

# *The Prosecutors' Memorial*



*Dedicated September 20, 2004*

*Ernest F. Hollings National Advocacy Center*

*University of South Carolina*

*Columbia, South Carolina*

# *Honored Prosecutors*

## *Eugene C. Berry*

After serving as an assistant state attorney in Florida's 15th Judicial Circuit for 11 years, Eugene Berry moved to the 20th Judicial Circuit (Fort Myers) in 1977, to become assistant state attorney for the Punta Gorda office. For more than four years, he handled a heavy caseload, including prosecution of many drug cases and winning 27 convictions in 30 major felony trials.

On January 19, 1982, while with his wife at their home in Charlotte Harbor, Berry answered the doorbell and was fatally shot by the wife of a man who had been sent to prison after Berry had successfully prosecuted him on charges connected with the importation of 17 tons of marijuana. After shooting Berry, the assailant reportedly jogged away and told a co-conspirator, "I got him."

At the time of his death, Eugene Berry was 47.

The killer was convicted of first-degree murder and sentenced to life with no chance of parole for 25 years. Two of her co-conspirators pleaded guilty to second-degree murder. One received a federal prison term. The other was freed after a state appeals court ordered a retrial and prosecutors decided against a new trial.

## *Victor C Breen*

Victor C. Breen was district attorney of New Mexico's 10th Judicial District (Tucumcari) when he was shot to death on December 1, 1971, while getting into his car to drive to his office. His assailant was ruled insane and never brought to trial.

The assailant was a former mental patient who, in the past, had been committed to the New Mexico Mental Hospital on the recommendation of District Attorney Breen. At the time of the murder, Breen was considering having the man recommitted.

Before his election as district attorney of the 10th Judicial District, Breen had served as assistant district attorney in the Ninth Judicial District. His law school career was interrupted by World War II, when he enlisted in the army air corps, serving as a flight instructor on B-54 bombers and rising to the rank of major. After the war, he returned to law school, graduating in 1946. He then went into private practice and also joined the office of the district attorney of the Ninth Judicial District as an assistant district attorney. He had served as president of the New Mexico District Attorneys Association.

## *R. Fred Capps*

Fred Capps spent his entire professional life as a prosecutor, first as an assistant commonwealth's attorney in Kentucky's 40th Judicial Circuit and then as its elected commonwealth's attorney.

In the early morning hours of June 5, 2000, Fred Capps died defending his home and family after a defendant, who was scheduled to go on trial that day on a child molestation charge, broke into the Capps' residence wielding an automatic rifle. Capps grabbed his personal .357 Magnum revolver and confronted the intruder in a hallway where, in the ensuing exchange of gunfire, both Capps and his assailant were killed.

A lifelong friend of Capps, then Kentucky State Senate President David Williams, speculated that as Capps lay dying, he fired the shot that killed his assailant with his left hand, since his right arm was severely wounded.

At the time of his death, Capps was 46. He left a wife, Cathy, who was an assistant commonwealth's attorney at the time, and two children.

## *Gil Epstein*

The name of Gil Epstein has been added to the Prosecutors Memorial at the Ernest F. Hollings National Advocacy Center, which honors prosecutors killed while performing their duties or because of their role as a prosecutor. Epstein, an assistant DA in Fort Bend County, Texas, was shot to death in a robbery attempt in the parking lot of Houston's Jewish Community Center on September 18, 1996. Epstein was leaving the center after playing basketball with friends, when he was confronted by the perpetrator, who demanded his wallet. According to a witness at the killer's subsequent trial, the robber shot Epstein after he saw Epstein's DA's badge in his wallet. Epstein was 27 at the time of his death.

## *Floyd G. Hoard*

In 1964, when Floyd Hoard was elected solicitor (now called district attorney) of Georgia's Piedmont Judicial Circuit, his first challenge was to confront a loose coalition of gangsters known as the Dixie Mafia, who were running rampant in the area. A few days after taking office, Hoard signaled his intention of dismantling the gang by ordering a raid on a car theft operation.

On the morning of August 7, 1967, Hoard was mortally wounded when he turned the ignition key in his car, detonating six to 12 sticks of dynamite connected to the vehicle's electrical system. Shocked and outraged by the tragedy, public officials, led by then

Gov. Lester Maddox, initiated investigations that led to the arrest, conviction and imprisonment of five perpetrators.

In an essay he had written that was found after his death, Hoard indicated his intent to carry out his sworn duty to eliminate the gangs that had been terrorizing his jurisdiction, declaring, "We want in some way to ease our consciences and to make amends. We have learned our lesson in crime. We pledge activity for inactivity, courage for fear." A eulogist at his funeral said that Hoard "made his decision, had counted the cost and ... he paid the full price."

## *C. Chris Marshall*

On July 1, 1992, C. Chris Marshall, then an assistant district attorney of Tarrant County (Fort Worth), Texas, was shot to death in an appellate courtroom while supervising the presentation of an oral argument.

Marshall was the chief of the Tarrant County appellate section at the time of his death and a frequent speaker at legal seminars. He was widely considered to be the best criminal appellate lawyer in the state and, after his death, was described by a colleague as "a true legal genius" who became a prosecutor in order to bring justice to crime victims.

The assailant reportedly fired, killing Marshall, to call attention to injustices that he believed he faced. He was about to be extradited to another state to face a charge of sexually abusing his son.

## *Paul R. McLaughlin*

In late 1995, Paul R. McLaughlin was a Massachusetts assistant attorney general detailed to the Suffolk County (Boston) District Attorney's office on special assignment with the city's first anti-gang violence unit. He was prosecuting a leader of one of Boston's most deadly street gangs on a carjacking charge.

On the evening of September 25, 1995, McLaughlin was walking to his car after leaving a commuter train station when he was shot to death by a hooded assailant. An intensive investigation led to an arrest of the person who had ordered a gang member to kill McLaughlin and a key witness in the case in order to avoid prosecution. After an unsuccessful attempt to kill the key witness, McLaughlin was murdered.

The gang leader was convicted of first-degree murder and is serving a mandatory life imprisonment term.

## *Michael C. Messer*

Michael C. Messer, 49, a special assistant U.S. attorney in the Northern District of Illinois, died on August 20, 2001, after he and a colleague were shot during a robbery attempt as they were walking back from a restaurant after dinner to the Ernest F. Hollings National Advocacy Center in Columbia, South Carolina, where they were attending a training seminar. The colleague survived.

Messer, a Social Security Administration attorney on detail with the Office of the U.S. Attorney for the Northern District of Illinois, was working on fraud cases at the time of his death. His wounded colleague, Assistant U.S. Attorney Gillum Ferguson, said, "His colleagues will remember him with affection, his family with pride, and the people of this district should remember him with gratitude." Among those attending the memorial services for Messer was U.S. Attorney General John Ashcroft, who told the gathering, "Each of us in the Department of Justice is somehow less today than when Mike was a part of us."

Four teenagers were convicted of the crime and received prison sentences ranging from 35 to 47 years.

## *William O. Weissich*

William O. Weissich served as the District Attorney for Marin County, CA from 1953 until 1960. In 1955, he prosecuted and convicted Malcolm Schlette for arson; Schlette served a lengthy prison term.

On November 18, 1986, some 31 years after the conviction, Mr. Weissich, then in private practice, was in his office when he was shot and killed by Malcolm Schlette. Pursued by police, Schlette committed suicide.

A note found in Schlette's belongings indicated that he wanted revenge on five people who played a role in sending him to prison. One of the individuals named was William Weissich.

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*By John Gill, Chief Counsel, Office of the District Attorney General, Knoxville, Tennessee;  
Associate Director, National District Attorneys Association;  
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*"... that we here, highly resolve that these dead shall not have died in vain. ... "*

Honoring the sacrifice of fallen compatriots is a worthy tradition. And as Pericles noted, those who speak to recognize these sacrifices can never have the necessary eloquence and insight to fairly describe the service and the giving of life in that service of each of the fallen. These sacrifices speak for themselves, "*... far above our poor power to add or detract...* "

Prosecutors have existed in some form since biblical times and, through the centuries, have passed down to us, today, the example of great accomplishments in bringing criminals to justice and protecting our citizens, of the personal loss that can come from dedication to principle and of the basic building block of our nation that no man is above the law. The heritage of our profession has been honed and improved steadily by our forebears. It is our duty to continue and build on this heritage.

Our criminal justice system is unique and an example to other countries. In our democracy, excellence is recognized and is preferred for public service, not as a matter of privilege, but as the reward of merit.

Capable and dedicated persons, regardless of wealth, social standing or connections, have the opportunity to serve their community as a prosecutor. Respect for justice system authorities and the fair application of its laws does as much as the actual enforcement of those laws to prevent their violation. Never doubt that many of the benefits we enjoy as Americans come directly from the prosecutor's heritage.

As prosecutors, we carefully study before we act to ensure the rightness of our action, not upon a calculation of interest. The risks and pressures of our acts are not assumed out of ignorance but upon reflection. We seek to do good for our communities, and freely assume the costs of our decisions. By aspiring to the best standards and traditions of our profession, we build our own memorial by the betterment of our society. These we honor by the dedication of this physical memorial sought to live for their communities but did not shrink from the performance of duty that led to their ultimate sacrifice for those communities. A death such as theirs is the true measure of any person's worth; such was the end of these men -- they were worthy prosecutors. We the living could not desire a more heroic spirit. The value of such a spirit cannot be fully expressed in words, rather it is reflected in this calling, this profession of prosecution ennobled by such men who knew their duty and had the courage to do it.

Pericles's funeral oration honoring fallen sons of Athens said it well "*... on the battlefield their feet stood fast, and in an instant, at the height of their fortune, they passed away from the scene, not of their fear, but of their glory ... not only are they*

commemorated by columns and inscriptions in their own country ... but in the hearts of men ... Make them your examples, and, esteeming courage to be freedom and freedom to be happiness."

The struggle to emulate them, and attain their level of service will be an arduous one. We, by the dedication of this memorial, seek to honor these fallen prosecutors. *"It is rather for us the living, to be here dedicated to the great task remaining before us - that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion.*

Text in italics above is from Abraham Lincoln, The Gettysburg Address.