

Wednesday, September 17, 2008

First Amendment slays spam conviction.

Computer hard drive. (Image from Pacific Northwest Laboratory's website). Thanks to the lawyer(s) who last Friday won a First Amendment-based reversal of a spam conviction in *Jaynes v. Com.*, Va. (Sept. 12, 2008), <http://www.courts.state.va.us/opinions/opnscvwp/1062388.pdf>. The Jaynes victory reverses the February 2008 Virginia Supreme Court 4-3 opinion against Jaynes. As last Friday's opinion explains at footnote 2: "The prior opinion rendered February 29, 2008, reported at 275 Va. 341, 657 S.E.2d 478 (2008), was withdrawn by the Court after a petition for rehearing 28, 2008 and May 19, 2008." Having blogged about the February 29, 2008, Jaynes opinion here and here, I went back to my bloglink to that February 2008 opinion, only to find that the link now goes to last Friday's opinion. Certainly, it is important that the public have access to all Virginia Supreme Court opinions, and if the court is going to erase some of them from the Internet, I guess I will need to save them all on my own hard drive from now on. (UPDATE: Thanks to my irrepressible brother lawyer Marc Randazza for having had the foresight to save the February 2008 opinion, and for having directed me to the opinion's link on his blogsite.) Everything ended up looking brighter for Mr. Jaynes once the Virginia Supreme Court decided to reconsider its February 2008 affirmance of his conviction, by finally agreeing to give him standing to raise First Amendment arguments, which the court at first refused to do, as described here. A unanimous Virginia Supreme Court ruled in Mr. Jaynes's favor last Friday. Now turning to the removal of the Virginia Supreme Court's February 2008 Jaynes opinion from its website: On May 19, 2008, the Virginia Supreme Court granted Jaynes a rehearing, to include coverage of First Amendment issues. 2008 Va. LEXIS 88. Now, where does one find the state Supreme Court's superseded February 2008 Jaynes opinion? Not on Lexis, whose website says: "The Opinion Previously Reported at this Citation has been Removed from the Lexis Service at the Request of the Court, June 12, 2008." 2008 Va. LEXIS 42 (parallel cite for 275 Va. 341; 657 S.E.2d 478). Hopefully the Virginia Supreme Court will put the February Jaynes opinion back on its website, with an explanatory note that it has been superseded by the September 12, 2008, opinion. Congratulations again to Mr. Jaynes and his legal team. Jon Katz

Posted by Jon Katz in Criminal Defense at 00:00