down and Judge Taylor lost control of his court from then on until his final recusal later that summer.

On April 17, 2012, Executive Director of the Virginia State Conference of the NAACP, King Salim Khalfani, accompanied by one of Williams' sisters, visited Williams in jail. Williams indicated that she had never wanted to plead guilty and wished to reassert her innocence and ask for Ewald's return as defense counsel. Khalfani informed Williams that she could still withdraw that plea.

The April 18, 2012 presentence report hearing was originally supposed to be for sentencing but Williams fired Davis just prior to start of court. The NAACP, a local justice coalition, The Defenders for Freedom, Justice & Equality, local media, and Williams' family and friends, filled the courtroom and were witness to the drama that unfolded over the next minutes. (Attachment 70 Com vs. Ashley Williams 4-18-2012.pdf)

It should also be noted that members of the Commonwealth's Attorney's office and the city's Department of Social Services, filled the rows on the prosecution's side.

As if apologizing for being blindsided by Khalfani, Davis told the court that she didn't visit Ashley *the very day before sentencing* because "... that was not something that I felt was necessary..." In our opinion, that admission revealed just how callous Davis could be toward a client.

Davis justified her withdrawal in part by saying, "especially since the Free Press article was published, I think apprehensive about civil liability on my part."

In addition to firing Davis, Williams also withdrew her guilty plea and requested that Ewald be returned as counsel. Ewald was present in the courtroom with a Motion to Substitute (MTS) in hand. However, the Court did not acknowledge her presence.

The Commonwealth strongly objected to the plea change. However, Williams' motion was in conformance with VA Code § 19.2-296. In light of their policy of ambush discovery, Langer's and McConnell's complaint that the plea change came at the last moment was highly hypocritical.

A visibly flustered Judge Taylor took a short recess and returned stating in regard to Ashley's representation, "...in light of the fact that this has been a court-appointed case, and until some other circumstance happens, the Court will appoint new counsel to replace Ms. Davis."

Judge Taylor also stated that during the recess he had spoken with attorney Cary Bowen Esq. in an ex parte telephone conversation, and would appoint him as Williams' new lawyer. Taylor pointedly praised Davis for her work in the case.

In apparent retaliation for withdrawing her guilty plea and firing Devika Davis, Williams was placed on a restricted tier in the Richmond City Jail. This afforded her very limited access to a telephone, visitation and canteen. It is also our understanding that Williams had no disciplinary actions prior to the imposition of these restrictions.

Ewald has also alleged that for a time she could not visit her clients in the Richmond City Jail because she refused to fill out an access form listing her Social Security Number and home address. Ewald has also alleged that no other attorneys were being asked to complete the form.

It is our opinion that Judge Taylor's motivation was borne out of prejudice precisely because Ewald had originally opposed Davis' appointment as co-counsel.

After the debacle of April 18, 2012, it was acutely obvious that there was high public interest in the Williams story. Consequently, Judge Taylor sealed the court records on motion from the Commonwealth on April 26, 2012. The Court imposed defense counsel, Cary Bowen, predictably made no objection.

Denying Williams her own privately retained attorney was in blatant disregard of VA Code §19.2-159.1 (b) and court precedent (*United States v. Gonzalez-Lopez*, 126 S. Ct. 2557 (2006,) *London v. Commonwealth*, 49 Va. App. 230, 638 S.E.2d 721 (2006,) and *Paris v. Commonwealth*, 9 Va. App. 454, 389 S.E. 2D 718 (1990.)

To avoid being confronted with both statute and court precedents, Judge Taylor in a manner recused himself, not in open court on May 16, 2012, but in an order he released on Friday, May 18, 2012. The delay was a transparent effort to shift reportage to the weekend when the public typically pays less attention to the news.

Judge Taylor had a motive for delaying the release of his order. Instead of following the recusal procedure detailed in VA Code § 17.1-105, Judge Taylor ordered the case sent to the next "judge in rotation." Should that next judge refuse to reinstate Ewald, the case was then to be returned to him for sentencing.

We have grave concerns that there was not then, and probably not now, any established "rotation." We say this because there has long been the appearance that most high profile cases are being heard by just two judges: Hon. Richard D. Taylor and Hon. Margret P. Spencer. It is also these two courts that are by far the most problematic.

Ewald did not attend the hearing (correctly) believing that Taylor would use it as a venue to publically humiliate her. Taylor repeated confidential VSB charges in open court even though they had been thoroughly refuted by Ewald's response the previous fall.

The next judge in the supposed rotation was the Hon. Beverly W. Snukals who recused herself without a hearing. The case then predictably fell to Judge Spencer, who not only shares the same courtroom with Judge Taylor, but also presides over the Richmond City Drug Court with him. (Attachment 71 Motions Hearing Taylor Recusal 5-18-2012.pdf)

It should also be noted that attorney Devika Davis has also been officially associated with the Richmond City Drug Court. Her name is featured in the back of the participant manual. (Attachment 72 Richmond Adult Drug Treatment Court Participant Manual.pdf page 34.)

Judge Spencer heard Ewald's Motion to Substitute (MTS) on June 13, 2012. This hearing became a venue to again repeat the same VSB charges Judge Taylor had made against Ewald. The Commonwealth also introduced excerpts of recorded jail telephone conversations designed to prejudice the court against Williams and to embarrass Ewald.

Again, following their pattern of ambush discovery, the certificate of service for the Commonwealth's response to Ewald's MTS was sworn by Langer as being mailed on June 5th. However, the envelope's postmark was actually *six days* later on June 11th. As a result, the audio CD and Commonwealth's response was not available for review by Ewald until the very morning of the hearing.

In light of Langer's discovery history, we cannot accept this discrepancy as an inadvertent error. (Attachment 73 Langer Service Envelope.pdf)

We also have other concerns with the introduction of the previously undiscovered audio CD. Its cda format is 33 year old technology that does not support meta data. Therefore, the recordings are not time stamped, nor were the dates and times otherwise provided, so it is not known exactly when the telephone conversations took place.

Additionally, the recordings are only excerpts and not full conversations, so other quite important information could have been, and probably was, omitted. Of very special interest would have been all of Devika Davis' dialog.

Accordingly, we cannot accept these recorded excerpts as being legitimately admissible in court as legal evidence. (We have converted the recordings to mp3 format for ease of sharing and analysis. The tracks were not otherwise altered.)

Judge Spencer repeated Judge Taylor's strategy of delaying the release of her order until that Friday afternoon and for good reason. She substituted dicta for opinion from the several cases she cited, including *U.S. v. Gonzalez-Lopez* (2006) and *London v. Commonwealth*. (Attachment 74 MotOpposeComnwelthRespMotSub06142012.pdf)

In citing dicta from *London*, Judge Spencer reveals her court's true interest is not in seeking truth or dispensing justice, but in proceeding with "prosecutions in an orderly and expeditious basis."

In citing dicta from *Gonzalez-Lopez*, one would never know that the SCOTUS opinion had been that denying a defendant their privately retained attorney was a structural error that could only be remedied by dismissal. Accordingly, SCOTUS overturned Mr. Gonzalez-Lopez's conviction. Nevertheless, Judge Spencer characterized *Gonzalez-Lopez* as supportive of denying defendants their rights to an attorney of their choice. (Attachment 75 SCOTUS Opinion 05-352 Gonzalez-Lopez 2006.pdf)

Ewald rushed to file a Motion to Correct (MTC) Friday morning, June 15, 2012. Judge Spencer ignored it and issued her order denying Williams her privately retained attorney. The case then went back to Judge Taylor. (Attachment 76 Spencer Order to MTS 6-15-12.pdf)

On July 6, 2012, Ewald filed a motion to void Judge Taylor's March 9, 2011 order dismissing her from the case. By virtue of the filing, most of Ewald's refutations to Judge Taylor's Bar complaint became public record for the very first time.

Judge Taylor avoided hearing the merits of the motion by simply recusing himself. That motion was never heard, even by the next presiding judge, the Hon. Alfred Swersky, of Alexandria.

The exact date Judge Swersky was appointed is not known, but it is believed to have been some time in August 2012. Carey Bowen was also substituted by attorney Joe Morrissey around the same time. Williams' plea change was also granted setting in motion anew the pretrial hearings and other necessary processes.

On November 20, 2012, Morrissey filed a motion to compel the OCME to provide documentation of Langer's secret lobbying efforts. Judge Swersky granted the motion the following day and gave the OCME only until Monday, November 26, 2012 to provide discovery. (Attachment 77 Williams Motion to Compel Discovery OCME Consensus Conference Notes.)

The OCME complied but it should be noted that when said discovery arrived at the Clerk's office that Monday, Langer suddenly departed Virginia on an alleged family emergency, and did not return for an unknown number of weeks.

When investigator Perry Hicks first endeavored to review the court file on November 30, 2012, the OCME discovery material was not in the court file nor was Ewald's motions. It was only after insisting that the OCME material should have been there, that Hicks was able to return on December 4, 2012 and find both Ewald's motions, segregated within a red folder, and the OCME Consensus Conference notes with the letter from Langer to Dr. Kay.

Due to Morrissey being a delegate in the Virginia legislature, the trial had to be postponed until it was likely that the legislative session, including any possible extensions, would have concluded. The trial date was accordingly set out on May 28-30, 2013. The highlights of the four day long trial is worthy of recounting.

During the Commonwealth's presentation, the prosecution's alternate medical examiner, Dr. Kevin Whaley, claimed that there were many more medical examiners involved in the consensus conference than had been named in the provided notes. If true, we can only interpret this revelation as being both a Brady violation and disobedience to Judge Swersky's order. However, Morrissey raised no objections.

Dr. Whaley also claimed that he had tested a sample of DeSean's ocular fluid for DiGeorge Syndrome and that it had come back negative. No data was given to support his claim, no documented evidence was provided, nor do we know by what authority he could order tests in another ME's case, or even if a sample of DeSean's ocular fluid had been preserved.

Again, Morrissey did not challenge Dr. Whaley's testimony nor demand further discovery.

We also find it curious that the OCME would allow its own medical examiners to bring into question the integrity of a final and official autopsy report, and therefore sully the public's perception of the OCME itself.

DeSean's medical profile and distinct physical features of his head have appeared to other medical experts as typical of DiGeorge Syndrome: Both Dr. Manzella and Dr. Wecht independently suspected that DeSean suffered from DiGeorge.

The Commonwealth continued to deny that DeSean's FTT was genetic, even though three other male children in the extended family also suffer from Failure to Thrive. Judge Swersky had these other children removed from the courtroom ostensibly so that they would not influence the jury.

What also concerns us about the Williams case is that even after there was a change in both judges and attorneys, the aforementioned “world class” medical defense was not revived. The prosecution's case was based almost entirely on a post mortem photo, and without medical evidence to put that image in context, Williams had no chance at acquittal.

While pyric at times, Joe Morrissey's courtroom performance lacked the substance necessary to prevail. In particular, we have issues with the testimony afforded by his sole medical expert, one time OCME pathologist, Dr. Jack Daniels, MD.

At Williams' bond hearing on December 18, 2013, Daniels testimony was so strong, and the prosecution's so weak, that Judge Swersky released Williams on her own recognizance. However, at trial, Daniels faded and mysteriously reversed himself on much of his previous bond hearing testimony.

Dr. Daniel not only failed to provide any explanation for the child's tissues being heavily infused with white blood cells, he actually implied under cross examination that the rampant infection was the result of a natural decomposition process.

Morrissey's choice of Daniels is itself curious. While Judge Swersky did deny Morrissey additional funds to pay expert witnesses, half of Dr. Wecht's $5000 fee had been paid by Ewald out of her own operating funds, and she had argued and won payment of said fee from Judge Taylor. Therefore, there should have been no out of pocket cost for Morrissey to reengage Dr. Wecht.

Furthermore, Ewald's pediatrics expert (Dr. Manzella) was working pro bono. Considering the weakness of Morrissey's defense presentation, his failure to revive the medical defense is frankly inexplicable.

Our point is that given our perception of Dr. Daniels cognitive flexibility, we cannot resolve his failure to provide Williams a medical explanation for DeSean's appearance. Additionally, we cannot understand why Morrissey would have ignored an already well-developed medical defense with existing expert witnesses, nor strenuously objected to the above mentioned discovery violations.

It also disturbs us that none of the prosecutorial abuses we have cited prior to his arrival were raised by Morrissey at trial. This failure all but guarantees Williams will have no grounds on which to file an appeal. In our view, the Commonwealth's unethical conduct prevailed.

Summary

None of the cases we cite can be excused as inadvertent errors or mere overzealous attempts to bring hardened criminals to justice. In our opinion, these are calculated violations of Canons, Rules, and Law that we can only interpret to be willful efforts to deprive defendants, particularly African-Americans, of their rights to due process.

As we have demonstrated, the public has no avenue for their grievances to be redressed with even the appearance of fairness: The courts will not discipline prosecutors, the Bar is corrupt, and the legislature is also unwilling to make reforms in part because, like the public, it is kept uninformed by a disinterested or otherwise compromised press.

All of this, in our opinion, has instilled in prosecutors an arrogant contempt for both the law and the Bar rules of ethical conduct. In our view, they are solely motivated by their own ambitions.

Attorney Pauline Ewald has been so pummeled with Bar complaints, public ridicule, and loss of income, she eventually succumbed to depression and PTS. Accordingly, she gave up responding to the Bar's demands and has subsequently been disbarred. She is currently undergoing professional counseling.

Given Ewald's treatment, how can anyone conceive of any defense attorney, much less an indigent defense lawyer, daring to file a *Battle v. Commonwealth* motion; even where such a motion would be supremely justified?

Frankly, it would be foolish and under the circumstances, attorney Steve Benjamin was wise to not press for sanctions, even as the AG flagrantly disregarded the court's gag order.

As it stands, considering the totality of all the violations we have cited, we can have no confidence that the Richmond courts are meting out any standard of justice whatsoever.

Our evidence also indicates that while Caucasian defendants are treated deferentially, African-Americans are subjected to the most brutal prosecutorial atrocities.

We therefore find dismissal of this conduct as being merely the way "things have always been done" particularly offensive. It is the minority community that suffers most from this abuse because they are, and have always been, the most vulnerable.

What is most astounding to us is that of all places in America, this disregard for justice is *permitted* to go on in Virginia; a place so steeped in American history, we are literally surrounded by memorials erected to the struggle for individual liberty.

Our soil has not only been drenched with the blood of soldiers dying for the cause of freedom, but also that drawn by the lash from the backs of slaves.

Accordingly, for prosecutors and courts to treat anyone, particularly *children*, with such abject contempt is just not wrong, it is obscene. Evidently these so-called public servants have forgotten that we- black, white, yellow, and brown- are equally citizens of the Commonwealth. We are not subjects of the Crown; and they are certainly not Lord High Prosecutors that are a law unto themselves.

The Bar's Rules of Professional Conduct specifically mandates prosecutors to be ministers of justice and not advocates. All that should matter to them is whether a crime has been committed and the accused is in fact the perpetrator of the crime.

Nonetheless, truth is no longer sought in the courtrooms of Richmond. The City's tribunals have been tragically reduced to little more than grotesque theatre.

We therefore believe the pattern established by all of our examples supports at minimum a criminal investigation under 18 U.S.C. § 242.

Based on all that we have related in this letter, we respectfully beg Your Honor to appoint a special prosecutor to investigate corruption within the Virginia State Bar, particularly the dismissal of investigator James E. Whitener, the usurpation of defendant rights by the Richmond City Commonwealth's Attorney's Office- in particular, prosecutors Chris Jones, Mary Langer and Julie McConnell- but also the circumstances surrounding the dismissal of former gang prosecutor, Ann Cabell Baskervill.

We also pray that an investigation be commenced into the corruption we allege stemming from the manner in which indigent defense appointments are made.

Finally, we respectfully ask for Your Honor to bring the Richmond City Court system under Federal supervision while all of these investigations are underway.

Respectfully,

King Salim Khalfani

E. Martin Jewell

Charles L. Shannon D.Min.

Jesse Frierson

Perry N. Hicks
Investigator