

FROM THE PRESIDENT

JOHN WESLEY HALL

Death Penalty Funding Bureaucracy and the Fountain of Justice

I have in my hand the Eighth Circuit's approved budget for the experts in a federal death penalty trial set for January. The client shall remain nameless to protect the accused from the rants of his lawyer in this magazine.

We first proposed our budget back in February, I think. Due to a somewhat understandable miscommunication of sorts, the magistrate judge sat on the budget a little long. I won't bore you with the details, but we met with the district judge over the budget in June. We sought what we certainly thought was a reasonable amount¹ for experts, including the mitigation expert. Future dangerousness is a big issue, as it is in most federal death cases.

In late September, the district judge got back from the chief judge of the Eighth Circuit that we were approved for only about two-thirds of what we asked for. So, the January trial date is now blown because of the bureaucracy of death penalty funding.² The joys of budgeting a CJA capital defense. Hurry up and wait. Scrimp and save.

And the relative cost of defending this man's life? All in? Less than three minutes of the Iraq War.

We have a shiny new courthouse in Little Rock. Eighty-nine million dollars worth. Out front is the architectural art pictured here.

Work on this started at the end of the courthouse construction, as it was about to open. Interesting piece of work. Most people, including



Photo courtesy John Wesley Hall

And it's leaking, again.

me, thought it was a pile of scrap metal until it started working.³ Those in the know were embarrassed at the cost: \$391,000 in Little Rock. The chief judge at the time of approval said, "I'm just horrified by it. It's nothing like what we agreed to."⁴

What is it? More important, *why* is it?

Did you know that one-half of one percent of federal⁵ or state⁶ courthouse construction cost is usually set aside for "public art"?⁷ Government art is important:

These permanent installations of contemporary art for the nation's civic buildings afford unique opportunities for promoting the integration of art and architecture, and facilitate a meaningful cultural dialogue between the American people and their government.⁸

It took me a while to make the connection that this water sculpture just

might be intended to be a modernistic "fountain of justice." That is, after all, the title of a memorable front page article in the *New York Times* about the Tammany scandal about an alleged rigged grand jury.⁹ There is a book on "natural law" by that title.¹⁰ There is the Gerechtigkeitsbrunnen ("Fountain of Justice") in Bern, Switzerland, constructed in 1543 with the goddess of justice on top that became a model for all others and our vision of what the goddess of justice should look like.¹¹



Gerechtigkeitsbrunnen Fountain

The name of our piece: "Echo Dynamics." What is that supposed to mean? It doesn't look like a fountain. More like a modernistic ballpark urinal. The CSOs at my courthouse had to run off a homeless man whom they caught washing his clothes in it. What happens at night when they aren't there to supervise? But I digress.

What is the average cost of a CJA appointment? In my district, I asked a couple of defense lawyers, and we think it is about \$3,000 per case, considering all the guilty pleas that the three points for acceptance force our clients to take. So, 130 indigent criminal defendants could be represented for that, or salary and fringe for two U.S. district judges for a year. Or three Yankees games for A-Rod.

This is a time when federal courthouse construction projects are considering eliminating the perk of each judge having his or her own courtroom because of construction costs,¹² but that certainly is a guide rather than a mandate. Sort of like the Constitution to a Guantánamo detainee.

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