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Introduction

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This issue of Capital Defense Digest contains summaries of three remarkable opinions by the United States Supreme Court. They suggest that the Court may not, as opinions in its previous term suggest, be on the verge of abandoning the monitoring of state death penalty application. *Shell v. Mississippi* is a per curiam opinion finding the state's "narrowing construction" of its vague aggravating factor to be constitutionally insufficient. It is further evidence that Virginia's "vileness" factor is probably being applied unconstitutionally. In *Parker v. Dugger*, the Court went to great lengths to reconstruct the trial record and determine that a state supreme court had not afforded the capital defendant meaningful appellate review of his sentence. In *Cage v. Louisiana*, the Court rejected the familiar "taking the charge as a whole" justification for upholding ambiguous jury instructions. Perhaps the message being sent to the states is: "We want to leave the administration of the death penalty up to you, but you must be more responsible."

In addition, this issue contains articles on aspects of capital defense which are not as well known, but are assuming increasing importance. The subjects include United States Supreme Court certiorari practice, identifying federal claims in seemingly state law matters, and the continuing mysteries of Virginia's mental mitigation expert statute. There is also an assessment of the current state of those cases that have been most helpful to capital defendants.

As always, comments, questions, and criticism are welcomed.

William S. Geimer
Director

