

COPY SUPREME COURT COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA SUPREME COURT
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PEOPLE OF THE STATE
OF CALIFORNIA,

NOV 28 2008

CRIM. No. Frederick K. Ohnisch Clerk
S062562
Deputy

Plaintiff and Respondent,

Automatic Appeal
(Capital Case)

vs.

BRANDON ARNAE TAYLOR,

San Diego

County

Superior Court

Defendant and Appellant.

No. SCD1113815

CORRECTED TABLE OF CONTENTS AND TABLE OF
AUTHORITIES TO APPELLANT'S OPENING BRIEF

Automatic Appeal from the Judgment of
Death of the Superior Court of the County of San Diego

Honorable Frederic L. Link

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DEATH PENALTY

TABLE OF CONTENTS

| | PAGE(S) |
|--|----------------|
| STATEMENT OF APPEALABILITY | 1 |
| STATEMENT OF THE CASE | 1 |
| STATEMENT OF FACTS | 6 |
| A. The Guilt Phase | 6 |
| B. The Second Penalty Phase | 19 |
| 1. The Evidence in Aggravation | 19 |
| a. Guilt Phase Witnesses | 20 |
| b. Victim Impact Evidence | 22 |
| c. Factor b Evidence Offered in Aggravation .. | 25 |
| 2. The Evidence in Mitigation | 28 |
| 3. The Prosecutor’s Rebuttal | 52 |
| I. THE TRIAL JUDGE ERRED IN DENYING APPELLANT’S NUMEROUS REQUESTS FOR APPOINTMENT OF NEW COUNSEL BOTH BEFORE AND DURING HIS COMPETENCY HEARING | 57 |
| A. Factual Background | 57 |
| B. The Law | 60 |
| C. Failure to Substitute Counsel Until After the Completion of the Competency Hearing Constituted an Abuse of Discretion | 62 |
| D. Prejudice | 67 |

TABLE OF CONTENTS

| | PAGE(S) |
|--|---------|
| II. THE TRIAL JUDGE ERRED IN FAILING TO CONDUCT ADEQUATE AND APPROPRIATE JUROR VOIR DIRE, THUS VIOLATING APPELLANT'S RIGHTS UNDER THE FIFTH, SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS | 71 |
| A. Appellant's Motions Regarding Jury Selection | 71 |
| B. Voir Dire and the Constitutional Right to an Impartial Jury | 72 |
| C. The State Statute Governing Voir Dire | 73 |
| D. The Trial Judge's Failure to Conduct Individual Sequestered Voir Dire Violated Appellant's Constitutional Rights and His Rights Under Code of Civil Procedure Section 223 | 74 |
| E. The Voir Dire in This Case was not Sufficient to Discover any Racial Biases of Prospective Jurors | 78 |
| 1. Selection of the First Jury | 80 |
| 2. Selection of the Second Jury | 83 |
| F. The Trial Judge Relied too Heavily on the Jury Questionnaires | 85 |
| G. The Inadequate Voir Dire Concerning Race Requires Reversal of Appellant's Convictions and Death Sentence | 88 |
| III. THE VERSION OF CODE OF CIVIL PROCEDURE SECTION 223 IN EFFECT AT THE TIME OF APPELLANT'S TRIAL WAS UNCONSTITUTIONAL BECAUSE IT TREATED CRIMINAL DEFENDANTS LESS FAVORABLY THAN CIVIL LITIGANTS | 94 |

TABLE OF CONTENTS

| | PAGE(S) |
|--|---------|
| A. The Version of Section 223 in Effect at the Time of Appellant’s Trial Violates Equal Protection Rights | 94 |
| B. Criminal Defendants are Treated less Favorably Under Section 223 than are Civil Litigants Under Code of Civil Procedure 222.5 | 96 |
| IV. THE TRIAL JUDGE ERRED IN DENYING DEFENSE MOTIONS DURING JURY SELECTION THAT THE PROSECUTOR HAD VIOLATED THE PRINCIPLES OF BATSON V. KENTUCKY BY STRIKING AFRICAN AMERICAN JURORS BASED ON THEIR RACE | 103 |
| A. Introduction | 103 |
| B. The Facts of this Case | 108 |
| 1. The First Jury Selection | 108 |
| 2. The Record Shows the Trial Judge Erred in Allowing the State to Challenge Tanisha Brooks | 116 |
| 3. The Second Jury Selection | 117 |
| C. Conclusion | 125 |
| V. THE TRIAL JUDGE ERRED IN ALLOWING THE PROSECUTOR TO CROSS-EXAMINE A DEFENSE EXPERT WITNESS AT TRIAL REGARDING HIS TESTIMONY AT THE COMPETENCY HEARING AND EVIDENCE GENERATED BY THAT HEARING | 127 |
| A. The Motion and the Hearing | 127 |
| B. The Cross-Examination of Dr. Cerbone at the Guilt Phase | 130 |

TABLE OF CONTENTS

| | PAGE(S) |
|---|---------|
| C. The Trial Judge Erred in Allowing this Cross-Examination | 130 |
| D. Appellant was Prejudiced by the Failure to Exclude Evidence from his Competency Proceedings at his Guilt Phase Trial | 135 |
| VI. THE TRIAL JUDGE ERRED IN REFUSING TO INSTRUCT THE JURY ON THE ELEMENTS OF TRESPASS | 139 |
| A. Reversal is Required | 145 |
| VII. THE TRIAL JUDGE ERRED IN FAILING TO INSTRUCT THE JURY REGARDING THE OFFENSE OF SECOND DEGREE MURDER | 146 |
| A. The Trial Record Concerning These Jury Instructions ... | 146 |
| B. The Trial Judge's Refusal to Give The Requested Instruction on Second Degree Murder as a Lesser Included Offense of First Degree Murder Violated Appellant's Rights Under State Law and Under | 149 |
| 1. State Law Concerning Lesser Included Offense Instructions | 149 |
| 2. State Law Concerning Instructions on the Theory of the Defense | 153 |
| 3. Federal Law Concerning Lesser Included Offense Instructions | 154 |
| C. The Failure to Give These Requested Instructions on the Defense Theory of the Case Violated Appellant's Constitutional Rights to Due Process and to a Jury Trial | 156 |

TABLE OF CONTENTS

| | PAGE(S) |
|--|----------------|
| D. Because Appellant did Introduce Sufficient Evidence to Support his Theory of Second Murder, the Trial Judge was Required to Give the Requested Instruction | 158 |
| E. The Erroneous Failure to Instruct on the Defense Theory of the Case Requires that Appellant’s Convictions Must be Reversed | 161 |
| VIII. THE TRIAL COURT ERRED IN INSTRUCTING THE JURY REGARDING FIRST DEGREE FELONY MURDER BECAUSE THE INFORMATION CHARGED APPELLANT WITH SECOND DEGREE MALICE MURDER IN VIOLATION OF PENAL CODE SECTION 187 | 164 |
| IX. THE TRIAL JUDGE ERRED IN FAILING TO INSTRUCT THE JURY THAT THEY MUST AGREE UNANIMOUSLY CONCERNING EACH ESSENTIAL FACT OF THE FIRST DEGREE FELONY MURDER ALLEGATION | 172 |
| A. The Jury Must be Unanimous on the Theory of First Degree Murder | 172 |
| X. THE TRIAL JUDGE’S ERRONEOUS INSTRUCTIONS REGARDING THE THREE FELONY SPECIAL CIRCUMSTANCES REQUIRE REVERSAL OF THOSE FINDINGS AND THE DEATH SENTENCE | 182 |
| A. The Version of CALJIC No. 8.81.17 Given Was Incomplete | 182 |
| B. This Instructional Error Violated Appellant’s Constitutional Rights and Resulted in Prejudice | 187 |

TABLE OF CONTENTS

| | PAGE(S) |
|---|----------------|
| C. The Incomplete Special Circumstance Verdict Forms, Omitting the “Advance the Commission” Language, Also Require Reversal | 190 |
| D. Conclusion | 194 |
| | |
| XI. THE CUMULATIVE EFFECT OF A SERIES OF INSTRUCTIONAL ERRORS WAS PREJUDICIAL AND VIOLATED APPELLANT’S RIGHTS TO A FAIR TRIAL, TRIAL BY JURY, AND RELIABLE VERDICTS, REQUIRING REVERSAL OF THE ENTIRE JUDGMENT | 197 |
| | |
| A. The Court Erred in Instructing the Jurors With CALJIC No. 2.03 and CALJIC No. 2.52 That They Could Consider his “False Statements” and his Flight as Evidence of his Consciousness of Guilt | 197 |
| | |
| 1. CALJIC Nos. 2.03 and 2.52 Should not Have Been Given Here Because They Were Impermissibly Argumentative | 200 |
| | |
| 2. CALJIC Nos. 2.03 and 2.52 Also Allowed the Jury to Draw Irrational Permissive Inferences | 206 |
| | |
| XII. THE JURY INSTRUCTION ON REASONABLE DOUBT, CALJIC No. 2.90, WAS CONSTITUTIONALLY DEFECTIVE | 212 |
| | |
| A. The Instruction Erroneously Implied That Reasonable Doubt Requires the Jurors to Articulate Reasons for Their Doubt | 212 |
| | |
| B. CALJIC No. 2.90 Unconstitutionally Instructed the Jury That a Possible Doubt is not a Reasonable Doubt . . . | 214 |

TABLE OF CONTENTS

| | PAGE(S) |
|---|---------|
| C. The Instruction Was Deficient and Misleading Because the Instruction Failed to Affirmatively Instruct That the Defense had No Obligation to Present or Refute Evidence | 217 |
| D. The Instruction Was Constitutionally Deficient Because it Failed to Explain That Appellant’s Attempt to Refute Prosecution Evidence did not Shift the Burden of Proof | 219 |
| E. The Jurors Should Have Been Told That a Conflict In The Evidence and/or a Lack Of Evidence Could Leave Them With a Reasonable Doubt as to Guilt | 220 |
| F. CALJIC No. 2.90 Failed to Inform the Jury That the Presumption of Innocence Continues Throughout the Entire Trial, Including Deliberations | 221 |
| G. CALJIC No. 2.90 Improperly Described the Prosecution’s Burden as Continuing “Until” the Contrary is Proved | 224 |
| H. The Errors Violated the Federal and State Constitutions | 223 |
| I. The Judgment Should be Reversed | 224 |
| XIII. OTHER INSTRUCTIONS IMPERMISSIBLY UNDERMINED AND DILUTED THE REQUIREMENT OF PROOF BEYOND A REASONABLE DOUBT | 226 |
| A. The Instruction on Circumstantial Evidence Undermined the Requirement of Proof Beyond a Reasonable Doubt | 226 |

TABLE OF CONTENTS

| | PAGE(S) |
|--|----------------|
| B. The Provision of CALJIC Nos. 2.22, 2.27 and 2.51 Also Vitiating the Reasonable Doubt Standard | 229 |
| C. The Court Should Reconsider its Prior Rulings Upholding the Defective Instructions | 233 |
| D. Reversal is Required | 235 |
| XIV. THE PROSECUTOR IMPERMISSIBLY BURDENED APPELLANT’S RIGHT TO REMAIN SILENT BY COMMENTING ON APPELLANT’S DECISION NOT TO TESTIFY | 237 |
| A. The <i>Griffin</i> Error in his Case | 239 |
| B. The Prejudice Caused by his Error Requires Reversal | 240 |
| XV. DURING THE SELECTION OF THE SECOND JURY, THE TRIAL JUDGE ERRED WHEN HE INCLUDED PINPOINT QUESTIONS IN THE JUROR QUESTIONNAIRE BASED ON STATEMENTS MADE BY THE TWO JURORS WHO REFUSED TO VOTE FOR DEATH DURING THE FIRST PENALTY TRIAL | 244 |
| A. The Proceedings in the Trial Court | 244 |
| B. These Questions Violated Appellant’s Sixth Amendment Right to a Fair and Impartial Jury | 248 |
| C. The Error of Including These Improper Questions Defies Harmless Error Analysis | 252 |
| D. The Record Discloses That the Inclusion of This Question Allowed the Prosecutor to Eliminate all Prospective Jurors Who Might Have an Open Mind on the Question of Whether it is Appropriate to Execute a Person who did not Intend to Kill | 252 |

TABLE OF CONTENTS

| | PAGE(S) |
|--|----------------|
| XVI. THE TRIAL JUDGE’S FAILURE TO LIMIT VICTIM IMPACT EVIDENCE VIOLATED APPELLANT’S RIGHTS TO A FAIR AND RELIABLE PENALTY DETERMINATION IN VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENTS | 255 |
| A. Factual Background | 255 |
| B. The Legal Standards | 256 |
| C. The Victim Impact Evidence Admitted in this Case Exceeded the Constitutional Bounds set Forth in the <i>Payne</i> Decision | 261 |
| XVII. APPELLANT’S DEATH JUDGEMENT SHOULD BE REVERSED BECAUSE ADMISSION AND USE OF EVIDENCE OF PRIOR UNADJUDICATED CRIMINAL ACTIVITY VIOLATED HIS CONSTITUTIONAL RIGHTS | 269 |
| A. Introduction | 269 |
| B. The Erroneous Admission of Evidence of Three Alleged Prior Unadjudicated Incidents of Criminal Activity under Section 190.3, Factor (b), Violated Appellant’s Constitutional Rights under the Sixth, Eighth and Fourteenth Amendments | 270 |
| 1. The Three Incidents of Alleged Prior Criminal Activity Which were Improperly Admitted | 275 |
| a. The Jason Labonte Incident | 275 |
| 1. The Proceedings in the Trial Court . | 275 |
| 2. The Testimony of Jason Labonte ... | 276 |

TABLE OF CONTENTS

| | PAGE(S) |
|---|----------------|
| 3. Prosecutor’s Closing Argument About the Labonte Allegations | 278 |
| 4. The Trial Court Erred In Admitting Uncharged Juvenile Behavior As An Aggravating Factor During the Penalty Phase | 280 |
| 5. The Trial Judge Erred In Failing to Instruct on the Elements of the Crimes Allegedly Committed by Appellant in the Incident Involving Jason Labonte | 282 |
| b. The Incident Involving Sheriff’s Deputies In the County Jail | 285 |
| c. The Incident Involving Officer Cherski . . . | 292 |
| C. The Improper Use of Evidence of These Three Alleged “Criminal Activities” Prejudiced Appellant in His Penalty Retrial | 294 |
| XVIII. THE TRIAL COURT’S IMPROPER ADMISSION OF A SHOCKING AND INFLAMMATORY PHOTOGRAPH OF THE VICTIM SERVED NO PURPOSE OTHER THAN TO INFLAME THE JURY AND REQUIRES REVERSAL OF THE DEATH SENTENCE | 297 |
| A. Factual Background | 297 |
| B. The Trial Court Failed to Weigh the Relevance of the Photograph Against the Prejudice Attendant to its Admission | 303 |

TABLE OF CONTENTS

PAGE(S)

C. Even if It Is Determined that the Trial Court Sufficiently Weighed the Prejudice Against the Probative Value, the Decision to Admit the Photograph was Error, an Abuse Discretion, a Violation of Evidence Code Section 352 and a violation of the Fifth, Sixth, Eighth and Fourteenth Amendments of the Federal Constitution 306

XIX. APPELLANT’S DEATH SENTENCE SHOULD BE REVERSED BECAUSE THE TRIAL JUDGE FAILED TO GIVE A COMPLETE REASONABLE DOUBT INSTRUCTION AT THE PENALTY PHASE RETRIAL 313

XX. APPELLANT’S RETRIAL AFTER THE ORIGINAL JURY FAILED TO REACH A PENALTY VERDICT VIOLATED HIS FEDERAL CONSTITUTIONAL RIGHTS 317

A. Introduction 317

B. Standard of Review 318

C. Analysis 318

XXI. THE TRIAL JUDGE DID NOT COMPLY WITH THE MANDATE OF PENAL CODE SECTION 190.9 THAT ALL PROCEEDINGS IN A CAPITAL CASE BE RECORDED BY A COURT REPORTER 322

A. The Off-the-Record Proceedings 322

1. Pre trial Proceedings 322

2. The Competency Proceedings 322

3. Pre trial Proceedings 322

4. The Guilt Phase 323

5. First Penalty Phase 325

6. The Second Penalty Phase 326

TABLE OF CONTENTS

| | PAGE(S) |
|---|---------|
| B. The Number of Unreported Proceedings in This Case as Well as the Crucial Nature of These Unreported Proceedings Require Reversal | 326 |
| XXII. THE PROCESS USED IN CALIFORNIA FOR DEATH QUALIFICATION OF JURIES IS UNCONSTITUTIONAL | 332 |
| A. The Record in this Case | 332 |
| B. The Death Qualification System and State and Federal Legal Precedents | 333 |
| C. The Central Role of the Jury in Determining the Evolving Standards of Decency Applicable to the Death Penalty | 339 |
| D. Current Empirical Studies Prove That Death Qualification is Unconstitutional | 344 |
| 1. The “ <i>Hovey</i> Problem” has Been Solved | 344 |
| 2. The Factual Basis of <i>Lockhart</i> is no Longer Sound | 347 |
| a. Misinterpretation of the Scientific Data | 349 |
| b. Incorrect Legal Observations | 350 |
| c. The Scientific Evidence | 351 |
| 1. Post- <i>Lockhart</i> Data Regarding Effects on the Guilt Phase Jury | 351 |
| 2. Post- <i>Lockhart</i> Penalty Phase Jury Studies | 352 |

TABLE OF CONTENTS

| | PAGE(S) |
|--|----------------|
| 3. Data Regarding the Impact of Death Qualification on Jurors' Race, Gender, and Religion | 354 |
| 4. Prosecutorial Misuse of Death-Qualification | 355 |
| E. Death Qualification in California Violates the Eighth Amendment | 357 |
| F. The Process of Death Qualification is Unconstitutional | 358 |
| G. Death Qualification Violates the Right to a Jury Trial | 359 |
| H. The Prosecutor's Use of Death Qualification via Peremptory Challenges was Unconstitutional | 361 |
| I. Errors in Death Qualifying the Penalty Jury Requires Reversal of the Guilt Verdicts as Well | 363 |
| J. Conclusion | 365 |
| XXII. APPELLANT'S DEATH SENTENCE, BASED ON FELONY MURDER SIMPLICITER, IS A DISPROPORTIONATE PENALTY UNDER THE EIGHTH AMENDMENT AND VIOLATES INTERNATIONAL LAW | 368 |
| A. California Authorizes the Imposition of the Death Penalty Upon a Person who Kills During the Commission of a Felony Without Regard to his or her State of Mind at the Time of the Killing | 369 |

TABLE OF CONTENTS

PAGE(S)

B. The Felony Murder Special Circumstances Violate the Eighth Amendment’s Proportionality Requirement and International Law Because They Permit Imposition of the Death Penalty Without Proof That the Defendant had a Culpable Mens Rea as to the Killing 373

XXIV. REVERSAL IS REQUIRED BASED ON THE CUMULATIVE EFFECT OF ERRORS 384

XXV. IF THE CONVICTION PURSUANT TO ANY COUNT IS REVERSED OR THE FINDING AS TO ANY SPECIAL CIRCUMSTANCE IS VACATED, THE PENALTY OF DEATH MUST BE REVERSED AND THE CASE REMANDED FOR A NEW PENALTY PHASE TRIAL 387

XXVI. THE CALIFORNIA DEATH PENALTY STATUTE AND INSTRUCTIONS ARE UNCONSTITUTIONAL BECAUSE THEY FAIL TO INSTRUCT THE JURY ON ANY PENALTY PHASE BURDEN OF PROOF . . . 390

A. The Statute and Instructions Unconstitutionally Fail to Assign to the State the Burden of Proving Beyond a Reasonable Doubt the Existence of an Aggravating Factor, That the Aggravating Factors Outweigh the Mitigating Factors, and That Death is the Appropriate Penalty 391

B. The State and Federal Constitutions Require That the Jurors be Instructed That They May Impose a Sentence of Death Only if They are Persuaded Beyond a Reasonable Doubt That the Aggravating Factors Outweigh the Mitigating Factors and That Death is the Appropriate Penalty 404

TABLE OF CONTENTS

| | PAGE(S) |
|--|----------------|
| 1. Factual Determinations | 404 |
| 2. Imposition of Life or Death | 405 |
| C. The Sixth, Eighth, and Fourteenth Amendments Require That the State Bear Some Burden of Persuasion at the Penalty Phase | 409 |
| D. The Instructions Violated the Sixth, Eighth and Fourteenth Amendments to the United States Constitution by Failing to Require Juror Unanimity on Aggravating Factors | 413 |
| E. The Instructions Violated the Sixth, Eighth and Fourteenth Amendments by Failing to Inform the Jury Regarding the Standard of Proof and Lack of Need for Unanimity as to Mitigating Circumstances | 419 |
| F. The Penalty Jury Should also be Instructed on the Presumption of Life | 421 |
| G. Conclusion | 422 |
| XXVII. THE INSTRUCTIONS DEFINING THE SCOPE OF THE JURY’S SENTENCING DISCRETION AND THE NATURE OF ITS DELIBERATIVE PROCESS VIOLATED APPELLANT’S CONSTITUTIONAL RIGHTS | 423 |
| A. Introduction | 423 |
| B. The Instructions Caused the Jury’s Penalty Choice to Turn on an Impermissibly Vague and Ambiguous Standard That Failed to Provide Adequate Guidance and Direction | 424 |

TABLE OF CONTENTS

| | PAGE(S) |
|--|----------------|
| C. The Instructions Failed to Convey the Central Duty of Jurors in the Penalty Phase | 427 |
| D. The Instructions Failed to Inform the Jurors That if They Determined That Mitigation Outweighed Aggravation, They Were Required to Return a Sentence of Life Without the Possibility of Parole | 429 |
| E. The Instructions Failed to Inform the Jurors That Appellant did not Have to Persuade Them the Death Penalty was Inappropriate | 433 |
| F. Conclusion | 434 |
| XXVIII. THE FAILURE TO PROVIDE INTERCASE PROPORTIONALITY REVIEW VIOLATES APPELLANT’S CONSTITUTIONAL RIGHTS | 435 |
| A. The Lack of Intercase Proportionality Review Violates the Eighth Amendment Protection Against the Arbitrary and Capricious Imposition of the Death Penalty | 435 |
| XXIX. CALIFORNIA’S USE OF THE DEATH PENALTY VIOLATES INTERNATIONAL LAW, THE EIGHTH AMENDMENT AND LAGS BEHIND EVOLVING STANDARDS OF DECENCY | 439 |
| XXX. CALIFORNIA’S DEATH PENALTY SCHEME FAILS TO REQUIRE WRITTEN FINDINGS REGARDING THE AGGRAVATING FACTORS AND THEREBY VIOLATES APPELLANT’S CONSTITUTIONAL RIGHTS TO MEANINGFUL APPELLATE REVIEW AND EQUAL PROTECTION OF THE LAW | 444 |
| CONCLUSION | 446 |

TABLE OF AUTHORITIES

| | PAGE(S) |
|--|--------------------------------------|
| <i>Adams v. Texas</i> (1980) 448 U.S. 38 | 249, 334 |
| <i>Addington v. Texas</i> (1979) 441 U.S. 418 | 405, 406 |
| <i>Ake v. Oklahoma</i> (1985) 470 U.S. 68 | 271 |
| <i>Albright v. Oliver</i> (1994) 510 U.S. 266 | 144 |
| <i>Aldridge v. United States</i> (1931) 283 U.S. 30 | 78, 88 |
| <i>Alford v. State</i> (Fla. 1975) 307 So.2d 433 | 437 |
| <i>Apprendi v. New Jersey</i> (2000) 530 U.S. 466 | passim |
| <i>Arizona v. Fulminante</i> (1991) 499 U.S. 279 | 155, 194, 252 |
| <i>Arnold v. State</i> (Ga. 1976) 224 S.E.2d 386 | 425, 426 |
| <i>Albright v. Oliver</i> (1994) 510 U.S. 266 | 144 |
| <i>Alford v. State</i> (Fla. 1975) 307 so.2d 433 | 437 |
| <i>Atkins v. Virginia</i> (2002) 536 U.S. 304, 316 | 280, 341-342, 373, 377-378, 382, 441 |

| | |
|--|---------------------------------------|
| <i>Bacigalupo v. California</i> (1992) 506 U.S. 802 | 414 |
| <i>Ballew v. Georgia</i> (1978) 435 U.S. 223 | 362, 416 |
| <i>Barclay v. Florida</i> (1976) 463 U.S. 939 | 435 |
| <i>Batchelder v. United States</i> (1979) 442 U.S. 114 | 95 |
| <i>Batson v. Kentucky</i> (1986) 476 U.S. 79 | 103-104, 109, 125, 384 |
| <i>Beazley v. Johnson</i> (5th Cir. 2001) 242 F.3d 248 | 443 |
| <i>Beck v. Alabama</i> (1980) 447 U.S. 625 | passim |
| <i>Blakely v. Washington</i> (2004) 542 U.S. 296 | 174, 177, 180, 283-285, 392, 394, 397 |
| <i>Blockberger v. United States</i> (1932) 284 U.S. 299 | 176 |
| <i>Blystone v. Pennsylvania</i> (1990) 494 U.S. 299 | 428 |
| <i>Booth v. Maryland</i> (1987) 482 U.S. 496 | 256, 261 |
| <i>Boyde v. California</i> (1990) 494 U.S. 370 | 419, 430 |
| <i>Bradley v. Duncan</i> (9th Cir. 2002) 315 F.3d 1071 | 143, 156 |

| | |
|---|--------------------|
| <i>Brewer v. State</i> (Ind. 1980) 417 NE.2d 889 | 437 |
| <i>Brown v. Kelly Broadcasting Co.</i> (1989) 48 Cal.3d 711 | 259 |
| <i>Brown v. Louisiana</i> (1980) 447 U.S. 277 323 | 180, 415 |
| <i>Buchanan v. Kentucky</i> (1987) 483 U.S. 402 | 332 |
| <i>Bullington v. Missouri</i> (1981) 451 U.S. 430 | 272, 407 |
| <i>Burch v. Louisiana</i> (1979) 441 U.S. 13 | 174 |
| <i>Burger v. Kemp</i> (1987) 483 U.S. 776 | 224 |
| <i>Bush v. Gore</i> (2000) 531 U.S. 98 | 94, 174 |
| <i>Buzgheia v. Leasco Sierra Grove</i> (1997) 60 Cal.App.4th 374 | 234 |
| <i>Cabana v. Bullock</i> (1986), 474 U.S. 376 | 375 |
| <i>Cage v. Louisiana</i> (1990) 498 U.S. 39 | 212, 223, 226, 230 |
| <i>Caldwell v. Mississippi</i> (1985) 472 U.S. 320 | 154, 386 |

| | |
|--|--------------------|
| <i>Caldwell v. Maloney</i> (1st Cir. 1998) 159 F.3d 639 | 105, 154 |
| <i>California v. Brown</i> (1987) 479 U.S. 538 | 391 |
| <i>Camden v. Superior Court</i> (1978) 20 Cal.3d 906 | 65 |
| <i>Carella v. California</i> (1989) 491 U.S. 263 | 197, 227, 235, 285 |
| <i>Carlos v. Superior Court</i> (1983) 35 Cal.3d 131 | 370 |
| <i>Carter v. Kentucky</i> (1981) 450 U.S. 288 | 149 |
| <i>Caspari v. Bohlen</i> (1994) 510 U.S. 383 | 272, 296 |
| <i>Chambers v. Mississippi</i> (1973) 410 U.S. 284 | 144 |
| <i>Chapman v. California</i> (1967) 386 U.S. 18 | passim |
| <i>Clark v. Jeter</i> (1988) 486 U.S. 456 | 96 |
| <i>Clarke v. Commonwealth</i> (Va. 1932) 166 S.E. 541 | 221 |
| <i>Coker v. Georgia</i> (1977) 433 U.S. 584 | passim |
| <i>Cole v. Young</i> (7 th Cir. 1987) 817 F.2d 412 | 290 |

| | |
|---|-------------------------|
| <i>Collins v. State</i> (Ark. 1977) 548 S.W.2d 106 | 437 |
| <i>Comden v. Superior Court</i> (1978) 20 Cal.3d 906 | 65 |
| <i>Commonwealth v. Brown</i> (Pa. 1988) 711 A.2d 444 | 329 |
| <i>Commonwealth v. Chambers</i> (Pa. 1992) 599 A.2d 630 | 329 |
| <i>Conde v. Henry</i> 9th Cir. 1999) 198 F.3d 734 | 140, 142, 143, 156, 161 |
| <i>Connors v. United States</i> (1895) 158 U.S. 408 | 72 |
| <i>Conservatorship of Roulet</i> (1979) 23 Cal. 3d.219 | 406 |
| <i>Cool v. United States</i> (1972) 409 U.S. 100 | 433 |
| <i>Cooper v. Fitzharris</i> (9 th Cir.) 586 F.2d. 1325 | 384 |
| <i>Cooper v. Industries v. Leatherman Tool Group, Inc.</i> (2001) 532 U.S. 432 | 401 |
| <i>Craig v. Boren</i> (1976) 429 U.S. 190 | 100 |
| <i>Cummiskey v. Superior Court</i> (1992) 3 Cal.4th 1018 | 166 |

| | |
|---|----------|
| <i>Darbin v. Nourse</i> (9th Cir. 1981) 664 F.2d 1109 | 92 |
| <i>Davis v. Alaska</i> (1974) 415 U.S. 308 | 156 |
| <i>Davis v. Georgia</i> (1976) 429 U.S. 122 | 102, 367 |
| <i>DeJonge v. Oregon</i> (1937) 299 U.S. 353 | 170 |
| <i>Delo v. Lashley</i> (1983) 507 U.S. 27 | 421 |
| <i>Den exdem. Murray v. Hoboken Land & Imp. Co.</i> (1855) 59 U.S. 272 | 414 |
| <i>Dennis v. United States</i> (1950) 339 U.S. 162 | 91-92 |
| <i>Devose v. Norris</i> (8th Cir. 1995) 53 F.3d 201 | 105 |
| <i>Dill v. State</i> (Ind. 2001) 741 N.E.2d, 1230 | 205 |
| <i>Dillard v. Commonwealth</i> (Ky. 1999) 995 S.W.2d 366 | 320 |
| <i>Donchin v. Guerrero</i> (1995) 34 Cal.App.4th 1832 | 199 |
| <i>Donnelly v. DeChristopher</i> (1974) 416 U.S. 637 | 384, 385 |
| <i>Donovan v. Davis</i> (4th Cir. 1977) 558 F.2d 201 | 272 |

| | |
|---|----------------------------|
| <i>Drayden v. White</i> (9th Cir. 2000) 232 F.3d 704 | 258 |
| <i>Drope v. Missouri</i> (1975) 420 U.S. 162 | 67 |
| <i>Duncan v. Louisiana</i> (1968) 391 U.S. 145 | 149, 244 |
| <i>Dusky v. United States</i> (1960) 362 U.S. 402 | 67 |
| <i>Dyer v. Calderon</i> (9th Cir. en banc 1998) 151 F.3d 970 | 273 |
| <i>Eddings v. Oklahoma</i> (1982) 455 U.S. 104 | 271, 311, 409, 412 |
| <i>Edmondson v. State Bar</i> (1981) 29 Cal.3d 339 | 220 |
| <i>Edye v. Robertson</i> (1884) 112 U.S. 580 | 442 |
| <i>Eisenstadt v. Baird</i> (1972) 495 U.S. 438 | 94 |
| <i>Enmund v. Florida</i> (1982) 458 U.S. 782 | 318, 373, 375-378, 381-382 |
| <i>Estate of Herrera</i> (1992) 10 Cal.App.4th 630 | 62 |
| <i>Estate of Martin</i> (1915) 170 Cal. 657 | 200 |
| <i>Estate of Obernolte</i> (1979) 91 Cal. App. 3d. 124 | 221 |

| | |
|---|------------------------------|
| <i>Estelle v. McGuire</i> (1991) 502 U.S. 62 | 196, 214, 234, 241 |
| <i>Estelle v. Smith</i> (1981) 451 U.S. 454 | 132 |
| <i>Estelle v. Williams</i> (1991) 425 U.S. 501 | 314, 421 |
| <i>Evitts v. Lucey</i> (1985) 469 U.S. 387 | 193, 432 |
| <i>Fahy v. Connecticut</i> (1963) 375 U.S. 85 | 145 |
| <i>Fenelon v. State</i> (Fla. 1992) 594 So.2d 292 | 205 |
| <i>Fetterly v. Paskett</i> (9th Cir. 1993) 997 F.2d 1295 | 174, 224 |
| <i>Fisher v. United States</i> (1946), 328 U.S. 463 | 382 |
| <i>Francis v. Franklin</i> (1985) 471 U.S. 307 | 144, 228, 234 |
| <i>Frazier v. United States</i> (1948) 335 U. S. 497 | 91, 169 |
| <i>Furman v. Georgia</i> (1972) 408 U.S. 238, 278-279 | 341, 437 |
| <i>Gardner v. Florida</i> (1977) 430 U.S. 349 | 154, 241, 257, 272, 310, 404 |
| <i>Gavieres v. United States</i> (1911) 220 U.S. 338 | 176 |

| | |
|---|--------------------|
| <i>Gideon v. Wainwright</i> (1963) 372 U.S. 335 | 431 |
| <i>Godrey v. Georgia</i> (1980) 446 U.S. 420 | 427 |
| <i>Gomez v. Superior Court</i> (1958) 50 Cal.2d 640 | 169 |
| <i>Gomez v. United States</i> (1989) 490 U.S. 858 | 358 |
| <i>Graham v. Collins</i> (1993) 506 U.S. 461 | 376 |
| <i>Gray v. Mississippi</i> (1987) 481 U.S. 648 | 250, 254, 361, 363 |
| <i>Green v. Bock Laundry Machine Co.</i> (1989) 490 U.S. 504 | 142, 203 |
| <i>Green v. United States</i> (1957) 355 U.S. 184 | 169, 321 |
| <i>Gregg v. Georgia</i> (1976) 428 U.S. 153 | passim |
| <i>Greer v. Miller</i> (1987) 483 U.S. 756 | 384 |
| <i>Griffin v. California</i> (1965) 380 U.S. 609 | 237-240, 242 |
| <i>Griffin v. United States</i> (1991) 502 U.S. 46 | 414 |

| | |
|--|------------------------------|
| <i>Groppi v. Wisconsin</i> (1971) 400 U.S. 505 | 272 |
| <i>Haddan v. State</i> (Wyo. 2002) 42 P.3d 495 | 204 |
| <i>Hain v. Gibson</i> (10th Cir. 2002) 287 F.3d 1224 | 258 |
| <i>Hale v. Morgan</i> (1978) 22 Cal.3d 388 | 318 |
| <i>Hamling v. United States</i> (1974) 418 U.S. 87 | 170 |
| <i>Harmelin v. Michigan</i> (1991) 501 U.S. 957 | 417, 444 |
| <i>Harris v. Pulley</i> (9th Cir. 1982), 692 F.2d 1189 | 436 |
| <i>Harris v. Wood</i> (9th Cir. 1995) 64 F.3d 1432 | 385 |
| <i>Hendricks v. Calderon</i> (9th Cir. 1995) 70 F.3d 1032 | 308 |
| <i>Hernandez v. New York</i> (1991) 500 U.S. 352 | 109 |
| <i>Hicks v. Oklahoma</i> (1980) 447 U.S. 343 | 174, 224, 274, 329, 430, 432 |
| <i>Hilbish v. State</i> (Alaska App. 1995) 891 P.2d 841 | 215 |
| <i>Hildwin v. Florida</i> (1989) 490 U.S. 638 | 415 |

| | |
|--|---------------------------------|
| <i>Hilton v. Guyot</i> (1895) 159 U.S. 113, 163 | 441 |
| <i>Hitchcock v. Dugger</i> (1987) 481 U.S. 393 | 310, 386 |
| <i>Holland v. United States</i> (1954) 348 U.S. 121 | 215 |
| <i>Hopkins v. Reeves</i> (1998) 524 U.S. 88 | 375 |
| <i>Hopper v. Evans</i> (1982) 456 U.S. 605 | 154-156 |
| <i>Hovey v. Superior Court</i> (1980) 28 Cal.3d 1 | 97, 332, 337, 339, 342, 344-346 |
| <i>In re Barnett</i> (2003) 31 Cal.4th 466 | 193 |
| <i>In re Hernandez</i> (2006) 143 Cal.App.4th 459 | 134-135 |
| <i>In re Hess</i> (1955) 45 Cal.2d 171 | 170 |
| <i>In re Hitchings</i> (1993) 6 Cal.4th 97 | 72, 386 |
| <i>In re Podesto</i> (1976) 15 Cal.3d 921 | 444 |
| <i>In re Rodriguez</i> (1987) 119 Cal.App.3d 457 | 211, 224 |
| <i>In re Winship</i> (1970) 397 U.S. 358, 364 | passim |

| | |
|--|-------------------------|
| <i>Irwin v. Dowd</i> (1961) 366 U.S. 717 | 96, 100, 272 |
| <i>Izazga v. Superior Court</i> (1991) 54 Cal.3d 356 | 431 |
| <i>Jackson v. Virginia</i> (1979) 443 U.S. 307 | 210, 213, 223, 227, 230 |
| <i>Johnson v. California</i> (2005) 545 U.S. 162 | 104, 106, 241 |
| <i>Johnson v. Louisiana</i> (1972) 406 U.S.356 | 416 |
| <i>Johnson v. Mississippi</i> (1980) 486 U.S. 578 | 241, 270, 272, 416 |
| <i>Johnson v. State</i> (Nev. 2002) 59 P.3d 450 | 395, 400 |
| <i>Johnson v. Texas</i> (1993) 509 U.S. 35 | 281 |
| <i>Jordan v. Lefevre</i> (2d Cir. 2000) 206 F.3d 196 | 105 |
| <i>Keeble v. United States</i> (1973) 412 U.S. 205 | 155, 161 |
| <i>Kessler v. Gray</i> (1978) 77 Cal. App.3d 284, | 304 |
| <i>Killian v. Poole</i> (9th Cir. 2002) 282 F.3d 1204 | 385 |
| <i>Kyles v. Whitley</i> (1995) 514 U.S. 419 | 224 |

| | |
|---|---------------|
| <i>Lear v. Cowan</i> (7th Cir. 2000) 220 F.3d 825 | 376 |
| <i>Leonard v. United States</i> (1964) 378 U.S. 544 | 273 |
| <i>Leslie v. Warden</i> (Nev. 2002) 59 P.3d 440 | 378 |
| <i>Lewis v. Jeffers</i> (1990) 497 U.S. 764 | 267 |
| <i>Lewis v. Lewis</i> (9th Cir. 2003) 321 F.3d 824 | 104 |
| <i>Lewis v. United States</i> (1892) 146 U.S. 370 | 273 |
| <i>Lincoln v. Sun</i> (9th Cir. 1987) 807 F.2d 805 | 238 |
| <i>Lindsay v. Normet</i> (1972) 405 U.S. 56 | 142, 203 |
| <i>Lisenba v. California</i> (1941) 314 U.S. 219 | 310 |
| <i>Lockett v. Ohio</i> (1978) 438 U.S. 586 | passim |
| <i>Lockhart v. McCree</i> (1986) 476 U.S. 162 | 253, 343, 367 |
| <i>Loving v. Hart</i> (C.A.A.F. 1998) 47 M.J. 438 | 376 |
| <i>McKenzie v. Daye</i> (9th Cir. 1995) 57 F.3d 1461 | 443 |

| | |
|--|------------------------------|
| <i>McKoy v. No. Carolina</i> (1990) 494 U.S. 433 | 415, 420 |
| <i>McLean v. Crabtree</i> (9th Cir. 1999) 173 F.3d 1176 | 94-95 |
| <i>McNeil v. Middleton</i> (9th Cir. 2003) 344 F.3d 988 | 156 |
| <i>Maine v. Superior Court</i> (1968) 68 Cal.2d 375 | 337 |
| <i>Mandelbaum v. United States</i> (2d Cir. 1958) 251 F.2d 748 | 220 |
| <i>Manduley v. Superior Court</i> (2002) 27 Cal.4th 537 | 95 |
| <i>Mathews v. United States</i> (1988) 485 U.S. 58 | 143, 149, 156, 161 |
| <i>Matthews v. Eldridge</i> (1976) 424 U.S. 319 | 405 |
| <i>Maynard v. Cartwright</i> (1988) 486 U.S. 356, 361-36 | 424, 425 |
| <i>Miller-El v. Dretke ("Miller-El II")</i> (2005) 545 U.S. 231 | 105, 116 |
| <i>Mills v. Maryland</i> (1988) 486 U.S. 367 | 410, 412, 420, 424, 445 |
| <i>Monge v. California</i> (1998) 524 U.S. 721 | 176, 403, 407, 409, 415, 419 |
| <i>Moore v. Chesapeake & O.R. Co.</i> (1951) 340 U.S. 573 | 220 |

| | |
|--|------------------------------|
| <i>Morgan v. Illinois</i> (1992) 504 U.S. 719 | 72, 73, 252, 338, 339 |
| <i>Mullaney v. Wilbur</i> (1975) 421 U.S. 684 | 149, 229 |
| <i>Mu'Min v. Virginia</i> 500 U.S. 415 | 88 |
| <i>Murray v. Giarratano</i> (1989) 492 U.S. 1 | 180 |
| <i>Murtishaw v. Woodford</i> (9th Cir. 2001) 255 F.3d 926 | 427 |
| <i>Myers v. Ylst</i> (9th Cir. 1990) 897 F.2d 417 | 412, 417, 444 |
| <i>Neder v. United States</i> (1999) 527 U.S. 1 | 161, 162, 163, 188, 223 |
| <i>New Jersey v. Portash</i> (1979) 440 U.S. 450 | 133 |
| <i>Nishikawa v. Dulles</i> (1958) 356 U.S. 129, 137 | 220 |
| <i>Parker v. Dugger</i> (1991) 498 U.S. 308 | 271 |
| <i>Pate v. Robinson</i> (1966) 383 U.S. 375 | 67 |
| <i>Payne v. Tennessee</i> (1991) 501 U.S. 808 | 255, 257, 261, 267, 268, 310 |
| <i>Penry v. Johnson</i> (2001) 532 U.S. 782 | 193 |

| | |
|---|---------------|
| <i>Penry v. Lynaugh</i> (1989) 492 U.S. 302 | 343, 353 |
| <i>Per Industries, Inc. v. Leatherman Tool Group, Inc.</i> (2001) 532 U.S. 424 | 401 |
| <i>People v. Adams</i> (1971) 21 Cal.App.3d 972 | 102 |
| <i>People v. Adams</i> (2004) 115 Cal.App.4th 243 | 184 |
| <i>People v. Alcala</i> (1992) 4 Cal.4th 742 | 306 |
| <i>People v. Allen</i> (1986) 42 Cal.3d 1222, 1287 | 342, 396 |
| <i>People v. Allison</i> (1989) 48 Cal.3d 879 | 229 |
| <i>People v. Anderson</i> (1968) 70 Cal.2d 15 | 208, 297, 335 |
| <i>People v. Anderson</i> (1987) 43 Cal.3d 1104 | 297, 370, 371 |
| <i>People v. Anderson</i> (2001) 25 Cal.4th 543 | 335, 396 |
| <i>People v. Anderson</i> (2006) 141 Cal.App.4th 430 | 151, 153 |
| <i>People v. Antommarchi</i> (N.Y. 1992) 604 N.E.2d 95 | 213 |
| <i>People v. Arcega</i> (1982) 32 Cal.3d 504 | 131-132 |

| | |
|---|-------------------------|
| <i>People v. Arias</i> (1996) 13 Cal.4th 92 | 107, 177, 203, 421, 422 |
| <i>People v. Ashmus</i> (1991) 54 Cal.3d 932 | 207, 254, 333, 364 |
| <i>People v. Attard</i> (N.Y. App. Div. 1973) 346 N.Y.S.2d 851 | 221 |
| <i>People v. Bacigalupo</i> (1992) 1 Cal.4th 103 | 414 |
| <i>People v. Bacigalupo</i> (1993) 6 Cal.4th 457 | 258, 428 |
| <i>People v. Balderas</i> (1985) 41 Cal.3d 144 | 250, 291 |
| <i>People v. Barnett</i> (1998) 17 Cal.4th 1044 | 62 |
| <i>People v. Bemore</i> (2000) 22 Cal.4th 809 | 335, 336 |
| <i>People v. Berryman</i> (1993) 6 Cal.4th 1048 | 61 |
| <i>People v. Birks</i> (1998) 19 Cal.4th 108 | 142, 151 |
| <i>People v. Bittaker</i> (1989) 48 Cal.3d 1046 | 73, 98 |
| <i>People v. Boulerice</i> (1992) 5 Cal.App.4th 463 | 73, 101 |

| | |
|---|------------------------------|
| <i>People v. Box</i> (2000) 23 Cal.4th 1153 | 73, 74, 168-169 |
| <i>People v. Boyd</i> (1985) 38 Cal.3d 762 | 260, 283, 288, 291, 293 |
| <i>People v. Boyette</i> (2002) 29 Cal.4th 381 | 209 |
| <i>People v. Bradford</i> (1997) 14 Cal.4th 1005 | 167-169, 198, 238 |
| <i>People v. Breaux</i> (1991) 1 Cal.4th 281 | 426 |
| <i>People v. Breverman</i> (1998) 19 Cal.4th 142 | 149, 150 |
| <i>People v. Bright</i> (1996) 12 Cal.4th 652 | 165 |
| <i>People v. Brown</i> (1985) 40 Cal 3d 512 | 391, 396, 427 |
| <i>People v. Brown</i> (1988) 46 Cal.2d 432 | 241, 268, 296, 309, 316, 386 |
| <i>People v. Brown</i> (2004) 33 Cal.4th 382 | 241, 443 |
| <i>People v. Brownell</i> (Ill. 1980) 404 N.E.2d 181 | 437 |
| <i>People v. Bull</i> (Ill. 1998) 705 N.E.2d 824 | 440 |
| <i>People v. Burnham</i> (1991) 176 Cal.App.3d 1134 | 151 |

| | |
|--|----------|
| <i>People v. Burnick</i> (1975) 14 Cal.3d 306 | 405 |
| <i>People v. Burton</i> (1989) 48 Cal.3d 843 | 271 |
| <i>People v. Cardenas</i> (1997) 53 Cal.App.4th 240 | 73 |
| <i>People v. Carmen</i> (1951) 36 Cal.2d 768 | 150, 151 |
| <i>People v. Carpenter</i> (1997) 15 Cal.4th 312 | 168 |
| <i>People v. Caro</i> (1988) 46 Cal.3d 1035 | 271 |
| <i>People v. Carter</i> (2003) 30 Cal.4th 1166 | 177 |
| <i>People v. Castillo</i> (1997) 16 Cal.4th 1009 | 231 |
| <i>People v. Castro</i> (1985) 38 Cal.3d 301 | 207 |
| <i>People v. Catlin</i> (2001) 26 Cal.4th 81 | 424 |
| <i>People v. Ceja</i> (1994) 26 Cal.App.4th 78 | 157 |
| <i>People v. Champion</i> (1995) 9 Cal.4th 879 | 427 |
| <i>People v. Clark</i> (1990) 50 Cal.3d 583 | 250 |

| | |
|---|------------------------------|
| <i>People v. Cleaves</i> (1991) 229 Cal.App.3d 367 | 150 |
| <i>People v. Cleveland</i> (2004) 32 Cal.4th 704 | 197, 233 |
| <i>People v. Collins</i> (1976) 17 Cal.3d 687 | 174 |
| <i>People v. Combs</i> (2004) 34 Cal.4th 821 | 427 |
| <i>People v. Cooper</i> (1991) 53 Cal.3d 771 | 150, 153 |
| <i>People v. Cornwell</i> (2005) 37 Cal.4th 50 | 116 |
| <i>People v. Costello</i> (1943) 21 Cal.2d 76 | 431 |
| <i>People v. Cox</i> (2003) 30 Cal.4th 916 | 284 |
| <i>People v. Crandell</i> (1988) 46 Cal.3d 833 | 64, 209 |
| <i>People v. Crittenden</i> (1994) 9 Cal.4th 83 | 106, 197, 233, 234, 304, 306 |
| <i>People v. Crowe</i> (1973) 8 Cal.3d 815 | 244 |
| <i>People v. Cudjo</i> (1993) 6 Cal.4th 585 | 391 |
| <i>People v. Daniels</i> (1991) 52 Cal.3d 815 | 200 |

| | |
|---|-------------------------|
| <i>People v. Davenport</i> (1985) 41 Cal.3d 247 | 282, 283, 291, 314, 315 |
| <i>People v. Davenport</i> (1995) 11 Cal.4th 1171 | 106, 283, 291, 320 |
| <i>People v. Dellinger</i> (1984) 163 Cal.App.3d 284 | 175 |
| <i>People v. Dewberry</i> (1959) 51 Cal.2d 548 | 231 |
| <i>People v. Dillon</i> (1983) 34 Cal.3d 44 | 168, 169, 369 |
| <i>People v. Duncan</i> (1991) 53 Cal.3d 955 | 400, 410-411, 431, 432 |
| <i>People v. Earp</i> (1999) 20 Cal.4th 826 | 72, 371 |
| <i>People v. Easley</i> (1983) 34 Cal. 3d 858 | 335 |
| <i>People v. Edelbacher</i> (1989) 47 Cal.3d 983 | 427 |
| <i>People v. Edwards</i> (1985) 39 Cal.3d 107 | 157 |
| <i>People v. Edwards</i> (1991) 54 Cal.3d 787 | 255, 257, 258, 261 |
| <i>People v. Ervin</i> (2000) 22 Cal.4th 48 | 107, 125 |
| <i>People v. Estorga</i> (1928) 206 Cal. 81 | 102 |

| | |
|--|---------------|
| <i>People v. Estrada</i> (1995) 11 Cal.4th 568 | 185 |
| <i>People v. Failla</i> (1966) 64 Cal.2d 560, 564 | 179 |
| <i>People v. Fairbank</i> (1997) 16 Cal.4th 1223 | 391, 392, 395 |
| <i>People v. Farnham</i> (2002) 28 Cal.4th 107 | 307, 396, 436 |
| <i>People v. Fauber</i> (1992) 2 Cal.4th 792, 859 | 444 |
| <i>People v. Feagley</i> (1975) 14 Cal.3d 338 | 180, 405 |
| <i>People v. Fields</i> (1983) 35 Cal.3d 329 | 344, 354, 364 |
| <i>People v. Fierro</i> (1991) 1 Cal.4th 173 | 261 |
| <i>People v. Flannel</i> (1979) 25 Cal.3d 668 | 150-151 |
| <i>People v. Flood</i> (1998) 18 Cal.4th 470 | 162, 198, 252 |
| <i>People v. Frank</i> (1985) 38 Cal.3d 711 | 304 |
| <i>People v. Freeman</i> (1995) 8 Cal.4th 450 | 328 |
| <i>People v. Frierson</i> (1985) 39 Cal.3d 803 | 273 |

| | |
|---|----------|
| <i>People v. Fuentes</i> (1991) 54 Cal.3d 707 | 106-107 |
| <i>People v. Garceau</i> (1993) 6 Cal.4th 140 | 106, 318 |
| <i>People v. Garrison</i> (1989) 47 Cal.3d 746 | 185 |
| <i>People v. Geiger</i> (1984) 35 Cal. 3d 510 | 149 |
| <i>People v. Ghent</i> (1987) 43 Cal.3d 739 | 392, 443 |
| <i>People v. Glenn</i> (1991) 229 Cal.App.3d 1461 | 432 |
| <i>People v. Goldstein</i> (1982) 130 Cal.App.3d 1024 | 65 |
| <i>People v. Gonzales</i> (1983) 141 Cal.App.3d 786 | 175 |
| <i>People v. Gonzales</i> (1990) 51 Cal.3d 1179 | 229 |
| <i>People v. Gonzalez</i> (1989) 211 Cal.App.3d 1186 | 117 |
| <i>People v. Goodchild</i> (Mich. 1976) 242 N.W.2d 465 | 220 |
| <i>People v. Gordon</i> (1990) 50 Cal.3d 1223 | 72 |
| <i>People v. Granice</i> (1875) 50 Cal. 447 | 166 |

| | |
|--|------------------------------|
| <i>People v. Granillo</i> (1987) 197 Cal.App.3d 110 | 117 |
| <i>People v. Grant</i> (1988) 45 Cal.3d 829 | 287, 293 |
| <i>People v. Green</i> (1980) 27 Cal.3d 1 | 184, 195, 242, 304, 305, 370 |
| <i>People v. Griffin</i> (2004) 33 Cal.4th 536 | 107, 399, 401, 408 |
| <i>People v. Groce</i> (1971) 18 Cal.App.3d 292 | 67 |
| <i>People v. Guerrero</i> (1975) 47 Cal.App.3d 441 | 65 |
| <i>People v. Gutierrez</i> (2002) 28 Cal.4th 1083 | 140 |
| <i>People v. Hagen</i> (1998) 19 Cal.4th 652 | 151 |
| <i>People v. Hall</i> (1986) 41 Cal.3d 826 | 304 |
| <i>People v. Hamilton</i> (1963) 60 Cal.2d 105 | 386 |
| <i>People v. Hansen</i> (1994) 9 Cal.4th 300 | 165 |
| <i>People v. Hardy</i> (1992) 2 Cal.4th 86 | 150, 271 |
| <i>People v. Harris</i> (1987) 192 Cal.App. 3d 943 | 129 |

| | |
|--|------------------------------|
| <i>People v. Harris</i> (2005) 37 Cal.4th 310 | 257 |
| <i>People v. Hart</i> (1999) 20 Cal.4th 54 | 61, 168 |
| <i>People v. Harvey</i> (1979) 25 Cal.3d 754 | 274 |
| <i>People v. Haskett</i> (1982) 30 Cal.3d 841 | 257, 336 |
| <i>People v. Hawthorne</i> (1992) 4 Cal.4th 43 | 395, 418 |
| <i>People v. Hayes</i> (1990) 52 Cal.3d 577 | 210, 370, 385, 409, 418, 433 |
| <i>People v. Heishman</i> (1988) 45 Cal.3d 147 | 271 |
| <i>People v. Henderson</i> (1963) 60 Cal.2d 482 | 169 |
| <i>People v. Henderson</i> (1977) 19 Cal.3d 86. | 171 |
| <i>People v. Hendricks</i> (1987) 43 Cal.3d 584 | 306 |
| <i>People v. Hernandez</i> (2003) 30 Cal. 4 th 835 | 318 |
| <i>People v. Hill</i> (1983) 148 Cal.App.3d 744 | 62, 63, 67 |
| <i>People v. Hill</i> (1998) 17 Cal.4th 800 | 218, 385 |

| | |
|--|-------------------|
| <i>People v. Hillhouse</i> (2002) 27 Cal.4th 469 | 443 |
| <i>People v. Hines</i> (1997) 15 Cal.4th 997 | ??? |
| <i>People v. Hofsheier</i> (2006) 37 Cal.4th 1185 | 95 |
| <i>People v. Holt</i> (1997) 15 Cal.4th 619 | 78 |
| <i>People v. Holt</i> (1984) 37 Cal.3d 436 | 385 |
| <i>People v. Hughes</i> (2002) 27 Cal.4th 287 | 166-167, 209, 335 |
| <i>People v. Jackson</i> (1971) 18 Cal.App.3d 504 | 304 |
| <i>People v. Jackson</i> (1996) 13 Cal.4th 1164 | 197, 199, 342 |
| <i>People v. Jenkins</i> (2000) 22 Cal.4th 900 | 335 |
| <i>People v. Jennings</i> (1991) 53 Cal.3d 334 | 233, 234 |
| <i>People v. Jeter</i> (1964) 60 Cal.3d 671 | 157, 158 |
| <i>People v. Johnson</i> (1989) 47 Cal.3d 1194 | 105 |

| | |
|---|---------------|
| <i>People v. Johnson</i> (1992) 3 Cal.4th 1183 | 72 |
| <i>People v. Johnson</i> (1993) 6 Cal.4th 1, 44-45.) | 370 |
| <i>People v. Johnson</i> (2003) 30 Cal.4th 1302 | 106 |
| <i>People v. Johnson</i> (Ill. App. Ct. 1972) 281 N.E.2d 451 | 221 |
| <i>People v. Jones</i> (1998) 17 Cal.4th 279 | 198 |
| <i>People v. Jones</i> (2003) 29 Cal.4th 1229 | 175, 193, 194 |
| <i>People v. Jurado</i> (2006) 38 Cal.4th 72 | 287 |
| <i>People v. Kainzrants</i> (1996) 45 Cal.App.4th 1068 | 234, 370 |
| <i>People v. Karis</i> (1988) 46 Cal.3d 612 | 342 |
| <i>People v. Kelley</i> (1980) 113 Cal.App.3d 1005 | 431 |
| <i>People v. Kelly</i> (1992) 1 Cal.4th. 495 | 203, 204 |
| <i>People v. Kimble</i> (1988) 44 Cal.3d 480 | 320 |
| <i>People v. Kobrin</i> (1995) 11 Cal.4th 416 | 171, 196 |

| | |
|--|-----------------------|
| <i>People v. Larson</i> (Colo. 1978) 572 P.2d 815 | 205 |
| <i>People v. Lessard</i> (1962) 58 Cal.2d 447 | 158 |
| <i>People v. Leung</i> (1992) 5 Cal.App.4th 482 | 94, 101 |
| <i>People v. Lewis</i> (2001) 25 Cal.4th 610 | 271 |
| <i>People v. Loggins</i> (1972) 23 Cal.App.3d 597 | 213 |
| <i>People v. Lohbauer</i> (1981) 29 Cal.3d 364 | 151 |
| <i>People v. Lucky</i> (1988) 45 Cal.3d 259, 295 | 282 |
| <i>People v. Mack</i> (Ill. 1995) 658 N.E.2d 437 | 191, 192, 193 |
| <i>People v. Majors</i> (1998) 18 Cal.4th 385 | 184, 185 |
| <i>People v. Marsden</i> (1970) 2 Cal.3d 118 | 57, 60-61, 63, 66, 67 |
| <i>People v. Marshall</i> (1996) 13 Cal.4th 799 | 156 |
| <i>People v. Martin</i> (1986) 42 Cal.3d 437 | 444, 445 |
| <i>People v. Martinez</i> (1998) 20 Cal.4th 225 | 304 |

| | |
|--|----------|
| <i>People v. Masterson</i> (1994) 8 Cal.4th 965 | 68 |
| <i>People v. Mata</i> (1955) 133 Cal.App.2d 18 | 431 |
| <i>People v. Maury</i> (2003) 30 Cal.4th 342 | 335 |
| <i>People v. Mattson</i> (1990) 50 Cal.3d 826 | 251, 334 |
| <i>People v. May</i> (1989) 213 Cal.App.3d 118 | 179 |
| <i>People v. Medina</i> (1974) 41 Cal.App.3d 43 | 238-240 |
| <i>People v. Medina</i> (1995) 11 Cal.4th 694 | 417 |
| <i>People v. Memro</i> (1995) 11 Cal.4th 786 | 61 |
| <i>People v. Mendoza</i> (2000) 24 Cal.4th 130 | 336, 342 |
| <i>People v. Milan</i> (1973) 9 Cal.3d 185 | 175 |
| <i>People v. Milner</i> (1988) 45 Cal.3d 227 | 427 |
| <i>People v. Mincey</i> (1992) 2 Cal.4th 408 | 200, 201 |
| <i>People v. Miranda</i> (1987) 44 Cal.3d 57 | 238 |

| | |
|---|--------------------|
| <i>People v. Modesto</i> (1963) 59 Cal.2d 722 | 151, 238 |
| <i>People v. Montiel</i> (1993) 5 Cal.4th 877 | 107, 261 |
| <i>People v. Moore</i> (1954) 43 Cal.2d 517 | 141, 203, 431, 432 |
| <i>People v. Munoz</i> (1974) 41 Cal.App.3d 62 | 67 |
| <i>People v. Murtishaw</i> (1981) 29 Cal.3d 733 | 238 |
| <i>People v. Murat</i> (1873) 45 Cal. 281 | 166 |
| <i>People v. Musselwhite</i> (1998) 17 Cal. 4th 1216 | 339, 371 |
| <i>People v. Nakahara</i> (2003) 30 Cal.4th 705 | 168, 201, 203 |
| <i>People v. Nguyen</i> (1997) 54 Cal.App.4th 705 | 96 |
| <i>People v. Nicolaus</i> (1991) 54 Cal.3d 551 | 209 |
| <i>People v. Nieto Benitez</i> (1992) 4 Cal.4th 91 | 200 |
| <i>People v. Noguera</i> (1992) 4 Cal.4th 599 | 233 |
| <i>People v. Ortiz</i> (1990) 51 Cal.3d 975 | 61 |

| | |
|---|-------------------------|
| <i>People v. Ozkan</i> (2004) 124 Cal.App.4th 1072 | 274 |
| <i>People v. Padilla</i> (1995) 11 Cal.4th 891 | 336 |
| <i>People v. Pensinger</i> (1991) 52 Cal.3d 899 | 288, 293 |
| <i>People v. Perez</i> (1962) 58 Cal.2d 229 | 242 |
| <i>People v. Phillips</i> (1985) 41 Cal.3d 29 | 287-289, 293 |
| <i>People v. Pinholster</i> (1992) 1 Cal.4th 865 | 246, 250, 334 |
| <i>People v. Pokovich</i> (2006) 39 Cal.4th 1240 | 132-133, 137 |
| <i>People v. Polk</i> (1965) 63 Cal.2d 443 | 288, 294 |
| <i>People v. Pollock</i> (2004) 32 Cal.4th 1153 | 258 |
| <i>People v. Prettyman</i> (1996) 14 Cal.4th 248 | 179 |
| <i>People v. Pride</i> (1992) 3 Cal.4th 195 | 168 |
| <i>People v. Prieto</i> (2003) 30 Cal.4th 225 | 335, 397, 400, 402, 424 |
| <i>People v. Ramos</i> (2004) 34 Cal.4th 494 | 97-99 |

| | |
|--|-------------------|
| <i>People v. Randall</i> (Ill.App. 1996) 671 N.E.2d | 105 |
| <i>People v. Rankeesoon</i> (1985) 39 Cal.3d 346 | 149 |
| <i>People v. Ratliff</i> (1986) 41 Cal.3d 675 | 185, 194 |
| <i>People v. Reynoso</i> (2003) 31 Cal.4th 903 | 107 |
| <i>People v. Rice</i> (1976) 59 Cal.App.3d 998 | 431 |
| <i>People v. Richardson</i> (Ill. 2001) 751 N.E.2d 1104 | 260 |
| <i>People v. Riel</i> (2000) 22 Cal.4th 1153 | 233 |
| <i>People v. Roberts</i> (1992) 2 Cal.4th 271 | 318 |
| <i>People v. Robertson</i> (1982) 33 Cal.3d 21 | 288-290, 294, 315 |
| <i>People v. Robinson</i> (2005) 37 Cal.4th 592 | 97, 99 |
| <i>People v. Roder</i> (1983) 33 Cal.3d 491 | 226, 228, 236 |
| <i>People v. Rodriguez</i> (1986) 42 Cal.3d 730 | 335 |
| <i>People v. Roldan</i> (2005) 35 Cal.4th 646 | 92 |

| | |
|--|-------------------------|
| <i>People v. Saille</i> (1991) 54 Cal.3d 1103 | 140 |
| <i>People v. Sakarias</i> (2000) 22 Cal.4th 596 | 176, 336 |
| <i>People v. Salas</i> (1976) 58 Cal.App.3d 460 | 231 |
| <i>People v. Samarjian</i> (1966) 240 Cal.App.2d 13 | 195 |
| <i>People v. San Nicolas</i> (2004) 34 Cal.4th 614 | 209 |
| <i>People v. Sanders</i> (1995) 11 Cal.4th 475 | 200 |
| <i>People v. Sarazzawski</i> (1945) 27 Cal.2d 7 | 252 |
| <i>People v. Scheid</i> (1997) 16 Cal.4th 1 | 306 |
| <i>People v. Schmeck</i> (2005) 37 Cal.4th 240 | 109, 390 |
| <i>People v. Scott</i> (1997) 15 Cal.4th 1188 | 327-328 |
| <i>People v. Seaton</i> (2001) 26 Cal.4th, 598 | 204, 318 |
| <i>People v. Sedeno</i> (1974) 10 Cal.3d 703 | 149, 150, 153 |
| <i>People v. Silva</i> (2001) 25 Cal.4th 345 | 106, 107, 109, 117, 125 |

| | |
|--|-----------------------|
| <i>People v. Smith</i> (1952) 9 Cal.App.4th 196 | 198 |
| <i>People v. Smith</i> (1978) 78 Cal.App.3d 698 | 179 |
| <i>People v. Smith</i> (2003) 30 Cal.4th 581 | 258, 336 |
| <i>People v. Smithey</i> (1999) 20 Cal.4th 936 | 371 |
| <i>People v. Snow</i> (2003) 30 Cal. 4th 43 | 338, 397 |
| <i>People v. Solorzano</i> (2005) 126 Cal.App.4th 106 | 66 |
| <i>People v. Soto</i> 63 Cal. 165 | 167 |
| <i>People v. Spearman</i> (1979) 25 Cal.3d 107, 119 | 162 |
| <i>People v. Stankewitz</i> (1990) 51 Cal.3d 72 | 66 |
| <i>People v. Stanley</i> (1995) 10 Cal.4th 764 | 392 |
| <i>People v. Stanworth</i> (1969) 71 Cal.2d 820 | 288 |
| <i>People v. Stewart</i> (1983) 145 Cal.App.3d 967 | 234 |
| <i>People v. Stewart</i> (2004) 33 Cal.4th 425 | 86, 87, 102, 253, 367 |

| | |
|---|-----------------------------|
| <i>People v. Superior Court (Mitchell)</i> (1993) 5 Cal.4th 1229 | 409 |
| <i>People v. Sutton</i> (1993) 19 Cal.App.4th 795 | 224 |
| <i>People v. St. Martin</i> (1970) 1 Cal.3d 524 | 150, 195 |
| <i>People v. Taylor</i> (1990) 52 Cal.3d 719 | 414 |
| <i>People v. Taylor</i> (1992) 5 Cal.App.4th 1299 | 74, 49, 88, 89 |
| <i>People v. Thomas</i> 19 Cal.3d 630 | 405 |
| <i>People v. Thompson</i> (1980) 27 Cal.3d 303 | 184 |
| <i>People v. Thompson</i> (1990) 50 Cal.3d 134, | 307 |
| <i>People v. Turner</i> (1994) 8 Cal.4th 137 | 106, 107 |
| <i>People v. Valdez</i> (2004) 32Cal.4th 73 | 61, 149, 158, 186, 189, 190 |
| <i>People v. Vann</i> (1974) 12 Cal.3d 220 | 224 |
| <i>People v. Visciotti</i> (1992) 2 Cal.4th 1 | 198 |
| <i>People v. Waidla</i> (2000) 22 Cal.4th 690 | 74 |

| | |
|---|------------------------|
| <i>People v. Watson</i> (1981) 30 Cal.3d 290 | 165, 169 |
| <i>People v. Weaver</i> (2001) 26 Cal.4th 876 | 307, 335 |
| <i>People v. Westlake</i> (1899) 124 Cal. 452 | 234 |
| <i>People v. Wheeler</i> (1978) 22 Cal.3d 258 | 105-106, 125, 174, 416 |
| <i>People v. Wickersham</i> (1982) 32 Cal.3d 307 | 150, 154 |
| <i>People v. Wilborn</i> (1999) 70 Cal.App.4th 339 | 74, 90 |
| <i>People v. Williams</i> (1971) 22 Cal.App.3d 34 | 211, 224, 384 |
| <i>People v. Williams</i> (1975) 13 Cal.3d 559 | 179 |
| <i>People v. Williams</i> (1994) 30 Cal.App.4th 1758 | 184 |
| <i>People v. Williams</i> (1997) 16 Cal.4th 635 | 72 |
| <i>People v. Witt</i> (1915) 170 Cal. 104 | 166, 167 |
| <i>People v. Woodberry</i> (1970) 10 Cal.App.3d 695 | 220 |
| <i>People v. Wright</i> (1988) 45 Cal.3d 1126 | 154, 200, 201, 203 |

| | |
|---|--------------------|
| <i>People v. Yeoman</i> (2003) 31 Cal.4th 93 | 318 |
| <i>People v. York</i> (1992) 11 Cal.App.4th 1506 | 184 |
| <i>Plyler v. Doe</i> (1982) 457 U.S. 202 | 433 |
| <i>Pointer v. United States</i> (1894) 151 U.S. 396 | 273 |
| <i>Powers v. Ohio</i> (1991) 499 U.S. 400 | 103, 244, 251, 358 |
| <i>Presnell v. Georgia</i> (1978) 439 U.S. 1 | 404 |
| <i>Proffitt v. Florida</i> (1976) 428 U.S. 242 | 410, 412, 435, 436 |
| <i>Pruett v. Norris</i> (8th Cir. 1998) 153 F.3d 579, 591 | 376 |
| <i>Pulley v. Harris</i> (1984) 465 U.S. 37 | 436, 438 |
| <i>Raven v. Deukmajian</i> (1990) 52 Cal.3d 336 | 348 |
| <i>Reagan v. United States</i> (1895) 157 U.S. 301 | 141, 203, 431 |
| <i>Reeves v. Hopkins</i> (8th Cir. 1996) 102 F.3d 977 | 376 |
| <i>Reliance Ins. v. McGrath</i> (N.D. Cal. 1987) 671 F.Supp. 669 | 221 |

| | |
|--|----------|
| <i>Renner v. State</i> (Ga. 1990) 397 S.E.2d 683 | 205 |
| <i>Rexall v. Nihill</i> (9th Cir. 1960) 276 F.2d 637 | 221 |
| <i>Richardson v. United States</i> (1999) 526 U.S. 813 | 167, 389 |
| <i>Riley v. Taylor</i> (3rd Cir. 2001)277 F.3d 261 | 116 |
| <i>Ring v. Arizona</i> (2002) 536 U.S. 584 | passim |
| <i>Ristaino v. Ross</i> (1976) 424 U.S. 589 | 89 |
| <i>Rogers v. Superior Court</i> (1955) 46 Cal.2d 3 | 166 |
| <i>Romer v. Evans</i> (1996) 517 U.S. 620 | 96, 100 |
| <i>Rosales-Lopez v. United States</i> (1981) 451 U.S. 182 | 72, 91 |
| <i>Rose v. Mitchell</i> (1979) 443 U.S. 545, 555 | 103 |
| <i>Rushen v. Spain</i> (1983) 464 U.S. 114 | 330 |
| <i>Sandstrom v. Montana</i> (1979) 442 U.S. 510 | 174, 288 |
| <i>Santosky v. Kramer</i> (1982) 455 U.S. 745 | 405-407 |

| | |
|---|---------------|
| <i>Sattazahn v. Pennsylvania</i> (2003) 123 S.Ct. 732 | 321 |
| <i>Schad v. Arizona</i> (1991) 501 U.S. 624 | 155, 414 |
| <i>Schell v. Witek</i> (9 th Cir. 2000) 218 F.3d 1017 | 70 |
| <i>Schlumpf v. Superior Court</i> (1978) 79 Cal.App.3d 892 | 62 |
| <i>Schwendeman v. Wallenstein</i> (9th Cir. 1992) 971 F.2d 313 | 207 |
| <i>Siberry v. State</i> (Ind. 1893) 33 N.E. 681 | 213, 214, 217 |
| <i>Silva v. Woodford</i> (9th Cir. 2002) 279 F.3d 825 | 387 |
| <i>Simmons v. Blodgett</i> (9th Cir. 1997) 110 F.3d 39 | 221 |
| <i>Simmons v. Roper</i> (2005) 543 U.S. 551 | 280-282 |
| <i>Skaggs v. Commonwealth</i> (Ky. 1985) 694 S.W.2d 672 | 320 |
| <i>Skipper v. South Carolina</i> (1986) 476 U.S. 1 | 311, 353, 386 |
| <i>Smith v. Murray</i> (1986) 477 U.S. 527 | 415, 443 |
| <i>Smith v. Phillips</i> (1982) 455 U.S.209 | 79 |

| | |
|---|--------------|
| <i>Smith v. Texas</i> (1940) 311 U.S. 128 | 103 |
| <i>Smith v. Superior Court</i> (1968) 68 Cal.2d 547 | 64 |
| <i>Smith, Smith & Cring v Superior Court</i> (1997) 60 Cal.App.4th 573 | 65 |
| <i>Sochor v. Florida</i> (1992) 504 U.S. 527 | 195, 294 |
| <i>Spaziano v. Florida</i> (1984) 468 U.S. 447 | 155, 271 |
| <i>Speiser v. Randall</i> (1958) 357 U.S. 513 | 99, 404, 405 |
| <i>Spencer v. Texas</i> (1967) 385 U.S. 554 | 144 |
| <i>Splunge v. Clark</i> (7th Cir. 1992) 960 F.2d 705 | 105 |
| <i>Stanford v. Kentucky</i> (1989) 492 U.S. 361 | 439, 441 |
| <i>State v. Bobo</i> (Tenn. 1987) 727 S.W.2d 945 | 270 |
| <i>State v. Bone</i> (Iowa 1988) 429 N.W.2d 123 | 205 |
| <i>State v. Cathey</i> (Kan. 1987) 741 P.2d 738 | 205 |
| <i>State v. Cohen</i> (Iowa 1899) 78 N.W. 857 | 214 |

| | |
|---|----------|
| <i>State v. Daniels</i> (Conn. 1988) 542 A.2d 306 | 320 |
| <i>State v. Dixon</i> (Fla. 1973) 283 So.2d 1 | 437 |
| <i>State v. Fortin</i> (N.J. 2004) 843 A.2d 974 | 170, 171 |
| <i>State v. Goff</i> (W. Va. 1980) 272 S.E.2d 457 | 221 |
| <i>State v. Grant</i> (S.C. 1980) 272 S.E.2d 169 | 205 |
| <i>State v. Gregory</i> (N.C. 1995) 459 S.E.2d 638 | 377 |
| <i>State v. Hatten</i> (Mont. 1999) 991 P.2d 939 | 205 |
| <i>State v. Hutchinson</i> (Tenn. 1994) 898 S.W.2d 161 | 222 |
| <i>State v. McCormick</i> (Ind. 1979) 397 N.E.2d 276 | 270 |
| <i>State v. Middlebrooks</i> 840 S.W.2d 317 | 190, 376 |
| <i>State v. Miller</i> (W. Va. 1996) 476 S.E.2d 535, 557 | 218 |
| <i>State v. Muhammad</i> (N.J. 1996) 678 A.2d 164 | 259, 260 |
| <i>State v. Nelson</i> (Mont. 2002) 48 P.3d 739 | 206 |

| | |
|--|----------|
| <i>State v. Pierre</i> (Utah 1977) 572 P.2d 1338 | 394, 437 |
| <i>State v. Reed</i> (Wash.App.1979) 604 P.2d 1330 | 205 |
| <i>State v. Reliford</i> (Mo.App. 1988) 753 | 105 |
| <i>State v. Ring</i> (Az. 2003) 65 P.3d 915.) | 395, 400 |
| <i>State v. Rizzo</i> (Conn. 2003) 833 A.2d 363 | 408 |
| <i>State v. Ross</i> (Conn. 2004) 849 A.2d 648 | 320 |
| <i>State v. Simants</i> (Neb. 1977) 250 N.W.2d 881 | 437 |
| <i>State v. Stilling</i> (Or. 1979) 590 P.2d 1223 | 205 |
| <i>State v. Tharp</i> (Wash. App. 1980) 616 P.2d 693 | 221 |
| <i>State v. Whitfield</i> (Mo. 2003) 107 S.W.3d 25 | 400 |
| <i>State v. Williams</i> (N. J. 1988) 550 A.2d 1172 | 89 |
| <i>State v. Wrenn</i> (Idaho 1978) 584 P.2d 1231 | 205 |
| <i>Stevenson v. United States</i> (1896) 162 U.S. 313 | 156, 161 |

| | |
|--|--------------------|
| <i>Stickland v Washington</i> (1984) 466 U.S. 668 | 272 |
| <i>Stringer v. Black</i> (1992) 503 U.S. 222 | 294, 427 |
| <i>Sullivan v. Louisiana</i> (1993) 508 U.S. 275 | passim |
| <i>Tamalini v. Stewart</i> (9th Cir. 2001) 249 F.3d 895 | 193 |
| <i>Tarantino v. Superior Court</i> (1975) 48 Cal.App.3d 454 | 127, 131, 135 |
| <i>Taylor v. Louisiana</i> (1975) 419 U.S. 522 | 359, 360 |
| <i>Thompson v. Oklahoma</i> (1988) 487 U.S. 815 | 281, 373, 439 |
| <i>Tison v. Arizona</i> (1987) 481 U.S. 137. | 373, 375, 376, 382 |
| <i>Trop v. Dulles</i> (1958) 356 U.S. 86 | 317, 321, 340, 439 |
| <i>Tuilaepa v. California</i> (1994) 512 U.S. 967 | 437, 445 |
| <i>Turner v. Murray</i> (1986) 476 U.S. 28 | 78, 367 |
| <i>Ulster County Court v. Allen</i> (1979) 442 U.S. 140 | 207, 208 |
| <i>United States v. Alcantur</i> (9th Cir. 1996) 897 F.2d 436 | 107, 108 |

| | |
|--|--------------|
| <i>United State v. Alanis</i> (9th Cir. 2003) 335 F.3d 965 | 104 |
| <i>United States v. Barnes</i> (2d Cir. 1979) 604 F.2d 121 | 91 |
| <i>United States v. Booker</i> (2005) 543 U.S. 220 | 175, 180 |
| <i>United States v. Carolene Products</i> (1938) 304 U.S. 144 | 348 |
| <i>United States v. Carter</i> (6th Cir. 2001) 236 F.3d 777 | 242 |
| <i>United States v. Cheely</i> (9th Cir. 1994) 36 F.3d 1439 | 376 |
| <i>United States v. Chinchilla</i> (9th Cir. 1989) 874 F.2d 695 | 116 |
| <i>United States v. Cotnam</i> (7th Cir. 1996) 88 F.3d 487 | 238 |
| <i>United States v. Dove</i> (2d Cir. 1990) 916 F.2d 41 | 157 |
| <i>United States v. Duarte-Acero</i> (11th Cir. 2000) 208 F.3d 1282 | 443 |
| <i>United States v. Escobar de Bright</i> (9th Cir. 1984) 742 F.2d 1196 | 143-145, 161 |
| <i>United States v. Gainey</i> (1965) 380 U.S. 63 | 207 |
| <i>United States v. Gaudin</i> (1995) 515 U.S. 506 | 285, 291 |

| | |
|---|----------|
| <i>United States v. Gillis</i> (10th Cir. 1991) 942 F.2d 707 | 91, 92 |
| <i>United States v. Hall</i> (5th Cir. 1976) 525 F.2d 1254 | 234 |
| <i>United States v. Haynes</i> (2d Cir. 1968) 398 F.2d 980 | 91 |
| <i>United States v. Hicks</i> (4th Cir. 1984) 748 F.2d 854 | 157 |
| <i>United States v. Kerr</i> (9th Cir.1992) 981 F.2d 1050 | 243 |
| <i>United States v. Lesina</i> (9th Cir. 1987) 833 F.2d 156 | 432 |
| <i>United States v. Maccini</i> (1st Cir. 1983) 721 F.2d 840 | 218, 219 |
| <i>United States v. Mason</i> (9th Cir. 1990) 902 F.2d 1434 | 140 |
| <i>United States v. Mitchell</i> (9th Cir. 1999) 172 F.3d 1104 | 230 |
| <i>United States v. Moore</i> (9th Cir. 1998) 159 F.3d 1154 | 62 |
| <i>United States v. Payne</i> (9th Cir. 1990) 944 F.2d 1458 | 221 |
| <i>United States v. Ploof</i> (2d Cir. 1972) 464 F.2d 116 | 91 |
| <i>United States v. Rubio-Villareal</i> (9th Cir. 1992) 967 F.2d 294 | 207 |

| | |
|--|----------|
| <i>United States v. Sarno</i> (9th Cir. 1995) 73 F.3d 1470 | 161 |
| <i>United States v. Scott</i> (1978) 437 U.S. 82 | 321 |
| <i>United States v. Sotelo-Murillo</i> (9th Cir. 1989) 887 F.2d 176 | 144 |
| <i>United States v. Torres</i> (2d Cir. 1997) 128 F.3d 38 | 91 |
| <i>United States v. Wallace</i> (9th Cir. 1988) 848 F.2d 1464 | 385 |
| <i>United States v. Walker</i> (7th Cir. 1993) 9 F.3d 1245 | 223 |
| <i>United States v. Walker</i> (9th Cir.1990) 915 F.2d 480 | 61 |
| <i>United States v. Warren</i> (9th Cir. 1994) 25 F.3d 890 | 207 |
| <i>United States v. Wilson</i> (1914) 232 U.S. 563 | 215 |
| <i>United States v. Winn</i> (9th Cir. 1978) 577 F.2d 86 | 161 |
| <i>Victor v. Nebraska</i> (1994) 511 U.S. 1 | 215, 226 |
| <i>Virgin Islands v. Parrott</i> (3rd Cir. 1977) 551 F.2d 553 | 273 |
| <i>Wade v. Calderon</i> (9th Cir. 1994) 29 F.3d 1312 | 187, 188 |

| | |
|--|---------------|
| <i>Wade v. Taggart</i> (1959) 51 Cal.2d 736 | 318 |
| <i>Wainwright v. Witt</i> (1985) 469 U.S. 41 | passim |
| <i>Walton v. Arizona</i> (1990) 497 U.S. 639 | 187, 244, 393 |
| <i>Wardius v. Oregon</i> (1973) 412 U.S. 470 | 203, 431 |
| <i>Washington v. Texas</i> (1967) 388 U.S. 14 | 156, 431 |
| <i>West v. State</i> (Miss. 1998) 725 So.2d 872 | 378 |
| <i>Williams v. Calderon</i> (9th Cir. 1995) 52 F.3d 1465 | 184 |
| <i>Williams v. Lane</i> (7th Cir. 1987) 826 F.2d 654 | 238 |
| <i>Witherspoon v. Illinois</i> (1968) 391 U.S. 510 | passim |
| <i>Woldt v. People</i> (Colo.2003) 64 P.3d 25 | 400 |
| <i>Woodson v. North Carolina</i> (1976) 428 U.S. 280 | passim |
| <i>Woratzeck v. Stewart</i> (9th Cir. 1996) 97 F.3d 329 | 376 |
| <i>Young v. State</i> (Tex.Crim.App. 1992) 826 S.W.2d 141 | 116 |

| | |
|---|----------|
| <i>Zant v. Stephens</i> (1983) 462 U.S. 862 | 190, 425 |
| <i>Zemina v. Solem</i> (8th Cir. 1978) 573 F.2d 1027 | 433 |
| <i>Zemina v. Solem</i> (D.S.D. 1977) 438 F.Supp. 455 | 433 |
| <i>Zschernig v. Miller</i> (1968) 389 U.S. 429 | 442 |

CONSTITUTIONS

| | |
|---------------------------------|--------|
| U.S. Const. Amends. V | passim |
| VI | passim |
| VIII | passim |
| XIV | passim |
| Cal. Const. art I, §§ 1.. | passim |
| 7 | passim |
| 15 | passim |
| 16 | passim |
| 17 | passim |

FEDERAL STATUTES

| | |
|--------------------------------|-----|
| 18 USC § 3593 | 319 |
| 21 U.S.C. §§ 3591(a)(2). | 378 |
| 848(a) | 417 |
| 848(k) | 416 |

CALIFORNIA STATUTES

| | |
|-------------------------------|------------------------------|
| Cal. Civ. Pro. §§ 222.5 | 96, 97, 98 |
| 223 | passim |
| 229 | 336 |
| Cal. Evid. Code, §§ 210 | 306 |
| 352. | 297, 299, 303, 304 |
| 500 | 224, 314 |
| 501 | 224 |
| 502 | 224, 314, 322 |
| Cal. Pen. Code, § § 187 | 153, 164, 166, 169, 369, 370 |
| 187(a) | 146, 152 |
| 189 | passim |
| 190(a) | 170 |
| 190.2 | 1165, 369, 370, 438 |
| 190.3 | passim |
| 190.3(a) | 195 |
| 190.4 | 5, 320, 368, 383 |
| 190.9 | 322, 327, 329, 331 |
| 190(a)(17) | 181, 189, 191 |
| 240 | 294 |
| 422 | 294 |
| 459 | 191 |
| 460 | 178, 191 |
| 654 | 5 |
| 1127 | 198 |
| 1259 | 198, 212 |

| | |
|------|-------------|
| 1368 | 7, 411, 520 |
| 1469 | 198 |

OTHER STATE STATUTES

| | |
|---|---------------|
| 42 Pa. Cons. Stat. Ann. § 9711(h)(3)(iii) (1993) | 437 |
| Ala. Code § 13A-5-53(b)(3) (1982) | 320, 394, 437 |
| Ark. Code Ann. § 5-4-603(a) (Michie 1993) | 416 |
| Ark. Stat. Ann. § 5-4-603(c) (1993) | 319, 394 |
| Ariz. Crim. Code § 13-703.01L (2002) | 320 |
| Ariz. Rev. Stat., § 13-703.01(E) (2002) | 416 |
| Colo. Rev. Stat. Ann., § 18-1.3-1201(2)(b)(II)(A) (West 2002) | 416 |
| Conn. Gen. Stat. Ann. § 53a-46b(b)(3) (West 1993) | 437 |
| Del. Code Ann., tit. 11, § 4209(c)(3)b.1. (2002) | 416 |
| Del. Code Ann. tit. 11, § 4209(g)(2) (1992) | 319, 416, 437 |
| Fla. Stat. Ann. § 921.141(2) and (3) | 320 |
| Ga. Code Ann. § 17-10-35(c)(3)(Harrison 1990) | 437 |
| Idaho Code, § 19-2515(3)(b) (2003) | 416 |
| Idaho Code § 19-2827(c)(3) (1987) | 394, 437 |
| Ind. Code § 35-50-2-9(f) (2002) | 394 |
| Ill. Ann. Stat. ch. 38, para. 9-1(f) (Smith-Hurd 1992) | 319, 394 |
| Ill. Ann. Stat., ch. 38, para. 9-1(g) (Smith-Hurd 1992) | 416 |
| Kan. Stat. Ann. § 21-4624(e) (Supp 1994) | 319 |
| Ky. Rev. Stat. Ann. § 532.075(3) (Michie 1985) | 394, 437 |
| La. Code Crim. Proc. Ann. art. 905.6 (West 1993) | 416 |
| La. Code Crim. Proc. Ann. art. 905.9.1(1)(c) (West 1984) | 321, 437 |
| Md. Ann. Code, art. 27, §§ 413(d), (f), (g) (1957) | 319, 394, 437 |
| Md. Ann. Code, art. 27, § 413(I) (1993) | 416 |
| Miss. Code Ann. § 99-19-103 (1992) | 416 |
| Miss. Code Ann. § 99-19-105(3)(c) (1993) | 437 |
| Mo. Ann. Stat. § 565.030(4) (Vernon Supp. 1995) | 319 |
| Mont. Code Ann. § 46-18-310(3) (1993) | 320, 437 |
| N.C. Gen. Stat. § 15A-2000(d)(2) (1983) | 437 |
| Neb. Rev. Stat., § 29-2520(4)(f) (2002) | 416 |
| Neb. Rev. Stat. §§ 29-2521.01, 29-2522(3) (1989) | 394, 437 |
| Nev. Rev. Stat. Ann § 177.055 (d) (Michie 1992) | 437 |
| N.H. Rev. Stat. Ann. § 630:5(IV) (1992) | 416 |
| N.H. Rev. Stat. Ann. § 630:5(XI)(c) (1992) | 416, 437 |

| | |
|--|--------------------|
| N.J.S.A. 2C:11-3c(2)(a); N.M. Stat. Ann., § 31-20A-3 (Michie 1990) . . . | 394 |
| N.M. Stat. Ann. § 31-20A-3 (Michie 1990) | 416 |
| N.M. Stat. Ann. § 31-20A-4(c)(4) (Michie 1990) | 394, 416, 437 |
| NY Crim. Proc. Law § 400.27(10) (WESTLAW 1995) | 319 |
| Ohio Rev. Code Ann. § 2929.05(A) (Baldwin 1992) | 319, 394, 437 |
| Okla. Stat. Ann., tit. 21, § 701.11 (West 1993) | 416 |
| Or. Rev. Stat. §§ 163.150(1)(e), 163.150(1)(f), 163.150(2)(a) (2001) . . . | 319 |
| Pa. Cons. Stat. Ann. § 9711(c)(1)(iv) (1982) | 416 |
| Pa. Cons. Stat. Ann. § 9711(h)(3)(iii) (1993) | 394, 416, 437 |
| Pa. Stat. Ann. tit. 42, § 9711(c)(1)(v) (Purdon Supp. 1995) | 319 |
| S.C. Code Ann. § 16-3-20(C)(Law. Coop. 1992) | 416 |
| S.C. Code Ann. § 16-3-25(c)(3) (Law. Coop. 1985) | 394, 437 |
| S.D. Codified Laws Ann. § 23A-27A-12(3) (1988) | 394, 437 |
| Tenn. Code Ann. § 13-206(c)(1)(D) (1993) | 319, 394, 416 |
| Tenn. Code Ann. § 39-13-204(g) (1993) | 416 |
| Tenn. Code Ann. § 39-13-204(i)(7) | 190 |
| Tex. Crim. Proc. Code Ann., § 37.071 | 416, 417 |
| Tex. Crim. Proc. Code Ann. § 37.071(2)(g) (Vernon Supp. 1995) | 319 |
| Utah Code Ann. § 76-3-207(4) (1995) | 319 |
| Va. Code Ann. § 17.110.1C(2) (Michie 1988) | 319, 394, 437 |
| Wash. Rev. Code Ann. § 10.95.130(2)(b) (West 1990) | 319, 394, 437 |
| Wyo. Stat. § 6-2-103(d)(iii) (1988). | 319, 394, 395, 437 |

CALIFORNIA JURY INSTRUCTIONS

| | |
|---------------------------|------------------------------|
| CALJIC Nos.1.00 | 202 |
| 1.02 | 242-243 |
| 2.01 | 233 |
| 2.02 | 197, 226, 233 |
| 2.03 | passim |
| 2.22 | 229, 232 |
| 2.27 | 197, 229, 232, 233 |
| 2.51 | 197, 229, 230, 233, 235 |
| 2.52 | 197, 198, 199, 206 |
| 2.90 | 209, 211, 220, 222, 234, 313 |
| 8.21 | 146, 369 |
| 8.31 | 160 |
| 8.80 | 182 |

| | |
|----------|------------------------------|
| 8.80.1 | 184 |
| 8.81.17. | 182, 183, 185, 186, 188, 194 |
| 8.85 | 335 |
| 8.87 | 313, 325 |
| 8.88 | passim |

OTHER JURY INSTRUCTIONS

| | |
|--|----------|
| 1 st Circuit Model Instructions, Criminal No. 1.01 | 222 |
| 6 th Circuit Pattern Jury Instructions - Criminal (1991) 1.03 | 217 |
| 8 th Circuit Model Instructions, Criminal No. 1.01 | 222, 223 |
| 8 th Circuit Model Jury Instructions - Criminal 3.11 (2000) | 216 |
| Alaska Pattern Criminal Jury <i>Instructions</i> 1.52 | 216 |
| Arkansas Model Jury Instructions - Criminal, AMCI 2d 110 | 216 |
| Colorado Jury Instructions (West 1983) COLJI - Crim 3:04 | 216 |
| Connecticut Selected Jury Instructions - <i>Criminal</i> 2.8 | 216 |
| Criminal Jury Instructions for The District of Columbia (Bar Association of the District of Columbia, 4 th ed. 1993) | |
| Instr. 1.03. | 222 |
| Criminal Jury Instructions for the District of Columbia, Instr. 2.09 | 216 |
| Criminal Jury Instructions - New York CJI (New York) (1 st Ed. 1983) No. 3.05 | 222 |
| Federal Judicial Center, Pattern Criminal Jury Instructions, 22 (1988) | 218 |
| Idaho Criminal Jury Instructions ICJI 103A | 216, 217 |
| Idaho Criminal Jury Instructions ICJI No. 1501 | 222 |
| Instructions for Virginia & West Virginia (Lexis 4 th ed. 1996) 24-401 | 217 |
| McClung's Texas Criminal Jury Charges § 1(II)(B)(2) | 216 |
| Maryland Criminal Patter Jury Instructions MPJI-Cr 1.04 | 217 |
| Oklahoma Uniform Jury Instruction, Crim. (2d ed.) No. 1 | 222 |
| New Mexico <i>Uniform Jury Instructions</i> - Criminal (Lexis 1998) | |
| UJI Criminal 14-5060 | 217 |
| Pennsylvania Suggested Standard Criminal Jury Instructions | |
| Pa. SSJI (Crim) 7.01 | 216 |
| South Carolina Criminal Jury Instructions 1-14 | 216 |
| South Dakota Pattern Jury Instructions - <i>Criminal</i> , SDCL 1-6-2 | 216 |
| South Dakota Pattern Jury Instructions - Criminal, SDCL 1-6-3 | 216 |
| Uniform Criminal Jury Instructions (Oregon) No. 1006 | 222 |

| | |
|---|-----|
| Washington Pattern Jury Instructions - Criminal (West, 2d ed. 1994) WPIC 1.01 | 221 |
| Wisconsin Jury <i>Instructions - Criminal</i> (University of Wisconsin Law School, 2000) WIS-JI-Criminal 140 | 217 |

TEXT AND OTHER AUTHORITIES

| | |
|---|-----|
| ABA Standards for Criminal Justice (2d ed. 1980) 4-3.1(a) | 64 |
| Allen, <i>Impact of Juror Attitudes about the Death Penalty on Juror Evaluations of Guilt and Punishment: A Meta-analysis</i> (1998) 22 Law & Hum. Behav. 715, 725 | 352 |
| Bassiouni, <i>Symposium: Reflections on the Ratification of the International Covenant of Civil and Political Rights by the United States Senate</i> (1993) 42 DePaul L. Rev. 1169 | 442 |
| Bersoff & Glass, <i>The Not-So Weisman: The Supreme Court's Continuing Misuse of Social Science Research</i> (1995) 2 U. Chig. L. Sch. Roundtable 279 | 348 |
| Blume, J., Eisenberg, T. & Garvey S., <i>Beyond Repair? America's Death Penalty</i> (Stephen P. Garvey ed., 2003) | 347 |
| Bowers, et al., <i>Foreclosed Impartiality in Capital Sentencing: Jurors' Predispositions, Guilt-trial Experience, and Premature Decision Making</i> (1999) 83 Cornell L.Rev 1476 | 309 |
| Bowers, W. & Foglia, W., <i>Still Singularly Agonizing: The Law's Failure to Purge Arbitrariness from Capital Sentencing</i> (2003) 39 Crim. Law. Bull. 51 | 347 |

| | |
|--|----------|
| Byrne, Lockhart v. McCree: <i>Conviction-Proneness and the Constitutionality of Death-Qualified Juries</i> (1986) 36 Cath. U. L. Rev. 287, 318 | 348 |
| <i>Criminal Procedure</i> (1960) 69 Yale L.J. 1149 | 433 |
| Dillehay, R.C. and Sandy, M.R., <i>Life Under Wainwright v. Witt: Juror Dispositions and Death Qualification</i> (1996) 20 L. & Hum. Behv. 147 | 347 |
| Douglas, et al., <i>The Impact of Graphic Photographic Evidence on Mock Jurors' Decisions in a Murder Trial: Probative or Prejudicial?</i> (1997) 21 Law & Hum. Behav. 485, 491-492 | 307, 308 |
| Eisenberg & Wells, <i>Deadly Confusion: Juror Instructions in Capital Cases</i> (1993) 79 Cornell L.Rev. 1 | 420 |
| Garvey, <i>The Overproduction of Death</i> (2000) 100 Colum. L. Rev. 2030 | 355 |
| Goldstein, <i>The State and The Accused: Balance of Advantage in Criminal Procedure</i> (1960) 69 Hale L.J. 1149, 1180-1192 | 431 |
| Gross, <i>Determining the Neutrality of Death-Qualified Juries: Judicial Appraisal of Empirical Data</i> (1984) 8 Law & Hum. Beh. 7, 13 | 355 |
| Hart, <i>Punishment and Responsibility</i> (1968) | 381 |
| Kadane, <i>Juries Hearing Death Penalty Cases: Statistical Analysis of a Legal Procedure</i> (1984) 78 J. American Statistical Assn. 544 | 345 |
| Kadane, <i>After Hovey: A Note on Taking Account of the Automatic Death Penalty Jurors</i> (1984) 8 law & Human Behavior 115 | 345 |

| | |
|---|----------|
| Kelley, <i>Addressing Juror Stress: A Trial Judge's Perspective</i> (1994) 43 Drake L.Rev. 97 | 308 |
| Luginbuhl & Middendorf, <i>Death Penalty Beliefs and Jurors' Responses to Aggravating and Mitigating Circumstances in Capital Trials</i> (1988) 12 Law & Human Behavior 263 | 346 |
| Miller & Mauet, <i>The Psychology of Jury Persuasion</i> (1999) 22 Am. J. Trial Advoc. 549, 563 | 308 |
| Moar, <i>Death-Qualified Juries in Capital Cases: The Supreme Court's Decision in Lockhart v. McCree</i> (1988) 19 Colum. Hum. Rts. L.Rev. 369, 374 | 348 |
| Moller, <i>Death-Qualified Juries Are the 'Conscience of the Community'?</i> L.A. Daily Journal (May 31, 1988), p.4, col. 3 | 360 |
| O'Malley, Kevin F., Grenig, Jay E. & Lee, William C., Federal Jury Practice and Instructions(West, 5 th ed. 2000) § 12:10 [<i>Presumption of Innocence, Burden of Proof, And Reasonable Doubt</i>] | 216 |
| Peters, <i>Constitutional Law: Does "Death Qualification" Spell Death for the Capital Defendant's Constitutional Right to an Impartial Jury?</i> (1987) 26 Washburn L.J. 382, 395 | 351, 421 |
| Posner & Shapiro, <i>Adding Teeth to the United States Ratification of the Covenant on Civil and Political Rights: The International Human Rights Conformity Act of 1993</i> (1993) 42 DePaul L. Rev. 1209 | 412 |
| Quigley, <i>Criminal Law and Human Rights: Implications of the United States Ratification of the International Covenant on Civil and Political Rights</i> (1993) 6 Harv. Hum. Rts. J. 59. | 442 |

| | |
|--|----------|
| Rubenstein, <i>A Picture Is Worth a Thousand Words - The Use of Graphic Photographs as evidence in Massachusetts Murder Trials</i> (2001) 6 Suffolk J. Trial & Appellate Advoc. 197 | 307 |
| Sand, Leonard B., et al., <i>1 Modern Federal Jury Instructions</i> (1994) | 223 |
| Seltzer et al., <i>The Effect of Death Qualification on the Propensity of Jurors to Convict: The Maryland Example</i> (1986) 29 How. L.J. 571, 573 | 344 |
| Shatz & Rivkind, <i>The California Death Penalty: Requiem for Furman?</i> 72 N.Y.U. Law. Rev. 1283, 1319, fn.201 (1997) | 377 |
| Smith, <i>Due Process Education for the Jury: Overcoming the Bias of Death Qualified Juries</i> (1989) 18 Sw. U. L. Rev. 493, 528 | 347, 349 |
| Tanford, <i>The Limits of a Scientific Jurisprudence: The Supreme Court and Psychology</i> (1990) 66 Ind L.J. 137 | 348 |
| <i>The Presumption of Life: A Starting Point for Due Process Analysis of Capital Sentencing</i> (1984) 94 Yale L.J. 351 | 421 |
| Thompson, <i>Death Qualification After Wainwright v. Witt and Lockhart v. McCree</i> (1989) 13 Law & Human Behavior 185 | 347 |
| R. Traynor (1970) <i>The Riddle of Harmless Error</i> 21 | 196 |

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Case Number: **Superior Court No. Crim. SCD113815**
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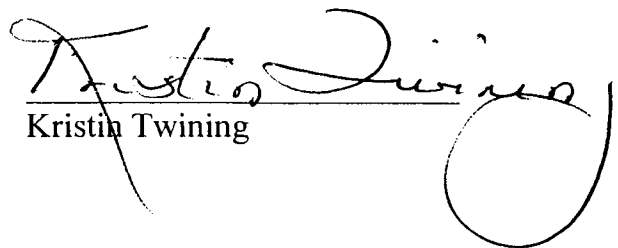
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on November 21, 2008, at Sacramento, California.


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