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Introduction

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Once again, the decisions of the United States Supreme Court available at press time have little or no systemic or doctrinal impact upon the administration of Virginia's capital murder statutes. This issue of the *Digest*, however, contains articles and analyses of Fourth Circuit and Supreme Court of Virginia cases that are of considerable practical importance.

The detailed article on the subject of recognizing mental retardation and its significance in the legal system should be read in conjunction with the summary and analysis of *Washington v. Murray* from the Fourth Circuit. The reader will see Earl Washington, an innocent man nearly executed, in the article's description of the traits of the mentally retarded client. In the case summary, the reader will see how those traits can work to the disadvantage of habeas petitioners.

There is also a valuable article on confronting Virginia's procedural default rules and the curious priorities embodied therein; priorities that elevate procedural orderliness above reliability in the determination that a death sentence is lawful and appropriate. It is useful to read the article in conjunction with the case summary of *Swann v. Commonwealth*, which demonstrates the policy in action.

This issue also contains a step-by-step discussion of one means of converting "plead" bargaining into meaningful plea bargaining in the capital context. The subject is of immense practical significance.

Finally, there is no practical significance to a brief essay noting Justice Blackmun's conclusion, after twenty years of trying to make the death penalty system work, that it is impossible to do so within the commands of the Constitution. Nevertheless, Justice Blackmun's observations are worth being read and considered by every person involved in the system.

This has been a most active year for capital litigation in Virginia. The resources of the Virginia Capital Case Clearinghouse in providing pretrial and direct appeal assistance to defense counsel have been taxed to the limit. Seldom have law students met a challenge of such magnitude with such dedication and competence. Sincere thanks are due to those whose names appear on the cover of this publication. They will be a credit to our profession.

William S. Geimer
Director