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## Introduction

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Regrettably, the Fourth Circuit Court of Appeals appears to have borrowed the Supreme Court of Virginia's rubber stamp in death penalty cases. This issue includes summary and analysis of three opinions from that court, reversing grants of relief ordered by federal district courts.

In one very encouraging decision, however, the United States Supreme Court told both the Fourth Circuit and the Supreme Court of Virginia to put the rubber stamp away. In *Tuggle v. Netherland*, the Supreme Court remanded a case where the Fourth Circuit had superficially tried to affirm the death sentence after the federal district court had granted habeas relief. The Supreme Court told the Fourth Circuit and Virginia Supreme Court that they had "misapplied" U.S. Supreme Court precedent and sent the case back.

Nor was *Tuggle* the only good news out of the United States Supreme Court, as the Court in *Kyles v. Whitley* put some teeth into the prosecution's obligations under *Brady v. Maryland* to disclose favorable evidence. *Kyles* abounds with language that defense counsel can mine to favorable effect, including the ideas that sloppy police work is *Brady* evidence and that a prosecutor in applying *Brady* must take into account the cumulative impact of all the potentially exculpatory evidence. The Digest note reviewing *Kyles* provides a number of concrete suggestions as to how *Kyles* can be used to gain broader access to the Commonwealth's files. Thus, while the United States Supreme Court has continued to refrain from major pronouncements on death penalty law, the Court has demonstrated some willingness to make sure the lower courts are applying the existing law in a meaningful way rather than just providing lip service to its existence.

The Supreme Court of Virginia continues in the business of upholding death sentences, except when mandated to do otherwise. One decision in the latter category, *Mickens II*, however is as interesting for what is omitted as for what is included.

This issue also contains a thoughtful article outlining the new challenges presented by Virginia's new "hurry up habeas" statutes. All legal signs continue to point to the critical importance of avoiding death sentences at or before trial. To that end, Virginia Capital Case Clearinghouse stands ready to assist any attorney taking on a capital case. Please contact us. Also, please mark you calendar and plan to attend the annual CLE program "Defending A Capital Case in Virginia VIII", which will be conducted at Washington and Lee on Friday, April 12, 1996. We are pleased to report that nationally recognized capital defense attorney David Bruck will return to lead this program.

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