



Fall 9-1-1996

Introduction

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Recommended Citation

William S. Geimer, *Introduction*, 9 Cap. DEF J. (1996).

Available at: <https://scholarlycommons.law.wlu.edu/wlucdj/vol9/iss1/2>

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The Supreme Court of Virginia and the U.S Court of Appeals for the 4th Circuit have continued their trend of ignoring the law in order to affirm death sentences. In practical terms, fidelity to the law in Virginia capital cases can be hoped for from only two sources. One is in the hands of circuit court judges, many of whom continue to demonstrate a sense of fairness far superior to that displayed by the appellate courts. The other is in the United States Supreme Court itself. The absence of any meaningful review at two critical appellate levels, combined with passage of the federal Anti-Terrorism and Effective Death Penalty Act, underscores even further the importance of effective representation at trial.

Although there are no clearly favorable rulings from the U.S. Supreme Court reported in this issue, *Gray v. Netherland* is a decision with much potential for curbing Virginia's commitment to trial by ambush, both as to exculpatory and inculpatory evidence.

There is no good news from the 4th Circuit, which completed the job of reversing several district court grants of relief. Also, the opinions in *Payne v. Netherland* and *Savino v. Murray* serve as a warning to defense counsel to reconsider the use of mental mitigation experts granted by 19.2-264.3:1. This issue contains a thought provoking article detailing the relevant considerations.

The Supreme Court of Virginia has come up with even more inventive procedural bars to avoid deciding the merits of claims. See particularly the summaries of *Goins v. Commonwealth* and *Barnabei v. Commonwealth*.

Finally, trial counsel as well as habeas counsel should carefully consider the article introducing the pertinent provisions of the aforementioned Anti-Terrorism and Effective Death Penalty Act.

It is a sad commentary on the legal profession that law matters so little and politics so much in capital litigation. Nevertheless, death sentences continue to be avoided at the pre-trial and trial level by dedicated counsel. It is a privilege for members of Virginia Capital Case Clearinghouse to be a part of this cooperative effort to make the 6th Amendment right to counsel meaningful. Please contact us early when you get a case. Also, please mark your calendar for Friday, April 11, 1997. In our annual seminar, "Defending a Capital Case in Virginia IX," the subject will be conducting an effective defense while at the same time making a default-proof record.

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Director