

# Constitutional Law--Federal Habeas Corpus for State Prisoners

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## ABSTRACTS

**Agency Relationship—Creditors' Group Life Insurance Policy**

*P*, bank, had a creditors' group life insurance policy with *D*, insurance company, whereby *D* insured the lives of *P*'s debtors who were under 65 years of age. *P* collected and submitted the premiums to *D*. *P* extended a loan to *X*, who was over 65. *X* died before repayment, and as the loan proved uncollectible *P* sued *D*. *P* maintained that even though *X* was over 65 at the time of the loan, *P* acting as *D*'s agent had bound *D* by collecting premiums from *X* and transmitting them to *D*. *Held*, the contract of insurance was between two principals, the bank being the policyholder and the insured, and the insurance company being the insurer. No contractual relationship existed between the debtors and the insurer. The bank did not become an agent of the insurance company by merely collecting and remitting premiums to the insurance company. This was a mere matter of bookkeeping by *P*'s cashier and was a service performed by the bank. Since *P* can in no way be considered an agent, any attempt by *P* to include an ineligible debtor for coverage under the policy with *D* must be chargeable to the bank and not the insurer. *South Branch Valley Nat'l. Bank v. Metropolitan Life Ins. Co.*, 155 S.E.2d 845 (W. Va. 1967).

It is generally held that employees in doing the various acts required to make effective a policy of group insurance act for themselves and their employer, and not as agents of the insurer. This case represents the logical extension of that principle to an employee acting to effect a creditors' group life insurance policy covering his employer's debtors. 29 AM. JUR. *Innkeepers* § 136 (1960).

**Constitutional Law—Federal Habeas Corpus for State Prisoners**

Two prisoners in the custody of the State of West Virginia filed petitions for writs of habeas corpus in the Supreme Court of Appeals of West Virginia. Both petitions were denied without a hearing by the Court and both petitioners then filed petitions in the district court which were dismissed on the ground that state remedies had not been exhausted. Petitioners then appealed to the Court of Appeals. *Held*, reversed. A person who files habeas corpus proceedings in the West Virginia Supreme Court of Appeals is not required as a prerequisite to obtaining federal habeas corpus

relief to first file a petition in a circuit court of West Virginia seeking an evidentiary hearing. *Sheftic v. Boles*, 377 F.2d 423 (4th Cir. 1967).

The district court's refusal was based on an earlier case in which it held on principles of comity and a desire to give state courts an opportunity to redress invalid state convictions without federal encroachment that state remedies must be exhausted. *Miller v. Boles*, 248 F. Supp. 49 (N.D. W. Va. 1965).

The Court of Appeals in the principal case overrules the district court's dismissal and clearly disapproves the *Miller* decision. The Court of Appeals held that while the Supreme Court had not ruled on this exact question it had held that where there were two alternative methods for filing the writ in state procedures, it was necessary to utilize only one in order to give state courts an opportunity to pass on the matter. The Court of Appeals also cited with approval a Third Circuit case which held it would be unreasonable to expect the circuit court to grant a writ when the Supreme Court of Appeals of that state had already denied the writ. *United States ex rel. Almeida v. Baldi*, 195 F.2d 815 (3rd Cir. 1952).

#### **Criminal Law—Definition of Capital Offenses**

*P*, fourteen years of age, was indicted for an alleged murder committed at age thirteen. The case was set for trial in the Intermediate Court of Kanawha County under W. VA. CODE ch. 49, art. 5, § 3 (Michie 1966) which provides that a juvenile court shall have jurisdiction over persons under eighteen years of age except for capital offenses. *P* contended that since capital punishment has been abolished in West Virginia, the juvenile court should properly have jurisdiction. *Held*, writ of prohibition denied. Capital offenses include those punishable by life imprisonment. Since murder in West Virginia is punishable by life imprisonment, *P* could be tried by the intermediate court. *State v. Wood*, 155 S.E.2d 893 (W. Va. 1967).

This decision rested on the court's interpretation of the term "capital offenses." W. VA. CODE ch. 49, art. 1, § 4 (Michie 1966) defines delinquency as a crime not punishable by death or life imprisonment, while W. VA. CODE ch. 49, art. 5, § 3 (Michie 1966) just speaks of capital offenses without further definition. In order to resolve the disparity in terminology, the court reasoned that capital offenses, as used in W. VA. CODE ch. 49, art. 5, § 3 (Michie