The Hearsay Rule

The Hearsay Rule

SECOND EDITION

G. Michael Fenner

JAMES L. KOLEY '54 PROFESSOR OF CONSTITUTIONAL LAW
CREIGHTON UNIVERSITY SCHOOL OF LAW

Carolina Academic Press
Durham, North Carolina

Library of Congress Cataloging-in-Publication Data

Fenner, G. Michael.
The hearsay rule / G. Michael Fenner. — 2nd ed.
p. cm. Includes bibliographical references and index.
ISBN 978-1-59460-697-7 (alk. paper)
1. Evidence, Hearsay—United States. I. Title.
KF8969.F46 2009
347.73'64—dc22 2009004925

Carolina Academic Press
700 Kent St.
Durham, NC 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.cap-press.com

Printed in the United States of America

For Anne

For Hilary, Ben, Tashi, and Alex

And for Yangdon, Kalden, and Lyle

Contents

Table of Authorities xxiii
Foreword lix
Acknowledgments lxiii

Chapter One · The Basic Definition 3
I. Introduction to Hearsay 4
II. The Definition of Hearsay 9
A. The Definition 9
B. The Formula 9
C. An Explanation of the Definition 9
1. A Statement 9
2. An Out-of-Court Statement 13
3. An Out-of-Court Statement by a Person 15
4. Offered to Prove the Truth of the Matter Asserted 16
III. The Top Ten Approaches to Hearsay 20
A. The Top Ten Approaches 20
1. The Formula 20
2. The Manufactured-Evidence Approach 21
3. The Real-Witness Approach 25
4. The Two-Boxes Approach 29
5. The Comic-Balloons Approach 29
6. The Plain-Fact-That-the-Words-Were-Spoken Approach 30
7. The Credibility Approach 30
8. The Effect-on-the-Mind-of-the-Hearer Approach 31
9. The Words-with-Independent-Legal-Effect Approach, a.k.a. the Verbal-Acts Approach 32
10. The Flow-Chart Approach 34
B. Some Analysis and a Few Caveats 37
1. Rule 801(d) 37
2. Overlap 37
3. Imprecision 38

4. The Best of the Ten 38
IV. Examples—The Basic Definition Applied 38
A. Variations from *Shepard v. United States* 38
1. *Shepard* Example One 38
2. *Shepard* Example Two 40
3. *Shepard* Example Three 41
4. *Shepard* Example Four 42
5. *Shepard* Example Five 42
B. Lee Harvey Oswald 43
C. "I Want to Discontinue My Insurance Policy" 44
D. "He Killed My Brother and He'll Kill My Mommie Too" 45

Chapter Two · The Definitional Exclusions 47
I. The Definitional Exclusions versus the Exceptions—Evidentiary Burdens 48
II. Nonhearsay Prior Statements by a Witness: Rule 801(d)(1) 54
A. Prior Inconsistent Statements: Rule 801(d)(1)(A) 54
1. Text of the Rule 54
2. Foundational Elements 54
3. Need + Reliability = 1 54
4. Use Note 55
B. Prior Consistent Statements: Rule 801(d)(1)(B) 58
1. Text of the Rule 58
2. Foundational Elements 58
3. Need + Reliability = 1 59
4. Use Note 59
C. Statement of Identification of a Person: Rule 801(d)(1)(C) 64
1. Text of the Rule 64
2. Foundational Elements 64
3. Need + Reliability = 1 64
4. Use Note 65
III. Nonhearsay "Admissions": Rule 801(d)(2) 67
A. General Use Note 67
1. Exclusions, Not Exceptions 68
2. The Two Sets of Definitional Exclusions 68
3. Need + Reliability = 1? 68
4. Using the Out-of-Court Statement Itself to Establish Foundational Elements of These Exclusions 69
B. A Party's own Statement: 801(d)(2)(A) 70

1. Text of the Rule 70
2. Foundational Elements 70
3. Use Note 71
C. A Statement by an Agent: 801(d)(2)(D) 73
1. Text of the Rule 73
2. Foundational Elements 73
3. Use Note 73
D. Statement by Person Authorized to Speak: 801(d)(2)(C) 78
1. Text of the Rule 78
2. Foundational Elements 78
3. Use Note 78
E. Adoptive Admission: 801(d)(2)(B) 81
1. Text of the Rule 81
2. Foundational Elements—Two Kinds of Adoptive Admissions 81
3. Use Note 83
F. Admission by a Coconspirator: 801(d)(2)(E) 96
1. Text of the Rule 96
2. Foundational Elements 96
3. Use Note 96
G. Rule 801(d)(2) Admissions Need Not Be Based on Personal Knowledge 109
1. Rule 805 and Double Hearsay 111
2. Rule 602 and Personal Knowledge 114
3. Rule 403 and Low Probative Value Substantially Outweighed by the Danger of Unfair Prejudice 119
IV. Additional Examples of Various Applications of the Hearsay Definition 120
A. "I Give to You [but Mostly] You Give to Me, Love Forever True," Plus Half-a-Million in Cash and Some Lovely Jewelry 120
1. The Facts 120
2. The First Issue: Kritzik's Intent 121
3. The Second Issue: Harris's Intent 122
4. What to Do with Evidence That Is Hearsay to One Issue and Nonhearsay to Another? 123
B. Auto Accident Examples 123

Chapter Three · Rule 803, Selected Exceptions 127
I. Introduction to the Exceptions Generally, and Rule 803 in Particular 131

A. Exceptions: A Brief History 131
B. N + R = 1: The Shared Theoretical Basis for Each Exception 133
C. The Foundational Elements, the Evidentiary Burden, and the Decision Maker 134
D. Rule 803's Exceptions versus Rule 804's: The Availability of the Live, Firsthand, In-Court Testimony of the Out-of-Court Declarant 136
II. Present Sense Impression: Rule 803(1) 137
A. Text of the Rule 137
B. Foundational Elements 137
C. Need + Reliability = 1 137
1. Need 137
2. Reliability 138
D. Use Note 140
III. Excited Utterance: Rule 803(2) 141
A. Text of the Rule 141
B. Foundational Elements 142
C. Need + Reliability = 1 142
1. Need 142
2. Reliability 142
D. Use Note 144
1. The Unidentified Onlooker As Out-of-Court Declarant 144
2. Self-Serving Statements 144
3. Laying the Foundation for the Statement with the Statement Itself 145
4. The Keys to the Excited Utterance Exception: The Particular Event and the Individual Declarant 146
5. An Excited Utterance Provided in Response to Questioning 149
6. Two Differences between the Present Sense Impression Exception and the Excited Utterance Exception 150
7. A Series of Exciting Events (the Rolling Exciting-Event) or a Subsequent Related Event Triggering Excitement Anew 154
8. Often an Out-of-Court Statement Will Be Both a Present Sense Impression and an Excited Utterance 156
9. The Excited Utterance and the Child Witness 158
IV. State of Mind or Statement of Then-Existing Mental, Emotional, or Physical Condition: Rule 803(3) 162
A. Text of the Rule 162
B. Foundational Elements 162

C. Need + Reliability = 1 163
1. Need 163
2. Reliability 164
D. Use Note 165
1. The Breadth of the Exception 165
2. The "No Elaboration" Rule 167
3. A Statement That Looks to the Past 172
4. A Statement That Looks to the Future 174
5. The Out-of-Court Statement Must Reflect the Declarant's Own State of Mind 176
6. The Out-of-Court Statement Must Be a Direct Statement of the Declarant's State of Mind 180
7. Just Because an Out-of-Court Statement Fits under This Exception Does Not Mean It Is Admissible into Evidence 181
8. State of Mind Evidence That Is Not Hearsay in the First Place 181
9. The State of Mind Exception and the Excited Utterance and Present Sense Impression Exceptions 183
10. The Intertwining of the Admissible and the Inadmissible: Redaction and Rule 403 183
V. Statements for Purposes of Medical Diagnosis or Treatment: Rule 803(4) 184
A. Text of the Rule 184
B. Foundational Elements 184
C. Need + Reliability = 1 185
1. Need 185
2. Reliability 185
D. Use Note 186
1. The Person to Whom the Statement Was Made 186
2. The Person by Whom the Statement Was Made 189
3. The Reason the Statement Is Made 192
4. Statements Regarding Mental Health 193
5. The Content of the Statement 196
6. The Timing of the Facts Stated 198
7. Admissibility of the Statement as Nonhearsay Basis Evidence 199
VI. Recorded Recollection: Rule 803(5) 199
A. Text of the Rule 199
B. Foundational Elements 199
C. Why Not Let the Paper or Other Record into Evidence? 200
D. Need + Reliability = 1 201

1. Need 201
2. Reliability 201
E. Use Note 202
1. Past Recollection Recorded versus Present Recollection Refreshed 202
2. Present Recollection Refreshed 205
3. A Past Recollection That Was Recorded by Someone Other Than the In-Court Witness 207
4. The Record Must Have Been Made while the Event Was Fresh in the Witness's Memory 208
5. Showing that the Record Correctly Reflects the Witness's Past Knowledge 208
6. Statements Recorded in Memory, Rather Than on Paper 210
7. A Re-Recording of Original Notes 210
8. Foreign Records as Past Recollection Recorded 210
VII. Records (and Absence of Records) of a Regularly Conducted Activity: Rules 803(6) & (7) 211
A. Text of the Rules 211
B. Foundational Elements 212
C. Need + Reliability = 1 213
1. Need 213
2. Reliability 213
D. Use Note 214
1. Made in the Course of a Regularly Conducted Business Activity (by a Person Acting in the Regular Course of his or her Business) 214
2. Information Automatically Gathered and Retained by Computer 217
3. The Sponsoring Witness 218
4. Multiple Levels of Hearsay 222
5. The "Trustworthiness" Clause 224
6. Foreign Records of Regularly Conducted Activities 226
7. The Absence of an Entry and the Hearsay Rule 226
VIII. Public Records and Reports: Rule 803(8) 228
A. Text of the Rule 228
B. Foundational Elements 228
C. A Variation of This Rule That Is Worth Considering 229
D. Need + Reliability = 1 229
1. Need 229

2. Reliability 230
E. Use Note 231
1. Establishing the Foundation with Certified Copies of the Record 231
2. Multiple Levels of Hearsay 231
3. Records Prepared by Private Parties and Filed with Public Agencies 233
4. The "Trustworthiness" Clause 234
5. Introducing the Entire Investigatory File 238
6. Reports Prepared by State, Local, and Foreign Governments 238
7. Police Reports 239
8. Near-Miss Evidence—Documents That Just Miss Fitting under This Exception and Fit under Some Other Exception 240
IX. Absence of Public Record or Entry: Rule 803(10) 241
A. Text of the Rule 241
B. Foundational Elements 241
C. Need + Reliability = 1 242
1. Need 242
2. Reliability 242
D. Use Note 242
X. Statements in Documents Affecting an Interest in Property: Rule 803(15) 244
A. Text of the Rule 244
B. Foundational Elements 245
C. Need + Reliability = 1 245
1. Need 245
2. Reliability 245
D. Use Note 247
1. The Kinds of Documents Covered by This Exception—In General 247
2. The Kinds of Documents Covered by This Exception—Examples 248
XI. Statements in Ancient Documents: Rule 803(16) 249
A. Text of the Rule 249
B. Foundational Elements 250
C. Need + Reliability = 1 250
1. Need 250
2. Reliability 250
D. Use Note 252

1. The Increasing Importance of This Exception 252
2. Old Age and Authenticity Alone Establish This Exception, without Any Special Regard for Trustworthiness 253
3. Nonhearsay Admissions and Ancient Documents 256
4. Undated Documents 256
5. Photographs and Other Such Ancient "Documents" 256
6. Foreign Ancient Documents 256
7. Multiple Levels of Hearsay 257
8. Ancient Documents and Rule 403 258
XII. Market Reports, Commercial Publications: Rule 803(17) 259
A. Text of the Rule 259
B. Foundational Elements 259
C. Need + Reliability = 1 259
1. Need 259
2. Reliability 260
D. Use Note 260
XIII. Learned Treatises: Rule 803(18) 261
A. Text of the Rule 261
B. Foundational Elements 261
C. Need + Reliability = 1 262
1. Need 262
2. Reliability 262
D. Use Note 263

Chapter Four · Rule 804 Exceptions 267
I. In-Court Testimony Unavailable: Rule 804(a) 269
A. Text of the Rule 269
B. Who or What Must Be Unavailable? 270
C. Unavailability Defined 271
II. Former Testimony Exception: Rule 804(b)(1) 274
A. Text of the Rule 274
B. The Three Principal Versions of the Former Testimony Exception and the Foundational Elements of Each 275
1. Criminal Cases under the Federal Rules of Evidence 275
2. Civil Cases under the Federal Rules of Evidence 276
3. The Proposed Federal Rules, Which Are the Rules Adopted in Some States 276
C. The Difference in the Three Variations in the Rule Summed Up in Three Sentences 277
D. Need + Reliability = 1 277

1. Need 277
2. Reliability 277
E. Use Note 277
1. Other Ways to Get Former Testimony around the Hearsay Rule 277
2. Predecessor in Interest 280
3. Opportunity to Examine the Witness 283
4. Similarly Motivated to Examine the Witness 285
5. Grand Jury Testimony Summarized 291
6. The Confrontation Clause 292
III. Statements under Belief of Impending Death: Rule 804(b)(2) 292
A. Text of the Rule 292
B. Foundational Elements 292
C. Need + Reliability = 1 293
1. Need 293
2. Reliability 293
D. Use Note 294
1. Unavailability—By Death or Otherwise 294
2. The Imminence of Expected Death 296
3. Evidence of a Belief in the Imminence of Death 297
4. The Statement Must Relate to the Cause or Circumstances of the Anticipated Death 299
5. The Competence and Confusion of the Declarant and the Danger of Unfair Prejudice Associated with the Statement 300
6. The Confrontation Clause 303
IV. Statements Against Interest: Rule 804(b)(3) 303
A. Text of the Rule 303
B. Foundational Elements 304
C. Need + Reliability = 1 304
1. Need 304
2. Reliability 304
D. Use Note 305
1. Timing—"Against Interest" and "Declarant's Knowledge" Are Judged as of the Time the Statement was Made 305
2. The Extent to Which the Statement Must Be Against the Declarant's Interest 305
3. A Statement Partly Against the Declarant's Interest and Partly in the Declarant's Interest 308
4. Corroboration 311

V. A Comparison: Statements by a Party Opponent versus Statements Against Interest 316
VI. Statement of Personal or Family History: Rule 804(b)(4) 318
A. Text of the Rule 318
B. Foundational Elements 319
C. Need + Reliability = 1 320
1. Need 320
2. Reliability 320
D. Use Note 320
1. The Relationship between This Exception and Rule 803(19), the Exception for Reputation Concerning Personal or Family History 320
2. Admission of Evidence beyond the Fact of the Event or Relationship—the Details 320
3. Competence, Double Hearsay, and This Exception 321
VII. Forfeiture by Wrongdoing Exception: Rule 804(b)(6) 322
A. Text of the Rule 322
B. Foundational Elements 322
C. Need + Reliability = 1 322
1. Need 322
2. Reliability 322
D. Use Note 323
1. The Motivation behind Procuring Unavailability 323
2. The Subject Matter of the Statement 323
3. The Exception Is Not Available to the Wrongdoing Party 324
4. Unavailability Procured by the Wrongdoing of a Coconspirator 324
5. Arguing This Exception in the Hearing of the Jury 325
6. Action Outside of the Rule As Literally Interpreted 327
7. The Burden of Establishing that the Party Against Whom the Evidence Is Offered Engaged or Acquiesced in Wrongdoing 329

Chapter Five · The Residual Exception—Rule 807 331
I. Know This If Nothing Else 332
II. Text of Rule 807 332
III. Foundational Elements 333
A. Five Required Findings … 333
B. … Reduced to Three Required Findings 334
IV. Need + Reliability = 1 334

A. The Need for, and the Reliability of, the Evidence 334
1. The Need for the Evidence in Question 334
2. Reliability 335
B. The Need for the Residual Exception Itself 335
V. Use Note 336
A. Near-Miss Evidence—the Relationship between the Residual Exception and the Specific Exceptions of Rules 803 and 804 336
B. Grand Jury Testimony 342
C. Notice—Use of the Residual Exception Requires Notice in Advance of the Trial or Hearing 346
1. The Substance of the Notice That Must Be Given 346
2. The Timing of the Notice That Must Be Given 347
3. The Form of the Notice That Must Be Given 349
4. A Conclusion Regarding Notice 350
D. Trustworthiness 350
1. Trustworthiness As Measured Against the Other Exceptions 350
2. Focus on the Statement, Not the Testifying Witness 354
3. Focus on the Circumstances at the Time the Statement Was Made, Not Hindsight 355
4. Independent Evidence of the Fact Asserted Is Not a Circumstantial Guarantee of Trustworthiness 356
5. The Trustworthiness of the Statement of an Incompetent Declarant 356
E. Probative Value 357
1. Probative Value in General 357
2. The Turncoat Witness—Using This Exception to Admit Prior Statements by Witnesses Who Take the Stand and Change Their Stories 358
F. Using the Residual Exception to Promote Social Agendas 366
G. The Residual Exception in Child-Abuse Cases 368
H. Findings Made on the Record 370
I. Miscellaneous Uses of the Residual Exception 371

Chapter Six · Rules of Civil and Criminal Procedure as Hearsay Exceptions 375
I. Rule 32 of the Federal Rules of Civil Procedure 376
A. Overview 376
B. Text of the Rule 377
C. Foundational Elements 379
D. Need + Reliability = 1 379

1. Need 379
2. Reliability 380
E. Use Note 381
1. The Relationship between Federal Rule of Civil Procedure 32 and Federal Rule of Evidence 804 381
2. This Rule Applies in Civil Cases Only 382
3. Depositions Offered in Cases Other Than the Case in Which They Were Taken 382
4. Objections to Evidentiary Problems within the Deposition, Including Multiple Hearsay 383
5. Against Whom the Deposition May Be Used 384
6. The Witness Who Is Over 100 Miles from the Courthouse 384
7. Old, Infirm, or in Prison and Unavailable 386
8. Deposition Strategy 387
9. The Ability of the Opponent of the Deposition to Counteract a Rule 32 Use of Deposition 387
10. Error in Refusing to Allow the Use of a Deposition May Be Harmless Error 388
11. Ex Parte Depositions 389
12. The Evidentiary Burden 389
13. The Confrontation Clause 389
14. Miscellaneous Points 389
II. Rule 15(e) of the Federal Rules of Criminal Procedure 390
A. Text of the Rule 390
B. Foundational Elements 391
C. Need + Reliability = 1 391
1. Need 391
2. Reliability 391
D. Use Note 392
1. Cross-References 392
2. Application of the Rule 393
3. Use of Depositions in Criminal Trials Is Disfavored 394
4. Rule 15's Requirement of Unavailability or Inconsistency 394
5. The Confrontation Clause 396
III. The Non-Exclusivity of These Rules 396

Chapter Seven · State-of-Mind Evidence 399
I. Introduction 399
II. Eight Ways of Handling State-of-Mind Evidence 400
A. Live, Firsthand Testimony: Nonhearsay 400

B. Verbal Acts: Nonhearsay 400
C. Statements That Circumstantially Assert the State of Mind of the Speaker: Nonhearsay 404
D. Statements Offered for Their Effect on Those Who Heard Them: Nonhearsay 407
E. Statements That Directly Assert Declarant's Then-Existing Mental State: Hearsay 413
F. Statements of Declarant's Intention Offered as Evidence That Declarant Did the Thing Intended: Hearsay 415
G. Statements of Declarant's Intention Offered to Prove What Someone Else Did: Hearsay 415
H. Statements Reflecting Back on a Past State of Mind, Offered to Prove State of Mind at That Time Past: Hearsay 416
III. State-of-Mind Evidence and the Question of Relevance 417
A. Introduction 417
B. Nonhearsay State-of-Mind Evidence That Is Irrelevant 417
C. Nonhearsay State-of-Mind Evidence That Is Inadmissible under Rule 403 419
D. Conclusion 422

Chapter Eight · Opinion Evidence as a Way around the Hearsay Rule 425
I. Expert Opinion 425
A. Text of Rules 702 and 703 425
B. "Foundational Elements" 426
C. Need + Reliability 427
1. Need 427
2. Reliability 427
D. Use Note 428
1. Identifying and Qualifying the Expert 428
2. The Importance of Expert Witnesses to a Discussion of the Hearsay Rule 429
3. The Expert's Reliance upon Inadmissible Evidence Must Be Reasonable 434
4. Basis Evidence 436
II. Lay Opinion 450
A. Text of Rule 701 450
B. Lay Opinion Based on Hearsay 450
C. Situations in Which Counsel May Need to Have a Putative Expert Testify As a Lay Witness 457

Chapter Nine · Miscellaneous Other Ways around the Hearsay Rule 459
I. Trial to the Judge 459
II. Background Evidence 460
III. The Rule of Completeness as a Hearsay "Exception" 462
IV. Judicial Notice 464
V. Trial by Affidavit in Bankruptcy Court 466
VI. Opening Statements and the Hearsay Rule 467

Chapter Ten · Having Found One Way around the Hearsay Rule, Keep Looking for Others 471
I. Stack Up the Exceptions 471
II. Put on Evidence of All of the Foundational Elements for Each Exception in the Pile 479
III. Stacking Up the Exceptions, of Course, Does Not Always Work 479

Chapter Eleven · Multiple Levels of Hearsay and Rule 805 481
I. Rule 805 and Multiple Levels of Hearsay 481
II. For Multiple Hearsay to Be Admissible, There Must Be an Exception or an Exclusion for Each Layer 483
A. Multiple Applications of Definitional Exclusions 483
B. Multiple Applications of Exceptions 484
C. Multiple Applications with a Mix of Exclusions and Exceptions 486
III. In Some Courts, Certain Exceptions or Exclusions Cleanse Preceding Levels of Hearsay 487
IV. Multiple Hearsay and Rule 403 489

Chapter Twelve · A Statement that Is Inadmissible Hearsay to One Issue and Either Nonhearsay or Admissible Hearsay to Another 491
I. Introduction 491
II. Redact the Statement 493
III. Apply Rule 403 493
IV. Consider a Limiting Instruction 496
V. Four Sentence Summary of Chapter 12 497

Chapter Thirteen · Competency: The Declarant's Competence and the Hearsay Rule 499
I. Competency as Another Way to Look at Many of the Hearsay Cases 499
A. Out-of-Court Declarant Must Have Personal Knowledge of the Facts Declared 499
B. Competency and the Hearsay Rule 502

II. Using Hearsay to Avoid Incompetence 504
A. Getting Around the Out-of-Court Declarant's Lack of Personal Knowledge 505
B. Getting Around Other Incompetencies 506
C. Modern Trend? 509

Chapter Fourteen · The Confrontation Clause 511
I. The Confrontation Clause 511
II. The Confrontation Clause and Hearsay 512
III. Use Note 513
A. The Right Attaches to Out-of-Court Statements That Are Testimonial, Offered Against the Accused in a Criminal Prosecution, and Offered to Prove the Truth of the Matter Asserted 513
1. Offered Against the Accused in a Criminal Prosecution 513
2. An Out-of-Court Statement Offered to Prove the Truth of the Matter Asserted 514
3. The Statement Must Be "Testimonial" 515
B. Forfeiture of the Confrontation Right 526
C. Situations Where the Right Attaches but Is Not Infringed 526
1. The Testifying Declarant 527
2. A Pretrial Opportunity to Cross-Examine the Declarant 528
3. The Declarant who is Present in the Courtroom but Invokes a Privilege or Otherwise Refuses to Testify 528
4. The Child Victim Who Will Be Further Traumatized if Made to Testify 528
D. *In Limine* Procedures 532
E. Harmless Constitutional Error 532

Index 533

Table of Authorities

FEDERAL CONSTITUTION AND RULES

United States Constitution

The Sixth Amendment Confrontation Clause: 57, 58, 64, 67, 68, 90, 137, 144, 161, 291, 292, 303, 315, 327, 342, 345, 365–369, 371, 389, 394, 396, 443, 511–532

Federal Rules of Evidence

Art. I
Fed.R.Evid. 102: 316, 328, 333, 334, 341, 345, 361, 363
Fed.R.Evid. 103: 111, 114, 384, 466, 502
Fed.R.Evid. 103(a)(1): 111, 114, 384, 502
Fed.R.Evid. 106: 63, 324, 462, 463

Art. II
Fed.R.Evid. 201: 465
Fed.R.Evid. 201(b)(2): 465

Art. IV
Fed.R.Evid. 401: 4, 17, 117, 195, 504
Fed.R.Evid. 402: 49, 261, 419
Fed.R.Evid. 403: 120, 184, 192, 195, 254, 258, 261, 302, 440, 450, 457, 468, 489, 494, 504
Fed.R.Evid. 404: 117, 118
Fed.R.Evid. 407: 118

Art. V
Fed.R.Evid. 501: 5, 118, 271

Art. VI
Fed.R.Evid. 601: 195
Fed.R.Evid. 602: 4, 49, 111, 114, 116, 157, 203, 244, 301, 487, 500–502, 504
Fed.R.Evid. 603: 505
Fed.R.Evid. 611: 504
Fed.R.Evid. 612: 203, 206
Fed.R.Evid. 613: 206

Art. VII
Fed.R.Evid. 701: 117, 450, 453, 454, 456–458
Fed.R.Evid. 702: 426, 428, 429, 457
Fed.R.Evid. 703: 426, 427, 434, 438, 439, 454, 457
Fed.R.Evid. 705: 444

Art. VIII
Fed.R.Evid. art. VIII, advisory committee note: 131
Fed.R.Evid. 801(a): 10, 12, 226, 243
Fed.R.Evid. 801(c): 9, 16, 28, 402, 404, 467, 491
Fed.R.Evid. 801(d) (generally): 48–54
Fed.R.Evid. 801(d)(1)(A): 57, 345, 359, 376, 492,
Fed.R.Evid. 801(d)(1)(B): 59, 61, 376, 478
Fed.R.Evid. 801(d)(1)(C): 65, 359, 364, 376
Fed.R.Evid. 801(d)(2) (generally): 67–70
Fed.R.Evid. 801(d)(2)(A): 70, 105, 342, 376, 401, 403, 486
Fed.R.Evid. 801(d)(2)(B): 105
Fed.R.Evid. 801(d)(2)(C): 78
Fed.R.Evid. 801(d)(2)(D): 74, 79, 256, 376, 474, 484
Fed.R.Evid. 801(d)(2)(E): 70
Fed.R.Evid. 802: 8, 132, 381, 438

Fed.R.Evid. 803 (generally): 131–137
Fed.R.Evid. 803(1): 62, 141, 183, 241, 473
Fed.R.Evid. 803(2): 62, 105, 146, 162, 291, 473, 486
Fed.R.Evid. 803(3): 163, 173, 176, 183, 337, 345
Fed.R.Evid. 803(4): 186, 188, 192, 195, 196, 198
Fed.R.Evid. 803(5): 200, 203, 209, 241, 478
Fed.R.Evid. 803(6): 62, 189, 212, 213, 216–218, 220, 241, 256, 428, 473, 474, 478
Fed.R.Evid. 803(7): 189
Fed.R.Evid. 803(8): 228, 230, 231, 234–236, 238, 239, 479, 488
Fed.R.Evid. 803(15): 245–247
Fed.R.Evid. 803(16): 250, 257, 258, 351, 446, 474, 486, 489
Fed.R.Evid. 803(17): 464, 465
Fed.R.Evid. 803(18): 263–265, 445
Fed.R.Evid. 803(24): 335, 339, 343
Fed.R.Evid. 804 (generally): 131–137, 269–274
Fed.R.Evid. 804(a): 270, 394, 529
Fed.R.Evid. 804(b)(1): 5, 270, 283, 345
Fed.R.Evid. 804(b)(2): 136
Fed.R.Evid. 804(b)(3): 105, 291, 304–306, 311, 315, 345
Fed.R.Evid. 804(b)(4): 319, 320, 345
Fed.R.Evid. 804(b)(5): 349, 364
Fed.R.Evid. 804(b)(6): 322, 327, 329, 345
Fed.R.Evid. 805: 110, 111, 144, 215, 232, 481, 487
Fed.R.Evid. 806: 49, 116, 196, 301, 308, 388, 500, 502
Fed.R.Evid. 807: 36, 159, 270, 333, 334, 338, 345, 346, 356, 357, 512

Art. IX
Fed.R.Evid. 901(a): 255
Fed.R.Evid. 901(b)(8): 254, 255
Fed.R.Evid. 902: 220, 231
Fed.R.Evid. 1001: 27
Fed.R.Evid. 1101: 460, 467

Federal Rules of Civil Procedure

Fed.R.Civ.P. 26: 454, 456
Fed.R.Civ.P. 32: 36, *passim* 376–390
Fed.R.Civ.P. 45(b): 273

Federal Rules of Criminal Procedure

Fed.R.Crim.P. 15: 36, *passim* 390–397
Fed.R.Crim.P. 16: 454, 456
Fed.R.Crim.P. 17: 273
Fed.R.Crim.P. 36: 392, 393, 395

UNITED STATES STATUTES

15 U.S.C.A. §23: 273
18 U.S.C. §3505 (2001): 226
18 U.S.C. §3509: 501
18 U.S.C. §3509(c)(3): 501
18 U.S.C. §3509(c)(4): 501
42 U.S.C. §1983: 157

STATE STATUTES

7A S.D.Codified Laws §19-15-5.2 through 19-15-8 (Michie 1995): 434
Fla. Stat. §90.803(23) (2000): 368
Neb.Evid.R. 803(5) & (6), Neb. Rev. Stat. §§27-803(5) & (6): 212
Neb.Evid.R. 803(7), Neb. Rev. Stat. §27-803(7) (Reissue 1995): 229
Neb.Evid.R. 803(15): 250
Neb.Evid.R. 804(2)(a), Neb. Rev. Stat. §27-804(2)(a) (Reissue 1995): 275
Neb.Evid.R. 804(2)(b), Neb. Rev. Stat. §27-804(2)(b) (Reissue 1995): 293
Neb. Rev. Stat. §25-12,115 (Reissue 1995): 434
Uniform Composite Reports as Evidence Act: 433

FEDERAL CASES

A

Acme Printing Ink Co. v. Menard, Inc., 812 F.Supp. 1498 (E.D. Wisc. 1992), 283, 383

Affronti v. United States, 145 F.2d 3, 7 (8th Cir. 1944), 63

Agent Orange Prod. Liab. Litig., 611 F.Supp. 1223, 1245 (E.D.N.Y. 1985), 428

Agfa-Gevaert v. A.B. Dick Co., 879 F.2d 1518 (7th Cir. 1989), 451

Ahlberg v. Chrysler Corp., 481 F.3d 630, (8th Cir. 2007), 75

Air and Land Forwarders, Inc. v. United States, 172 F.3d 1338 (F.C. 1999), 223

Alberty v. United States, 162 U.S. 499 (1896), 12

Alexander v. Conveyors & Dumpsters, Inc., 731 F.2d 1221 (5th Cir. 1984), 346, 349

Alexander v. FBI, 198 F.R.D. 306 (D.D.C. 2000), 206

Allen v. Montgomery, 728 F.2d 1409 (11th Cir. 1984), 326

Allen v. Sybase, Inc. 468 F.3d 642 (10th Cir. 2006), 174, 177

Am. Auto. Accessories, Inc. v. Fishman, 175 F.3d 534 (7th Cir. 1999), 315, 316

American Auto Accessories, Inc. v. Fishman, 175 F.3d 534 (7th Cir. 1999), 49, 312

American Eagle Ins. Co. v. Thompson, 85 F.3d 327 (8th Cir. 1996), 50, 51, 54, 76

Amtrust, Inc. v. Larson, 388 F.3d 594 (8th Cir. 2004), 223, 232, 488

Anderson v. United States, 417 U.S. 211 (1974), 16, 33, 403

Angelo v. Armstrong World Indus., Inc., 11 F.3d 957 (10th Cir. 1993), 381

Apanovitch v. Houk, 466 F.3d 460 (6th Cir. 2006), 167

Arpan v. United States, 260 F.2d 649 (8th Cir. 1958), 93, 94

Asplundh Mfg. Div. v. Benton Harbor Eng'g, 57 F.3d 1190 (3d Cir. 1995), 453, 456

B

Bado-Santana v. Ford Motor Co., 364 F.Supp.2d 79 (D.P.R. 2005), 439

Baker v. Elcona Homes Corp., 588 F.2d 551 (6th Cir. 1978), 236, 239

Ballou v. Henri Studios, Inc., 656 F.2d 1147 (5th Cir. 1981), 4

Bank of Lexington & Trust Co., 959 F.2d 606 (6th Cir. 1992), 225, 236

Barraza v. United States, 526 F.Supp.2d 637 (W.D. Tex. 2007), 372

Barrel of Fun, Inc. v. State Farm Fire & Cas. Co., 739 F.2d 1028 (5th Cir. 1984), 440, 441

Barry v. Trustees of the Int'l Ass'n Full-Time Salaried Officers and Emps. of Outside Local and Dist. Counsel's (Iron Workers) Pension Plan, 467 F.Supp.2d 91 (D. D.C. 2006), 357

Barsamian v. City of Kingsburg, 76 Fed. R. Evid. Serv. 766 (E.D. Cal. 2008), 74

Battle v. Memorial Hosp. at Gulfport, 228 F.3d 544 (5th Cir. 2000), 389

Beech Aircraft Corp. v. Rainey, 488 U.S. 153 (1988), 66, 228, 236, 248, 463

Bemis v. Edwards, 45 F.3d 1369 (9th Cir. 1995), 49, 147, 149, 153, 154, 156, 157, 158

Bennett v. Saint-Gobain Corp., 507 F.3d 23, (1st Cir. 2007), 110

Bennett v. Yoshina, 98 F.Supp.2d 1139 (D. Haw. 2000), 168

Bickerstaff v. Nordstrom, Inc. 48 F.Supp.2d 790 (N.D. Ill. 1999), 75

Blakey v. Continental Airlines, 1997 U.S. Dist. LEXIS 22074, *13 (D.N.J. Sept. 9, 1997), 450

Blancha v. Raymark Indus., 972 F.2d 507 (3d Cir. 1992), 4

Bobadilla v. Carlson, 570 F.Supp.2d 1098, 1111 (D. Minn. 2008), 518

Boca Investerings P'ship v. United States, 128 F.Supp.2d 16 (D.C.D.C. 2000), 217, 224

Boca Investerings P'ship v. United States, 197 F.R.D. 18 (D.C.D.C. 2000), 386

Bohler-Uddeholm America, Inc. v. Ellwood Group, Inc., 247 F.3d 79 (3d Cir. 2001), 339

Bombard v. Fort Wayne Newspapers, Inc., 92 F.3d 560 (7th Cir. 1996), 191
Borawick v. Shay, 68 F.3d 597 (2d Cir. 1995), 116
Boren v. Sable, 887 F.2d 1032 (10th Cir. 1989), 489
Bourjaily v. United States, 483 U.S. 171 (1987), 51, 52, 329
Bowser v. Synar, 478 U.S. 714 (1986), 524
Boy Scouts of America v. Dale, 530 U.S. 640 (2000), 530
Boyce v. Eggers, 513 F.Supp.2d 139 (D. N.J. 2007), 177
Boyd v. Dutton, 405 U.S. 1 (1972), 530
Brennan v. Reinhart Inst'l Foods, 211 F.3d 449 (8th Cir. 2000), 434
Broad. Music, Inc. v. Airhead Corp., 1990 U.S. Dist. LEXIS 19382, *5 (E.D. Va Dec. 27, 1990), 249
Brookover v. Mary Hitchcock Memorial Hosp., 893 F.2d 411 (1st Cir. 1990), 116
Brown v. Crown Equip. Corp., 445 F.Supp.2d 59, 67 (D. Me. 2006), 342
Brown v. Keane, 355 F.3d 82 (2d Cir. 2004), 499
Brown v. Philip Morris, Inc., 228 F.Supp.2d 506 (D. N.J. 2002), 339
Brown v. Seaboard Airline and R.R., 434 F.2d, 1101 (5th Cir. 1970), 196
Bruton v. United States, 391 U.S. 123 (1968), 448
Bryan v. John Bean Div. of FMC Corp., 566 F.2d 541 (5th Cir. 1978), 438
Bulthuis v. Rexall Corp., 789 F.2d 1315, 1316 (9th Cir. 1985), 191
Burlington N. RR Co. v. Nebraska, 802 F.2d 994, (8th Cir. 1986), 455
Burns v. Board of County Comm'rs of Jackson County, 330 F.3d 1275 (10th Cir. 2003), 110
B-W Acceptance Corp. v. Porter, 568 F.2d 1179 (5th Cir. 1978), 79

C

California v. Green, 399 U.S. 149 (1970), 6, 7, 396, 530
Cal-Mat Co. v. United States Dept. of Labor, 364 F.3d 1117 (9th Cir. 2004), 32
Canatxx Gas Storage Ltd. v. Silverhawk Capital Partners, LLC, 76 Fed. R. Evid. Serv. 500 (S.D. Tex. 2008), 76, 141, 336
Carden v. Westinghouse Electric Corp., 850 F.2d 996 (3d Cir. 1988), 76
Carey v. Bahama Cruise Lines, 864 F.2d 201 (1st Cir. 1988), 381, 385
Cargill v. Turpin, 120 F.3d 1366 (11th Cir. 1997), 468
Carr v. Deeds 453 F.3d 593 (4th Cir. 2006), 95
Carter v. Kentucky, 450 U.S. 288 (1981), 92
Caruolo v. John Crane, Inc., 226 F.2d 46 (2d Cir. 2000), 263, 264
Castro-Pu v. Mukasey, 540 F.3d 864 (8th Cir. Aug. 28, 2008), 428
Catellus Dev. Corp. v. L.D. McFarland Co., 1993 U.S. Dist. LEXIS 14124 (D. Oregon May 14, 1993), 257
Celebrity Cruises, Inc. v. Essef Corp. 434 F.Supp.2d 169 (S.D.N.Y. 2006), 441
Central R.R. Co. v. Monahan, 11 F.2d 212 (2d Cir. 1926), 452
Chadwell v. Koch Ref. Co., 251 F.3d 727 (8th Cir. 2001), 226
Chambers v. Mississippi, 410 U.S. 284 (1973), 476
Champagne Metals v. Ken-Mac Metals, Inc, 458 F.3d 1073 (10th Cir. 2006), 107
Chapman v. California, 386 U.S. 18 (1967), 532
Chapple v. Gangar, 851 F.Supp. 1481 (E.D. Wash. 1994), 362
Claar v. Burlington N. R.R. Co., 29 F.3d 499 (9th Cir. 1994), 362
Clarendon Trust v. Dwek, 970 F.2d 990 (1st Cir. 1992), 389
Clay v. Johns-Manville Sales Corp, 722 F.2d 1289 (6th Cir. 1982), 283
Clevenger v. CNH America, LLC, 76 Fed. R. Evid. Serv. 897, 903 (M.D. Pa. **208**), 483
Cloverland-Green Spring Dairies, Inc. v. Pennsylvania Milk Mktg. Bd. 298 F.3d 201 (3d Cir. 2003), 402
Coleman v. Home Depot, Inc., 306 F.3d 1333 (3d Cir. 2002), 230, 235, 236

Coltrane v. United States, 418 F.2d 1131 (D.C. Cir. 1969), 63
Compton v. Davis Oil Co., 607 F.Supp. 1221 (D. Wyo. 1985), 245, 251
Constantino v. Herzog, 203 F.3d 164 (2d Cir. 2000), 134, 263, 265
Conwood Co. v. U.S. Tobacco Co., 290 F.3d 768 (6th Cir. 2002), 430
Cook v. Hoppin, 783 F.2d 684 (7th Cir. 1986), 196, 197
Cooper Sportswear Mfg. Co. v. Hartford Cas. Ins. Co., 818 F.Supp. 721 (D.N.J. 1993), 484
Coy v. Iowa, 487 U.S. 1012 (1988), 530
Crawford v. Washington, 541 U.S. 36 (2004), 52, 292, 303, 315, 342, 512–17, 520–22, 524–527, 530–31
Crowley v. L.L. Bean, Inc., 303 F.3d 387 (1st Cir. 2002), 408
Cummins v. Lyle Indus., 93 F.3d 362 (7th Cir. 1996), 438
Curtis v. Oklahoma Pub. Sch. Bd. of Educ., 147 F.3d 1200 (10th Cir. 1998), 52

D

Daigle v. Maine Medical Center, Inc., 14 F.3d 684 (1st Cir. 1994), 385
Dallas County v. Commercial Union Assurance Co., 286 F.2d 388 (5th Cir. 1961), 133, 251, 253, 257, 258, 503
Danaipour v. McLarey, 386 F.3d 289 (1st Cir. 2004), 186, 189
Dartez v. Fiberboard Corp., 765 F.2d 456 (5th Cir. 1985), 255, 265, 347
Daubert v. Merrell Dow Pharms, 509 U.S. 579 (1993), 66, 248, 362, 429, 430
David v. Pueblo Supermarket of St. Thomas, 740 F.2d 230 (3d Cir. 1984), 153
Davignon v. Clemmey, 322 F.3d 1 (1st Cir. 2003), 186, 187, 194
Davignon v. Hodgson, 524 F.3d 91 (1st Cir. 2008), 229
Davila v. Corporacion de P. R. Para a la Difusion Publica, 498 F.3d 9 (1st Cir. 2007), 75, 140
Davis v. Washington, 547 U.S. 813 (2006), 515, 516, 518
Delaney v. Merchants River Transp., 829 F.Supp. 186 (W.D. La. 1993), aff'd, 16 F.3d 1214 (5th Cir. 1992), 429
Delaney v. United States, 77 F.2d 916 (3d Cir. 1935), 204
Deleware v. Fensterer, 474 U.S. 15 (1985), 528
de Mars v. Equitable Life Assurance Society of the United States, 610 F.2d 55 (1st Cir. 1979), 373
Deravin v. Kerik, 2007 U.S. Dist. LEXIS 24696, *35 (S.D.N.Y. 2007), 179
DesRosiers v. Moran, 949 F.2d 15 (1st Cir. 1991), 49
De Weerth v. Baldinger, 658 F.Supp. 688 (S.D.N.Y. 1987), 256
Dhyne v. Meiners Thriftway, Inc., 184 F.3d 983 (8th Cir. 1999), 388, 390
Diaz v. United States, 223 U.S. 442 (1912), 328
Distaff, Inc. v. Springfield Contracting Corp., 984 F.2d 108 (4th Cir. 1993), 235
District of Columbia v. Heller, 128 S. Ct. 2783 (2008), 530
Doe v. United States, 976 F.2d 1071 (7th Cir. 1992), 356
Donlin v. Aramark Corp., 162 F.R.D. 149 (D. Utah 1995), 109
Doyle v. Ohio, 426 U.S. 610 (1976), 92
DSC Sanitation Mgmt., Inc. v. Occupational Safety & Health Rev. Comm'n, 82 F.3d 812 (8th Cir. 1996), 49
Duncan v. Louisiana, 391 U.S. 145 (1968), 532
Dura Automotive Sys. v. CTS Corp., 285 F.3d 609 (7th Cir. 2002), 443
Dyno Constr. Co. v. McWane, Inc. 198 F.3d 567 (7th Cir. 1999), 219

E

Echo Acceptance Corp. v. Household Retail Servs., 267 F.3d 1068 (10th Cir. 2001), 402, 463
EEOC v. HBE Corp., 135 F.3d 543 (8th Cir. 1998), 484
EEOC v. Watergate at Landmark Condo., 24 F.3d 635 (4th Cir. 1994), 76
Eliserio v. United Steelworkers of Am. Local 310 F.3d 1071 (8th Cir. 2005), 75

Ellipsis, Inc. v. Color Works, Inc. 428 F.Supp.2d 752 (W.D. Tenn 2006), 434
Ellis v. Int'l Playtex, Inc., 745 F.2d 292 (4th Cir. 1984), 225
EnergyNorth Natural Gas, Inc. v. UGI Utils., Inc., 2003 U.S. Dist. LEXIS 5681, at *3–4 (D.N.H. 2003), 503
Engebretsen v. Fairchild Aircraft Corp., 21 F.3d 721 (6th Cir. 1994), 437, 441, 443, 447
Estenfelder v. Gates Corp., 199 F.R.D. 351 (D. Colo. 2001), 389

F

FAA v. Landy, 705 F.2d 624 (2d Cir. 1983), 238
Fagiola v. Nat'l Gypsum Co. AC & S, Inc., 906 F.2d 53 (2d Cir. 1990), 255
Fairfield 274-278 Clarendon Trust v. Dwek, 970 F.2d 990 (1st Cir. 1992), 389
Faries v. Atlas Truck Body Mfg. Co, 797 F.2d 619 (8th Cir. 1986), 235, 237, 435
Farner v. Paccar, Inc., 562 F.2d 518 (8th Cir. 1977), 452
Faulkner v. Super Valu Stores, Inc., 3 F.3d 1419 (10th Cir. 1993), 409
Field v. Trigg County Hosp., Inc., 386 F.3d 729 (6th Cir. 2004), 191
Finizie v. Principi, 69 Fed.Appx. 571 (3d Cir. 2003) 272
Fischer v. Forestwood Co., Inc., 525 F.3d 972 (10th Cir. 2008), 78
Fisher v. United States, 78 Fed. Cl. 710 (Fed. Cl. 2007), 263
Florida Conf. Ass'n of Seventh-Day Adventists v. Kyriakides, 151 F.Supp.2d 1223 (C.D. Cal. 2001), 13
Fox v. Taylor Diving & Salvage Co., 694 F.2d 1349 (5th Cir. 1983), 437, 443
Fraley v. Rockwell Int'l Corp., 470 F. Supp. 1264 (S.D. Ohio 1979), 236
Fraser v. Goodale, 342 F.3d 1032 (9th Cir. 2003), 203
Frechette v. Welch, 621 F.2d 11 (1st Cir. 1980, 390
FSLIC v. Griffin, 935 F.2d 691 (5th Cir. 1991), 221, 222
FTC v. Amy Travel Serv., Inc. 875 F.2d 564 (7th Cir. 1989), 351
FTC v. Kitco of Nevada, Inc., 612 F.Supp. 1282 (D.C. Minn. 1985), 349
Freeman v. Metropolitan Life Ins. Co., 468 F.Supp. 1269 (W.D. Va. 1979), 45
Fulkerson v. Holmes, 117 U.S. 389 (1886), 252
Fun-Damental Too, Ltd. v. Gemmy Indus. Corp., 111 F.3d 993 (2d Cir. 1997), 414
Furtado v. Bishop, 604 F.2d 80 (1st Cir. 1979), 348

G

Garbinicius v. Boston Edison Co., 621 F.2d 1171 (1st Cir. 1980), 265
Garcia v. Portuondo, 459 F.Supp.2d 267 (S.D. N.Y. 2006), 337
Garcia-Martinez v. City and County of Denver, 392 F.3d 1187 (10th Cir. 2004), 135, 385, 270
Garner v. Missouri Dept. of Mental Health, 439 F3d 958 (8th Cir. 2006) 18, 32
General Elec. Co. v. Joiner, 522 U.S. 136 (1997), 52
Gentile v. County of Suffolk, 129 F.R.D. 435, 457 (E.D.N.Y. 1990), 235
Gilbert v. California, 388 U.S. 263 (1967), 365
Giles v. California, 128 S.Ct. 2678 (2008), 526
Glendale Fed. Bank v. United States, 39 Fed. Cl. 422 (Ct. Fed. Cl. 1997), 79, 80
Globe Newspaper Co. v. Superior Court, 457 U.S. 596 (1982), 367
Globe Newspaper Co. v. Superior Court, 457 U.S. 596, (1982), 531
Goldsmith v. Bagby Elevator Co., 513 F.3d 1261 (11th Cir. 2008), 229
Gomes v. Rivera Rodriguez, 344 F.3d 103 (1st Cir. 2003), 52, 76
Gong v. Hirsch, 913 F.2d 1269 (7th Cir. 1990), 441
Gonzalez v. Digital Equip. Corp., 8 F.Supp.2d 194 (E.D.N.Y. 1998), 251

Gonzalez v. Digital Equip. Corp., 8 F.Supp.2d 194 (E.D.N.Y. 1998), 351
Grace United Methodist Church v. City of Cheyenne, 451 F.3d 643 (10th Cir. 2006) 80, 109, 270
Grace v. Keystone Shipping Co., 805 F.Supp. 436 (E.D. Tx. 1992), 109
Graham v. Wyeth Labs., 906 F.2d 1399 (10th Cir. 1990), 265
Greater Kansas City Laborers Pension Fund v. Superior Gen. Contrs., 104 F.3d 1050 (8th Cir. 1997), 460
Griffin v. California, 380 U.S. 609 (1965), 92
Grines v. Employers Mut. Liab. Ins. Co., 73 F.R.D. 607 (D. Alaska 1977), 372
Gross v. Burggraf **Const**. Co., 53 F.3d 1531 (10th Cir. 1995), 119
Gross v. Burggraf **Constr.** Co., 53 F.3d 1531 (10th Cir. 1995), 499
Gross v. King David Bistro, Inc., 84 F.Supp.2d 675 (D. Md. 2000), 230
Grundberg v. The Upjohn Co., 137 F.R.D. 365 (D. Utah 1991), 187
Grunewald v. United States, 353 U.S. 391 (1957), 102
Guerra v. N.E. Indep. Sch. Dist., 496 F.3d 415 (5th Cir. 2007), 236
Guzman v. Abbott Labs, 59 F.Supp.2d 747 (N.D. Ill. 1999), 69

H

Hall v. Forest River, Inc., 2007 U.S. Dist. LEXIS 49376, *18 (N.D. Ind. July 5, 2007), 467
Hannah v. City of Overland, 795 F.2d 1385 (8th Cir. 1986), 286
Harris v. Itzhaki, 183 F.3d 1043 (9th Cir. 1999), 74
Harris v. New York, 401 U.S. 222 (1971), 395
Harris v. Rivera, 454 U.S. 339 (1981), 459, 460
Hartley v. Dillard's, Inc., 310 F.3d 1054 (8th Cir. 2002), 437
Henry v. Hess Oil V. I. Corp., 163 F.R.D. 237 (D.V.I. 1995), 435
Herb v. Pitcairn, 324 U.S. 117 (1945), 475
Herrick v. Garvey, 298 F.3d 1184 (10th Cir. 2002), 228, 346
Hertz v. Luzenac Am., Inc., 370 F.3d 1014 (10th Cir. 2004), 215, 235
Hicks v. Charles Pfizer & Co., 466 F. Supp. 2d 799 (E.D. Tex. 2005), 258, 348
Hoppe v. G.D. Searle & Co., 779 F.Supp. 1413 (S.D.N.Y. 1991), 288, 289, 386
Horne v. Owens-Corning Fiberglass Corp., 4 F.3d 276 (4th Cir. 1993), 257, 282, 503
Horton v. Allen, 370 F.3d 75 (1st Cir. 2004), 164
Horvath v. Rimtec Corp., 102 F.Supp.2d 219 (D.N.J. 2000), 85
Hoselton v. Metz Baking Co., 48 F.3d 1056 (8th Cir. 1995), 483
Houser v. Snap-On-Tools Corp, 202 F.Supp. 181 (D. Md. 1962), 385
Hub v. Sun Valley Co., 682 F.2d 776 (9th Cir. 1982), 383
Huff v. White Motor Corp., 609 F.2d 286 (7th Cir. 1979), 333, 341, 355, 476, 477
Hughes v. United States, 953 F.2d 531 (9th Cir. 1992), 231
Hynes v. Coughlin, III, 79 F.3d 285 (2d Cir. 1996), 479
Hynix Semiconductor Inc. v. Rambus Inc., 250 F.R.D. 452, 458 (N.D. Cal. 2008), 282
Hynix Semiconductor, Inc. v. Rambus, Inc., 2008 U.S.Dist. LEXIS 10859, *20 (N.D. Cal. 2008), 439

I

Idaho v. Wright, 497 U.S. 805 (1990), 49, 133, 293, 351, 355, 356
Ieradi v. Mylan Labs., Inc., 230 F.3d 594 (3rd Cir. 2000), 465
Illinois v. Allen, 397 U.S. 337 (1970), 530
Imperial Meat Co. v. United States, 316 F.2d 435 (10th Cir. 1963), 204, 205
In re Agent Orange Prod. Liab. Litig., 611 F.Supp. 1223 (E.D.N.Y. 1985), 428
In re Bankers Trust Co., 752 F.2d 874 (3d Cir. 1984), 381
In re Complaint of Bankers Trust Co., 752 F.2d 874 (3d Cir. 1984), 381, 386

In re James Wilson Assoc'd, 965 F.2d 160 (7th Cir. 1992), 430, 437, 443, 447
In Re Japanese Elec. Prods. Antitrust Litig., 723 F.2d 238 (3d Cir. 1983), 80, 135, 290, 338, 339
In re Oil Spill by the Amoco Cadiz, 954 F.2d 1279 (7th Cir. 1992), 232, 238, 258
In re Roberts, 210 B.R. 325 (Bankr. N.D. Iowa 1997), 260, 464, 466
In re Slatkin, 525 F.3d 805 (9th Cir. 2008), 351, 352
In re Welding Fume Prods. Liab. Litig., 534 F.Supp.2d 761 (N.D. Ohio 2008), 263
In re Wierschem, 152 B.R. 345 (Bankr. M.D. Fla. 1993), 464
INS v. Chadha 462 U.S. 919, 944 (1983), 524
International Adhesive Coating Co. v. Bolton Emerson Int'l, 851 F.2d 540 (1st Cir. 1988), 437

J

J.E.M. Ag Supply, Inc. v. Pioneer Hi-Bred Int'l, Inc., 534 U.S. 124 (2001), 134
Jacklyn v. Schering-Plough Healthcare Prods. Sales Corp., 176 F.3d 921 (6th Cir. 1999), 75, 80
Jewell v. CSX Transp., Inc., 135 F.3d 361 (6th Cir. 1998), 135
Jewett v. Anders, 521 F.3d 818 (7th Cir. 2008), 410
Jewett v. United States, 15 F.2d 955 (9th Cir. 1926), 204, 206
John McShain, Inc. v. Cessna Aircraft Co., 563 F.2d 632 (3d Cir. 1977), 233, 238
Johnson v. California, 543 U.S. 499 (2005), 530
Johnson v. New Jersey, 384 U.S. 719 (1966), 530

K

Kelley v. American Heyer-Schulte Corp., 957 F.Supp. 873 (W.D. Tex. 1997), 435
Kennon v. Slipstreamer, Inc., 794 F.2d 1067 (5th Cir. 1986), 448
Kentucky v. Stincer, 482 U.S. 730 (1987), 513, 527
Kepner-Tregoe Inc. v. Leadership Software, 12 F.3d 527 (5th Cir. 1994), 402
Kingsley v. Baker/Beech-Nut Corp., 546 F.2d 1136 (5th Cir. 1977), 81
Kirk v. Raymark Indus., Inc. 61 F.3d 147 (3d Cir. 1995), 77, 288, 346
Knoster v. Ford Motor Co., 200 Fed. Appx. 106 (3d Cir. 2006) 453
Koch Indus., Inc. and Subsidiaries v. United States, 564 F.Supp.2d 1276 (D. Kan. 2008), 223
Kraft, Inc. v. United States, 30 Fed. Cl. 739 (Fed. Cl. 1994) 250, 254
Kramer v. Time Warner Inc. 937 F.2d 767 (2d Cir. 1991), 456
Krulewitch v. United States, 336 U.S. 440 (1949), 103
Kumho Tire Co. v. Carmichael, 526 U.S. 137 (1999), 362, 429
KW Plastics v. United States Can Co., 130 F.Supp.2d 1297 (M.D. Ala. 2001), 14
KW Plastics v. United States Can Co., 131 F.Supp.2d 1265 (M.D. Ala. 2001), 450, 455
KZK Livestock, Inc. v. Production Credit Servs. of W. Cent. Illinois, 221 B.R. 471 (Bankr. C.D. Ill. 1998), 397

L

L.W. ex rel. Whitson v. Knox County Bd. of Educ., 76 Fed. R. Evid. Serv. 796 (E.D. Tenn. 2008), 72
LaCombe v. A-T-O, Inc., 679 F.2d 431 (5th Cir. 1982), 426, 428, 430
LaRouche v. Webster, 175 F.R.D. 452 (S.D.N.Y. 1996), 244
Lee v. McCaughtry, 892 F.2d 1318 (7th Cir. 1990), 87, 112
Lewis v. Velez, 149 F.R.D. 474 (S.D.N.Y. 1993), 233, 235, 485
Lexington Ins. Co. v. Western Pa. Hosp., 423 F.3d 318 (3d Cir. 2005), 14, 109
Liberty Mut. Ins. Co. v. Rotches Pork Packers, Inc., 969 F.2d 1384 (2d Cir.1992), 465
Lightning Lube, Inc. v. Witco Corp., 4 F.3d 1153 (3d Cir. 1993), 79
Lilley v. Home Depot U.S.A., Inc., 2008 U.S. Dist. LEXIS 53903, *8 (S.D. Tex. July 15, 2008), 430
Limone v. United States, 497 F.Supp.2d 143 (D. Mass. 2007), 346

Lippay v. Christos, 996 F.2d 1490 (3d Cir. 1993), 76, 77
Lloyd v. American Export Lines, Inc., 580 F.2d 1179 (3d Cir. 1978), 281, 282, 283
Lloyd's v. Sinkovich, 232 F.3d 200 (4th Cir. 2000), 213, 215
Lorraine v. Markel Am. Ins. Co., 241 F.R.D. 534 (D. Md. 2007), 12, 15, 137, 166, 402
Louisiana v. Langley, 128 S.Ct. 493 (2007), 172
Lovejoy v. United States, 92 F.3d 628 (8th Cir. 1996), 191, 358, 359, 363, 365
Luckie v. Ameritech Corp., 389 F.3d 708 (7th Cir. 2004), 409
Lust v. Sealy, Inc., 383 F. 3d 580, 588 (7th Cir. 2004), 140, 214, 235
Lutwak v. United States, 344 U.S. 604 (1953), 102, 103, 105
Louis Vuitton Malletier v. Dooney & Bourke, Inc., 525 F.Supp.2d 576 (S.D.N.Y. 2007), 439, 443

M

M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc., 681 F.2d 930 (4th Cir. 1982), 501
Mahlandt v. Wild Canid Survival & Research Ctr., Inc., 588 F.2d 626 (8th Cir. 1978), 88, 109, 113, 115, 504, 506
Mancusi v. Stubbs, 408 U.S. 204, 216 (1972), 351
Marra v. Philadelphia Housing Auth., 497 F.3d 286 (3d Cir. 2007), 75
Marsee v. United States Tobacco Co., 866 F.2d 319 (10th Cir. 1989), 233
Marseilles Hydro Power, LLC v. Marseilles Land and Water Co., 518 F.3d 459 (7th Cir. 2008), 408
Martinez v. McCaughtry, 951 F.2d 130 (7th Cir. 1991), 408
Maryland v. Craig, 497 U.S. 836 (1990), 396, 530
Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574 (1986), 80, 135, 290, 338, 339
Matthews v. Ashland Chem., Inc., 770 F.2d 1303 (5th Cir. 1985), 237
Mattox v. United States, 146 U.S. 140 (1892), 297
McCullock v. H.B. Fuller Co., 61 F.3d 1038 (2d Cir. 1995), 428
McGuire v. Blount, 199 U.S. 142 (1905), 252
McInnis v. Fairfield Cmtys., Inc., 458 F.3d 1129 (10th Cir. 2006) 167, 409
McIntosh v. Partridge, 540 F.3d 325 (5th Cir. 2008), 409
McLendon v. Georgia Kaolin Co., 841 F.Supp. 415 (M.D. Ga. 1994), 435
Meaney v. United States, 112 F.2d 538 (2d Cir. 1940), 185
Meder v. Everest & Jennings, Inc., 637 F.2d 1182 (8th Cir. 1891), 479
Meeker v. Vitt, 2006 U.S.Dist. LEXIS 15009, *10–11 (N.D. Ohio March 31, 2006) 462
Melendez-Diaz v. Massachusetts, 128 S.Ct. 1647 (2008), 516, 520, 522
Melville v. Am. Home Assurance Co., 443 F.Supp. 1064 (E.D.Pa. 1997), 230
Messner v. Lockheed Martin Energy Sys., Inc., 126 F.Supp.2d 502 (E.D. Tenn. 2000), 80
Metropolitan St. Ry. v. Gumby, 99 F. 192 (2d Cir. 1900), 281
Michaels v. Michaels, 767 F.2d 1185 (7th Cir. 1985), 140
Mike's Train House, Inc. v. Lionel, L.L.C., 472 F.3d 398 (6th Cir. 2006) 238, 316
Miller v. Field, 35 F.3d 1088 (6th Cir. 1994), 237
Miller v. Keating, 754 F.2d 507 (3d Cir. 1985), 49
Mitchell v. Esparza, 540 U.S. 12 (2003) 532
Moore v. Kuka Welding Sys., 171 F.3d 1073 (6th Cir. 1999), 76
Moore v. United States, 429 U.S. 20 (1976), 460
Morgan Guar. Trust Co. v. Hellenic Lines Ltd., 621 F. Supp. 198 (S.D.N.Y. 1985), 238
Morgan v. Foretich, 846 F.2d 941 (4th Cir. 1998), 149, 161, 194, 507
Moss v. Ole S. Real Estate, Inc., 933 F.2d 1300 (5th Cir. 1991), 255, 235, 238

Mueller v. Abdnor, 972 F.2d 931 (8th Cir. 1992), 402, 404
Mullins v. Crowell, 228 F.3d 1305 (11th Cir. 2000), 428
Mutual Life Ins. Co. v. Hillmon, 145 U.S. 285 (1892), 174, 175

N
Nachtsheim v. Beech Aircraft Corp., 847 F.2d 1261 (7th Cir. 1988), 440, 494
National Bank of Commerce v. Dow Chem. Co., 965 F.Supp. 1490 (E.D. Ark. 1996), 362
Nees v. SEC, 414 F.2d 211 (9th Cir. 1969), 203, 204, 205
New York v. Ferber, 458 U.S. 747 (1982), 367, 531
Nichols v. American Risk Mgmt., Inc., 45 Fed.R.Serv.3d (Callaghan) 1311 (S.D.N.Y. 2000), 389
Nipper v. Snipes, 7 F.3d 415 (4th Cir. 1993), 228
Northern Securities Co. v. United States, 193 U.S. 197 (1904), 336
Noviello v. City of Boston, 398 F.3d 76 (1st Cir. 2005), 37, 403, 409
Nowell v. Universal Elec. Co., 792 F.2d 1310 (5th Cir. 1986), 347

O
O'Conner v. Commonwealth Edison Co., 13 F.3d 1090 (7th Cir. 1994), 429
O'Quinn v. United States, 411 F.2d 78 (10th Cir. 1969), 203, 205
Ohio v. Roberts, 448 U.S. 56 (1980)). 512
Old Chief v. United States, 519 U.S. 172 (1997), 4
Osborne v. Ohio, 495 U.S. 103 (1990), 530
Ostad v. Oregon Health Sciences Univ., 327 F.3d 876 (9th Cir. 2003), 400

P
Paddack v. Dave Christensen, Inc., 745 F.2d 1254 (9th Cir. 1984), 447
Palmer v. Hoffman, 318 U.S. 109 (1943), 213, 214, 216, 442
Pappas v. Middle Earth Condo. Ass'n, 963 F.2d 534 (2d Cir. 1992), 68, 74
Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1, 127 S.Ct. 2738 (2007), 530
Parker v. Reda, 327 F.3d 211 (2d Cir. 2003), 202, 208, 209, 213, 337, 472
Parliament Ins. Co. v. Hanson, 676 F.2d 1069 (5th Cir. 1982), 202, 203
Pearce v. E.F. Hutton Group, Inc., 653 F. Supp. 810 (D.D.C. 1987), 236
Pearl v. Keystone Consolidated Industries, Inc., 884 F.2d 1047 (7th Cir. 1989), 283
Pekelis v. Transcontinental & W. Air, Inc., 187 F.2d 122 (2d Cir. 1951), 85
Peterkin v. Horn, 176 F.Supp.2d 342 (E.D. Pa. 2001), 468
PG&E v. United States, 73 Fed. Cl. 333 (Ct. Fed. Cl. 2006), 80
PG&E v. United States, No. 2007-5046, 2008 WL 3089272 (Fed. Cir. 2008), 80
Phan v. Trinity Reg'l Hosp., 3 F.Supp.2d 1014 (N.D. Iowa 1998), 358, 366
Pierce v. Atchison Topeka, Santa Fe Ry., 110 F.3d 431 (7th Cir. 1997), 235
Pilgrim v. The Trustees of Tufts College, 118 F.3d 864 (1st Cir. 1997), 85
Pinkerton v. United States, 328 U.S. 640 (1946), 325
Pittman v. Grayson, 149 F.3d 111 (2d Cir. 1998), 114
Pittsburgh Press Club v. United States, 579 F.2d 751 (3d Cir. 1978), 135, 371
Pointer v. Texas, 380 U.S. 400 (1965), 511
Polozie v. United States, 835 F.Supp. 68 (D. Conn. 1993), 286, 289
Portuoudo v. Agard, 529 U.S. 61 (2000), 92
Prather v. Prather, 650 F.2d 88 (5th Cir. 1981), 181, 419
Preferred Properties Inc. v. Indian River Estates Inc., 276 F.3d 790 (6th Cir. 2002), 402

R
R.B. Matthews, Inc. v. Transamerica Transp. Servs., Inc., 945 F.2d 269 (9th Cir. 1991)., 388
Rambus, Inc. v. Infineon Techs. AG, 222 F.R.D. 101 (E.D. Va 2004), 439

Ramrattan v. Burger King Corp, 656 F.Supp. 522 (D. Md. 1987), 198
Redvanly v. Nynex Corp., 152 F.R.D. 460 (S.D.N.Y. 1993), 206
Reedy v. White Consol. Ind., Inc., 890 F.Supp. 1417 (N.D. Iowa 1995), 237
Regan-Touhy v. Walgreen Co., 526 F.3d 641 (10th Cir. 2008), 483
Reichhold Chems., Inc. v. Textron, Inc., 888 F.Supp. 1116 (N.D. Fla. 1995), 253, 473
Reid Bros. Logging Co. v. Ketchikan Pulp Co., 699 F.2d 1292 (9th Cir.1983), 79
Remtech, Inc. v. Fireman's Fund Ins. Co., 2006 U.S. Dist. LEXIS 1145, *3 (E.D. Wash. Jan. 4, 2006), 434, 442
Reno v. ACLU, 521 U.S. 844 (1997), 367, 531
Reno v. Flores, 507 U.S. 292, 301–02 (1993), 530
Research Sys. Corp. v. IPOS Publicite, 276 F.3d 914 (7thCir. 2002), 200
Reynolds v. United States, 98 U.S. 145 (1878), 327, 526
Ricciardi v. Children's Hospital Medical Center, 811 F.2d 18 (1st Cir. 1987), 471, 478, 479
Richmond v. Brooks, 227 F.2d 490 (2d Cir. 1955), 386
Ring v. Erikson, 983 F.2d 818 (8th Cir. 1992), 188
Rock v. Huffco Gas & Oil Co., 922 F.2d 272 (5th Cir. 1991), 198
Rosario v. City of Chicago, 2008 U.S. Dist. LEXIS 40562, *6 (N.D. Ill. May 15, 2008), 201
Rosenthal v. Justices of Supreme Court, 910 F.2d 561 (9th Cir. Cal. 1990), 514
Ross v. Saint Augustine's Coll., 103 F.3d 338 (4th Cir. 1996), 60, 138, 166
Rowland v. American Gen. Fin., Inc., 340 F.3d 187 (4th Cir. 2003), 346, 419
Rush v. Illinois Cent. R.R. Co., 399 F.3d 705 (6th Cir. 2005), 200
Russo v. Abington Mem. Hosp. Healthcare Plan, 1998 U.S. Dist. LEXIS 18598, *9 (E.D. Pa Nov. 18, 1998), 339
Ryan v. Illinois, 1999 U.S. Dist. LEXIS 1095, *9 (N.D. Ill. 1999), 248
Ryder v. Westinghouse Elec. Corp., 128 F.3d 128 (3d Cir. 1997), 76

S

Sabel v. Mead Johnson & Co., 737 F.Supp. 135 (D. Mass. 1990), 79
Sanchez v. Brokop, 398 F.Supp.2d 1177 (D. N.M. 2005), 346, 439
Schafer v. Time, 142 F.3d 1361 (11th Cir. 1998), 435
Schering Corp. v. Pfizer Inc., 189 F.3d 218 (2d Cir. 1999), 114, 164
Schindler v. Joseph C. Seiler & Synthes Spine Co., 474 F.3d 1008 (7th Cir. 2007), 141, 402, 403
Schneble v. Florida, 405 U.S. 427 (1972), 532
Schneider v. Revici, 817 F.2d 987 (2d Cir. 1987), 264
Scott v. Ross, 140 F.3d 1275 (9th Cir. 1998), 434
Scroggins v. Norris, 77 F.3d 1107 (8th Cir. 1996), 290
Sea Land Serv., Inc. v. Lozen Int'l, LLC, 285 F.3d 808 (9th Cir. 2002), 52, 77, 95, 109, 218
SEC v. Antar, 120 F.Supp.2d 431 (D.N.J. 2000); 397
Shedd-Bartush Foods v. Commodity Credit Corp, 135 F.Supp. 78 (D. Ill. 1955), aff'd, 231 F.2d 555 (7th Cir. 1956), 459
Shelton v. Consumer Prods. Safety Comm'n, 277 F.3d 998 (8th Cir. 2002), 217, 225
Shepard v. United States, 290 U.S. 96 (1933), 38, 86, 170, 172, 178, 296, 419, 502, 504
Sherman v. Burke Contracting, Inc., 891 F.2d 1527 (11th Cir. 1990), 449
Simple v. Walgreen Co., 511 F.3d 668 (7th Cir. 2007), 74
Smith v. Isuzu Motors Ltd., 137 F.3d 859 (5th Cir. 1998), 237
Smith v. Pathmark Stores, Inc., 485 F.Supp.2d 235 (E.D.N.Y. 2007), 74, 194
Sosna v. Binnington, 321 F.3d 742 (8th Cir. 2003), 217

Sphere Drake Insurance PLC v. Trisko, 226 F.3d 951 (8th Cir. 2000), 428, 432, 435, 438, 447
Spivey v. United States, 912 F.2d 80 (4th Cir. 1990), 466
Staheli v. The University of Mississippi, 854 F.2d 121 (5th Cir. 1988), 75
Stallings v. Bobby, 464 F.3d 576 (6th Cir. 2006), 459
Steele v. Taylor, 684 F.2d 1193 (6th Cir. 1982), 327
Stephens, Inc. v. Geldermann, Inc., 962 F.2d 808 (8th Cir. 1992), 310
Sterling v. United States, 516 U.S. 1105 (1996), 295
Sternhagen v. Dow Co., 108 F.Supp.2d 1113 (D. Mont. 1999), 296, 337, 351–354
Stevens v. Cessna Aircraft Co., 634 F.Supp. 137 (E.D. Pa. 1986), aff'd 806 F.2d 252 (3d Cir. 1986), 433
Stull v. Fuqua Industries, Inc., 906 F.2d 1271 (8th Cir. 1990), 191
Sullivan v. Louisiana, 508 U.S. 275 (1993), 532
Supermarket of Marlinton, Inc. v. Meadow Gold Dairies, Inc., 71 F.3d 119 (4th Cir. 1995), 282

T

Talley v. Bravo Pitino Rest., Ltd., 61 F.3d 1241 (6th Cir. 1995), 403, 404
Tatam v. Collins, 938 F.2d 509 (4th Cir. 1991), 385
Tatmahn v. Collins, 938 F.2d 509 (4th Cir. 1991), 389
Teeen-Ed, Inc. v. Kimball International, Inc., 620 F.2d 399 (3d Cir. 1980), 453, 458
Tennessee v. Street, 471 U.S. 409 (1985), 515
Territory of Guam v. Cepeda, 69 F.3d 369 (9th Cir. 1995), 150
Territory of Guam v. Ignacio, 10 F.3d 608 (9th Cir. 1993), 187, 197
Territory of Guam v. Ojeda, 758 F.2d 403 (9th Cir. 1985), 71
Thanongsinh v. Bd. of Educ., 462 F.3d 762 (7th Cir. 2006), 71, 221, 213
Thomas v. Newton Int'l Enters., 42 F.3d 1266 (9th Cir. 1994), 428
Threadgill v. Armstrong World Indus., 928 F.2d 1366 (3d Cir. 1991), 252, 254
Thurman v. Missouri Gas Energy, 107 F.Supp.2d 1046 (W.D. Mo. 2000), 434
Tome v. United States, 513 U.S. 150 (1995), 58, 61, 180
Tompkins v. Cyr, 202 F.3d 770 (5th Cir. 2000), 403
Torraco v. Port Authority of New York & New Jersey, 539 F.Supp.2d 632 (E.D.N.Y. 2008), 411
Trepel v. Roadway Express, Inc., 194 F.3d 708 (6th Cir. 1999), 52, 402
Tucker v. Housing Auth. of the Birmingham Dist., 507 F.Supp.2d 1240 (M.D. Ala. 2006), 407
Tucker v. Nike, Inc., 919 F.Supp. 1192 (N.D. Ind. 1995), 362
Tucker v. Osthu Tire & Rubber Co., Ltd., 49 F.Supp.2d 456 (D. Md. 1999), 443, 445
Tumey v. Ohio, 273 U.S. 510 (1927), 532

U

Ueland v. United States, 291 F.3d 993 (7th Cir. 2002), 377
Union Mut. Life Ins. Co. v. Chrysler Corp., 793 F.2d 1 (1st Cir. 1986), 75
Union Pac. R.R. Co. v. Kirby Inland Marine, Inc., 296 F.3d 671 (8th Cir. 2002), 235
United States Football League v. National Football League, 842 F.2d 1335 (2d Cir. 1988), 463
United States v. 0.59 Acres of Land, 109 F.3d 1493 (9th Cir. 1997), 447
United States v. 14.38 Acres of Land, 80 F.3d 1074 (5th Cir. 1996), 428
United States v. Adams, 74 F.3d 1093 (11th Cir. 1996), 467
United States v. Adams, 74 F.3d 1093 (11th Cir. 1996)., 467
United States v. Adcock, 558 F.2d 397 (8th Cir.), 411
United States v. Aikins, 923 F.2d 650 (9th Cir. 1990), 231

United States v. Alexander, 1989 U.S. Dist. LEXIS 17812 (W.D. Mich. 1989, 246
United States v. Alfonso, 66 F.Supp.2d 261 (D.P.R. 1999), 174
United States v. Allen J., 127 F.3d 1292 (10th Cir. 1997), 501
United States v. Alvarez, 584 F.2d 694 (5th Cir. 1978)., 315
United States v. Alverez, 584 F.2d 694 (5th Cir. 1978), 307
United States v. Alzanki, 54 F.3d 994 (1st Cir. 1995), 166, 167
United States v. Amerson, 185 F.3d 676 (7th Cir. 1999), 311, 312
United States v. Anderson, 303 F.3d 847 (7th Cir. 2002), 61
United States v. Andreas, 216 F.3d 645 (7th Cir. 2002), 305
United States v. Arias, 252 F.3d 973 (8th Cir. 2001), 97
United States v. Arnold, 486 F.3d 177 (6th Cir. 2007), 49, 517
United States v. Ary, 518 F.3d 775 (10th Cir. 2008), 213, 218, 223
United States v. Aspinall, 389 F.3d 332 (2d Cir. 2004), p. 12
United States v. Astorga-Torres, 682 F.2d 1331 (9th Cir. 1982), 11
United States v. AT&T, 498 F. Supp. 353 (D.D.C. 1980), 77
United States v. Atkins, 558 F.2d 133 (3d Cir. 1977), 355
United States v. Avants, 367 F.3d 433 (5th Cir. 2004), 289, 292
United States v. Aviles-Colon, 536 F.3d 1 (1st Cir. 2008), 98, 100, 108
United States v. Bachsian, 4 F.3d 796 (9th Cir. 1993), 348
United States v. Badalamenti, 794 F.2d 821 (2d Cir. 1986), 174
United States v. Bagley, 537 U.S. 162 (5th Cir. 1976), 306
United States v. Bagnell, 679 F.2d 826 (11th Cir. 1982), 428
United States v. Bagnell, 679 F.2d 826 (11th Cir. 1982), 429
United States v. Bailey, 581 F.2d 341 (3d Cir. 1978), 339, 348, 356
United States v. Baker, 693 F.2d 183 (D.C. Cir. 1982), 213, 223
United States v. Baker, 985 F.2d 1248 (4th Cir. 1993), 348
United States v. Banks, 514 F.3d 769 (8th Cir. 2008), 352, 353
United States v. Barlow, 693 F.2d 954 (6th Cir. 1982), 343
United States v. Barone, 114 F.3d 1284 (1st Cir. 1997), 307, 314, 315
United States v. Barrett, 539 F.2d 244 (1st Cir. 1976), 306, 307, 309, 311
United States v. Barrett, 8 F.3d 1296 (8th Cir. 1993), 190
United States v. Barror, 20 M.J. 501 (A.F.C.M.R. 1985), 368, 531
United States v. Bartelho, 129 F.3d 663 (1st Cir. 1997), 135, 285, 289
United States v. Becker, 230 F.3d 1224 (10th Cir. 2000), 404, 460, 461, 492
United States v. Beckham, 968 F.2d 47 (D.C. Cir. 1992), 84, 475
United States v. Bedonie, 913 F.2d 782 (10th Cir. 1990), 509
United States v. Benavente Gomez, 921 F.2d 378 (1st Cir. 1990), 348, 350
United States v. Bennett, 363 F.3d 947 (9th Cir. 2004), p. 217
United States v. Bercier, 506 F.3d 625 (8th Cir. 2007), p. 59
United States v. Best, 219 F.3d 192 (2d Cir. 2000), 174
United States v. Beverly, 369 F.3d 516 (6th Cir. 2004), p. 155
United States v. Bigelow, 914 F.2d 966 (7th Cir. 1990), 463
United States v. Blackburn, 992 F.2d 666 (7th Cir. 1993), 215
United States v. Bloome, 773 F.Supp. 545 (E.D.N.Y. 1991), 116
United States v. Bobo, 994 F.2d 524 (8th Cir. 1993), 312, 313
United States v. Bolivar, 532 F.3d 599 (7th Cir. 2008), 97
United States v. Boulware, 384 F.3d 794 (9th Cir. 2004), vacated, 128 S.Ct. 1168 (2008), 248
United States v. Bowman, 215 F.3d 951 (9th Cir. 2000), 101

United States v. Boyce, 849 F.2d 833 (3d Cir. 1988), 315
United States v. Brassard, 212 F.3d 54 (1st Cir. 2000), 468
United States v. Brito, 427 F.3d 53 (1st Cir. 2005), p. 520
United States v. Brooke, 4 F.3d 1480 (9th Cir. 1993), 4
United States v. Brown, 254 F.3d 454 (3d Cir. 2001), 146
United States v. Brown, 459 F.3d 509 (5th Cir. 2006), 71
United States v. Brown, 490 F.2d 758 (D.C. Cir. 1973), 492
United States v. Bucci, 525 F.3d 116 (1st Cir. 2008), 462
United States v. Burreson, 643 F.2d 1344 (9th Cir. 1981), 463
United States v. Butler, 71 F.3d 243 (7th Cir. 1995), 312
United States v. Caballero, 277 F.3d 1235 (10th Cir. 2002), 448, 458
United States v. Capaldo, 402 F.2d 821 (2d Cir. 1968), 343
United States v. Cardascia, 951 F.2d 474 (2d Cir. 1991), 135, 172
United States v. Cardenas, 9 F.3d 1139 (5th Cir. 1993), 459
United States v. Carlson, 547 F.2d 1346 (8th Cir. 1976), 348
United States v. Carmine Persico, 832 F.2d 705 (2d Cir. 1987), 99
United States v. Carson, 455 F.3d 336 (D.C. Cir. 2006), 288
United States v. Carvalho, 742 F.2d 146 (4th Cir. 1984), 320, 321
United States v. Casamento, 887 F.2d 1141 (2d Cir. 1989), 315
United States v. Cazares, 521 F.3d 991 (8th Cir. 2008), 101
United States v. Chang, 207 F.3d 1169 (9th Cir. 2000), 52
United States v. Chapman, 345 F.3d 630 (8th Cir. 2003), 273, 310
United States v. Cherry, 217 F.3d 811 (10th Cir. 2000), 325
United States v. Childs, 539 F.3d 552 (6th Cir. 2008), 10, 403
United States v. Cisneos-Gutierez, 517 F.3d 751 (5th Cir. 2008), 57
United States v. Clark, 96 U.S. 37 (1877), 335
United States v. Clarke, 2 F.3d 81 (4th Cir. 1993), 338, 340, 341
United States v. Cohen, 631 F.2d 1223 (5th Cir. 1980), 168
United States v. Cole, 488 F.Supp.2d 792 (N.D. Iowa 2007), 307
United States v. Cole, 525 F.3d 656 (8th Cir. 2008), 313, 315
United States v. Collicott, 92 F.3d 973 (9th Cir. 1996), 462, 463
United States v. Colon-Diaz, 521 F.3d 29 (1st Cir. 2008), 496
United States v. Concepcion Sablan, 555 F. Supp2d 1205 (D. Colo. 2007), 514
United States v. Connors, 825 F.2d 1384 (9th Cir. 1987), 49
United States v. Conroy, 424 F.3d 833 (8th Cir. 2005), p. 63
United States v. Cooper, 91 F.Supp.2d 79 (D.D.C. 2000), 393
United States v. Coppola, 526 F.2d 764 (10th Cir. 1975), 91
United States v. Cordero, 18 F.3d 1248 (5th Cir. 1994), 371
United States v. Cordova, 157 F.3d 587 (8th Cir. 1998), 101
United States v. Corey, 207 F.3d 84 (1st Cir. 2000), 434
United States v. Costa, 31 F.3d 1073 (11th Cir. 1994), 309
United States v. Costner, 684 F.2d 370 (6th Cir. 1982), 463
United States v. Cowley, 720 F.2d 1037 (9th Cir. 1983), 371, 465
United States v. Cree, 778 F.2d 474 (8th Cir. 1985), 367, 368–369
United States v. Cromer, 389 F.3d 662 (6th Cir. 2004), 521
United States v. Cucuzzella, 66 M.J. 57 (C.A.A.F. 2008), 187, 192, 193, 195
United States v. Curry, 187 F.3d 762 (7th Cir. 1999), 101
United States v. Czachorowski, 66 M.J. 432 (U.S. Armed Forces 2008), 357

United States v. Daulton, 266 Fed. Appx. 381, 387 (6th Cir. 2008), 532
United States v. Davis, 170 F.3d 617 (6th Cir. 1999), 211
United States v. Davis, 40 F.3d 1069 (10th Cir. 1994), 434
United States v. Davis, 571 F.2d 1354 (5th Cir. 1978), 350
United States v. Davis, 792 F.2d 1299 (5th Cir. 1986), 49
United States v. Davis, 826 F.Supp. 617 (D.R.I. 1993), 225
United States v. De Bright, 730 F.2d 1155 (9th Cir. 1989), 173, 176
United States v. De La Cruz, 514 F.3d 121, (1st Cir. 2008), 428, 524
United States v. DeCastris, 798 F.2d 261 (7th Cir. 1986), 449
United States v. DeCastris, 798 F.2d 261 (7th Cir. 1986)., 449
United States v. DeGeorgia, 420 F.2d 889 (9th Cir. 1969), 217
United States v. Demjanjuk, 367 F.3d 623 (6th Cir. 2004), 255
United States v. Dennis, 497 F.3d 765 (7th Cir. 2007), 71, 120
United States v. DeNoyer, 811 F.2d 436 (8th Cir. 1987), 367, 531
United States v. Dent, 984 F.2d 1453 (7th Cir. 1993), 342
United States v. Dhinsa, 243 F.3d 635 (2d Cir. 2001), 323, 324, 329
United States v. Dickerson, 248 F.3d 1036 (11th Cir. 2001), 218
United States v. DiDomenico, 78 F.3d 294 (7th Cir. 1996), 102, 103
United States v. DiNapoli, 8 F.3d 909 (2d Cir. 1993), 285, 286, 287–288
United States v. Distler , 671 F.2d 954 (6th Cir. 1981), 57
United States v. Doerr, 886 F.2d 944 (7th Cir. 1989), 101, 356
United States v. Dolah, 245 F.3d 98 (2d Cir. 2001), 271
United States v. Donlon, 909 F.2d 650 (1st Cir. 1990), 337, 342, 343, 344
United States v. Dorian, 803 F.2d 1439 (8th Cir. 1986), 361
United States v. Dotson, 821 F.2d 1034 (5th Cir. 1987), 90
United States v. Doyle, 130 F.3d 523 (2d Cir. 1997), 231, 234
United States v. Drogoul, 1 F.3d 1546 (11th Cir. 1993), 393
United States v. Drury, 396 F.3d 1303 (11th Cir. 2005), p. 58
United States v. Duncan, 919 F.2d 981 (5th Cir. 1990), 79
United States v. Duran Samaniego, 345 F.3d 1280 (11th Cir. 2003), 167
United States v. Durham, 464 F.3d 976 (9th Cir. 2006), 458
United States v. Earles, 113 F.3d 796 (8th Cir. 1997), 340, 342
United States v. Edwards, 159 F.3d 1117 (8th Cir. 1998), 463
United States v. Eiland, 71 Fed.R.Evid.Serv. (Callaghan) 455, (D.C.D.C. 2006), 458
United States v. Elekwachi, 1997 U.S. App. LEXIS 6381, *9–10 (9th Cir. April 2, 1997), 454, 456
United States v. Ellis, 121 F.3d 908 (4th Cir. 1997), 60
United States v. Ellis, 460 F.3d 920 (7th Cir.2006), 523
United States v. Emery, 186 F.3d 921 (8th Cir. 1999), 324
United States v. Emmert, 829 F.2d 805 (9th Cir. 1987), 168
United States v. Emuegbunam, 268 F.3d 377 (6th Cir. 2001), 98, 99
United States v. Engler, 521 F.3d 965 (8th Cir. 2008), 70, 106
United States v. Enterline, 894 F.2d 287 (8th Cir. 1990), 230, 240
United States v. Ettinger, 344 F.3d 1149 (11th Cir. 2003), 61, 63
United States v. Evans, 216 F.3d 80 (D.C. Cir. 2000), 32, 419, 460, 461
United States v. Evans, 635 F.2d 1124 (4th Cir. 1980), 310
United States v. Faison, 679 F.2d 292 (3d Cir. 1982), 272
United States v. Farmer, 543 F.3d 363 (7th Cir. Sept. 9, 2008), 428

United States v. Faulkner, 439 F.3d 1221 (10th Cir. 2006), 52
United States v. Ferber, 966 F.Supp. 90 (D. Mass. 1997), 151, 216, 473
United States v. Fernandez, 892 F.2d 976 (11th Cir. 1989), 352, 489
United States v. Finley, 708 F.Supp. 906 (N.D. Ill. 1989), 87, 112
United States v. Firishchak, 468 F.3d 1015 (7th Cir. 2006), 256, 337, 472, 473
United States v. Flecha, 539 F.2d 874 (2d Cir. 1976), 92
United States v. Fontenot, 14 F.3d 1364 (9th Cir. 1994), 167
United States v. Fowlie, 24 F.3d 1059 (9th Cir. 1994), 306
United States v. Franklin, 235 F.Supp. 338 (D.D.C. 1964), 289
United States v. Freundlich, 95 F.2d 376 (2d Cir. 1938), 343
United States v. Fujii, 152 F.Supp.2d 942 (N.D. Ill. 2000), 307, 314
United States v. Fuller, 162 F.3d 256 (4th Cir. 1998), 326
United States v. Gabe, 237 F.3d 954 (8th Cir. 2001), 134
United States v. Gajo, 290 F.3d 922 (7th Cir. 2002), 57
United States v. Gallagher, 57 Fed. Appx. 622 (6th Cir. 2003), 462
United States v. Garcia, 413 F.3d 201 (2d Cir. 2005), 458
United States v. Garcia, 994 F.2d 1499 (10th Cir. 1993), 450
United States v. Gardner, 447 F.3d 558 (8th Cir. 2006), 101
United States v. Garland, 991 F.2d 328 (6th Cir. 1993)., 239
United States v. Garth, 540 F.3d 766 (8th Cir. 2008), 221
United States v. Garza, 435 F.3d 73 (1st Cir. 2006), 71
United States v. George, 960 F.2d 97 (9th Cir. 1992), 188
United States v. Gil, 58 F.3d 1414 (9th Cir. 1995), 141
United States v. Gil, 604 F.2d 546 (7th Cir. 1979), 108
United States v. Goins, 11 F.3d 441 (4th Cir. 1993), 109, 117
United States v. Goins, 11 F.3d 441 (4th Cir. 1993), 505
United States v. Goldberg, 105 F.3d 770 (1st Cir. 1997), 68, 102
United States v. Goldberg, 538 F.3d 280 (3d Cir. 2008), 532
United States v. Gomez, 67 F.3d 1515 (10th Cir. 1995), 428
United States v. Gomez, 939 F.2d 326 (6th Cir. 1991), 337, 342, 343
United States v. Gonzalez, 533 F.3d 1057, 1061 (9th Cir. 2008), 59
United States v. Gonzalez, 559 F.2d 1271 (5th Cir. 1997), 345
United States v. Gonzalez-Lopez, 548 U.S. 140, 148 (2006), 532
United States v. Goosby, 523 F.3d 632 (6th Cir. 2008), 410
United States v. Grady, 544 F.2d 598 (2d Cir. 1976), 238
United States v. Grant, 38 M.J. 684 (USAF Ct. Mil. Rev. 1993), 337, 352
United States v. Grant, 56 M.J. 410 (C.A.A.F. 2002), 223
United States v. Grassi, 783 F.2d 1572 (11th Cir. 1986), 411
United States v. Gray, 405 F.3d 227 (4th Cir. 2005), 323
United States v. Green, 180 F.3d 216 (5th Cir. 1999), 100
United States v. Green, 258 F.3d 683 (7th Cir. 2001), 60, 486
United States v. Green, 541 F.3d 176 (8th Cir. 2008), 138, 150
United States v. Gresham, 118 F.3d 258 (5th Cir. 1997), 431, 434
United States v. Griham, 76 Fed. R. Evid. Serv. 761, 764 (11th Cir. 2008), 61
United States v. Grooms, 978 F.2d 425 (8th Cir. 1992), 368, 369
United States v. Guevara, 598 F.2d 1094 (7th Cir. 1979), 348
United States v. Hajda, 135 F.3d 439 (7th Cir. 1998), 251, 258
United States v. Hale, 422 U.S. 171 (1975), 91

United States v. Hale, 978 F.2d 1016 (8th Cir. 1992), 243
United States v. Hall, 165 F.3d 1095 (7th Cir. 1999), 313, 314
United States v. Hanson, 994 F.2d 403 (7th Cir. 1993), 123
United States v. Harper, 463 F.3d 663 (7th Cir. 2006), 407
United States v. Harris, 542 F.2d 1283 (7th Cir. 1976), 98, 99, 123
United States v. Harris, 942 F.2d 1125 (7th Cir. 1991), 120, 492, 495, 496
United States v. Hartmann, 958 F.2d 774 (7th Cir. 1991), 171, 174, 404
United States v. Harvey, 959 F.2d 1371 (7th Cir. 1992), 419
United States v. Hayes, 190 F.3d 939 (9th Cir. 1999), 393
United States v. Hebeka, 25 F.3d 287 (6th Cir. 1994), 62
United States v. Hedgcorth, 873 F.2d 1307, 1313 (9th Cir. 1989), 419
United States v. Hendircks, 395 F.3d 173 (3d Cir. 2005), 521
United States v. Heppner, 519 F.3d 744 (8th Cir. 2008), 71
United States v. Hernandez, 105 F.3d 1330 (9th Cir. 1997), 321
United States v. Hernandez, 750 F.2d 1256 (5th Cir. 1985), 417
United States v. Hernandez-Mejia, 2007 U.S. Dist. LEXIS 54792, *29 (D. N.M. April 30, 2007), 443
United States v. Hilario-Hilario, 529 F.3d 65 (1st Cir. 2008), 452
United States v. Hitt, 981 F.2d 422 (9th Cir. 1992), 4
United States v. Hogan, 886 F.2d 1497 (7th Cir. 1989), 176
United States v. Hong, 545 F.Supp.2d 281 (W.D. N.Y. 2008), 349
United States v. Hoosier, 542 F.2d 687 (6th Cir. 1976), 82
United States v. Houlihan, 92 F.3d 1271 (1st Cir. 1996), 323, 324, 462, 482
United States v. Hubbard, 22 F.3d 1410 (7th 1994), 99
United States v. Hughes, 970 F.2d 227 (7th Cir. 1992), 170
United States v. Humphrey, 279 F.3d 372 (6th Cir. 2002), 203
United States v. Hutchings, 751 F.2d 239 (8th Cir.), 393
United States v. Iaconetti, 406 F.Supp. 554 (E.D.N.Y.), 347, 348
United States v. IBM Corp., 90 F.R.D. 377 (S.D.N.Y. 1981), 389
United States v. Iglesias, 535 F.3d 150 (3d Cir. 2008), 56
United States v. Innamorati, 996 F.2d 456 (1st Cir. 1993), 305
United States v. Iron Shell, 633 F.2d 77 (8th Cir. 1980), 185, 197, 198
United States v. Ironi, 525 F.3d 683 (8th Cir. 2008), 313
United States v. Jackson, 540 F.3d 578 (7th Cir. 2008), 313
United States v. Jackson-Randolph, 282 F.3d 369 (6th Cir. 2002), 235, 236, 272
United States v. Jahagirdar, 466 F.3d 149 (1st Cir. 2006), 154, 155, 158, 159
United States v. Jiminez Recio, 537 U.S. 270 (2003), 100
United States v. Jinadu, 98 F.3d 239 (6th Cir. 1996), 87, 112
United States v. Joe, 8 F.3d 1488 (10th Cir. 1993), 167, 168, 169, 177, 197
United States v. Johnson, 219 F.3d 349 (4th Cir. 2000), 323
United States v. Johnson, 28 F.3d 1487 (8th Cir. 1994), 428, 453
United States v. Johnson, 495 F.2d 1097 (5th Cir. 1974), 203
United States v. Johnson, 575 F.2d 1347 (5th Cir. 1978), 429, 453
United States v. Jones, 124 F.3d 781 (6th Cir. 1997), 312
United States v. Jones, 29 F.3d 1529 (11th Cir. 1994), 228
United States v. Jones, 482 F.2d 747 (D.C. Cir. 1973), 509
United States v. Jordan 810 F.2d 262 (D.C. Cir. 1987), 87, 112

United States v. Juvenile NB, 59 F.3d 771 (8th Cir. 1995), 355, 368
United States v. Kairys, 782 F.2d 1374 (7th Cir. 1986), 255
United States v. Kaplan, 490 F.3d 110 (2d Cir. 2007), 450
United States v. Kappell, 418 F.3d 550 (6th Cir. 2005),186, 188, 194
United States v. Kelinson, 205 F.2d 600 (2d Cir. 1953), 343
United States v. Kelley, 36 F.3d 1118 (D.C. Cir. 1994), 393
United States v. Kelley, 446 F.3d 688 (7th Cir. 2006), 514
United States v. Kelly, 436 F.3d 992 (8th Cir. 2006), 509
United States v. Kenyon, 481 F.3d 1054 (8th Cir. 2007), 13, 149
United States v. Khoury, 901 F.2d 948 (11th Cir. 1990), 116, 501
United States v. Kilcullen, 546 F.2d 435 (1st Cir. 1976), 448
United States v. Kimball, 15 F.3d 54 (5th Cir. 1994), 271
United States v. King, 713 F.2d 627 (11th Cir. 1983), 4
United States v. Koziy, 728 F.2d 1314 (11th Cir. 1984), 254, 255, 257
United States v. L.E. Cooke Co., 991 F.2d 336 (6th Cir. 1993), 437
United States v. Lafferty, 503 F.3d 293 (3d Cir. 2007), 92
United States v. Lamons, 532 F.3d 1251 (11th Cir. 2008), 15, 514
United States v. Lanci, 669 F.2d 391 (6th Cir. 1982), 501,
United States v. Lang, 589 F.2d 92 (2d Cir. 1978), 117, 306
United States v. Lara, 181 F.3d 183 (1st Cir. 1999), 104
United States v. Laster, 258 F.3d 525 (6th Cir. 2001), 339, 341, 342
United States v. Lawrence, 349 F.3d 109 (3d Cir. 2003), 147, 296, 335, 355
United States v. Lechoco, 542 F.2d 84 (D.C. Cir. 1976), 194
United States v. LeClair, 338 F.3d 882 (8th Cir. 2003), 434
United States v. Lentz, 524 F.3d 501 (4th Cir. 2008), 462
United States v. Leo, 941 F.2d 181 (3d Cir. 1991), 455
United States v. LeShore, 543 F.3d 935 (7th Cir. 2008), 213, 219
United States v. Levy, 904 F.2d 1026 (6th Cir. 1990), 467, 468
United States v. Lindemann, 85 F.3d 1232 (7th Cir. 1996), 117
United States v. Liu, 960 F.2d 449 (5th Cir. 1992), 167, 169
United States v. Locascio, 6 F.3d 924 (2d Cir. 1993), 430, 434
United States v. Loggins, 486 F.3d 977 (7th Cir. 2007), 306
United States v. Long, 905 F.2d 1572 (D.C Cir. 1990), 12
United States v. Lopez, 271 F.3d 472 (3d Cir. 2001), 65, 66
United States v. Lopez, 937 F.2d 716 (2d Cir. 1991), 371
United States v. Love, 521 F.3d 1007 (8th Cir. 2008), 404, 410
United States v. Love, 767 F.2d 1052 (4th Cir. 1985), 461
United States v. Loyola-Dominguez, 125 F.3d 1315 (9th Cir. 1997), 225
United States v. Lykes Bros. Steamship Co., 432 F.2d 1076 (5th Cir. 1970), 234, 238
United States v. Lyon, 567 F.2d 777 (8th Cir. 1977), 361
United States v. Mackey, 117 F.3d 24 (1st Cir. 1997), 233, 311, 313, 314
United States v. Mancillas, 580 F.2d 1301 (7th Cir. 1978), 16, 25, 461, 491
United States v. Manfre, 368 F.3d 832 (8th Cir. 2004), 404
United States v. Mangan, 575 F.2d 32 (2d Cir. 1978), 265
United States v. Marchese, 842 F.Supp. 1307 (D. Colo. 1994), 392
United States v. Marchini, 797 F.2d 759 (9th Cir. 1986), 342
United States v. Marcy, 814 F.Supp. 670 (N.D. Ill. 1992), 493

United States v. Marino, 658 F.2d 1120 (6th Cir. 1981), 85
United States v. Marrowbone, 211 F.3d 452 (8th Cir. 2000), 150
United States v. Martinez, 430 F.3d 317 (6th Cir. 2005), p. 103
United States v. Martino, 648 F.2d 367 (5th Cir. 1981), 509
United States v. Mastrangelo, 693 F.2d 269 (2d Cir. 1982), 328
United States v. Mathis, 559 F.2d 294 (5th Cir. 1977), 360
United States v. Matlock, 109 F.3d 1313 (8th Cir. 1997), 56
United States v. Matta-Ballesteros, 71 F.3d 754 (9th Cir. 1995), 193
United States v. Mayberry, 540 F.3d 506 (6th Cir. 2008), 56, 345
United States v. Mazloum, 563 F.Supp.2d 779 (N.D. Ohio 2008), p. 168
United States v. McDaniel, 398 F.3d 540 (6th Cir. 2005), p. 72
United States v. McGuire, 307 F.3d 1192 (9th Cir. 2002), 272
United States v. McKeeve, 131 F.3d 1 (1st Cir. 1997), 394
United States v. McPartlin, 595 F.2d 1321 (7th Cir. 1979), 337, 353
United States v. McPike, 512 F.3d 1052 (8th Cir. 2008), 147, 149
United States v. Medico, 557 F.2d 309 (2d Cir. 1977), 347
United States v. Medina-Gasca, 739 F.2d 1415 (9th Cir. 1984), 321
United States v. Mendez, 514 F.3d 1035 (10th Cir. 2008), 514, 521
United States v. Mendoza, 85 F.3d 1347 (8th Cir. 1996), 315
United States v. Meserve, 271 F.3d 314 (1st Cir. 2001), 407, 418
United States v. Meyer, 113 F.2d 387 (7th Cir. 1940), 234
United States v. Meza-Urtado, 351 F.3d 301 (7th Cir. 2003), 57
United States v. Miles, 290 F.3d 1341 (11th Cir. 2002), 101, 285
United States v. Milkiewicz, 470 F.3d 390 (1st Cir. 2006), 439
United States v. Miller, 904 F.2d 65 (D.C. Cir. 1990), 290
United States v. Mitchell, 145 F.3d 572 (3d Cir. 1998), 339
United States v. Mitchell, 502 F.3d 931 (9th Cir. 2007), 462
United States v. Mobley, 421 F.2d 345 (5th Cir. 1970), 136, 298
United States v. Montana, 199 F.3d 947 (7th Cir. 1999), 402
United States v. Monteleone, 257 F.3d 210 (2d Cir. 2001), 99
United States v. Moore, 791 F.2d 566 (7th Cir. 1986), 151
United States v. Moreno, 233 F.3d 937 (7th Cir. 2000), 403
United States v. Mouzin, 785 F.2d 682 (9th Cir. 1986), 97, 98
United States v. Munoz, 16 F.3d 1116 (11th Cir. 1994), 349
United States v. Munoz-Franco, 487 F.3d 24 (1st Cir. 2007), p. 458
United States v. Murdock, 290 U.S. 389 (1933), 326
United States v. Murphy, 193 F.3d 1 (1st Cir. 1999), 104
United States v. Muscato, 534 F.Supp. 969 (E.D.N.Y. 1982), 407, 421
United States v. Napier, 518 F.2d 316 (9th Cir.), 149, 154, 508
United States v. Narciso, 446 F.Supp. 252 (E.D. Mich.1977), 198
United States v. Natson, 469 F.Supp.2d 1243 (M.D. Ga. 2006), 177, 178
United States v. Nazemian, 948 F.2d 522 (9th Cir. 1991), 371
United States v. Neeley, 25 M.J. 105, 107 (U.S. C.M.A. 1987), 440
United States v. Nelson, 530 F.Supp.2d 719 (D. Md. 2008), 97
United States v. Nettles, 476 F.3d 508 (7th Cir. 2007), 521
United States v. Newell, 315 F.3d 510 (5th Cir. 2002), 168, 172
United States v. New-Form Mfg. Co., 277 F.Supp. 2d 1313 (Ct. Int'l Trade 2003), 465

United States v. Nick, 604 F.2d 1199 (9th Cir. 1979), 198, 369, 507
United States v. Nigoa, 656 F.Supp. 1499 (D.N.J. 1987), 343
United States v. Nixon, 418 U.S. 683, 701 (1974), 107
United States v. Nnanyererugo, 39 F.3d 1205 (D.C. Cir. 1994), 114, 502
United States v. Nutter, 22 M.J. 727 (U.S. Army Ct. of Mil. Rev. 1986), 315
United States v. Oates, 560 F.2d 45 (2d Cir. 1977), 240, 347
United States v. Obayagbona, 627 F.Supp. 329 (E.D.N.Y. 1985), 347, 449
United States v. Odom, 736 F.2d 104 (4th Cir. 1984), 509
United States v. Omar, 104 F.3d 519 (1st Cir. 1997), 284, 290
United States v. Omene, 143 F.3d 1167 (9th Cir. 1998), 393
United States v. One 1968 Piper Navajo Twin Engine Aircraft, 594 F.2d 1040 (5th Cir. 1979), 346
United States v. One Star, 979 F.2d 1319 (8th Cir. 1992), 305
United States v. Orellana-Blanco, 294 F.3d 1143, 1148 (9th Cir. 2002), 83
United States v. Orozco, 590 F.2d 789 (9th Cir. 1979), 237
United States v. Ortega, 203 F.3d 675 (9th Cir. 2000), 462, 463
United States v. Osyp Firishchak, 468 F.3d 1015, 1022 (7th Cir. 2006), 256
United States v. Owens, 484 U.S. 554 (1988), 56, 60, 67, 239, 272, 527
United States v. Pacheco, 154 F.3d 1236 (10th Cir. 1998), 185
United States v. Page, 521 F.3d 101 (1st Cir. 2008), 87, 89
United States v. Palow, 777 F.2d 52 (1st Cir. 1985), 98
United States v. Pang, 362 F.3d 1187 (9th Cir. 2004), 403
United States v. Parsee, 178 F.3d 374 (5th Cir. 1999), 219
United States v. Paxson, 861 F.2d 730 (D.C. Cir. 1988), 76
United States v. Payne, 437 F.3d 540 (6th Cir. 2006), 97, 101–103, 483
United States v. Peacock, 654 F.2d 339 (5th Cir. 1981), 138
United States v. Pecora, 798 F.2d 614 (3d Cir. 1986), 102
United States v. Pelullo, 964 F.2d 193 (3d Cir. 1992), 337
United States v. Pena-Gutierrez, 222 F.3d 1080 (9th Cir. 1999), 273, 320
United States v. Pendas-Martinez, 845 F.2d 938 (11th Cir. 1988), 463
United States v. Peneaux, 432 F.3d 882 (8th Cir. 2005), 197, 346
United States v. Peoples, 250 F.3d 630 (8th Cir. 2001), 325, 326
United States v. Perez, 989 F.2d 1574 (10th Cir. 1993), 100
United States v. Perez-Ruiz, 353 F.3d 1 (1st Cir. 2003) 52, 100, 527
United States v. Peterson, 100 F.3d 7 (2d Cir. 1996), 271
United States v. Pheaster, 544 F.2d 353 (9th Cir. 1976), 171
United States v. Pheaster, 544 F.2d 353 (9th Cir. 1976), 174
United States v. Phelps, 168 F.3d 1048 (8th Cir. 1999), 147
United States v. Phillips, 219 F.3d 404 (5th Cir. 2000), 101
United States v. Pinto-Mejia, 720 F.2d 248 (2d Cir. 1983), 243
United States v. Poitierr, 623 F.2d 1017 (5th Cir. 1980), 98
United States v. Ponticelli, 622 F.2d 985 (9th Cir. 1980), 173, 176
United States v. Porter, 986 F.2d 1014 (6th Cir. 1992), 202, 209
United States v. Portsmouth Paving Corp., 694 F.2d 312 (4th Cir. 1982), 75, 139
United States v. Posada-Rios, 158 F.3d 832 (5th Cir. 1998), 411
United States v. Pratt, 239 F.3d 640 (4th Cir. 2001), 99
United States v. Preston, 608 F.2d 626 (5th Cir. 1979), 326

United States v. Prevatte, 16 F.3d 767 (7th Cir. 1994), 77
United States v. Price, 265 F.3d 1097 (10th Cir. 2001), 329
United States v. Prieto, 232 F.3d 816 (11th Cir. 2000), 63
United States v. Qualls, 553 F. Supp. 2d 241, 242 (E.D.N.Y. 2008), 522
United States v. Quinones, 511 F.3d 289, 311–12 (2d Cir. 2007), 176
United States v. Ramos, 45 F.3d 1519 (11th Cir. 1995), 393
United States v. Ramos, 725 F.2d 1322 (11th Cir. 1984), 441
United States v. Ramos-Caraballo, 375 F.3d 797, 803 (8th Cir. 2004), 463
United States v. Rappy 157 F.2d 964 (2d Cir. 1946), 206
United States v. Ray, 530 F.3d 666 (8th Cir. 2008), 514
United States v. Reed, 167 F.3d 987 (6th Cir. 1999), 76
United States v. Regner, 677 F.2d 754 (9th Cir. 1982), 238
United States v. Renville, 779 F.2d 430 (8th Cir. 1985), 198
United States v. Rettenberger, 344 F.3d 702 (7th Cir. 2003), 408
United States v. Reyes, 239 F.R.D. 591 (N.D. Cal. 2006), 200
United States v. Riccardi, 174 F.2d 883 (3d Cir. 1949), 204
United States v. Richards, 204 F.3d 177 (5th Cir. 2000), 475
United States v. Richards, 967 F.2d 1189 (8th Cir. 1992), 305
United States v. Richardson, 537 F.3d 951, 960 (8th Cir. 2008), 526
United States v. Riley, 236 F.3d 982 (8th Cir. 2001), 218
United States v. Rioux, 97 F.3d 648 (2d Cir. 1996), 75
United States v. Rittweger, 524 F.3d 171 (2d Cir. 2008), 532
United States v. Rivera, 412 F.3d 562 (4th Cir. 2005), 329
United States v. Rodriguez, 525 F.3d 85 (1st Cir. 2008), 100
United States v. Rouse, 111 F.3d 561 (8th Cir. 1997), 367, 531
United States v. Rubin, 591 F.2d 278 (5th Cir.), 407
United States v. Ruffin, 12 M.J. 952 (USAF Ct. Mil. Rev. 1981), 354
United States v. Ruiz, 249 F.3d 643 (7th Cir. 2001), 62, 135, 139, 144, 145
United States v. Running Horse, 175 F.3d 635 (8th Cir. 1999), 461
United States v. Saccoccia, 58 F.3d 754 (1st Cir. 1995), 109
United States v. Sadler, 234 F.3d 368 (8th Cir. 2000), 56, 60, 64
United States v. Safavian, 435 F.Supp.2d 36 (D.C. D.C. 2006), 409
United States v. Saks, 964 F.2d 1514 (5th Cir. 1992), 76
United States v. Salameh, 152 F.3d 88 (2d Cir. 1988), 67
United States v. Salerno, 505 U.S. 317 (1992), 283, 284, 290, 343
United States v. Salgado, 250 F.3d 438 (6th Cir. 2001), 100, 101, 217, 218
United States v. Samaniego, 187 F.3d 1222 (10th Cir. 1999), 49
United States v. Samaniego, 345 F.3d 1280 (11th Cir. 2003), 166, 273, 338, 472
United States v. Sanders, 749 F.2d 195 (5th Cir. 1984), 79
United States v. Sarmiento-Perez, 633 F.2d 1092 (5th Cir. 1981), 313
United States v. Satterfield, 572 F.2d 687, 691 n.1 (9th Cir. 1978), 306
United States v. Schaff, 948 F.2d 501 (9th Cir. 1991), 92
United States v. Schalk, 515 F.3d 768 (7th Cir. 2008), 87, 100
United States v. Schoenborn, 4 F.3d 1424 (7th Cir. 1993), 207
United States v. Scirma, 819 F.2d 996 (11th Cir. 1987), 419
United States v. Sears, 663 F.2d 896 (9th Cir. 1981), 95
United States v. Seguro-Gallegos, 41 F.3d 1266 (9th Cir. 1994), 102
United States v. Senak, 257 F.2d 129 (7th Cir. 1975), 208

United States v. Sesay, 313 F.3d 591 (D.C. Cir. 2002), 419
United States v. Sheets, 125 F.R.D. 172 (D. Utah 1989), 341, 372
United States v. Shores, 33 F.3d 438 (4th Cir. 1994), 101, 103,
United States v. Short, 790 F.2d 464 (6th Cir. 1986), 49
United States v. Shoup, 476 F.3d 38 (1st Cir. 2007), 141
United States v. Shryock, 342 F.3d 948 (9th Cir. 2003), 66, 306
United States v. Siddiqui, 235 F.3d 1318 (11th Cir. 2000), 18, 71, 394
United States v. Silverstein, 732 F.2d 1338 (7th Cir. 1984), 313
United States v. Simonelli, 237 F.3d 19 (1st Cir. 2001), 60
United States v. Smith, 197 F.3d 225 (6th Cir. 1999), 208
United States v. Smith, 354 F.3d 390 (5th Cir. 2003), 403
United States v. Smith, 520 F.2d 1245 (8th Cir. 1975), 98, 100
United States v. Smith, 893 F.2d 1573 (9th Cir. 1989), 62, 63
United States v. Smith, 893 F.2d 1573 (9th Cir. 1990), 98
United States v. Smithers, 212 F.3d 306 (6th Cir. 2000), 4
United States v. Socony-Vacuum Oil Co., 310 U.S. 150 (1940), 204, 206
United States v. Spano, 421 F.3d 599 (7th Cir. 2005), 235
United States v. Squillacote, 221 F.3d 542 (4th Cir. 2000), 231
United States v. Stelmokas, 100 F.3d 302 (3d Cir. 1996), 256
United States v. Stone, 222 F.R.D. 334 (E.D. Tenn. 2004), 434
United States v. Sumner, 204 F.3d 1182 (8th Cir. 2000), 190
United States v. Sutton, 801 F.2d 1346 (D.C. Cir. 1986), 462
United States v. Taggart, 944 F.2d 837 (11th Cir. 1991), 315
United States v. Tann, 425 F. Supp. 2d 26 (D.D.C. 2006), 402
United States v. Tannehill, 49 F.3d 1049 (5th Cir. 1995), 289
United States v. Taplin, 954 F.2d 1256 (6th Cir. 1992), 283, 284, 287
United States v. Taylor, 802 F.2d 1108 (9th Cir. 1986), 105
United States v. Thevis, 84 F.R.D. 57 (N.D. Ga. 1979), 294
United States v. Thomas, 571 F.2d 285 (5th Cir. 1978), 307
United States v. Thomas, 62 F.3d 1332 (11th Cir. 1995), 315
United States v. Thompson, 449 F.3d 267 (1st Cir. 2006), 101
United States v. Tietjen, 264 F.3d 391 (4th Cir. 2001), 271
United States v. Tocco, 135 F.3d 116 (2d Cir. 1998), 91
United States v. Tocco, 200 F.3d 401 (6th Cir. 2000), 309
United States v. Tolliver, 454 F.3d 660 (7th Cir. 2006), 71
United States v. Tolliver, 61 F.3d 1189 (5th Cir. 1995), *vacated on other grounds,* Sterling v. United States, 516 U.S. 1105 (1996), 295
United States v. Tome, 61 F.3d 1446 (10th Cir. 1995), 180, 355, 356
United States v. Torres, 519 F.2d 723 (2d Cir. 1975), 83, 89
United States v. Townley, 472 F.3d 1267 (10th Cir. 2007), 99
United States v. Towsend, 206 Fed.Appx. 444 (6th Cir. 2006), 72
United States v. Tracy, 12 F.3d 1186 (2d Cir. 1993), 108
United States v. Turner, 104 F.3d 217 (8th Cir. 1997), 264
United States v. Turner, 104 F.3d 217 (8th Cir. 1997), 264
United States v. Two Shields, 497 F.3d 789 (8th Cir. 2007), 49, 353, 354, 355
United States v. Tyler, 281 F.3d 84 (3d Cir. 2002), 404, 410
United States v. Udey, 748 F.2d 1231 (8th Cir. 1984), 181, 271, 419
United States v. Urena, 27 F.3d 1487 (10th Cir.), 108

United States v. Vasilakos, 508 F.3d 401 (6th Cir. 2007), 71
United States v. Vazquez, 857 F.2d 864 (1st Cir. 1988), 105
United States v. Vespe, 868 F.3d 1328 (3d Cir. 1989), 381
United States v. Vest, 842 F.2d 1319 (1st Cir. 1988), 63
United States v. Vigneau, 187 F.3d 70 (1st Cir. 1999), 223
United States v. Vretta, 790 F.2d 651 (7th Cir. 1986), 349, 352, 353
United States v. Washington, 106 F.3d 983 (D.C. Cir. 1997), 339
United States v. Washington, 398 F.3d 225 (4th Cir. 2007), 514
United States v. Watson, 525 F.3d 583 (7th Cir. 2008), 105, 305, 306, 307, 309, 310
United States v. Weinstock, 863 F.Supp. 1529 (D. Utah 1994), 66, 245, 247–249
United States v. Wells, 262 F.3d 455, 462 (5th Cir. 2001), 213
United States v. Welsh, 774 F.2d 670 (4th Cir. 1985), 360
United States v. Wesela, 223 F.3d 656 (7th Cir. 2000), 146, 148, 158
United States v. West, 574 F.2d 1131 (4th Cir. 1978), 347
United States v. Westbrook, 896 F.2d 330 (8th Cir. 1990), 453, 458
United States v. Westry, 524 F.3d. 1198 (11th Cir. 2008), 306
United States v. Wexler, 522 F.3d 194 (2d Cir. 2008), 309, 315
United States v. White, 116 F.3d 903 (D.C. Cir. 1997), 327
United States v. Wilkerson, 84 F.3d 692 (4th Cir. 1996), 462
United States v. Williams, 212 F.3d 1305 (D.C. Cir. 2000), 437
United States v. Williams, 272 F.3d 845 (7th Cir. 2001), 55, 57, 101, 348
United States v. Williams, 571 F.2d 344 (6th Cir. 1978), 133, 207
United States v. Williams, 697 A.2d 1244 (D.C. Ct. App. 1997), 404
United States v. Williams, 952 F.2d 1504 (6th Cir. 1991), 411
United States v. Wilmer, 799 F.2d 495 (9th Cir. 1986), 240
United States v. Wilson, 107 F.3d 774 (10th Cir. 1997), 461
United States v. Wilson, 249 F.3d 366 (5th Cir. 2001), 226, 338
United States v. Wilson, 36 F.Supp.2d 1177 (N.D. Cal. 1999), 286
United States v. Woolbright, 831 F.2d 1390 (8th Cir. 1987), 463
United States v. Yakobov, 712 F.2d 20 (2d Cir. 1983), 244
United States v. Yazzie, 59 F.3d 807 (9th Cir. 1995), 186, 187, 189, 191, 193
United States v. Yida, 498 F.3d 945 (9th Cir. 2007), 6, 273
United States v. Young, 105 F.3d 1 (1st Cir. 1997), 61, 62, 478
United States v. Zarnes, 33 F.3d 1454 (7th Cir. 1994), 99
United States v. Zenni, 492 F. Supp. 464 (E.D. Ky. 1980), 13
United States v. Zizzo, 120 F.3d 1338 (7th Cir. 1997), 89, 99, 100, 106

V

Virgin Islands v. Joseph, 162 Fed. Appx. 175 (3d Cir. 2006), 501
Virgin Islands v. Morris, 191 F.R.D. 82 (D.V.I. 1999), 190, 196
Virgin Islands v. Riley, 754 F.Supp. 61 (D.V.I. 1991), 272, 386, 507

W

Wade-Greaux v. Whitehall Labs., Inc., 874 F.Supp. 1441 (D. V.I. 1994), 435
Walters v. Illinois Farmers Ins. Co., 1988 U.S. Dist. LEXIS 17512, *25 (N.D. Ind. May 26, 1988), 249
Ward v. Dretke, 420 F.3d 479 (5th Cir. 2005), 441
Ward v. United States, 838 F.2d 182 (6th Cir. 1988), 265
Washington v. Recuenco, 548 U.S. 212 (2006), 532
Webb v. Lewis, 44 F.3d 1387 (9th Cir. 1994), 188

Western Tenn. Ch. of Ass'd Builders & Contrs., Inc. v. City of Memphis, 219 F.R.D. 587 (W.D. Tenn. 2004), 458
Wetherill v. University of Chicago, 565 F.Supp. 1553 (N.D. Ill. 1983), 258
Wezorek v. Allstate Ins. Co., 2007 U.S. Dist. LEXIS 45555, *4–5 (E.D. Pa. 2007), 339
Wheat v. United States, 486 U.S. 153, 159, 160 (1988), 531
White v. Illinois, 502 U.S. 346 (1992), 132, 143, 185, 344
Whitfield v. Pathmark Stores, Inc., 1999 U.S. Dist. Lexis 7096 (D. Del. 1999), 194
Wilkinson v. Carnival Cruise Lines, Inc., 920 F.2d 1560 (11th Cir. 1991), 52, 75
Williams v. Consol. City of Jacksonville, 2006 U.S. Dist. LEXIS 8257, * 24–25 (M.D. Fla. Feb. 8, 2006), 441
Williams v. Pharmacia, Inc., 137 F.3d 944 (7th Cir. 1998), 74
Williamson v. United States 512 U.S. 594 (1994), 305–307, 309, 310, 315, 338
Willingham v. Crooke, 412 F.3d 553 (4th Cir. 2005), 194, 196, 198
Wilson v. City of Des Moines, 442 F.3d 637 (8th Cir. 2006), 403
Wilson v. Zapata Off-Shore Co., 939 F.2d 260 (5th Cir. 1991), 191
Witherspoon v. Navajo Refining Co., 2005 U.S. Dist. LEXIS 46148, *3 (D. N.M. June 28, 2005), 458
Wolff v. McDonnell, 418 U.S. 539 (1974), 514
Woodard v. Branch, 256 B.R. 341 (M.D. Fla. 2000), 383
Woodman v. Haemonetics Corp, 51 F.3d 1087, 1094 (1st Cir. 1995), 75
Woolford v. Rest. Concepts, II, LLC, 2008 U.S. Dist. LEXIS 5187, *15 (S.D. Ga. Jan. 23, 2008), 141
Wright v. Farmers Co-Op of Arkansas & Oklahoma, 681 F.2d 549 (8th Cir. 1982), 75
Wright-Simmons v. City of Oklahoma City, 155 F.3d 1264 (10th Cir. 1998), 85

Y

Yamagiwa v. City of Half Moon Bay, 523 F.Supp.2d 1036, 1075 (N.D. Cal. 2007), 430
Young v. James Green Mgmt., Inc., 327 F.3d 616 (7th Cir. 2003), 229
Young v. James Green Mgmt., Inc., 327 F.3d 616 (7th Cir. 2003), 69, 73, 229
Young v. United States, 214 F.2d 232 (D.C. Cir. 1954), 343
Yuan v. Riveria, 2000 U.S. Dist. Lexis 4483, *13 (S.D.N.Y. 2000), 85

Z

Zenith Radio Corp. v. Matsushita Elec. Indus. Co., Ltd., 505 F. Supp. 1190 (E.D. Pa. 1980), 80, 90, 135, 219, 220, 236, 237, 290, 339, 341

STATE CASES

A

Abney v. Commonwealth, 657 S.E.2d 796 (Va. Ct. App. 2008), 208
Alabama Gold Life Ins. Co. v. Sledge, 62 Ala. 566, 570 (1878), 501
Armstrong v. State, 826 P.2d 1106 (Wyo. 1992), 407, 420, 421, 422
Ayala v. Aggressive Towing and Transp., Inc., 661 S.E.2d 480 (Va. 2008), 273

B

Baker v. State, 371 A.2d 699 (Md. Ct. Spec. App. 1977), 202, 205
Bayne v. State, 632 A.2d 476 (Md. Ct. Spec. App. 1993), 155
Beck v. Dye, 92 P.2d 1113 (Wash. 1939), 93
Beckman v. Carson, 372 N.W.2d 203 (Iowa 1985), 413
Benson v. Shuler Drilling Co., 871 S.W.2d 552 (Ark. 1994), 189, 192
Berry v. State, 611 So.2d 924 (Miss. 1992), 293
Betts v. Betts, 473 P. 2d 403 (Wash. Ct. App. 1970), 46, 152, 154, 405, 503
Bingham v. State, 987 S.W.2d 54 (Tex. Crim. App. 1999), 72
Blanks v. Murphy, 632 A.2d 1264 (N.J. Super. App. Div. 1993), 446

Blecha v. People, 962 P.2d 931 (Colo. 1998), 102, 135, 468
Bockting v. State, 847 P.2d 1364 (Nev. 1993), 274
Bong Jin Kim v. Nazarian, 576 N.E.2d 427 (Ill. App. Ct. 1991), 440, 442, 444, 447
Booth v. State, 508 A.2d 976 (Md. 1986), 139, 146
Brainard v. State, 12 S.W.2d 6 (Tx. 1999), 455
Bridges v. State, 419, 19 N.W.2d 529 (Wis. 1945), 419
Brown v. State, 671 N.E.2d 401, (Ind. 1996), 61
Brunner v. Brown, 480 N.W.2d 33 (Iowa 1992), 441, 449
Brunson v. State, 245 S.W.3d 132, (Ark. 2006), 515
Butler v. State, 667 A.2d 999, (Md. Ct. Spec. App. 1995), 203

C

Carey v. United States, 647 A.2d 56 (D.C. 1994), 208
Caron v. GMC, 643 N.E.2d 471 (Mass. App. Ct. 1994), 386
Chapman v. Ford Motor Co., 245 S.W.3d 123 (Ark. 2006), 407
Chestnut v. Commonwealth, 250 S.W.3d 288 (Ky. 2008), 404, 411
City of Denison v. Grisham, 716 S.W.2d 121 (Tex. App. 1986), 206
Clarke v. United States, 943 A.2d 555 (D.C. 2008), 516
Clayton v. Fargason, 730 So.2d 160 (Ala. 1999), 408
Clearwater Corp. v. Lincoln, 301 N.W.2d 328 (Neb. 1981), 438
Cobb v. State, 658 S.E.2d 750 (Ga. 2008), 443
Coker v. Burghardt, 833 S.W.2d 306 (Tex. App. 1992), 457
Cole v. State, 818 S.W.2d 573 (Ark. 1991), 89, 158, 160
Collins v. State, 294 P. 625 (Ariz. 1930), 296
Commonwealth v. Babbitt, 723 N.E.2d 17 (Mass. 2000), 91, 93
Commonwealth v. Chmiel, 738 A.2d 406 (Pa. 1998), 72
Commonwealth v. Dravecz, 227 A. 904 (Pa. 1967), 91, 93
Commonwealth v. Fiore, 308 N.E.2d 902 (Mass. 1974), 408
Commonwealth v. Key, 407 N.E.2d 327 (Mass. 1980), 297
Commonwealth v. MacKenzie, 597 N.E.2d 1037 (Mass. 1992), 92
Commonwealth v. Melendez-Diaz, 870 N.E.2d 676 (Mass. 2007), 516, 520
Commonwealth v. Murray, 496 N.E.2d 179 (Mass. App. Ct. 1986), 468
Commonwealth v. Nesbitt, 892 N.E.2d 299 (Mass. 2008), 517, 520
Commonwealth v. Nolan, 694 N.E.2d 350 (Mass. 1998), 200
Commonwealth v. Robinson, 888 N.E.2d 926 (Mass. 2008), 273
Commonwealth v. Smith, 314 A.2d 224 (Pa. 1973), 293, 297
Commonwealth v. Verde, 827 N.E.2d 701 (Mass. 2005), 521
Compton v. WMV Enters., 679 S.W.2d 668 (Tex. App. 1984), 249
Connor v. State, 171 A.2d 699 (Md. 1961), 297, 300
Corbett v. State, 746 A.2d 954 (Md. Ct. Spec. App. 2000), 201
Covington v. Sawyer, 458 N.E.2d 465 (Ohio App. 1983), 80
Coy v. Renico, 414 F.Supp.2d 744 (E.D. Mich. 2006). 178, 416
CSX Transportation, Inc. v. Casale, 441 S.E.2d 212 (Va. 1994), 445
Cummins v. Mississippi, 515 So.2d 869 (Miss. 1987), 341, 350
Cunningham v. State, 944 P.2d 261 (Nev. 1997), 207

D

Dant v. Commonwealth, 258 S.W.3d 12 (Ky. 2008), 91
Davis v. State, 872 S.W.2d 743 (Tx. Crim. App. 1994), 313
Dawn VV v. State, 850 N.Y.S.2d 246 (N.Y. App. Div. 2008), 215, 307

Dayan v. McDonald's Corp., 466 N.E.2d 958 (Ill. App. Ct. 1984), 205, 210
Dexheimer v. Indus. Comm'n., 559 N.E.2d 1034 (Ill. Ct. App. 1990), 205
Drexler v. Seaboard Sys. R.R., 530 So.2d 754 (Ala. 1988), 436
Duke v. American Olean Tile Co., 400 N.W.2d 677 (Mich. Ct. App. 1986), 185

E
Easterling v. Weedman, 922 S.W.2d 735 (Ark. Ct. App. 1996), 230, 233
Ex parte Hunt, 744 So.2d 851, 857 (Ala. 1999), 14

F
Ferguson v. Williams, 399 S.E.2d 389 (N.C. Ct. App. 1991), 299
Fiberboard Corp. v. Pool, 813 S.W.2d 658 (Tex. App. 1991), 233
Fields v. J Haynes Waters Builders, Inc. 658 S.E.2d 80 (S.C. 2008), 32
Figgins v. Cochrane, 942 A.2d 736 (Md. 2008), 174, 180
Flonnery v. State, 893 A.2d 507 (Del. 2006) 288
Flynn v. State, 702 N.E.2d 741 (Ind. Ct. App. 1998), 210
Fomby v. Popwell, 695 So. 2d 628 (Ala. Ct. App. 1996), 168

G
Garcia v. State, 246 S.W.3d 121 (Tex. App. 2007), 516
Gohring v. State, 967 S.W.2d 459 (Tex. App. 1998), 194
Goldade v. State, 674 P.2d 721 (Wyo. 1983), 196
Golob v. People, 180 P.3d 1006 (Colo. 2008), 442, 445
Graham v. State, 643 S.W.2d 920 (Tex. Crim. App. 1981), 13
Ground v. State, 702 N.E.2d 728 (Ind. Ct. App. 1998), 221
Guidry v. State, 9 S.W.3d 133 (Tex. Crim. App. 1999), 249

H
Hall v. Commonwealth, 403 S.E.2d 362 (Va. Ct. App. 1991), 297
Harris v. State, 846 S.W.2d 960 (Tex. App. 1993), 249
Hayes v. Texas, 740 S.W.2d 887 (Tex. App. 1987), 297
Hewitt v. Grand Trunk W.R., 333 N.W.2d 264 (Mich. Ct. App. 1983), 476, 477, 480
Hill v. Brown, 672 S.W.2d 330 (Ark. 1984), 355
Holland v. State, 713 A.2d 364 (Md. 1997), 407
Hollingsworth v. State, 211 S.W. 454 (Tex. Crim. App. 1919), 344

I
In re Egbert Estate, 306 N.W.2d 525 (Mich. 1981), 321
In re Estate of Spiegelglass, 137 A.2d 440 (N.J. Super. Ct. App. Div. 1958), 173
In re Fromdahl, 840 P.2d 683 (Or. 1991), 408
In re Marriage of Theis, 460 N.E.2d 912 (Ill. App. Ct. 1984), 161
In re Troy P., 842 P.2d 742 (N.M. 1992), 155
In re Wheeler, 408 N.E.2d 424 (Ill. App. Ct. 1980), 191
In re Young, 857 P.2d 989 (Wash. 1993), 431, 446

J
Jefferis v. Marzano, 696 P.2d 1087 (Or. 1985), 451, 452
Johnson v. Skelly Oil, Co., 288 N.W.2d 493 (S.D. 1980), 175
Johnson v. State, 579 P.2d 20 (Alaska 1978), 297
Johnson v. State, 967 S.W.2d 410 (Tex. Crim. App. 1998), 209
Jones v. State, 940 A.2d 1 (Del. 2007), 98

K
Kath v. Burlington N. R.R., 441 N.W.2d 569 (Minn. Ct. App. 1989), 256
Kennemur v. California, 133 Cal.App.3d 907 (1982), 436

Kent Village Assocs. Joint Venture v. Smith, 657 A.2d 330 (Md. 1994), 432
Kim v. Nazarian, 576 N.E.2d 427 (Ill. App. Ct. 1991), 440, 442, 444, 447
Klever v. Elliot, 320 P.2d 263 (Or. 1958), 93, 94
Kroth v. Commonwealth, 737 S.W.2d 680 (Ky. 1987), 467

L
Lai v. St. Peter, 869 P.2d 1352 (Haw. 1994), 434, 451, 452
Large v. State, 177 P.3d 807 (Wyo. 2008), 58, 60, 61
Leake v. Burlington N. R.R., 892 S.W.2d 359 (Mo. Ct. App. 1995), 441, 442
Lillard v. State, 994 S.W.2d 747 (Tex. App. 1999), 467
Linn v. Fossum, 946 So.2d 1032 (Fla. 2006); 443
Long v. United States, 940 A.2d 87 (D.C. 2007), 517, 518, 519, 523, 525
Long Trusts v. Atlantic Richfield Co., 893 S.W.2d 686 (Tex. App. 1995), 465

M
MacDonald v. B.M.D. Golf Assocs., 813 A.2d 488 (N.H. 2002), 149, 150
Madden v. State, 799 S.W.2d 683 (Tex. Crim. App. 1990), 245, 249
Maresh v. State, 489 N.W.2d 298 (Neb. 1992), 382
Mashburn v. Wright, 420 S.E.2d 379 (Ga. Ct. App. 1992), 144, 355
Matuszewski v. Pancoast, 526 N.E.2d 80 (Ohio Ct. App. 1987), 254, 257
Maui Land & Pineapple Co. v. Infiesto, 879 P.2d 507 (Haw. 1994), 248
McGuire v. Walker, 423 S.E.2d 617 (W. Va. 1992), 248
McKenna v. St. Joseph Hosp., 557 A.2d 854 (R.I. 1989), 189, 190, 485
McLean v. State, 16 Ala. 672 (1849), 296
Melore v. Great Lakes Dredge & Dock Co., 1996 WL 548142, *4 (E.D.Pa. Sept. 20, 1996), 387
Melridge, Inc. v. Heublein, 125 B.R. 825 (D. Or. 1991), 238
Metropolitan Dade County v. Yearby, 580 So.2d 186 (Fla. App. 1991), 109
Moore v. Goode, 375 S.E.2d 549 (W. Va. 1988), 255, 321
Morgan v. Mississippi, 703 So. 2d 832 (Miss. 1997). 341, 350
Morse v. Colombo, 819 N.Y.S.2d 162 (N.Y. App. Div. 2d 2006) 208
Myers v. American Seating Co., 637 So.2d 771 (La. Ct. App. 1994), 440

N
Nash v. State, 754 N.E.2d 1021 (Ind. Ct. App. 2001), 219
Neno v. Clinton, 772 A.2d 899 (N.J. 2001), 455
Newbill v. State, 884 N.E.2d. 383 (Ind. App. 2008), 156
Nielsen v. Nielsen, 462 P.2d 512 (Idaho 1969), 166
Noffle v. Perez, 178 P.3d 1141 (Alaska 2008), 214
Norris v. State, 788 S.W.2d 65 (Tex. App. 1990), 368

O
Ohio v. Lawler, 1999 Ohio App. LEXIS 5998 (Ohio Ct. App. Dec. 15, 1999), 259
Oldsen v. People, 732 P.2d 1132 (Colo. 1986), 507
Oliver v. State, 783 A.2d 124 (Del. 2001), 468

P
Pannoni v. Bd. of Trs., 90 P.3d 438 (Mont. 2004), 222
Parker v. State, 778 A.2d 1096 (Md. 2001), 144, 146, 150
Paulos v. Covenant Transp. Inc., 86 P.3d 752 (Ut. Ct. App. 2004), 263
People In the Interest of O.E.P., 654 P.2d 312 (Colo. 1982), 143, 147, 162
People v. Anderson, 495 N.E.2d 485 (Ill. 1986), 437
People v. Arnett, 214 N.W. 231 (Mich. 1927), 298

People v. Azmudio, 181 P.3d 105 (Cal. 2008), 10
People v. Barrett, 747 N.W.2d 797 (Mich. 2008), 148
People v. Barrett, 749 N.W.2d 797 (Mich. 2008), 146
People v. Brown, 517 N.E.2d 515 (N.Y. 1987), 150
People v. Buie, 658 N.E.2d 192 (N.Y. 1995), 337
People v. Burton, 441 N.W.2d 87 (Mich. Ct. App. 1989), 246
People v. Cuevas, 906 P.2d 1290 (Cal. 1995), 364
People v. Davis, 363 N.W.2d 35 (Mich. Ct. App. 1984), 13
People v. District Court of El Paso County, 776 P.2d 1083 (Colo. 1989), 369
People v. Gage, 28 N.W. 835 (Mich. 1886), 161
People v. Garcia, 826 P.2d 1259 (Colo. 1992), 155, 301
People v. Goodman, 399 N.Y.S.2d 56 (1977), 410
People v. Gould, 354 P.2d 865 (Cal. 1960), 365
People v. Griffin, 93 P.3d 344 (Cal. 2004), 176
People v. Guardado, 47 Cal.Rptr.2d 81 (1995), 210
People v. Hendrickson, 586 N.W.2d 906 (Mich. 1998), 146
People v. Johnson, 441 P.2d 111 (Ca. 1968), 343
People v. Katt, 662 N.W.2d 12 (Mich. 2003) 337, 341
People v. Lovett, 272 N.W.2d 126 (Mich. Ct. App. 1976), 160
People v. Nieves, 492 N.E.2d 109 (N.Y. Ct. App. 1986), 298
People v. Nunez, 698 P.2d 1376 (Colo. 1984), 175
People v. Ojeda, 745 P.2d 274 (Colo. Ct. App. 1987), 155
People v. P.T., 599 N.E.2d 79 (Ill. App. Ct. 1992), 437
People v. Parney, 296 N.W.2d 568 (Mich. Ct. App. 1979), 298
People v. Raffaelli, 701 P.2d 881 (Colo. 1985), 321
People v. Reeves, 648 N.E.2d 278 (Ill. App. Ct. 1995), 468
People v. Reynoso, 534 N.E.2d 30 (N.Y. App. 1988), 172
People v. Romero, 187 P.3d 56 (Cal. 2008), 517
People v. Rowland, 841 P.2d 897 (Cal. 1992), 166
People v. Silva, 754 P.2d 1070 (Cal. 1988), 87, 112
People v. Speed, 731 N.E.2d 1276 (Ill. App. Ct. 2000), 210
People v. Zamudio, 181 P.3d 105 (Cal. 2008), 227, 243
Pierce v. State, 705 N.E.2d 173 (Ind. 1998), 166
Posner v. Dallas County Welfare, 784 S.W.2d 585 (Tex. App. 1990), 421
Puma v. Sullivan, 746 A.2d 871 (D.C. 2000), 402

R

R.R. Comm'n of Tex. v. Rio Grande Valley Gas Co., 683 S.W.2d 783, 788 (Tex. App. 1985), 234
Rabovsky v. Commonwealth, 973 S.W.2d 6 (Ky. 1998), 216
Rafanelli v. Dale, 924 P.2d 242 (Mont. 1996), 406, 414
Richter & Phillips Jewelers & Distribs., Inc. v. Dolly Toy Co. (*In re* Richter & Phillips & Distribs., Inc.), 31 Bankr. 512 (Bankr. S.D. Ohio 1983), 220, 403
Riggins v. Mariner Boat Works, Inc., 545 So.2d 430 (Fla. Dist. Ct. App. 1989), 443, 444
Rockwell v. State, 176 P.3d 14 (Alaska Ct. App. 2008), 231, 521
Rodriguez v. State, 711 P.2d 410 (Wyo. 1985), 287
Romano v. State, 909 P.2d 92 (Okla. Crim. App. 1995), 91
Ruszcyk v. Secretary of Pub. Safety, 517 N.E.2d 152 (Mass. 1988), 109
Rutherford v. State, 605 P.2d 16 (Alaska 1979), 109

RWB Newton Associates v. Gunn, 541 A.2d 280 (N.J. Super. Ct. App. Div. 1988), 465
Ryan v. Commissioner, T.C. Memo 1998-331 (T.C. 1998), 465

S
Second Med., P.C. v. Auto One Ins. Co., 857 N.Y.S.2d 898 (N.Y. Civ. Ct. 2008), 219
Sherrell v. State, 622 So.2d 1233 (Miss. 1993), 166
Shuck v. Texaco Refining & Marketing, Inc., 872 P.2d 1247 (Ariz. Ct. App. 1994), 75
Simmons v. United States, 945 A.2d 1183 (D.C. 2008), p. 147
Smith v. State, 947 A.2d 1131 (D.C. 2008), 519
Smith v. State, 947 A.2d 1131 (D.C. 2008), 532
Soles v. State, 119 So. 791 (Fla. 1929), 300, 301
Stahl v. State, 686 N.E.2d 89 (Ind. 1997), 215, 248
Star Rentals, Inc. v. Seeberg Construction Co., 730 P.2d 573 (Or. Ct. App. 1986), 249
State v. Allred, 505 S.E.2d 153 (N.C. Ct. App. 1998), 468
State v. Alvarado, 949 P.2d 831 (Wash. Ct. App. 1998), 209
State v. Anderson, 409 A.2d 1290 (Me. 1979), 83, 84
State v. Arroyo, 935 A.2d 975 (Conn. 2007), p. 519
State v. Ayers, 468 A.2d 606 (Me. 1983), 289
State v. Baker, 2003 De. Super. LEXIS 286, *7 (Del. Super. Ct. Aug. 7, 2003), 509
State v. Ballew, 667 N.E.2d 369 (Ohio 1996), 204
State v. Beckett, 383 N.W.2d 66 (Iowa Ct. App. 1985), 91
State v. Belvin, 968 So.2d 516 (Fla. 2008), 521
State v. Bergevine, 942 A.2d 974 (R.I. 2008), 148, 156
State v. Best, 703 P.2d 548 (Ariz. Ct. App. 1985), 371
State v. Bodden, 661 S.E.2d 23 (N.C. 2008), 295, 296
State v. Brainard, 968 S.W.2d 403 (Tex. App. 1998), 455
State v. Briner, 255 N.W.2d 422 (Neb. 1977), 429
State v. Brooks, 618 S.W.2d 22 (Mo. 1981), 467
State v. Brown, 752 P.2d 204 (Mont. 1988), 372
State v. Buda, 949 A.2d 761 (N.J. 2008), 147, 512, 519
State v. Bujan, No. 20060883, 2008 WL 2776682, at *2–4 (Utah 2008), 59, 60, 61
State v. Caine, 746 N.W.2d 339 (Minn. 2008), 57
State v. Canady, 911 P.2d 104 (Haw. Ct. App. 1996), 472
State v. Cannon, 254 S.W.3d 287 (Tenn. 2008), 515, 518, 526
State v. Carlson, 808 P.2d 1002 (Or. 1991), 87, 94, 112, 149, 155
State v. Carroll, 36 S.W.3d 854 (Tenn. Crim. App. 1999), 216
State v. Cate, 683 A.2d 1010 (Vt. 1996), 509
State v. Caudill, 706 P.2d 456 (Idaho 1985), 99
State v. Caulfield, 722 N.W.2d 304 (Minn. 2006) 521
State v. Chapin, 826 P.2d 194 (Wash. 1992), 149, 508
State v. Clark, 175 P.3d 1006 (Or. Ct. App. 2008), 93
State v. Coffey, 389 S.E.2d 48 (N.C. 1990), 174
State v. Conklin, 444 N.W.2d 268 (Minn. 1989), 368, 369
State v. Contreras, 979 So.2d 896 (Fla. 2008), 519
State v. Cook, 628 S.W.2d 657 (Mo. 1982), 419
State v. Cotten, 879 P.2d 971 (Wash. 1994), 87
State v. Craycraft, 889 N.E.2d 1100, (Ohio Com. Pl. 2008), 14

State v. Crocker, 435 A.2d 1109 (Me. 1981), 412
State v. Daniels, 636 N.E.2d 336 (Ohio App. 1993), 103
State v. Darby, 599 P.2d 821 (Ariz. Ct. App. 1979), 98
State v. DeJesus, 947 A.2d 873 (R.I. 2008), 515
State v. DeShay, 669 N.W.2d 878 (Minn. 2003), 443
State v. Dotson, 254 S.W.3d 378 (Tenn. 2008), 309
State v. Draganescu, 755 N.W.2d 57 (Neb. 2008), 86, 218
State v. East, 481 S.E.2d 652 (N.C. 1997), 176
State v. Eaton, 524 So.2d 1194 (La. 1988), 408
State v. Echeverria, 626 P.2d 897 (Or. Ct. App. 1981), 371
State v. Ferguson, 581 N.W.2d 824 (Minn. 1998), 297, 298
State v. Flesher, 286 N.W.2d 215 (Iowa 1979), 146
State v. Forbes, 953 A.2d 433 (N.H. 2008), 92, 93, 94, 95
State v. Frustino, 689 P.2d 547 (Ariz. Ct. App. 1984), 79, 80
State v. Fulminante, 975 P.2d 75 (Ariz. 1999), 419
State v. Galvan, 297 N.W.2d 344 (Iowa 1980), 160, 161, 507
State v. Gano, 988 P.2d 1153 (Haw. 1999), 87, 91, 93, 94, 95, 112
State v. Garvey, 283 N.W2d 153 (N.D. 1979), 373
State v. Getz, 830 P.2d 5 (Kan. 1992), 412
State v. Gondor, No. 90-P-2260, 1992 Ohio App. Lexis 6219, *17 (1992), 103
State v. Gonzales Flores, 186 P.3d 1038 (Wash. 2008), 532
State v. Graham, 941 A.2d 848 (R.I. 2008), 148
State v. Hammons, 597 So.2d 990 (La. 1992), 314
State v. Helmick, 495 S.E.2d 262 (W. Va. Ct. App. 1997), 105
State v. Hester, 470 S.E.2d 25 (N.C. 1996), 321
State v. Hoffman, 828 P.2d 805 (Haw. 1992), 87, 91, 112
State v. Holden, 416 S.E.2d 415 (N.C. 1992), 357
State v. Holliday, 745 N.W.2d 556 (Minn. 2008), 527
State v. Hughes, 584 P.2d 584 (Ariz. Ct. App. 1978), 372
State v. Hyatt, 519 A.2d 612 (Conn. Ct. App. 1987), 452
State v. Irick, 231 S.E.2d 833 (N.C. 1977), 408, 411
State v. Ivy, 188 S.W.2d 132 (Tenn. 2006) 323
State v. J.C.E., 767 P.2d 309 (Mont. 1989), 189
State v. Jacob, 494 N.W.2d 109 (Neb. 1993), 300, 301, 302
State v. Johnson, 982 So.2d 672 (Fla. 2008), 521
State v. Jones, 532 A.2d 169 (Md. 1987), 139, 144, 146
State v. Jones, 873 P.2d 122 (Idaho 1994), 98, 108
State v. Jordan, 5 S.E.2d 156 (N.C. 1939), 294
State v. Karpenski, 971 P.2d 553 (Wash. Ct. App. 1999), 507, 508
State v. Kelly, 1984 Ohio App. LEXIS 9387, *4–5 (Ohio Ct. App. Feb. 16, 1984), 249
State v. Kemp, 948 A.2d 636 (N.J. 2008), 404
State v. Kennedy, 343 A.2d 783 (N.J. Super. Ct. App. Div. 1975), 72
State v. Lander, 644 S.E.2d 684 (S.C. 2007), 507
State v. Langley, 711 So.2d 651 (La. 1998), 172, 173
State v. Lawler, 1999 Ohio App. Lexis 5998 (1999), 503
State v. Laws, 668 S.W.2d 234 (Mo. Ct. App. 1984), 83, 105, 106, 107
State v. Letterman, 616 P.2d 505 (Or. Ct. App. 1980), 133
State v. Levan, 388 S.E.2d 429 (N.C. 1990), 475
State v. Lonergan, 505 N.W.2d 349 (Minn. Ct. App. 1993), 368, 369

State v. Lopez, 974 So.2d 340 (Fla. 2008), 148
State v. Losson, 865 P.2d 255 (Mont. 1993); 414
State v. Luzanilla, 880 P. 2d 611 (Ariz. 1994), 338
State v. March, 216 S.W.3d 663 (Mo. 2007), p. 521
State v. Marcy, 680 A.2d 76 (Vt. 1996), 209
State v. Marfenner 458 So. 2d 454 (La. 1984), 173
State v. Martin, 458 So.2d 454 (La. 1984), 172, 174, 182, 405
State v. Matusky, 682 A.2d 694 (Md. 1996), 307, 308
State v. McCafferty, 356 N.W.2d 159 (S.D. 1984), 350
State v. McElrath, 366 S.E.2d 442, 450 (N.C. 1988), 475
State v. Morant, 701 A.2d 1, 8 (Conn. 1997), 116
State v. Mubita, 188 P.3d 867 (Idaho 2008), 218
State v. Neufeld, 578 N.W.2d 536 (N.D. 1998), 61
State v. Nichols, 365 S.E.2d 561 (N.C. 1988), 353
State v. Ochoa, 576 So.2d 854 (Fla. 1991), 192
State v. Opsahl, 513 N.W.2d 249 (Minn. 1994), 105
State v. Owens, 899 P.2d 833 (Wash. Ct. App. 1995), 155
State v. Padilla, 329 N.W.2d 263 (Wis. 1982), 160
State v. Patton, 164 S.W. 223 (Mo. 1914), 344
State v. Pepin, 940 A.2d 221 (N.H. 2007), 156
State v. Pettrey, 549 S.E.2d 323 (W. Va. 2001), 194
State v. Pinnell, 806 P.2d 110 (Or. 1991), 483, 485
State v. Plant, 461 N.W.2d 253 (Neb. 1990), 147, 160
State v. Poehnelt, 722 P.2d 304 (Ariz. Ct. App. 1985), 166
State v. Quinn, 490 S.E.2d 34 (W.Va. 1997), 61
State v. Rameriz, 730 P.2d 98 (Wash. Ct. App. 1986), 159
State v. Reynolds, 746 N.W.2d 837 (Iowa 2008), 215
State v. Roberts, 14 P.3d 713 (Wash. 2001), 493
State v. Roberts, 448 U.S. 56 (1980), 132, 512
State v. Robinson, 735 P.2d 801 (Ariz. 1987), 349
State v. Rodreguiez-Castillo, 151 P.3d 931 (Or.Ct.App. 2007), 133
State v. Rodriguez-Castillo, 188 P.3d 288 (Or. 2008), 372
State v. S.T.M., 75 P.3d 1257 (Mont. 2003), 189
State v. Scholl, 661 A.2d 55 (R.I. 1995), 297, 298
State v. Schreuder, 726 P.2d 1215 (Utah 1986), 195
State v. Shatterfield, 457 S.E.2d 440 (W. Va. 1995), 293, 294, 299
State v. Silva, 670 P.2d 737 (Ariz. 1983), 371
State v. Simbara, 811 A.2d 448 (2002), 522
State v. Simpson, 945 A.2d 449 (Conn. 2008), 57, 527
State v. Smallwood, 594 N.W.2d 144 (Minn. 1999), 468
State v. Smith, 588 S.E.2d 453 (N.C. 2003) 168
State v. Smith, 909 P.2d 236 240 (Utah 1995), 146, 149
State v. Snowden, 867 A.2d 314 (Md. 2005), 519
State v. St. Clair, 282 P.2d 323 (Utah 1955), 297
State v. Standifur, 526 A.2d 955 (Md. 1987), 308
State v. Stephenson Oil Co., 128 S.W.3d 805 (Ark. 2003), 338
State v. Stevens, 794 P.2d 38 (Wash. Ct. App. 1990), 13
State v. Stonaker, 945 P.2d 573 (Or. Ct. App. 1997), 135, 143, 155
State v. Sua, 987 P.2d 959 (Haw. 1999), 210
State v. Sutphin, 466 S.E.2d 402 (W. Va. 1995), 486

State v. Sweet, 949 A.2d 809 (N.J. 2008), 215, 522
State v. Taylor, 420 S.E.2d 414 (N.C. 1992), 176
State v. Timmons, 178 P.3d 644 (Idaho Ct. App. 2007), 158
State v. Tonelli, 749 N.W.2d 689 (Iowa 2008), 107
State v. Vondenkamp, 119 P.ed 653 (Idaho Ct. App. 2005), 501
State v. Wagoner, 506 S.E.2d 738 (N.C. Ct. App. 1988), 356, 507
State v. Walker, 691 A.2d 1341 (Md. 1996), 336, 338, 370
State v. Warsame, 735 N.W.2d 684 (Minn. 2007), 518
State v. White, 507 N.W.2d 654 (Neb. App. 1993), 194
State v. Woodward, 646 P.2d 135 (Wash. Ct. App. 1982), 159
State v. Worthen, 765 P.2d 839 (Utah 1988), 109
State v. Yelli, 530 N.W.2d 250 (Neb. 1995), 371
State v. York, 489 S.E.2d 380 (N.C. 1997), 205
State v. Yslas, 676 P.2d 1118 (Ariz. 1984), 99
State, ex rel. McDougall v. Johnson, 891 P.2d 871 (Ariz. Ct. App. 1994), 234
Stevenson v. Commonwealth, 218 Va. 462, 237 S.E.2d 779 (1977), 13

T

T.C.M. v. United States, 93-2 U.S. Tax Cas. (CCH) P50, 583 (D. Ariz.1993), 249
Tabieros v. Clark Equipment Co., 944 P.2d 1279 (Haw. 1997), 440, 443
Thomas v. State, 766 So.2d 860 (Ala. Crim. App. 1998), 204
Thomas v. United States, 914 A.2d 1 (D.C. 2006), 517, 525
Truman v. Watts, 598 A.2d 713 (Family Ct. Del. 1991), 368
Turner v. Commonwealth, 248 S.W.3d 543 (Ky. 2008), 515, 521, 532
Turro v. State, 837 S.W.2d 232 (Tex. 1992), 245

U

Ush Ventures v. Global Telesystems Group, Inc., 796 S.2d 7 (Del. Super. Ct. 2000, 454
Utsey v. Olshan Found. Repair Co. of New Orleans, 2007 U.S. Dist. LEXIS 85918, *9 (E.D. La. Nov. 19, 2007), 428

V

Velazquez v. State, 655 S.E.2d 806 (Ga. 2008), p. 430
Villafranca v. People, 573 P.2d 540 (Colo. 1978), 103
Village of New Hope v. Duplessie, 231 N.W.2d 548 (Minn. 1975), 91
Vinyard v. Vinyard Funeral Home, Inc., 435 S.W.2d 392 (Mo. Ct. App. 1968), 408

W

W.C.L., Jr. v. People, 685 P.2d 176 (Colo. 1984), 336, 357
Warren v. Medlantic Health Group Inc., 936 A.2d 733 (D.C. 2007), 264
Warren v. State, 774 A.2d 246 (Del. 2001), 146
Weber v. Weber, 512 N.W.2d 723 (N.D. 1994), 460
Weinbender v. Commonwealth, 398 S.E.2d 106 (Va. Ct. App. 1990), 92, 94
Wells v. Commonwealth, 892 S.W.2d 299 (Ky. 1995), 298
Wells v. State, 67 S.W.2d 1020 (Tex. Crim. App. 1902), 10
Wierschem, 152 B.R. 345 (Bankr. M.D. Fla. 1993), 464
Williams v. State, 413 S.E.2d 256 (Ga. Ct. App. 1991), 476
Wright v. State, 249 S.W.3d 133 (Ark. 2007), 158
Zimmer v. Peters, 861 P.2d 1188 (Ariz. Ct. App. 1993), 501
Zito v. City of N.Y., 857 N.Y.S.2d 575 (N.Y. App. Div. 2008), 196

FOREIGN CASES

Luch, L.J., Regina v. Osman, 15 Cox C.C. 1 (Eng. 1881), 293
Subramaniam v. Public Prosecutor, 100 Solicitor's Journal 566 (Jud. Comm. on the Privy Council 1956), 410
The Queen v. Inhabitants of Lydeard St. Lawrence, 1 Gale & D. 191 (1841), 452

BOOKS AND ARTICLES

100 Solicitor's Journal 566 (Judicial Committee of the Privy Council 1956), found in Jon R. Waltz & Roger C. Park, Cases and Materials on Evidence 97 (9th ed. 1999): 410
Black's Law Dictionary (8th ed. 2004): 454
Black's Law Dictionary (7th ed. 1999): 344
Black's Law Dictionary (6th ed. 1990): 280, 402
Branch, Taylor, Parting the Waters: America in the King Years 1954–63 759 (1988): 139
Broun, Kenneth S., McCormick on Evidence (6th ed. 2006): 352, 357, 263
Cleary, E., McCormick On Evidence (3d ed. 1984): 92, 94, 249
Fenner, G. Michael, Handling the Turncoat Witness Under the Federal Rules of Evidence, 55 Notre Dame Lawyer 536 (1980): 359
Fenner, G. Michael, Law Professor Reveals Shocking Truth About Hearsay, 62 UMKC L. Rev. 1, 9–10 (1993): 14, 15, 20, 132, 158, 159, 253, 254, 257, 327, 347, 366–368, 407, 433, 452, 475
Fenner, G. Michael, The *Daubert* Handbook: The Case, Its Essential Dilemma, and Its Progeny, 29 Creighton L. Rev. 939, 1031 (1996): 458
Fenner, G. Michael, The Forced Use of Inadmissible Hearsay Evidence in Bankruptcy Court, 8 Am. Bankr. Inst. L. J. 453 (2000): 467
Fenner, G. Michael, The Residual Exception to the Hearsay Rule: The Complete Treatment, 33 Creighton L. Rev. 265 (2000): 332
Garland, Norman M., An Overview of Relevance and Hearsay: A Nine-Step Analytical Guide, 22 Sw. U. L. Rev. 1039 (1993): 360
Graham, Michael, Federal Practice and Procedure (1992): 235
Graham, Michael H., Handbook of Federal Evidence (3d ed. 1991): 65
Jefferson, Bernard S., Declarations Against Interest: An Exception to the Hearsay Rule, 58 Harv. L. Rev. 1, (1944): 305
Kettles, Gregg, Ancient Documents and the Rule Against Multiple Hearsay, 39 Santa Clara L. Rev. 719, (1999): 253
Lieberman, Joel D., and Arndt, Jamie, Understanding the Limits of Limiting Instructions, 6 Psychol. Pub. Pol'y & L. 677 (2000): 448, 496
Maguire, John MacArthur, Evidence: Common Sense and Common Law (1947): 7, 133, 214, 294, 455
McCormick, Charles T., Handbook of the Law of Evidence (1954): 201, 202, 221
McCormick on Evidence (John W. Strong gen. ed., 4th ed. 1992): 139, 143
McCormick on Evidence (John W. Strong, gen. ed., 5th ed. 1999): 206
McFarland, Douglas D., 'Present Sense Impressions Cannot Live in the Past,' 28 Fla. St. U. L. Rev. 907, 916 (2001): 140
McKelvey, John Jay, Handbook of the Law of Evidence (1944): 216
McLaughlin, Joseph M., & Weinstein, Jack B., Weinstein's Federal Evidence (2d ed. 1999): 134
Merrian Webster's Collegiate Dictionary (Zane Pub. Co. CD rom, 10th ed. 1997): 194, 452
Merriam-Webster's Collegiate Dictionary, CD rom (Zane Pub. Co. 1996): 144, 216, 247, 340

Milich, Paul S., Hearsay Antinomies: The Case for Abolishing the Rule and Starting Over, 71 Or. L. Rev. 723 (1992): 131, 132
Moore, James W., Moore's Federal Practice VII (2d ed. 1996): 279, 281, 320
Morgan, Edmund, A Suggested Classification of Utterances Admissible as Res Gestae, 31 Yale L.J. 229 (1922): 139
Mosteller, Robert P., Testing the Testimonial Concept and Exceptions to Confrontation: "A Little Child Shall Lead Them," 82 Ind. L.J. 917 (2007): 528
Mueller, Christopher B. & Laird C. Kirkpatrick, Evidence (2d ed. 1999): 72, 97: 151
Mueller, Christopher B., & Laird C. Kirkpatrick, Evidence Practice Under The Rules (2d ed. 1999): 299
Mueller, Christopher B., Post-Modern Hearsay Reform: The Importance of Complexity, 76 Minn. L. Rev. 367 (1992): 143
Myers, John E.B., et al., Children as Victims and Witnesses in the Criminal Trial Process: Hearsay Exceptions: Adjusting the Ratio of Intuition to Psychological Science, 65 Law & Contemp. Prob. 3 (2002), 140
Oxford English Dictionary (1970): 361
Oxford English Dictionary (1933): 166, 194
Riggs, Jr., Webster, M.D., The You You Don't Know 29 (Prometheus Books 1997): 143
Schmertz, John R., 24 Federal Rules of Evidence News 99 (West Group 1999): 316
Stewart, I. Daniel Jr., Perception, Memory, and Hearsay: A Criticism of Present Law and the Proposed Rules of Evidence, 1970 Utah L. Rev. 1 (1970): 6, 134, 143
Swift, Eleanor, A Response to the "Probative Value" Theory of Hearsay Suggested by Hearsay From a Layperson, 14 Cardozo L. Rev. 103 (1992): 361, 363
Thayer, James B., A Preliminary Treatise on Evidence at the Common Law 524 (1898): 452
Thayer, James Bradley, *Bedingfield's Case—Declarations as a Part of the Res Gesta*, 15 Am. L. Rev. 71 (1881): 139
Tribe, Laurence H., Triangulating Hearsay, 87 Harv. L. Rev. 957 (1974): 164
Udall, Morris K., et al., Law of Evidence (3d ed. 1991): 338
Webster's Third New International Dictionary 1809 (Philip Babcock Gove, ed., 2002): 385
Webster's Third New International Dictionary, Unabridged. Merriam-Webster, 2002: 418
Weinstein, Jack B., & Margaret A. Berger, Weinstein's Federal Evidence, (Joseph M. McLaughlin, ed., Matthew Bender 2d ed. 2004): 434
Weinstein, Jack B., & Margaret A. Berger, Weinstein's Federal Evidence (2d ed. 2003): 440
Weinstein, Jack B., & Margaret A. Berger, Weinstein's Federal Evidence (2d ed. 2000): 341
Weinstein, Jack B., & Margaret A. Berger, Weinstein's Evidence (1981): 501
Weinstein, Jack B., & Margaret A. Berger, Weinstein's Evidence (1969): 489
Weinstein, Jack B., & Margaret A. Berger, Weinstein's Evidence (1996): 57, 79, 246, 273, 274, 489
Weinstein, Jack B., & Margaret A. Berger, Weinstein's Evidence (1990): 509
Weinstein, Jack B. & Berger, Margaret A., Weinstein's Evidence Manual (student ed. 1987): 49, 50, 68
Weissenberger, Glen, Hearsay Puzzles: An Essay on Federal Evidence Rule 803(3), 64 Temple L. Rev. 145 (1991): 178

Wigmore, John Henry, Evidence in Trials at Common Law (3d ed. 1940): 7
Wigmore, Evidence (Chadbourn rev. 1974): 234
Wigmore, J., Evidence (J. Chadbourn Rev. 1979): 501
Wigmore, John Henry, Evidence (2d ed. 1923): 133
Wright, C., & Gold, V., Federal Practice and Procedure: Evidence, (1997): 451
Wright, Charles Alan & Gold, Victor James, Federal Practice and Procedure (1997): 455
Wright, Charles Alan, Miller, Arthur & , Marcus, Richard L., 8A Federal Practice and Procedure (1994): 388
Yun, Judy, Note, A Comprehensive Approach to Child Hearsay Statements, 83 Col. L. Rev. 1745 (1983): 193

Foreword

Part of my job as a law professor teaching Evidence is to teach hearsay as a tool. My students need to learn to understand hearsay so that they can use this tool to advocate a position, to convince an opponent, first, and a judge, second, and to win. My students need to learn how to manipulate the hearsay rules to serve the ends of their clients. I hope I am a good teacher of manipulation. Part of my job as a lawyer who works with this subject is to take sides, to argue the rules, to persuade. My job as a lawyer with this specialty calls for me to understand these rules and to engage in the manipulation I hope I teach my students.

This book is about those things. It is about how law students, lawyers, and judges can understand and use the hearsay rules. It is about how students can learn these rules right, right from the beginning (for that is so much easier than trying to relearn them later). It is about how students can use these rules in class and on their final exams. It is about how students can manipulate these rules in their clinics, mock trials, internships, and clerkships. This book is about how lawyers can understand the hearsay rules, how lawyers can build a reputation—as in "Hey, here is a lawyer who actually understands this stuff!"—and how lawyers can manipulate the rules in the interests of their clients. It is about how judges can remain faithful to the rule of law while using the rules to see that justice is served. In the process, the book tells nothing but the truth.

* * *

Chapter 1 begins with a fresh look at the principles and values that underlie the hearsay rule. It presents time-tested and brand-new techniques for recognizing hearsay for, unlike obscenity, sometimes it is not so easy to know it when you see it. Chapter 2 covers the definitional exclusions. Chapters 3, 4, and 5 cover the exceptions in Rule 803, 804, and 805, respectively. Through the first five chapters the topics covered are rather traditional and straightforward for a treatment of the hearsay rule.

Though the organization and much of the content of the first five chapters is very traditional, much of what is in these chapters is not. The key to the ex-

clusions and exceptions is that each has a certain number of foundational facts: The lawyer seeking the admission of hearsay evidence must produce evidence of each of the foundational elements; the lawyer wanting to block admission of hearsay evidence must defeat offering counsel on at least one foundational element. This book takes a foundational approach to hearsay. It breaks out and lists the foundational elements for each exclusion and exception covered in this book. This makes it a handy quick reference. You know exactly what you need to prove or what you need to defeat for each exclusion and exception covered—even when the need arises suddenly, in the heat of battle. Following the foundational elements, is a statement of the values on which each exception is built, which will serve as an interpretative guide to the exception. Following the statement of values, for each exception covered there is a "Use Note" discussing each foundational element and commenting on ways in which each exception, each element, can be used to achieve the student's, lawyer's, or judge's goal. There is the handy, quick reference of the list of foundational elements and the ultimately more helpful detailed discussion, with cases and ideas on the use of each of the foundational elements.

Some other examples of what is new in the first five chapters: Chapter 1 presents new ways of conceptualizing hearsay. The part of Chapter 2 that deals with adoptive admissions presents a whole new way of looking at them, analyzing them, and understanding them—one that seems simpler than the traditional ways of approaching adoptive admissions.

In addition to a very complete treatment of the exclusions and specific exceptions—with foundational elements, the values behind each, and in depth analysis of each foundational element—Chapters 2, 3, and 4 look past the trees of a particular exception and onto how the exception fits into the forest of hearsay. The Use Notes discuss the ways various parts of the hearsay rules interrelate. Surprisingly, this is not commonly addressed in other works, which mostly just talk trees, and not forest. An example of seeing the forest is in the discussion of the former testimony exception. That Use Note begins with a discussion of other ways to get former testimony around the hearsay rule. Students, lawyers, and judges faced with former testimony will see a discussion of eleven ways it might be admissible in spite of the hearsay rule: the former testimony exception and ten other techniques.

Chapter 5 presents the most complete treatment of the residual exception currently available. It includes, for example, a discussion of how that exception can be used to get into evidence an out-of-court statement made by a witness who is testifying—get the out-of-court statement in as substantive evidence of the facts declared and not just as impeachment, even though the out-of-

court declarant is a testifying witness. There is offhand reference to this point in some other writings, but there is no analysis and all of the offhand references come to what I think is the wrong conclusion. This is an important point. Take, for example, a criminal case where the prosecutor has a favorable pretrial statement from a witness and the witness takes the stand at trial and tells a different story. Perhaps the witness has had a change of heart out of love or intimidation. Whatever the reason, the witness tells a different story on the stand and the pretrial statement of this available witness does not fit under any of the exclusions in Rule 801(d) or the exceptions in Rule 803 or 804. Chapter 5 discusses how this pretrial statement may be admissible as substantive evidence of the facts declared…even though the declarant is testifying.

The rest of the book—Chapters 6 through 13—is not so traditional in either the topics covered or the content of the coverage. Chapter 6 goes beyond traditional evidence texts and treatises, goes beyond the rules of evidence, and discusses important hearsay exceptions that are found in Rule 32 of the Federal Rules of Civil Procedure and Rule 15 of the Federal Rules of Criminal Procedure.

Chapter 7 is devoted to state of mind evidence. Every out-of-court statement is in some way or another nonhearsay state of mind evidence. That's right: There are ways in which every out-of-court statement is nonhearsay. Sometimes, however, the nonhearsay use of the statement is not relevant. As a result, the statement will be inadmissible as hearsay in its relevant uses and inadmissible as irrelevant in its nonhearsay uses. This chapter makes an important point about the relationship between the hearsay rule and the rules of relevance. It also provides counsel with a way of turning every hearsay problem into a relevance problem. In addition, Chapter 7 gathers together the uses of state of mind evidence and discusses eight ways that such evidence might be used at trial.

Chapter 8 is devoted to the use of opinion evidence—expert and lay opinion—as a way to get around the hearsay rule. Chapter 9 is devoted to miscellaneous other ways around the hearsay rule—judicial notice and the rule of completeness for two examples. Chapters 10, 11, and 12 are devoted to important concepts such as the benefit of applying many exceptions to a single level of hearsay, the problem of multiple levels of hearsay behind a single statement, and the subject of evidence that is inadmissible hearsay to one issue in a case and either nonhearsay or admissible hearsay to another issue in the same case. Each of these chapters is useful to the student, the lawyer, and the judge alike. Chapter 11, for example, discusses how to make underlying levels of hearsay go away. It discusses cases that have found that one or another of the

exceptions or exclusions does away with multiple hearsay problems. Under certain exceptions and exclusions, the declarant need not have personal knowledge of the facts declared in the statement and offering counsel need not deal with the hearsay that underlies the statement. Chapter 11 discusses where that has been held to be so, and how to argue that it is so elsewhere.

Chapter 13 deals with the interrelation between the hearsay rule and the competence of witnesses. Among other things, Chapter 13 suggests and discusses ways to stand the hearsay rule on its head and use it affirmatively—ways to use hearsay to get into evidence an out-of-court statement by a witness who was incompetent when the statement was made, is incompetent at the time of trial, or both.

Chapter 14 deals with the Confrontation Clause of the United States constitution, its interrelation with the hearsay rule, and its effect on the admissiblilty of hearsay evidence offered against an accused in a criminal prosecution.

* * *

Hearsay is a tool. Its purpose is to assist the trier of fact in the search for truth by limiting the trier of fact's exposure to unreliable evidence. How effective a tool it is, is open to question. Two things are certain: Hearsay is everywhere, and it either helps you achieve your goal or it stands in your way; either way, it is a tool that must be used to advocate, to win, and to decide. This tool must be mastered by law students, practicing lawyers, and judges alike, and it is for all of them that this book is written.

Acknowledgments

First and foremost I want to thank my students and my daughter Hilary and her law-school friends for using this material in its early stages and for their unfailing encouragement that I turn it into a book. There are obvious risks associated with going beyond that kind of general thank you and actually naming those who have helped the most. Worse, however, I think, is the kind of arrogance of sole authorship associated with not trying. Some of my current and former students helped me a great deal with the research and writing of this book and they deserve to have their names associated with it. So, here goes:

■ The journey is easy. Starting and stopping are difficult. At the beginning, there was Kathy Ford and, as the manuscript submission date approached, there were Pat Cooper and Vic Padios. (You may have noticed in life the tendency to appreciate most those who've helped you most recently. Pat and Vic, I have told you in person and now I tell you in print that I am immensely appreciative of your help.)

■ In the middle, there was Heather Albertie Garretson (who believes that she wrote the book), Cristy Carbon-Gaul (to whom I said "If you think you are right, convince me," and she did), Josh Dickinson (who helped during the difficult six months when my wife and I were forced to live in Paris), and Shilee Therkelsen Mullin (who allowed me to believe that I wrote the book).

■ Katherine Kimball has been particularly helpful (and cheerfully so) in the preparation of the Second Edition of this book. Though his time on the project was limited, I thank Rob Stark as well.

■ I also want to recognize Dale Cottam, Virginia Albers, and Linda Thompson for their help on my article, Law Professor Reveals Shocking Truth About Hearsay, 62 UMKC L. Rev. 1 (1993).

My thanks to the men and women of the Paris office of Willkie Farr & Gallagher, who gave me a place to plug in and work during the six months of the most wonderful sabbatical anyone could ever have. Particular thanks to Daniel Hurstel for his hospitality and to Jacky Murray for getting my computer up

and operating and keeping it working. And to my long-time friend Terry Ferguson for the introduction to Willkie Farr that allowed it to happen.

My two brothers are also lawyers. My brother Gary is a federal judge. My brother Bob is the legal counsel for a federal agency. Each is an inspiration to me, in the law and otherwise. I thank them for that. And I thank my mother and father—Mary Ann and George—for raising the three of us to know the joy of work well done.

One of the great joys in life is having a job where you look forward to coming to work each day. Most law professors have great jobs and, in my experience, most of them realize it. Not as many have as great a place to do the job as I do. For almost all of us on the faculty of the Creighton University School of Law it is true that we fight our battles and then we move on, taking nothing personally, letting nothing go sour and spoil the place where we spend so much of our time. Credit goes to the deans who have set the tone—Rod Shkolnick, Larry Raful, and Pat Borchers—and, even more so, to the faculty who make it happen.

One more thing that makes Creighton such a great place to come to five days a week is the two best faculty secretaries anyone ever had, Joan Hillhouse and Pat Andersen. Pat Andersen—whose main job is to keep us from taking ourselves too seriously—has worked hard on this book, always tirelessly, always with great humor, and always with terrific ideas. Thank you Pat!

Finally, thanks to my family, my wife Anne, and my daughter and son Hilary and Ben. I am blessed with a family of writers. Anne has a book of her own in its second edition with Fairchild Publications. Hilary is a lawyer (Alston and Bird in Atlanta, to King and Spalding in New York City, to Razorfish also in NYC, and now with Levi Strauss & Co. in San Francisco) with a real gift for analysis, synthesization, and composition. Ben is a lawyer as well (Fredericks Peebles & Morgan, an Omaha firm exclusively practicing Native American law).

Special thanks to Anne for her forbearance while I came to the office and worked on this book.