

COMMONWEALTH OF NEWGARTH
COURT OF APPEALS

To: Court of Appeals Law Clerks

From: Hon. Jeffrey Van Detta, Judge of the Newgarth Court of Appeals



Re: Judge Van Detta's Designation to the Supreme Court of Newgarth for Rehearing In *Commonwealth of Newgarth v. Four Speluncean Explorers*, 501 Newg. Rptr. 1 (May 4300)

Date: 17 June 4301

Judge Van Detta has been designated from the Court of Appeals to the Supreme Court of Newgarth to permit rehearing of *Commonwealth v. Four Speluncean Explorers* (Sup. Ct. Newgarth May 4300). We will meet in Judge Van Detta's virtual judicial chambers at 6:30 pm on Wednesday, 25 June, to evaluate the posture of the case and the issue(s) for the rehearing. The objective of this meeting is to prepare Judge Van Detta to participate in the re-argument of, and cast the deciding vote in rehearing, the Supreme Court's May 4300 decision, which may be to (a) affirm; (b) reverse and acquit; (c) reverse and remand for resentencing; or (d) reverse and remand for further proceedings in the trial court.

The opinions rendered in the Supreme Court's first hearing of the case last year (May 4300) are available at <https://pennstatelaw.psu.edu/file/TheCaseOfTheSpelunceanExplorers.pdf>

Judge Van Detta asks you, as his Law Clerks, to do the following in preparation for our meeting:

Please study the judgments of each of the Justices (Truepenny, Foster, Tatting, Keen, and Handy) in the case of the *Speluncean Explorers* carefully. For each of the Justices, **consider the following questions:**

1. What were the facts and legal issues that concerned each Justice most in reaching his or her decision? Were there any non-legal issues in play?
2. What school of legal thought does each Justice's opinion appear to represent? Among the leading schools of legal thought are Positivism; Natural Law; Realism; Instrumentalism; Populism; Strict Constructionism (Textualism); and Pragmatism.
3. What does each Justice think his or her role *as a judge* demands? Does this differ depending on whether a judge is a trial judge, versus an intermediate appellate judge, versus a Supreme Court Justice? If so, *how*?
4. What does each Justice consider to be the correct outcome? How does each Justice use argumentation, logic, case law, statute law, legal history, and legal theory to support that outcome?
5. Do the facts of the case appear to be complete? Or are there additional, relevant facts that need to be found or developed? If so, what can the Supreme Court do at this point?
6. Once you have analyzed each opinion:
 - a. Which of the Justices' opinions do you agree with most completely, and why?
 - b. Which of the Justices' opinions do you think is most sound, *legally*?
 - c. For the Justices whose opinion(s) you ultimately *disagree* with, which do you find *most* persuasive, and why? Which do you find the *least* persuasive, and why?
 - d. Should the disposition of the case be the *same* for all four defendants? Or are there *distinctions* among their role(s) and culpability that should have been made in the trial court? If so, what can the Supreme Court do at this point?
 - e. What implications for this case, for the courts, and for society would there be if Judge Van Detta were implacably opposed to capital punishment, and refused in every capital case to affirm any conviction in which the defendant had been sentenced to death?