

Evidence

Evidence

Teaching Materials for an Age of Science and Statutes

NINTH EDITION

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It was with extremely heavy hearts that we dedicated our eighth edition to the memory of our late co-author, Erica Beecher-Monas. Erica enthusiastically volunteered to take on the role of lead editor for the eighth edition and was literally on the eve of putting the manuscript to bed when she passed away. We learned only after the fact that this woman of incredible energy, talent, intelligence, and expertise had been working from her hospital room to complete her chapters, not to mention submitting her latest scholarly articles to law journals at the same time. Through her dedication, hard work, keen eye, and sharp pen, Erica helped us all to make the eighth edition an excellent coursebook. We miss her very much, and think of her each time we open these pages. We hope to maintain her legacy and sincerely hope that she is proud of this new, ninth edition.

Contents

Table of Cases	xxxii
Preface to the Ninth Edition	lvii
Acknowledgments	lix
Excerpt Acknowledgments	lxi

PART 1
BACKGROUND, FRAMEWORK, AND PROCEDURE

Chapter 1 The Philosophy and History of American Evidence Law	3
A. Introduction	3
B. The Theoretical Setting of American Evidence Law	4
1. A Commitment to the Adversary System	4
Professional Responsibility: Report of the Joint Conference	5
Notes	6
2. The Use of Lay Jurors	7
Notes	9
3. Evidentiary Rules Based on External Social Policies and Other Considerations	10
4. A Research Agenda for the Future	11
Reid Hastie, Steven Penrod & Nancy Pennington, <i>Inside the Jury</i>	11
Note	13
C. The History of American Evidence Law	14
1. Introduction	14
2. Prior to the Federal Rules	14
3. The Federal Rules of Evidence	15
Notes	18
Chapter 2 Evidence: Types, Sources, and Substitutes	19
A. The Types of Information to Which the Evidentiary Rules Are Applied	19
Notes	20
B. The Sources of Evidence Law	21
1. Constitutional Considerations	21

2. Court Rules	22
Notes	22
3. Statutes and Statutory Interpretation	23
William N. Eskridge, Jr. & Philip P. Frickey, <i>Statutory Interpretation as Practical Reasoning</i>	23
Frank H. Easterbrook, <i>Statutes' Domains</i>	28
Edward Cleary, <i>Preliminary Notes on Reading the Rules of Evidence</i>	30
Notes	31
4. The Common Law	32
Notes	33
C. Substitutes for Evidence: Other Methods of Establishing Facts	34
1. Judicial Notice	34
a. Judicial Notice of Facts	34
Kenneth C. Davis, <i>Judicial Notice</i>	35
Notes	35
Problems	37
Notes and Problem	38
b. Judicial Notice of Law	40
Notes	41
2. Other Methods of Establishing Facts	42
Chapter 3 The Chronology of a Trial	45
A. Introduction	45
B. The Organization of the Trial as a Whole	45
1. Jury Selection and Voir Dire	45
2. Opening Statements	46
3. The Plaintiff's or Prosecutor's Case-in-Chief	47
4. Defense Motion for Nonsuit or Directed Verdict	49
5. The Defense's Case-in-Chief	49
Laurens Walker, John Thibaut & Virginia Andreoli, <i>Order of Presentation at Trial</i>	50
6. The Plaintiff's or Prosecutor's Rebuttal	52
7. The Defense Surrebuttal or Rejoinder	52
8. Reopening the Case	52
9. Witnesses Called by the Trial Judge	52
10. Closing Argument or Summation	53
11. The Judge's Instruction (or "Charge") to the Jury	54
Chapter 4 The Examination of a Witness	61
A. The Order of the Examination of a Witness	61
1. Sequestration or Exclusion of Witnesses—Federal Rule 615	61
Notes and Problems	62

2. Direct, Cross, Redirect, and Recross Examinations	63
3. Questions by the Trial Judge—Federal Rule 614	64
<i>United States v. Hickman</i>	65
Notes	68
4. Questions by the Jurors	69
Notes	71
5. Excusing the Witness	71
B. The Scope of the Examination of a Witness	71
1. Direct Examination	71
2. Cross-Examination—Federal Rule 611(b)	72
a. The Split of Authority over the Proper Scope of Cross-Examination	72
Notes and Problems	73
b. The Consequences of Undue Restriction of the Scope of Cross-Examination	74
1 <i>McCormick on Evidence</i> § 19	75
Problem	76
c. Expansion of the Scope of Cross-Examination—Federal Rule 611(b)	77
Note	77
3. Redirect Examination	77
Problem	78
4. Recross Examination	78
5. The Rule of Completeness—Federal Rule 106	78
Notes and Problem	79
C. The Form of the Examination of a Witness	81
1. In General—Federal Rule 611(a)	81
Notes and Problems	81
2. Leading Questions—Federal Rule 611(c)	82
Notes and Problem	83
Notes	85
3. Questions Calling for a Narrative Response	86
Note	87
4. Argumentative Questions	87
Notes and Problems	88
Chapter 5 The Roles of Judge, Jury, and Attorneys	91
A. The Role of the Attorneys in the Admission and Exclusion of Evidence	91
1. Pretrial Motions to Admit or Exclude Evidence—Federal Rules 103(a)–(b)	91
2. The Proponent: Offering Evidence at Trial—Federal Rules 103(a)–(c)	94
3. The Opponent: Objections to Evidence at Trial—Federal Rule 103(a)	98
B. The Role of the Trial Judge	102
1. Questions of Law	102
2. Preliminary Facts Conditioning the Admissibility of Evidence—Federal Rules 104(a)–(b)	102
Notes and Problems	105

C. The Role of the Petit Jurors	109
1. Questions of Law	109
2. Questions of Fact on the Historical Merits	109
3. Preliminary Questions of Fact Conditioning Admissibility— Federal Rules 104(a)–(b)	110
Notes and Problem	111
D. Proof of Foundational Facts	111
<i>Bourjaily v. United States</i>	112
Notes	116
Chapter 6 Overview: A Conceptual Framework	117
A. Admissibility	117
B. Sufficiency	119
A Conceptual Framework for the Course Book	120
<hr/>	
PART 2	
CASE FILES	
<hr/>	
Civil Case File— <i>Hill v. Roe & Polecat Motors</i>	125
Criminal Case File— <i>State v. Devitt</i>	133
<hr/>	
PART 3	
ADMISSIBILITY OF EVIDENCE	
<hr/>	
Chapter 7 Witness Competency	139
A. Introduction	139
B. The Early Common-Law Competency Doctrine	139
C. The Prevailing Modern Doctrine	140
1. General Competency Requirements	140
a. Capacity for Sincerity: The Oath	141
b. Mental Capacity to Observe	142
c. Mental Capacity to Remember	143
<i>State v. Moore</i>	144
Notes and Problems	149
d. Mental Capacity to Narrate	152
Notes and Problems	152
D. The Federal Rules—Federal Rule 601	153
Notes	154
E. Specialized Aspects of Competency	156
1. Disqualification for Interest: Dead Man’s Acts	156
N.Y. Civ. Prac. Law § 4519	157

a. Statutory Interpretation and Analysis	158
1) Types of Actions	158
2) Disqualified Witnesses	158
3) Scope of the Incompetence	158
4) Subject Matter of the Incompetence	159
5) Exceptions	159
6) Waiver	160
b. The Future of Dead Man's Acts	160
Notes and Problem	161
2. Judges, Jurors, and Attorneys	162
a. Judges—Federal Rule 605	162
Problem	163
b. Jurors—Federal Rule 606	163
Problem	166
c. Attorneys	167
Chapter 8 Logical Relevance: Probative Value	169
A. Introduction	169
B. The Distinction between Logical Relevance and Materiality— Federal Rule 401	170
1. Logical Relevance	170
William Twining, <i>Taking Facts Seriously—Again</i>	171
Problems	173
2. Materiality	175
a. Introduction	175
Note and Problems	176
b. Curative Admissibility	177
Note and Problem	178
3. Modern Statutory Treatment of Logical Relevance and Materiality	179
Notes	180
C. The Distinction between Direct and Circumstantial Logical Relevance	181
1. Directly Relevant Evidence	181
2. Circumstantially Relevant Evidence	182
Problems	182
3. The Significance of the Distinction between Direct and Circumstantial Evidence	183
D. The Distinction between Facial and Underlying Logical Relevance	185
1. Facial Logical Relevance—Federal Rule 401	185
2. Underlying Logical Relevance—Federal Rules 602 and 901-02	186
Notes	187
a. Underlying Logical Relevance—Personal or Firsthand Knowledge—Federal Rule 602	188
<i>Boyd v. Louisiana</i>	188
Notes and Problems	189

b. Underlying Logical Relevance—Authentication—Federal Rule 901	191
<i>United States v. Wilson</i>	192
Notes and Problems	195
E. Summary and Preview: Logical Relevance	196
Chapter 9 Specialized Aspects of Logical Relevance:	
Authentication of Writings	197
A. Introduction	197
B. Private Writings—Federal Rule 901	198
1. Introduction	198
2. Comparison by the Trier of Fact—Federal Rule 901(b)(3)	200
3. Non-Expert Opinion—Federal Rule 901(b)(2)	201
4. Expert Opinion Testimony—Federal Rule 901(b)(3)	201
Notes and Problems	204
5. Techniques for Authenticating the Products of Modern Means of Private Communication	205
C. Business Writings	207
1. Custody	207
Notes	207
2. Computer Records and Other Modern Methods of Business Recordation—Federal Rule 901(b)(9)	208
<i>In re Vee Vinhnee</i>	209
Notes and Problems	211
3. Simplified Procedures for Introducing Business Records— Federal Rules 902(11)–(14)	215
Problem	215
Notes and Questions	216
D. Official Writings—Federal Rules 902(1)–(4)	217
Notes and Problems	220
E. Conclusion	221
Chapter 10 Specialized Aspects of Logical Relevance:	
Identification of Physical Evidence	223
A. Introduction	223
B. Real or Original Physical Evidence—Federal Rules 901(b)(1) and (b)(4)	225
1. Ready Identifiability—Federal Rule 901(b)(4)	225
Note and Problem	227
2. Chain of Custody—Federal Rules 901(b)(1) and (b)(4)	227
Edward J. Imwinkelried, Comment, <i>The Identification of Original, Real Evidence</i>	229
Notes and Problems	233

C. Demonstrative Physical Evidence	235
Melvin M. Belli, Sr., <i>Demonstrative Evidence and the Adequate Award</i>	235
Notes	237
<i>State v. Freeman</i>	240
Note	241
Chapter 11 Specialized Aspects of Logical Relevance: Identification of Speakers and Verification of Photographs and Charts	243
A. The Identification of a Speaker	243
1. The Telephone Directory Doctrine—Federal Rule 901(b)(6)	243
2. Identification Based on the Content of an Oral Statement	244
3. Skilled Lay Observer Testimony—Federal Rule 901(b)(5)	244
Notes and Problems	245
4. Expert Testimony Based on Sound Spectrography—Federal Rule of Evidence 901(b)(9)	246
Philip E. Cutler, Carol R. Thigpen, Timothy R. Young, & Edward B. Mueller, <i>The Evidentiary Value of Spectrographic Voice Identification</i>	247
Notes	249
5. Audio Recordings	252
<i>McAlinney v. Marion Merrell Dow, Inc.</i>	252
Notes	254
6. Caller Identification	256
B. Photographs	256
<i>Bergner v. State</i>	257
Note and Problem	258
1. Still Photographs	259
Notes and Problem	260
2. X-Rays	261
Charles C. Scott, <i>X-Ray Pictures as Evidence</i>	261
Notes and Problems	262
3. Automated Photographic Systems	263
<i>McHenry v. State</i>	264
Notes and Problems	264
4. Miscellany: Videotapes, Computer Images, Digitally Enhanced Images, and Motion Pictures	265
<i>State v. Hayden</i>	270
Notes and Questions	272
Questions and Problems	275
C. Charts, Including Maps—Federal Rule 105	276
Notes	277

Chapter 12 Specialized Aspects of Logical Relevance: Assessing the Validity of Scientific Evidence	279
A. Introduction	279
B. Admissibility Standards: The Justification for Resorting to Scientific Evidence—Federal Rule 702(a)	280
<i>United States v. Amaral</i>	281
Notes and Problems	282
C. Admissibility Standards: The Evolution of the Test for the Admissibility of Scientific Testimony	285
1. General Acceptance under <i>Frye</i>	285
Notes and Problems	286
2. Validation/Reliability under <i>Daubert</i> —Federal Rule 702(b)	289
<i>Daubert v. Merrell Dow Pharmaceuticals, Inc.</i>	290
Notes	295
3. A Comparison of <i>Frye</i> and <i>Daubert</i>	300
D. (Part of) the Big Picture: The Beginning and End of the Expert’s Direct Examination	302
1. The Beginning of the Witness’s Direct Examination: The Qualification of the Witness as an Expert—Federal Rule 702	303
Notes	304
2. The End of the Witness’s Direct Examination: Final Opinions Couched in Statistical Terms	306
<i>People v. Collins</i>	306
Notes and Problems	313
Chapter 13 The Discretion of the Court to Exclude Logically Relevant Evidence	319
A. Introduction	319
B. Exclusion of Evidence under FRE 403: The Modern Doctrine	320
C. Applying Rule 403	320
1. Step One: The Plus Side: Determining the Probative Value of the Item of Evidence	321
Notes	323
2. Step Two: The Minus Side: Identifying the Countervailing Probative Dangers	324
Questions and Notes	327
3. Step Three: Striking the Balance between Probative Value and Probative Dangers	328
Notes and Problems	329
D. Recurring Issues under Rule 403	331
1. Tangible Objects, Photographs, and Other Visual Evidence	332
<i>State v. Rowe</i>	332
Notes and Problems	334

2. Experiments and Tests	335
Note	336
3. Exhibitions	336
a. Jury Views	336
Notes	337
b. Displays of a Person or Parts of the Body	338
Note	339
4. Active Demonstrations	339
Problem and Question	339
5. Limiting Instructions	340
Chapter 14 Evidence of Character, Habit or Routine, and Other Acts and Transactions	341
A. The First, Most General Level: Character Evidence	342
1. Character as Direct Evidence of an Ultimate Fact—Federal Rules 405	342
a. WHETHER: When Is Character Itself in Issue?— Federal Rules 401, 405(a)	342
Notes	343
b. HOW: If So, What Methods of Proof Are Admissible?—Rule 405	343
2. Character as Circumstantial Evidence of the Ultimate Fact of the Conduct of a Party—Federal Rules 404–05	344
Miguel Angel Mendez, <i>California’s New Law on Character Evidence: Evidence Code Section 352 and the Impact of Recent Psychological Studies</i>	346
Notes	348
1) WHETHER: When Is Character Evidence Admissible as Circumstantial Proof of an Ultimate Fact?	349
a. The Use of a Defendant’s Character as Circumstantial Evidence of the Defendant’s Conduct in Criminal Cases	350
Notes and Problems	350
Notes	352
2) HOW: What Methods of Proof Are Permissible?	354
Notes and Problems	355
Notes	357
b. Circumstantial Character Evidence of a Party in Civil Cases	359
1) The General Rule—Neither Reputation nor Opinion — Federal Rule 404(a)	359
2) Circumstantial Character Evidence in Civil Cases — Specific Acts—Federal Rule 415	360
3. Character as Circumstantial Evidence of the Conduct of a Non-Party	360
a. The Victims of Violent Crime	361
1) WHETHER: When Is Proof of the Victim’s Violent Character Admissible as Circumstantial Evidence of the Victim’s Conduct?—Federal Rules 404(a)(2)(B)–(C)	361

2) HOW: What Methods of Proof Are Available?	362
Notes	362
b. The Victims of Sex Crimes—Rape Shield Laws— Federal Rule 412	362
Notes and Problems	364
B. The Second, More Specific Level: Habit or Routine—Federal Rule 406	367
1. The Difference between Character Evidence and Habit or Routine Evidence	368
Notes	369
2. WHETHER: When is Habit or Routine Evidence Admissible?	370
3. HOW: What Methods of Proving Habit or Routine Are Permissible?	371
Notes and Problems	371
C. The Third, Most Specific Level: Other Acts and Transactions	372
1. Introduction—Federal Rule 404(b)	372
2. Other Acts Evidence in Criminal Cases	374
a. The Independent or Special Logical Relevance Requirement	375
United States v. Woods	379
Notes and Problems	381
b. The Balancing Process for Determining the Admissibility of Other Acts Evidence	384
1) The Prosecution’s Need for the Evidence	384
Problems	385
2) The Prejudicial Character of the Evidence	386
Notes	387
3. Other Acts Evidence in Civil Actions—Federal Rule 404(b)	388
a. Other Contracts	389
Problems	389
b. Tort Actions	390
1) Other Claims by the Plaintiff	390
Notes and Problems	391
2) Other Torts by the Defendant	392
Notes and Problems	393
4. A Comparison of the Admissibility of Other Acts Evidence in Civil and Criminal Cases	395
Notes	395
Chapter 15 Credibility Evidence: Bolstering and Impeaching	397
A. Introduction	397
B. The Evidentiary Status of Credibility Evidence	397
Problem and Note	398
C. Bolstering before Impeachment—Federal Rules 608(a) and 801(d)(1)(C)	399
Notes and Problems	402

D. Impeachment	403
1. The <i>How</i> Question: The Permissible Methods of Impeachment— FRE Article VI	403
Notes	405
2. The <i>Who</i> Question: The Permissible Targets for Impeachment— Federal Rules 607 and 611(c)(2)	406
Ronald Carlson, <i>A Student's Guide to Elements of Proof</i>	407
Notes and Problems	410
Chapter 16 Credibility: Impeachment Techniques	413
A. Attacks on Deficiencies in the Elements of Competency	413
1. Introduction	413
2. The Testimonial Quality of Sincerity	413
Notes and Problems	414
People v. Gard	416
Notes	417
United States v. Scheffer	418
Notes	420
3. The Testimonial Qualities of Perception, Memory, and Narration	421
Notes and Problems	422
Jack B. Weinstein & Margaret A. Berger, 3 Weinstein's Evidence ¶ 607[04]	423
Notes	425
People v. Zambrano	426
Notes	427
B. Prior Inconsistent Statements and Specific Contradiction	428
1. Prior Inconsistent Statements and Acts—Federal Rule 613	428
Alan E. Morrill, Trial Diplomacy § 4.29	429
Notes and Problems	430
a. Cross-Examination about a Prior Inconsistent Statement or Act— Federal Rule 613(a)	431
Jack B. Weinstein & Margaret A. Berger, 3 Weinstein's Evidence ¶ 607[06]	433
Notes and Problems	434
b. Extrinsic Evidence of a Prior Inconsistent Statement or Act— Federal Rule 613(b)	436
Mason Ladd, <i>Some Observations on Credibility: Impeachment of Witnesses</i>	437
Problem	438
Note and Problems	440
2. Specific Contradiction	441
Notes	442
C. Bias	442
1. Introduction	442

2. Bias Impeachment in General	443
Albert H. Hastorf & Hadley Cantril, <i>They Saw a Game: A Case Study</i>	443
Notes and Problems	444
<i>United States v. Abel</i>	445
Notes	446
3. The Two Stages of Bias Impeachment	446
a. Cross-Examination to Prove Bias	446
1) The Logical Relevance of Bias Impeachment Problems	446
2) The Legal Relevance of Bias Impeachment: Balancing Probative Value and Prejudice—Federal Rule 403	450
Notes and Problems	451
b. Extrinsic Evidence to Prove Bias	453
D. Proof of a Character Trait of Untruthfulness and Specific Untruthful Acts	454
1. Introduction	454
2. The General Permissibility of Introducing Evidence of the Character Trait of a Witness for Untruthfulness	454
a. Character Directly in Issue as an Ultimate Fact on the Historical Merits	454
b. Character as Circumstantial Evidence of a Fact on the Historical Facts of the Merits	455
c. Character as Circumstantial Evidence of Credibility	455
3. Specific Methods of Proving the Character Trait of a Witness for Untruthfulness	456
a. Reputation and Opinion Testimony	457
1) Direct Examination—Federal Rule 608(a)	457
Notes and Problems	458
2) Cross-Examination—Federal Rule 608(b)(2)	459
Notes and Problems	460
b. Specific Untruthful Acts (Which Have Not Resulted in a Conviction)—Federal Rule 608(b)	461
Notes and Problems	463
E. Conviction of a Crime—Federal Rule 609	466
1. An Overview of Impeachment by Proof of a Conviction	466
a. Logical Relevance	466
Problems	466
b. Legal Irrelevance: Prejudice	467
Note	468
2. Cross-Examination of a Witness about a Prior Conviction	468
a. The First Point of Controversy: The Types of Crimes	469
Notes and Problems	470
b. The Second Point of Controversy: The Judge’s Discretion to Exclude an Otherwise Admissible Conviction	473
Notes	474

Problems and Notes	477
Notes and Problems	478
3. Extrinsic Evidence of a Prior Conviction	480
Note	480
4. Waiving or Forfeiting Objections to Conviction Evidence	481
Notes	482
F. The Collateral Fact Rule	484
Notes and Problems	487
Chapter 17 Credibility: Rehabilitation	491
A. Introduction	491
B. The Use of Redirect Examination for Rehabilitation	491
Notes and Problems	492
C. Prior Consistent Statements—Federal Rule 801(d)(1)(B)	494
1. What Types of Impeachment Trigger the Admissibility of Prior Consistent Statements	494
Notes and Problems	495
2. Timing Requirements for Prior Consistent Statements	497
<i>Tome v. United States</i>	498
Notes and Problems	499
D. Corroboration	500
E. Proof of the Character Trait of a Witness for Truthfulness— Federal Rule 608(a)	501
Problems	502
F. Expert Testimony	503
Chapter 18 The Rule against Hearsay: The Admissibility of Out-of-Court Statements	507
A. The Reasons for the Hearsay Rule	507
B. The Definition of Hearsay	509
1. “An Assertion”—The Types of Statements Testable by Cross- Examination—Federal Rule 801(a)	510
<i>Wright v. Doe D. Tatham</i>	513
Notes and Problems	515
2. “Offered to Prove the Truth of the Assertion”—Federal Rule 801(c)(2)	516
a. Verbal Act or Legally Operative Language	517
b. Effect on the State of Mind of the Hearer or Reader—Mental Input	519
c. State of Mind of the Declarant—Mental Output	520
Notes and Problems	521
3. “By a Human Declarant”—Hearsay Issues versus Scientific Validity Problems—Federal Rule 801(b)	523
4. “By an Out-of-Court Declarant”—Satisfying the Need for Cross-Examination—Federal Rule 801(d)(1)	524
Notes and Problems	527

C. Conclusion	529
D. Hearsay Drill	530
Chapter 19 Hearsay: The Exemption for a Party’s Own Statements Offered against the Party	537
A. Introduction	537
B. Personal Statements or Admissions—Federal Rule 801(d)(2)(A) Notes and Problems	538 539
C. Adoptive Statements or Admissions—Federal Rule 801(d)(2)(B)	540
1. Affirmative Adoption	541
Problems	542
2. Negative Adoption—Tacit Admissions	543
Notes	544
<i>Doyle v. Ohio</i>	545
Notes and Problems	547
D. Vicarious Statements or Admissions	549
1. Civil Cases—Federal Rules 801(d)(2)(C)-(D) Notes and Problems	549 550
2. Criminal Cases—Federal Rule 801(d)(2)(E) Notes and Problems	553 555
<i>United States v. Santos</i>	558
<i>United States v. Yildiz</i>	559
Notes	560
Chapter 20 Hearsay: Exceptions That Do Not Require Proof of Unavailability	563
A. Introduction	563
B. Exceptions Derived from the Common Law “Res Gestae” Theory	564
1. The General “Res Gestae” Notion	564
2. Present Sense Impressions—Federal Rule 803(1) Problems	565 567
3. Excited or Startled Utterances—Federal Rule 803(2)	568
<i>United States v. Napier</i>	570
Notes and Problems	571
Problems	574
Robert M. Hutchins & Donald Slesinger, <i>Some Observations on the Law of Evidence</i>	576
Notes	577
4. Declarant’s State of Mind, Body, or Emotion—Federal Rule 803(3) Notes and Problems	580 582
<i>Mutual Life Insurance Co. v. Hillmon</i>	583
Notes and Problems	587
Problem	590

5. Statements Made for Medical Diagnosis or Treatment— Federal Rule 803(4)	590
<i>Meaney v. United States</i>	592
Note and Problems	594
C. Business Records and Public Records	596
1. Introduction	596
2. Business Records—Federal Rules 803(6) and (7)	596
Notes and Problems	599
<i>Johnson v. Lutz</i>	601
Note and Problems	603
<i>Palmer v. Hoffman</i>	605
Notes and Problems	607
3. Public Record—Federal Rules 803(8)-(10), 803(12), and 803(14)	608
<i>United States v. Oates</i>	611
Notes	615
Notes and Problems	619
D. Other 803 Exceptions	620
1. Learned Treatises—Federal Rule 803(18)	620
Notes and Problems	622
2. Recorded Recollection—Federal Rule 803(5)	624
a. Present Recollection Refreshed or Revived—Federal Rule 612	624
Notes	626
b. Past Recollection Recorded—Federal Rule 803(5)	626
Notes	628
Problem	629
Notes	630
E. Conclusion	631
 Chapter 21 Hearsay: Exceptions That Require Proof of Unavailability	 635
A. Introduction	635
B. Proof of the Declarant’s Unavailability—Federal Rule 804(a)	635
Problems	638
C. Exceptions Requiring Proof of Unavailability	638
1. Former or Prior Testimony—Federal Rule of Evidence 804(b)(1)	638
Problems	640
Notes and Problems	641
Note	643
<i>United States v. Salerno</i>	644
Notes	646
2. Dying Declarations—Federal Rule 804(b)(2)	648
Notes and Problems	649
3. Declarations against Interest—Federal Rule 804(b)(3)	650

<i>Williamson v. United States</i>	652
Notes	657
Notes and Problem	660
4. Forfeiture—Federal Rule 804(b)(6)	661
5. Depositions Otherwise Admissible under Federal Rule of Civil Procedure 32(a)	662
D. Conclusion	663
Chapter 22 The Future of the Rule against Hearsay: The Residual Exception	665
A. Introduction	665
B. Future Legislative Changes	666
1. Abolition of the Hearsay Exclusion	666
2. Recognition of New Categorical Hearsay Exceptions	669
Notes	670
3. Creating Broad Exceptions to the Hearsay Rule	671
Notes and Questions	673
Problems	678
Chapter 23 Opinion Evidence: Lay and Expert	679
Introduction	679
A. Lay Opinion Testimony—Federal Rule 701	680
1. The General Requirements for the Admission of Lay Opinion Testimony	680
a. Reliability—Federal Rule 701	680
<i>United States v. Garcia</i>	681
b. Necessity—Federal Rule 701(b)	685
Government of the Virgin Islands v. Knight	685
Notes	686
2. Specific Types of Admissible Lay Opinions	687
a. Collective Fact, Composite Fact, or Shorthand Rendition	
Lay Opinions	687
Problem	688
Problems	689
Problems	692
b. Skilled Lay Observer Testimony	693
Notes and Problems	695
c. Other “Lay” Opinion Testimony	696
3. Summary and Preview	698
B. Expert Opinion Testimony—Federal Rules 702–06	698
1. Introduction	698
Question and Note	701

a. The Educational or Teaching Witness	701
1) The Witness’s Qualification as an Expert—A Theoretician	701
Notes and Problems	702
2) The Validity of the Underlying Theory—Federal Rule 702(c)	704
Problem	704
3) The Validity of the Technique Implementing the Theory—	
Federal Rule 702(c)	705
b. The Reporting Witness	705
1) The Witness’s Qualifications as an Expert—A Technician	705
2) Proof That the Reporter Received the Object to be Tested—	
Federal Rule 901	706
3) Proof That Any Instrument Involved Was in Proper	
Working Order—Federal Rule 702(d)	706
Problem	707
4) Proof That the Proper Test Procedures Were Used—	
Federal Rule 702(d)	707
Notes	709
5) Statement of the Test Result	710
c. The Interpreting or Evaluating Witness	710
1) The Qualifications to Interpret the Test Result	710
2) The Test Result—Federal Rule 703	711
Note	713
Notes and Problem	714
3) The Interpretive Standard Used to Evaluate the Test Result	718
4) The Statement of the Ultimate Opinion	720
<i>United States v. Finley</i>	723
Notes	725
C. The Future of Expert Opinion Testimony	726
Notes and Questions	727
Chapter 24 The Best Evidence Rule: The Admissibility of Copies,	
 Summaries, Etc.	731
A. Introduction	731
B. What Is a “Document” for Purposes of the Best Evidence Rule?—	
Federal Rules 1001(a)–(c)	732
1. Writings	733
Note	733
2. Audio Recordings	734
3. Photographs	734
4. Inscribed Chattels	734
Notes and Problem	735
C. When Are the Document’s Terms “In Issue”?—Federal Rule 1002	736

1. When the Facts of Consequence Automatically Place the Document's Terms in Issue	736
Problems	737
2. When the Proffered Testimony Contains an Express or Implied Reference to the Contents of a Document	737
Notes and Problems	738
D. The Definitions of "Original" and "Duplicate"	739
1. The Definition of "Original"—Federal Rule 1001(d)	739
Note	740
2. The Definition of "Duplicate" or "Counterpart"—Federal Rules 1001(e) and 1003	740
Notes and Problems	741
E. Adequate Excuse for Nonproduction of the Original—Federal Rules 1004–07	743
Problem and Notes	746
Questions and Notes	748
F. If There Is an Adequate Excuse for Nonproduction, What Types of Secondary Evidence Are Admissible?—Federal Rules 1004–05, 1008	748
1. The Types of Secondary Evidence	749
2. The Degrees of Secondary Evidence	749
Notes and Problems	749
G. Conclusion	751

PART 4

ADMISSIBILITY RULES BASED ON SOCIAL POLICY

Chapter 25 Privilege: A General Analytical Approach	755
A. Introduction	755
B. The Rationales for Privilege Protection	759
C. The Criteria for Determining Whether to Recognize a Privilege	760
Notes	760
D. An Analytical Outline—Federal Rule 501	762
1. To What Types of Proceedings Does the Privilege Apply?	762
2. Who Is the Holder of the Privilege?	763
a. The Original Holder	764
Notes	764
b. Successor Holders	765
c. Agents of the Privilege Holder	765
3. What Is the Nature of a Privilege?	766
a. The Right Personally to Refuse to Disclose the Privileged Information	766

b. The Right to Prevent a Third Party from Disclosing the Privileged Communication Problem	766 767
c. The Right to Prevent Trial Comment on the Invocation of the Privilege	768
4. What Type of Information Is Privileged?	768
a. A “Communication” Notes and Problem	768 769
b. A “Confidential” Communication Notes and Problems	770 771
c. Between “Properly Related Parties”	772
d. “Incident to the Relationship” Notes	773 773
5. Has There Been a Waiver of the Privilege?—Federal Rule 502	774
a. Whether There Has Been a Waiver Note and Problems	775 776
b. The Extent of the Waiver Note and Problems	779 779
6. Is There a Pertinent Special Exception to the Asserted Privilege?	781
7. Is the Privilege Absolute or Qualified?	782
Chapter 26 Privilege: Specialized Aspects	785
Introduction	785
A. The Attorney-Client Privilege	785
1. The Wisdom of Recognizing the Privilege Fred C. Zacharias, <i>Rethinking Confidentiality</i> Notes and Questions	786 787 789
2. The Holder of the Privilege <i>Swidler & Berlin v. United States</i> Notes and Questions	790 790 793
3. The Scope of the Privilege	794
a. Is the Client’s Revelation of His or Her Identity a Protected “Communication”?	794
b. Was the Communication Confidential?: Clients with Shared Legal Interests Notes	796 796
c. Did the Communication Occur between Properly Related Parties? <i>Upjohn Co. v. United States</i> Notes Problems	797 798 801 803
4. Special Exceptions to the Attorney-Client Privilege	803

<i>United States v. Zolin</i>	805
Notes	808
Problem	809
B. The Spousal Privileges and Other Confidential Family Communications	809
1. The Disqualification Power or “Testimonial” Privilege	809
<i>Trammel v. United States</i>	811
Notes	813
2. The Spousal Communications Privilege	814
a. The Types of Information Protected by the Spousal Communications Privilege	815
1) The Definition of “Confidential Communication”	815
<i>Blau v. United States</i>	815
Questions	816
Comment, <i>The Husband-Wife Privileges of Testimonial Non-Disclosure</i>	817
Notes and Problems	817
2) The Requirement that the Communication Occur Between Properly Related Parties	818
Notes and Problem	819
3) The Requirement that the Communication Be Incident to the Relationship	819
Problems	820
b. Special Exceptions to the Spousal Privilege	821
Problem	822
3. A Parent-Child Testimonial or Communications Privilege?	822
C. Medical Privilege: Physician, Psychotherapist, etc.	824
1. Overview	824
Notes and Problems	825
2. Specialized Aspects: The Psychotherapist Privilege	826
<i>Jaffee v. Redmond</i>	828
Notes	830
<i>United States v. Chase</i>	832
Notes	836
D. Government Secrets	836
1. Overview	836
2. The Major Topical Privilege for Military and State Secrets	837
<i>United States v. Reynolds</i>	837
Notes and Questions	839
3. Confidential Government Information	842
E. The Future of Privilege	845

Chapter 27 Compromise Negotiations in Civil and Criminal Cases	847
A. Introduction	847
B. Settlement Offers, Statements during Negotiations, and Surrounding Conduct in Civil Cases	849
1. The General Exclusionary Rule—Federal Rule 408	849
a. The Threshold Standing Question: Who May Invoke the Rule?	850
b. The Scope of the Exclusionary Rule	851
1) What Types of Claims Must the Negotiations Relate To?	851
2) Which Types of Bargaining Discussions Qualify as “Compromise” Negotiations?	852
Notes and Problem	852
3) Which Types of Statements Made during Compromise Negotiations Are Covered?	853
Notes and Problems	854
c. “Exceptions” to the Exclusionary Rule: The Permissible Uses of Covered Statements	855
Notes and Problem	856
2. Payments by the Potential Defendant to the Potential Plaintiff of Medical Expenses—Federal Rule 409	858
Questions	859
3. True Privileges for Statements Made during Settlement or Mediation	859
C. Statements Made during Criminal Plea Bargaining—Federal Rule 410	860
1. The Scope of the Exclusionary Rule	862
a. Pleas—Rules 410(a)(1)–(2)	862
Note	863
b. Statements Made During Plea Bargaining with a Prosecuting Attorney—Federal Rule 410(a)(4)	864
Notes and Problems	864
2. “Exceptions” to the Exclusionary Rule: The Permissible Uses of Covered Statements—Federal Rule 410(b)	867
Notes and Problem	867
3. Waiver	868
Chapter 28 Remedial Measures	871
A. Introduction-Federal Rule 407	871
B. The Threshold Standing Question: Who May Invoke the Rule	871
C. The Current Status of the Exclusionary Rule	873
1. The Scope of the Exclusionary Rule for “Subsequent Remedial Measures”	873
Notes	874
Notes and Problems	876

2. The “Exceptions” to the Exclusionary Rule: Permissible Uses of Subsequent Remedial Measures	878
a. Permissible Uses in General	878
Notes and Problems	879
b. The Specific Issue of the Use of Subsequent Remedial Measures in Strict Products Liability Actions	881
<i>Ault v. International Harvester Co.</i>	881
Notes	885
Chapter 29 Liability Insurance	887
A. The Rule Precluding Any Mention of Liability Insurance—Federal Rule 411	887
B. The Wisdom of the Exclusionary Rule	888
Henry Kalven, Jr., <i>The Jury, The Law, and The Personal Injury Damage Award</i>	888
Notes	889
<i>Ede v. Atrium South Ob-Gyn, Inc.</i>	889
Notes	892
C. The Threshold Standing Question: Who Can Invoke the Rule?	892
D. The “Exceptions” to the Rule: The Permissible Uses of Insurance Evidence	893
Notes and Problems	893
Note	896

PART 5
SUFFICIENCY OF THE EVIDENCE

Chapter 30 Burdens and Presumptions	899
Introduction	899
A. The Burdens of Pleading, Production, and Proof and Their Allocation	900
Fleming James, Jr., Geoffrey C. Hazard, Jr., & John Leubsdorf, Civil Procedure §7.16	901
Notes	902
B. Burdens and Presumptions in Civil Cases	903
1. Legal Sufficiency in Civil Cases: The Initial Burden of Production or Going Forward	903
a. In General	903
<i>Gathright-Dietrich v. Atlanta Landmarks, Inc.</i>	904
Notes	908
b. Presumptions—Federal Rule 301	911
<i>Lupyan v. Corinthian Colleges, Inc.</i>	915
Notes and Problems	919

2. Factual Sufficiency in Civil Cases: The Ultimate Burden of Persuasion	922
Note and Problem	925
Notes	926
Note	927
C. Special Rules for Criminal Cases	928
1. Legal Sufficiency in Criminal Cases: The Initial Burden of Production or Going Forward	928
a. What Standard Must the Prosecution Meet to Satisfy the Initial Burden? (Steps #1–2)	928
Notes and Problems	929
b. True Presumptions Operative against the Accused (Step #3)	930
Questions	934
<i>Sandstrom v. Montana</i>	934
Notes	938
c. May the Prosecution Ever Sustain Its Initial Burden of Production to the Point of Obtaining a Peremptory Ruling on an Essential Element of a Charged Offense? (Step #4)	939
2. Factual Sufficiency in Criminal Cases: The Ultimate Burden of Proof	940
a. The Measure of the Ultimate Burden: Proof Beyond a Reasonable Doubt	940
b. Allocation of the Ultimate Burden of Proof	941
<i>Patterson v. New York</i>	942
Notes and Problems	946
c. The Impact of the <i>Apprendi</i> Line of Authority	948

PART 6
CONSTITUTIONAL OVERRIDES TO
THE RULES OF EVIDENCE

Chapter 31 Constitutional Overrides: Confrontation, Compulsory Process, and Due Process	953
A. Introduction	953
The Trial of Sir Walter Raleigh	953
Note	955
B. Negative Overrides: Excluding Otherwise Admissible Evidence	955
<i>Crawford v. Washington</i>	958
Notes and Problem	965
<i>Michigan v. Bryant</i>	968
Notes and Problems	976

C. Affirmative Overrides: Admitting Otherwise Inadmissible Evidence	985
1. Criminal Cases	986
<i>Washington v. Texas</i>	986
Notes	989
<i>Chambers v. Mississippi</i>	990
Notes	997
<i>Davis v. Alaska</i>	998
Notes and Problems	1005
2. Civil Cases	1007
D. Conclusion	1008
Appendix Federal Rules of Evidence	1011
Index	1047

Table of Cases

- A.T. & T. Co., United States v., 560
Abel, United States v., 445, 656
Abraham v. BP America Production Co., 93
Access Now, Inc. v. South Florida Stadium Corp., 905
Acosta, People v., 687
Adams v. St. Francis Regional Medical Center, 1007
Adams v. State, 446
Adams, State v. (R.I. 2017), 604
Adams, State v. (Wash. 1969), 334
Adamski, People v., 1005
Addington v. Texas, 926
“Agent Orange” Prod. Liab. Litig., In re, 715
Agosto, In re, 823
Aguwa, United States v., 181
Ah Fat, People v., 503
Ahmed, United States v., 251
Aifang Ye, United States v., 551
Air Land Forwarders, Inc. v. United States, 616
Aircrash in Bali, Indonesia, In re, 877
Aitahmedlamara, Commonwealth v., 152
Al-Amin, State v., 471
Albergo, United States v., 244, 245
Albert, State v., 178
Alcalde, People v., 586
Alexander v. Smith & Nephew, P.L.C., 303, 702
Alexander, United States v. (6th Cir. 1964), 741
Alexander, United States v. (9th Cir. 1995), 478
Alexander, United States v. (D.C. Cir. 2003), 574
Alexis v. McDonald’s Restaurants of Massachusetts, 689
Alfieri v. Carmelite Nursing Home Inc., 875
Alford v. United States, 445, 509, 1004
Allen v. Allen, 37
Alleyne v. United States, 668, 949
Almanza, State v., 595
Almerfeddi v. Obama, 924
Alvarez v. Ercole, 533
Amahia, United States v., 462
Amalgamated Transit. Local 1309 v. Laidlaw Transit, 895
Amaral, United States v., 281
Amarin Plastics, Inc. v. Maryland Cup Corp., 526
Ambrosini v. Labarraque, 296
American Automative Accessories, Inc. v. Fishman, 661
American Bank of St. Paul v. T.D. Bank, N.A., 686, 687
American Chicle Co. v. United States, 674
American Cyanamid Co., United States v., 673
American Hosp. Ass’n v. N.L.R.B., 29
American Wrecking Corp. v. Secretary of Labor, 259, 260
Anderson v. City of New York, 619
Anderson, People v., 152
Andolschek, United States v., 841
Anello, United States v., 532
Angleton, United States v., 246, 250

- Antrim Pharm. LLC v. BioPharm, 304, 720
- Apex Mun. Fund v. N-Group Securities, 772
- Apollo Fuel Oil v. United States, 619
- Aponte-Rivera v. DHL Solutions (USA), Inc., 624
- Appeal of (See Name of Appellant)**
- Apprendi v. New Jersey, 668, 948
- Aranda v. City of McMinnville, 877
- Architects Collective v. Pucciano & English, Inc., 304
- Ares-Perez v. Caribe Physicians Plaza Group, 851
- Argo v. Blue Cross Blue Shield of Kan., Inc., 190
- Arias, United States v., 868
- Arizona Dept. of Law, Civil Rights Div. v. Asarco, 743
- Arthur, United States v., 638
- Artis v. Hitachi Zosen Clearing, Inc., 239
- Assembly of State of California v. United States Dept. of Commerce, 38
- Athridge v. Iglesias, 427
- Atlanta Channel, Inc. v. Solomon, 92
- Atmosphere Hospitality Mgmt. v. Shiba Investments, 853
- Atwell v. State, 400, 401
- Ault v. International Harvester Co., 881
- Auslander v. Helfand, 902
- Auzene v. Gulf Pub. Serv. Co., 393
- Aveson v. Kinnaird, 581
- Ayala, State v., 693
- Back v. Nestle USA, Inc., 552
- Bah, United States v., 460
- Bahena, United States v., 250
- Bahrani, United States ex rel., v. Conagra, Inc., 63
- Bailey v. Pitcher, 658
- Bailey, United States v. (10th Cir. 2003), 868
- Bailey, United States v. (3d Cir. 2016), 260
- Baines v. Walgreen Co., 510
- Baird v. Koerner, 795
- Baker v. State, 626
- Bakshinian, United States v., 540
- Baldwin County Welcome Ctr. v. Brown, 912
- Balfour, People v., 327
- Ball, United States v., 66
- Ballew v. State, 625
- Baltimore & O. R.R. v. Schultz, 686
- Bammerlin v. Navistar Int'l Transportation Corp., 722
- Banghart v. Origoverken, 259
- Bank Atlantic v. Paine Webber, Inc., 440
- Bank of New York Mellon v. Shone, 604
- Bankcard America, Inc. v. Universal Bancard Systems, Inc., 238, 239
- Banks, State v., 74
- Banks, United States v., 422
- Bankston, United States v., 534
- Baptist Memorial Hospital-Union County v. Johnson, 1008
- Barbati, United States v., 672
- Barber v. City of Chicago, 488
- Barber v. Page, 508, 638
- Barner, United States v., 465
- Barnes v. United States, 931
- Barnes, United States v., 330
- Barraford v. T & N Ltd., 642
- Barroteran v. Superior Court of Los Angeles County, 643, 647
- Barry v. Manglass, 876
- Bartholomew v. Unum Life Ins. Co. of America, 510
- Bartley, United States v., 702
- Battle v. Delo, 265
- Baugh ex rel. Baugh v. Cuprum, 238, 277
- Bautista, People v., 472
- Baynes, People v., 416
- Bayview Loan Serving v. Shadow Springs Community, 221

- Beasley v. City of Granite City, 646
Beasley, United States v., 414
Becker v. ARCO Chemical Co., 462
Beech Aircraft Corp. v. Rainey, 80, 291,
292, 618
Beechum, United States v., 374
Beecroft, United States v., 205
Behler v. Hanlon, 430
Bell, State v., 283
Bemis v. Edwards, 567
Bendix Autolite Corp. v. Midwesco
Enterprises, Inc., 330
Benitez, United States v., 265
Bennefield v. State, 630
Bennett, United States v., 733
Benniefield, People v., 867
Benson, United States v., 557
Bercier, United States v., 595
Berger v. California, 994
Bergner v. State, 257
Berky, State v., 259
Berman v. State, 399, 427
Best, United States v., 587
Bianchi v. Florists Mut. Ins. Co., 744
Biegas v. Quickway Carriers, Inc., 510
Bigpond v. State, 106
Billstrom, State v., 385
Bixler, United States v., 153
Blachard, United States v., 228
Black, Commonwealth v., 449
Black, State v., 362
Blackburn v. United Parcel Service,
Inc., 552
Blackwell, United States v., 356
Blake v. Clein, 177
Blake, United States v., 537
Blakely v. Washington, 948
Blankenship, United States v., 493
Blanks v. Waste Management of Arkan-
sas, Inc., 519
Blassingame, United States v., 942
Blau v. United States, 812, 815
Blevins, United States v., 335
Blythe v. Sears, Roebuck & Co., 880
Bobo, People v., 1006
Boehmer v. LeBoeuf, 628
Boler v. State, 572
Bolstridge v. Central Me. Power Co.,
331
Bolton v. Tesoro Petr. Corp., 359
Boltz, United States v., 864
Bonds, United States v., 550
Bonilla v. Jaronczyk, 462
Bonner, In re Will of, 589
Booker, United States v., 668, 949
Boomsma v. Star Transp., Inc., 476
Boothe v. Wheeling Police Officer
Sherman, 524
Boren v. Sable, 550
Borrelli, State v., 504
Bosch, United States v., 940
Boston, State v., 669
Botvin, Estate of, v. Islamic Republic
of Iran, 510
Bourjaily v. United States, 112, 291, 292,
550, 656, 962
Bout, United States v., 228
Bower v. Processor & Chem. Serv.,
696
Bowers, United States v., 334
Bowley, People v., 258
Bowman v. General Motors Corp., 52
Boyce, United States v., 566, 676
Boyd v. Louisiana, 188
Boyer, United States v., 493
Boyette, People v., 1005
Bradshaw v. Vilsack, 919
Brainard v. Cotner, 894
Branch, United States v., 254
Brandt v. Vulcan, Inc., 432
Branzburg v. Hayes, 792
Brian C. v. Ginger K., 914
Bridges v. State, 175, 531
Bridges, United States v., 864
Britton v. Rogers, 388
Broadcast Music, Inc. v. Havana Ma-
drid Restaurant Corp., 405
Brookhart v. Janis, 1003

- Brookover v. Mary Hitchcock Mem. Hosp., 552
- Brooks, United States v., 747
- Brown v. Board of Educ., 36
- Brown v. Hyslop, 854
- Brown v. Philip Morris Inc., 675
- Brown v. State, 996
- Brown, State v. (N.J. 2007), 435
- Brown, State v. (Tenn. 1992), 684, 696
- Brown, United States v., 325
- Browne v. Signal Mountain Nursery, L.P., 464
- Browne, United States v., 215
- Brundidge v. City of Buffalo, 471
- Bruton v. United States, 58, 557
- Bryant, People v., 973, 974
- Buchanan, United States v., 254
- Bueno, United States v., 940
- Bullcoming v. New Mexico, 981, 982
- Bump, United States v., 770
- Bunting v. State, 687
- Burch, United States v., 868
- Burchfield v. CSX Transp. Inc., 335
- Burden, State v., 959
- Burkey v. Ellis, 560
- Burnett v. Caho, 338
- Burnett v. Collins, 245
- Burnette, State v., 573
- Burrall v. State, 150
- Burris v. American Chicle Co., 227
- Burt Rigid Box Inc. v. Travelers Property Cas., 675
- Burton, People v., 569
- Bush, United States v., 69
- Busic v. United States, 930
- Byrd, United States v., 819
- Byrnes, People v., 258
- Calderon, People v., 206
- Caldwell v. District Court, 807
- Calhoun v. Walmart Stores E., LP, 431
- California v. Green, 430, 639, 644, 965, 996
- California v. Trump, 647
- Camara, State v., 947
- Campbell v. Walt Disney Co., 39
- Campbell, People v., 283
- Campos v. Commonwealth, 595
- Campos, United States v., 420
- Campos, United States v., 724, 726
- Canan, United States v., 657
- Candoli, United States v., 661
- Cannon, State v., 233
- Capanelli, United States v., 253
- Cappuccio v. Prime Capital Funding LLC, 917
- Caprara v. Chrysler Corp., 884
- Carabbia, United States v., 66
- Cardenas-Hernandez, State v., 561
- Cardillo, United States v., 77
- Cardone, State v., 707
- Carella v. California, 939
- Carey, United States v., 85
- Cargill, Inc. v. Boag Cold Storage Warehouse, Inc., 628
- Carlos Cruz, United States v., 227, 228
- Carmichael, State v., 365
- Carol Barnhart Inc. v. Economy Cover Corp., 722
- Carrie Contractors, Inc. v. Blount Construction Group of Blount, Inc., 598
- Carroll v. Leboeuf, Lamb, Greene & Macrae, LLP, 741
- Carter v. Hewitt, 484, 485
- Carter v. State, 694
- Carter, State v., 803
- Caruolo v. John Crane, Inc., 621
- Caruthers, State v., 461
- Casamento, United States v., 639
- Caspermeyer v. Florsheim Shoe Store Co., 581
- Castillo, United States v., 442
- Castro, People v., 708
- Castro, United States v., 79
- Caudle, United States v., 89
- Cazares, United States v., 662
- Certain Complaints Under Investigation by an Investigating Comm. of

- Judicial Council of Eleventh Circuit,
In re, 837
- Certified Envtl. Servs., United States v.,
400
- CFTC v. Weintraub, 764, 765
- Chambers v. Mississippi, 409, 659, 990
- Chapple, State v., 284
- Charter v. Chleborad, 894
- Chase, United States v., 832
- Chaufy v. De Vries, 516
- Cherry v. Stockton, 894
- Chisler v. Johnson, 843
- Chlopek v. Federal Ins. Co., 876
- Choi v. Tower Research Capital LLC,
701
- Chorzelewski v. Druker, 704
- Churchill v. State, 260
- Ciampi v. City of Palo Alto, 199
- Ciarel v. Alderden, 522
- Cindy L., In re, 669
- City of (See Name of City)**
- Civic Center Drive Apts. Ltd. v. SW
Bell Video, 855
- Claar v. Burlington N.R.R., 296
- Clarett v. Roberts, 488
- Clark v. Arizona, 1006
- Clark v. Kellogg Co., 775
- Clark v. State, 262
- Clark v. United States, 806
- Clayton v. Volkswagenwerk A.G., 856
- Clevenstine, People v., 207
- Clifford, United States v., 573
- Cloverland-Green Spring v. Pennsylvania Milk, 517
- Coades, United States v., 386
- Coble v. State, 699
- Cochran, United States v., 385
- Cohen v. Jenkintown Cab. Co., 791, 793
- Colantuoni v. Alfred Calcagni & Sons,
Inc., 903
- Colasanto v. Life Ins. Co. of North
America, 582
- Coleman v. Amon, 848
- Coleman, United States v., 497
- Collicott, United States v., 79
- Collins v. Wayne Corp., 451
- Collins, People v., 306
- Colon v. Bic USA, Inc., 274
- Colon v. Rinaldi, 274
- Colon, Commonwealth v., 647, 660
- Colorado Cross Disability Coalition v.
Hermanson Family Ltd., 905
- Colorado Springs, City of, v. White,
844
- Columbia Gas Transmission LLC v.
Haas, 852
- Comer v. State, 525
- Commercial Union Ins. Co. v. Boston
Edison Co., 269
- Commonwealth v. (See Name of
Defendant)**
- Complaint of (See Name of Com-
plainant)**
- Computer Associates Intern. v.
American Fundware, 539
- Cone, United States v., 599
- Conneal, People v., 326
- Connecticut v. Johnson, 940
- Conner v. Seattle, R. & S. Ry. Co., 607
- Consolidated Litig. Concerning Int'l
Harvester's Disposition of Wis. Steel,
In re, 802
- Consolidation Coal Co., Complaint of,
880
- Cook v. State, 421
- Cook, United States v., 386
- Cooks, United States v., 447
- Cooley v. Lincoln Elec. Co., 926
- Coon, State v., 250, 251
- Cooper, United States v., 415
- Cordance Corp. v. Amazon.com, Inc.,
642
- Cordoba, United States v., 419
- Cornfield, In re, 553
- Cosby, Commonwealth v., 378
- Costco Wholesale Corp. v. Superior
Court, 808
- County Court v. Allen, 934, 936

- County of (See Name of County)**
 Coven, United States v., 534
 Cowley, United States v., 535
 Cowling, United States v., 488
 Cox v. State, 268
 Cox, United States v., 496
 Craft v. Wright, 538
 Craig v. State, 511
 Craig, United States v., 442, 465, 488
 Craigue, United States v., 520
 Crane v. Kentucky, 111
 Crawford v. State, 241
 Crawford v. Washington, 509, 557, 600, 958, 969, 970, 972
 Cretacci v. Hare, 477
 Crockett, United States v., 524
 Cronin v. J.B.E. Olson Corp., 882
 Crooks v. Harrelson, 808
 Crosby-Mississippi Resources, Ltd. v. Prosper Energy Corp., 927
 Crouch, United States v., 450
 Crowe v. Bolduc, 451
 Crowe v. Marchand, 263
 Cruzan v. Director, Missouri Dept. of Health, 927
 Cudlitz, United States v., 463
 Cummings v. Malone, 469
 Cummiskey v. Chandris, S.A., 572
 Cunningham, United States v., 320
 Curtin, United States v., 376
 Curtis v. Price Holdings, Inc., 880
 D. Ginsburg & Sons, Inc. v. Popkin, 474
 D'Amato, People v., 819
 Dallas County v. Commercial Union Assurance Co., 672
 Daniels v. Loizzo, 470
 Daniels v. State, 449
 Daubert v. Merrell Dow Pharms., Inc., 38, 173, 204, 251, 290, 295, 296, 303, 330, 504, 561, 656, 885
 Davis (6th Cir. 2007), United States v., 450
 Davis (6th Cir. 2007), United States v., 74
 Davis (7th Cir. 2016), United States v., 410
 Davis v. Alaska, 74, 406, 448, 467, 998
 Davis v. American Broadcasting Companies, Inc., 39
 Davis v. National Council of Negro Women, 860
 Davis v. Velez, 478
 Davis v. Washington, 509, 967, 968, 975, 976, 980
 Dawson, United States v., 465
 De La Torre, United States v., 398
 Deantoni, United States v., 865
 DeLeon, United States v. (4th Cir. 2012), 595
 Deleon, United States v. (D.N.M. 2019), 510
 DeLoach, United States v., 479
 Delozier v. Sirmons, 411
 Demjanjuk, United States v., 204
 Dempster v. Lamorak Ins. Co., 331
 Dennis J., In re, 343
 Dent, United States v., 674
 Desert Palace, Inc. v. Costa, 185
 Desimone, United States v., 428
 DeSisto College, Inc. v. Town of Howey-in-the-Hills, 471
 Dessinger, State v., 512
 DHS v. Dept. of Educ., Rehab. Services Admin., 646
 Di Carlo v. United States, 526
 Diaz, In re, 926
 Diaz-Casillas v. Doctors' Center San Juan, 331
 Diaz-Colon v. Toledo-Davila, 643
 Diaz-Morales v. Rubio-Paredes, 329
 DiBella v. County of Suffolk, 305
 Dice, People v., 487
 Digilio, United States v., 925
 Dimambro Northend Associates v. Williams, 702
 DiNapoli, United States v., 647
 Dionisio, United States v., 245
 DiPaolo, United States v., 422

- Director, Office of Workers' Comp. Programs v. Greenwich Collieries, 922
- Dirring v. United States, 380
- Diversified Industries, Inc. v. Meredith, 780
- Dixon v. Pfister, 523
- Dixon v. United States, 948
- DiZenzo, United States v., 385
- Dobbins v. Crain Bros., 894
- Dockery v. Dockery, 206
- Dodds, United States v., 335
- Doe v. Diamond, 1005
- Doe v. Friendfinder Network, Inc., 744
- Doe, In re, 823
- Doe, People v., 824
- Dolan v. State, 272
- Donie State Bank v. Knight, 37
- Donnelly v. Southern Pac. Co. 882
- Dorsey, United States v., 323
- Doster, State v., 791
- Douglas v. Alabama, 1002, 1003
- Douglass v. Eaton Corp., 180
- Dow, Lohnes & Albertson v. Presidential Comm'n on Broadcasting to Cuba, 843
- Downeast Ventures, LTD v. Washington County, 697
- Downing, United States v., 293, 294
- Doyle v. Ohio, 433, 545
- Draine, United States v., 725
- Draper v. United States, 522
- Draughn, State v., 401
- Drury, United States v., 499, 502
- Duckett v. Touhey, 771
- Duckworth v. State, 440
- Dudley, United States v., 267
- Duenas, People v., 268
- Duldulao, United States v., 726
- Dunmore, United States v., 941
- Dunn v. Hovic, 281
- Dunn v. OwensCorning Fiberglass, 86
- Dunson, United States v., 453, 471
- Dupree, United States v., 660
- Duran v. Merline, 875
- Duran, United States v., 245
- Durham, United States v. (10th Cir. 2008), 226
- Durham, United States v. (8th Cir. 2006), 409
- Durrani, United States v., 560, 619
- Dutton v. Evans, 555, 994, 996
- Eagleston v. Guido, 540
- Echo Acceptance Corp. v. Household Retail Serv., 518
- Eckman v. Moore, 274
- Eckmann v. Board of Educ., 774
- Ecological Rights Found. v. U.S. E.P.A., 731
- Ede v. Atrium South Ob-Gyn, Inc., 889
- Edwardo-Franco, United States v., 451
- Edwards v. State, 266
- EEOC v. Delta Air Lines, 36
- EEOC v. First Metro. Fin., 93
- EEOC v. MCI Intern., Inc., 181
- EEOC v. Staffmark Investment, LLC, 552
- Eichel v. New York Cent. R. Co., 320
- Ekco Group, Inc. v. Travelers Indem. Co. of Ill., 875
- El-Amin, United States ex rel., v. George Washington Univ., 731, 751
- Elder, United States v., 555
- Ellicott v. Pearl, 498, 499
- Ellis v. United States, 409
- Emami v. Bolden, 330
- English, United States v., 62
- EPA v. Mink, 844
- Equitable Life Assur. Soc'y v. Starr, 740
- Erickson, People v., 459
- Erie, In re County of, 775
- Escobar, United States v., 535
- Esser v. Commonwealth, 571
- Estate of (See Name of Deceased)**
- Estelle v. McGuire, 382
- Estrada, United States v., 472
- Ethyl Corp. v. U.S.E.P.A., 844
- Evans v. Verdini, 410

- Evans, United States v., 607
Ex parte (See Name of Party)
Exposito v. SDB Investments, Inc.,
880
Fadayini, United States v., 265
Fagan, United States v., 737
Faigin v. Signature Group Holdings,
Inc., 389
Fairchild v. All American Check Cash-
ing, Inc., 552
Fairchild, United States v., 547
Falcone v. Internal Revenue Serv., 843,
844
Families for Freedom v. U.S. Customs
and Border, 769
Farley, United States v., 844
Farnsworth Cannon, Inc. v. Grimes,
841
Farrell, People v., 963
Farris v. Interstate Circuit, 282
Faulkner, United States v., 625
Favors v. State, 260
FBI v. Fazaga, 841
FDIC v. Jeff Miller Stables, 471
Federated Mut. Ins. Co. v. Williams
Trull Co., 658
Feingold v. Graff, 221
Feldman, United States v., 41
Felix v. Wis. Dep't Transp., 519
Fendi Adele v. Burlington Coat Factory
Warehouse, 630
Fendley, United States v., 100, 101
Fenje v. Feld, 519
Ferguson v. Graddy, 858
Fields v. State, 422
Figures v. Bd. of Public Utilities, 620
Finan, State v., 694
Finley, State v., 449
Finley, United States v., 723
Firemen's Fund Ins. Co. v. Thien, 415
Firlotte v. Jessee, 389
Fisher v. United States, 769, 805
Flanagan, People v., 555
Fleschner, United States v., 493
Fletcher v. Weir, 547
Flom, United States v., 604
Flores, United States v. (2d Cir. 2019),
529
Flores, United States v. (6th Cir. 2012),
53
Flowers-Carter v. Braun Corp., 646,
647
Fluellen v. State, 493
Foalima, People v., 637
Folb v. Motion Picture Indus. Pension
& Health Plans, 756
Ford v. Hopkins, 732
Ford v. Schmidt, 875
Fornash v. Marshall, 948
Forshey v. Gober, 926
Fost v. Superior Court, 427
Foster v. State, 998
Foster, People v., 427
Foster, United States v., 520
Fowler v. Schweitzer, 263
Fowler, United States v., 520
Fox, State v., 865
Francis v. Franklin, 939
Franco, United States v., 255
Frank v. Tomlinson, 794
Franklin Nat'l Bank Securities Litig.,
In re, 844
Franklin v. State, 350
Frazier, United States v., 496
Fred Harvey Corp. v. Mateas, 519
Freeland v. Financial Recovery Ser-
vices, Inc., 927
Freeman v. State, 355
Freeman, State v., 240
Freidus v. First National Bank, 252
French v. City of Springfield, 336
Frey, State v., 465
Frezzell, United States v., 153
Fryberg, United States v., 609
Frye v. CSX Transp., Inc., 876
Frye v. United States, 282, 285
FTC v. National Business Consultants,
Inc., 902

- FTC v. Ross, 541
Fuentes v. T. Griffin, 446
Fujii, United States v., 204
Funk v. United States, 445, 811
Furlong v. Circle Line Statue of Liberty Ferry, Inc., 422
G.E.G. v. State, 735
GAF Corp., United States v., 559, 561
Gagnon v. Pronovost, 672
Gaillard v. Jim's Water Service, Inc., 462
Gainey, United States v., 932
Galloway, United States v., 365
Gamerdinger v. Schaefer, 369
Gann v. Oltesvig, 370
Garcia, People v. (Cal. 2005), 337
Garcia, People v. (N.Y. Sup. Ct. 2013), 228
Garcia, United States v., 681
Gard, People v., 416
Gardiner, United States v., 421
Gardner, People v., 532
Garland v. State, 561
Gathright-Dietrich v. Atlanta Landmarks, Inc., 904
Gauche v. Ford Motor Co., 876
Gault, In re, 1004
Gauthier v. AMF, Inc., 885
Gavic, United States v., 734
Geders, United States v., 864, 866
General Aggregate Corp. v. Labrayere, 696
General Electric v. Joiner, 297
Genova, United States v., 908
George v. Howard Constr. Co., 896
George, United States v., 594
Gerber v. Computer Associates Intern., Inc., 331
Gettys, State v., 441
Giannini, State v., 533
Giant Eagle, Inc. v. Federal Ins. Co., 900
Gibson v. Moskowitz, 469
Gigliotti v. United Illuminating Co., 628
Gilbert v. United States, 447
Giles v. California, 662, 977
Gill v. Arab Bank, PLC, 651
Gilliland, United States v., 350
Gillock, United States v., 758, 837
Gilmore, State v., 512
Gilmore, United States v., 442
Ginsberg, United States v., 510
Ginsburg v. City of Ithaca, 879
Gissantaner, United States v., 709
Glaspie, United States v., 866
Glass, United States v., 833
Goddard, United States ex rel., v. Vaughn, 948
Goldbach, People v., 803
Goldman, United States v., 483
Gonzales, People v., 150
Gonzalez-Perez v. Gomez-Aguila, 338
Goodman, United States v., 695
Goodyear Tire & Rubber Co. v. Chiles Power Supply, Inc., 859
Gordon v. United States, 446
Gortarez, State v., 249
Gould, People v., 929
Government of the (See Name of Government)
Grady, United States v., 610
Graftenreed v. Seabaugh, 263
Graham v. City of New York, 331
Grand Jury Investigation, In re, 772
Grand Jury Proceedings, In re, 772
Grand Jury Subpoena (Koecher), In re, 814
Grand Jury Subpoena: Under Seal, In re, 797
Grand Lake Drive-In v. Superior Court, 803
Granviel v. Estelle, 803
Gravel v. United States, 837
Graves, United States v., 574
Gray, United States v. (8th Cir. 1976), 258

- Gray, United States v. (D. Mont. 1986), 930
- Green v. Bock Laundry Mach. Co., 473
- Green v. Georgia, 998
- Green, United States v. (11th Cir. 1994), 245
- Green, United States v. (3d Cir. 2009), 566
- Greene v. McElroy, 1003
- Greene, United States v., 83
- Greenman v. Yuba Power Products, Inc. 882
- Grenada Steel Indus. v. Alabama Oxygen Co., 880
- Griffin v. California, 21, 544, 768
- Grogan v. Garner, 924
- Gross v. Burggraf Constr. Co., 688
- Grunewald v. United States, 554, 555
- Guerrero v. Meadows, 331
- Guild v. General Motors Corp., 620
- Guimond v. Vill. of Keeseville, 879
- Gulf States Utils. Co. v. Ecodyne Corp., 330
- Gust v. Jones, 687
- Gutierrez, State v., 761, 815, 824, 830, 846
- Guzman v. Memorial Hermann Hosp. System, 738
- Guzman, People v., 895
- Guzzino, United States v., 692
- Haas v. Zaccaria, 721
- Hadges v. New York Rapid Transit Corporation, 883
- Hadley v. Kellogg Sales Co., 39
- Hafner v. Brown, 450
- Haines v. Mensen, 927
- Haire, United States v., 253
- Hairston v. Washington Metropolitan Area Transit Auth., 620
- Haldeman, United States v., 377
- Hale, United States v., 544, 547
- Hall v. C.I.A., 675
- Hall v. Flannery, 703
- Hall, State v., 503
- Hall, United States v., 725
- Hamilton v. Oppen, 260
- Hamilton, Estate of, v. City of New York, 875
- Hamilton, United States v. (10th Cir. 2005), 524
- Hamilton, United States v. (10th Cir. 2018), 646
- Hampton v. Dillard Dept. Stores, Inc., 465
- Han v. Whole Foods Market Group, Inc., 542
- Hanger v. United States, 499
- Hannigan, United States v., 916
- Hanover American Ins. Co. v. Tattooed Millionaire Ent., 331
- Hansen, United States v., 84
- Harden v. Hillman, 166
- Hardin v. Badlani, 178
- Hardison v. Balboa Ins. Co., 209
- Harley v. United States, 529
- Harlow, United States v., 400
- Harper v. State, 286
- Harper, United States v., 448
- Harris v. General Motors Corp., 908
- Harris v. New York, 546, 867
- Harris v. State, 660
- Harris v. Ward, 268
- Harris, United States v. (3d Cir. 2006), 428
- Harris, United States v. (U.S. 1971), 659, 996
- Harrison v. State, 534
- Hartranft v. Encore Capital Group, Inc., 919
- Hartt v. County of Los Angeles, 270
- Harvey v. General Motors Corp., 395
- Harvey, United States v., 485
- Hassan v. Williams, 875
- Hasting, United States v., 482
- Havens, United States v., 867
- Hawkins v. State, 428
- Hawkins v. United States, 811, 812
- Hawkins, People v., 492

- Hawkins, United States v., 746
 Hayden, State v., 270
 Hayes, United States v., 833
 Haynes v. State, 802
 Hearn v. Rhay, 775
 Hearst, United States v., 383
 Heatherly, United States v., 330
 Hellard v. Mid Century Ins. Co., 369
 Hellenic Lines, Ltd. v. Gulf Oil Corp., 548
 Helman v. Murray's Steaks, Inc., 780
 Hemphill v. New York, 977
 Henderson, State v., 607
 Henry v. City of Tallahassee, 746
 Herbert v. Lando, 756
 Hercules, Inc. v. Exxon Corp., 773
 Herman, United States v., 866
 Hernandez, United States v., 19
 Hernandez-Lara v. Lyons, 922
 Hickman, United States v., 65
 Higa, United States v., 486
 Higgins, State v., 469
 Hill v. F.R. Tripler & Co., Inc., 550
 Hill, State v., 659
 Hill, United States v., 68
 Hines v. Brandon Steel Decks, Inc., 619
 Hines, United States v., 380
 Hiss, United States v., 424, 458, 503
 HLC Properties, Ltd. v. Superior Court, 765
 Hodge & Zweig, United States v., 795
 Hodge, United States v., 422
 Hodges v. Keane, 458
 Hodges v. State, 469
 Hoffman v. United States, 838
 Hoffner, United States v., 693
 Hogan v. American Telephone & Telegraph Co., 253
 Hoker, United States v., 66
 Holland v. French, 880
 Holland v. United States, 183
 Holmes v. South Carolina, 1007
 Holmes v. Torguson, 438
 Holmes, State v., 235
 Holston, State v., 477
 Holsum de P.R., Inc. v. Compass Indus. Group LLC, 746
 Holton, United States v., 239
 Hood v. Knappton Corp., Inc., 920
 Hooker v. Graham, 519
 Horne v. State, 421
 Horowitz v. Peace Corps, 844
 Houston Oxygen Co. v. Davis, 567, 568
 Houston v. Sam P. Wallace & Co., 856
 Houston, State v., 227
 Howe v. Hull, 516
 Huddleston v. United States, 106, 384, 656
 Hudson v. Babilonia, 510
 Hughes v. Boston Scientific Corp., 877
 Hughes v. Matthews, 1006
 Humiston, People v., 427
 Hunter v. Shield, 217, 517
 Hunter v. State, 428, 585
 Huntingdon v. Crowley, 287
 Hurt v. State, 441
 Husayn aka Zubaydah, United States v., 840
 Hyppolite v. State, 249
 Idaho v. Wright, 669, 957, 965
 Ideal Farms, Inc. v. Benson, 615
 Illinois v. Allen, 63
In re (See Name of Matter or Party)
In re County of (See Name of County)
In re Will of (See Name of Deceased)
In the Matter of (See Name of Party or Matter)
 Iniguez v. The CBE Group, 38
 Innovation Ventures, LLC v. NVE, Inc., 477
 Insana, United States v., 440
Interest of (See Name of Party)
 International Management Associates, LLC, In re, 116
 Iowa Pacific Holdings, LLC v. National R.R. Passenger Corp., 599
 Ira Green, Inc. v. Military Sales & Service Co., 522, 599

- Irigaray Dairy v. Dairy Employees
Union Local No. 17, 518
- Iron Shell, United States v., 574, 596
- Ironridge Global IV, Ltd. v. S.E.C., 808
- Isaac v. United States, 940
- Isgar, United States v., 604
- Ismail, United States v., 823
- Itek Corp. v. First Nat'l Bank, 37
- Ivey, In re, 938
- J & A Mash & Barrel v. Superior Court,
517, 742
- J.P.B., Interest of, 262
- Jackson v. City of San Bernardino, 93
- Jackson v. E-Z GO Division of Textron,
Inc., 722
- Jackson v. Fletcher, 335, 336
- Jackson v. Norris, 449
- Jackson v. Virginia, 928
- Jackson, United States v. (2d Cir. 2003),
235, 647
- Jackson, United States v. (D. Kan.
1994), 465, 480
- Jaffee v. Redmond, 16, 758, 759, 761,
783, 792, 816, 823, 824, 825, 828, 830,
831, 832, 833, 845
- Jahn v. Equine Servs., PSC, 721
- Jalo, State v., 449, 1006
- James River Ins. Co. v. Rapid Funding,
L.L.C., 697
- James, United States v., 984
- Japanese Elec. Prods. Antitrust Litig.,
In re, 715
- JDT, United States v., 595
- Jenkins v. Anderson, 433, 547
- Jenkins v. McKeithen, 994
- Jennings, United States v., 574
- Jewell v. CSX Transp., Inc., 540
- Jianniney v. State, 510
- Jimenez, People v., 501
- Jin Fuey Moy v. United States, 811
- Jinadu, United States v., 541
- Johanesen, State v., 432
- John B. v. Goetz, 797
- John Doe Grand Jury Investigation, In
re, 765, 791
- John Hancock Mut. Life Ins. Co. v.
Dutton, 693
- Johns v. United States, 741
- Johnson v. Burkey-Kelly, 263
- Johnson v. City of Pleasanton, 619
- Johnson v. Ellis & Sons Iron Works,
Inc., 623
- Johnson v. Family Health Plan, 453
- Johnson v. Lutz, 601
- Johnson v. Penrod Drilling Co., 37
- Johnson v. State of Arizona, 880
- Johnson v. Village of Dolton, 539
- Johnson, People v. (Cal. 1968), 525
- Johnson, People v. (Cal. 2004), 941
- Johnson, State v. (La. 1980), 358
- Johnson, State v. (Utah 2022), 565
- Johnson, United States v. (7th Cir.
2006), 501
- Johnson, United States v. (8th Cir.
1989), 71
- Jonathan B., State v., 106
- Jones v. National American University,
199, 212
- Jones v. State (Ga. 1998), 411
- Jones v. State (Md. Ct. Spec. App. 1973),
532
- Jones v. State (Tex. App. 2003), 262
- Jones v. Superior Court, 803
- Jones, People v., 446
- Jones, United States v. (5th Cir. 2019),
985
- Jones, United States v. (6th Cir. 1997),
913
- Jones, United States v. (8th Cir. 2013),
465
- Jordan v. Binns, 537
- Jordan v. Jenkins, 893
- Joseph P. (In re Joy P.), State v., 770
- Joseph v. Lincare, Inc., 200
- Joyce, Commonwealth v., 449, 1009
- Joyner, State v., 476, 477
- Juarez, State v., 1005

- Judicial Watch v. Consumer Fin. Prot. Bureau, 844
- Kackley, State v., 399, 401
- Kaiser Aluminum & Chem. Corp. v. United States, 843
- Kalasho v. BMW of North America, LLC, 207
- Kallstrom v. City of Columbus, 510
- Kaminsky v. Hertz Corp., 910
- Kandiel, United States v., 227
- Kaquatosh, United States v., 529
- Karnes v. SCI Colorado Funeral Services, Inc., 395, 927
- Karnes, United States v., 53
- Katsougrakis, United States v., 512
- Kattar, United States v., 559
- Katz v. United States, 771
- Keck, United States v., 814
- Kelly, People v. (Cal. 1976), 249, 286, 288
- Kelly, People v. (Cal. 2007), 275
- Kelly v. Armstrong, 920
- Kelly, United States v., 639
- Kemper Architects v. McFall, Konkel & Kimball Consulting Engineers, Inc., 620
- Kemper, State ex rel., v. Vincent, 421
- Kennedy, People v., 496
- Kenrick, United States v., 78
- Keown v. Monks, 894
- Kerby, United States v., 697
- Kercheval v. United States, 862
- Kerr, United States v., 446
- Key Safety Systems, Inc. v. Bruner, 268
- Khan, United States v., 646
- Kies v. City of Lima, Ohio, 265
- King, United States v., 765
- Kinney, United States v., 384
- Kirk v. Raymark Industries, Inc., 550
- Kirk, People v., 734
- Kirk, United States v., 386
- Kizziar v. State, 497
- Klever v. Elliott, 548
- Klocke v. Watson, 159
- Knight v. Miami-Dade Cnty., 471
- Kohli, United States v., 488
- Koresko v. United States, 550
- Kostovetsky v. Ambit Energy Holdings, LLC, 912
- Kovel, United States v., 802
- Kozlov, Matter of, 795
- Kraemer v. Franklin and Marshall College, 853
- Krilich, United States v., 868
- Krulewitch v. United States, 554
- Kubini, United States v., 495
- Kuhs v. Superior Court, 463
- Kumho Tire Co. v. Carmichael, 298
- Kupau, United States v., 190
- KW Plastics v. U.S. Can Co., 511
- L.E. v. Lakeland Joint School Dist. #272, 879
- Laborers' International, of N. Am., Loc. 578 v. NLRB, 918
- Lafferty, State v., 945
- Lafler v. Cooper, 847, 861
- Lam Muk Chiu, United States v., 204, 205
- Lamons, United States v., 524
- Lanham, United States v., 66
- Lanier v. State, 377
- Lapage, State v., 380
- Larochelle, State v., 613
- Lattin, United States v., 425
- Lavictor, United States v., 410
- Law, People v., 249
- Lawson, United States v., 406
- Lawton, State v., 686
- Layne Christensen v. Bro-Tech Corp., 855
- Leal, United States v., 220
- Leary v. United States, 931, 932, 933
- Lebron v. Secretary of Fla. Dep't of Children & Families, 623
- Ledford, United States v., 572
- Lee v. E I Dupont De Nemours & Co., 879
- Lee v. Illinois, 654

- Lee v. Small, 329
Lee, United States v., 374, 377
Lefebvre v. Remington Arms Company, LLC, 303
Legg v. Chopra, 703
Leidig v. State, 983, 984
Leight, United States v., 741
Leon Guerrero, United States v., 865
Leon v. Fedex Ground Package System, Inc., 574
Leonard, United States v., 422
Levendos v. Stern Entertainment Co., 903
Levin v. United States, 369, 371, 372
Lewis, People v., 422
Liddy, United States v., 66
Liebman, United States v., 795
Liera-Morales, United States v., 79
Liggett v. People, 428
Lighting Lube, Inc. v. Witco Corp., 697
Lilly v. Virginia, 658, 962, 963
Linde v. Arab Bank, PLC, 746
Lindsey v. State, 572
Lindsey, State v., 719
Lippay v. Christos, 560
Lira v. Albert Einstein Medical Center, 573
Liteky v. United States, 69
Little, Commonwealth v., 482
Livanovitch v. Livanovitch, 924
Livingston, United States v., 531
Llera Plaza, United States v., 301
Lloyd, United States v., 865
Lockley, People v., 985
Lompe v. Sunridge Partners, LLC, 877
Long, People v., 334
Loper v. Beto, 469
Lopez v. State, 227
Lopez-Medina, United States v., 446
Lord v. Moore, 597
Loreley Fin. (Jersey) No. 3 v. Wells Fargo Sec., 925
Love, People v., 822
Loyd, State v., 451
Lozado, United States v., 652
Lubbock Mfg. Co. v. Perez, 856
Lubell, United States v., 660
Lucas v. Jerusalem Café, 326
Luce v. United States, 481
Lucero v. Holland, 557
Lucier, State v., 256
Luck v. United States, 473
Lueders v. Arp, 851
Lukashov, United States v., 595
Lund, People v., 87
Lupyan v. Corinthian Colleges, Inc., 915
Lutwak v. United States, 554, 818
Ly v. State, 535
Lyondell Chemical Co. v. Occidental Chemical Corp., 851
Lyons Partnership v. Giannoulas, 902
Macuba v. DeBoer, 538
Macumber, State v., 791, 793
Madril, United States v., 227
Magallanez, United States v., 400
Maggard, United States v., 329
Maggipinto v. Reichman, 623, 630
Magnan, United States v., 574
Mahaney ex rel. Estate of Kyle v. Novartis Pharma., 875
Maher v. City of Chicago, 552
Mahon, United States v., 493
Maivia, United States v., 249
Makuc v. American Honda Motor Co., 568
Malek v. Federal Ins. Co., 63, 414
Malfitano, Appeal of, 814
Mallay, United States v., 561
Malloy v. Hogan, 21
Mancusi v. Stubbs, 638
Mancuso v. Olivarez, 151
Mandel, United States v., 355
Maniego, United States v., 403
Mapp v. Ohio, 21, 92
Marcato v. United States Agency for Int'l Dev., 925
Marek, Ex parte, 544
Marinelarena v. Sessions, 922

- Marino, *United States v.*, 332
- Marks, *United States v.* (6th Cir. 2000), 865
- Marks, *United States v.* (7th Cir. 1987), 436
- Marquam Invest. Corp., *In re*, 37, 38
- Marsh, *Commonwealth v.*, 625
- Martel v. Mass. Bay Transp. Auth., 877
- Martin v. Norfolk Southern Railway Co., 874
- Martin v. Ohio, 946, 947
- Martin v. P.H. Hanes Knitting Co., 592
- Martin v. Reynolds Metal Corp., 612
- Martin v. Social Sec. Administration, Com'r, 647
- Martin, *State v.*, 436
- Martinez v. Wainwright, 361
- Martinez, *United States v.* (5th Cir. 1976), 867
- Martinez, *United States v.* (6th Cir. 1992), 56
- Maryland v. Craig, 670
- Masat, *United States v.*, 726
- Massachusetts Bonding & Ins. Co. v. Norwich Pharmacal Co., 606
- Massachusetts Mut. Life Ins. Co. v. DLJ Mortg. Capital, Inc., 851
- Master-Halco, Inc. v. Scillia, Dowling & Natarelli, 852
- Mastropetre, *State v.*, 363
- Mathis, *United States v.*, 673
- Mattco Forge, Inc. v. Arthur Young & Co., 926
- Matter of (See Name of Party)**
- Mattox v. *United States*, 961, 962, 994
- Maurer v. Minnesota, 693
- Maxwell v. *State*, 260
- Mayberry v. Indiana, 791
- Mayberry, *People v.*, 940
- Mayor, etc., of New York City v. Second Ave. R. Co., 602
- Mays v. *State*, 259
- McAlinney v. Marion Merrell Dow, Inc., 252
- McCabe v. Parker, 84
- McCasland v. ProGuard Coatings, Inc., 721
- McClellan, *United States v.*, 556
- McColgin, *United States v.*, 66
- McCormick v. Brevig, 254
- McCoy v. Augusta Fiberglass Coatings, Inc., 79
- McCoy, *People v.*, 183
- McCrary-El v. Shaw, 190
- McDermott v. Party City Corp., 394
- McDonald, *People v.*, 287
- McFall, *United States v.*, 647
- McGee v. *State*, 468
- McGrew v. Pearlman, 92
- McHenry v. *State*, 259, 264
- McHugh, *People v.*, 268
- McInerney, *State v.*, 636
- McInnis v. Fairfield Communities, Inc., 499
- McIntosh v. *State*, 259
- McKeon, *United States v.*, 556
- McKeown v. Woods Hole, 737
- McLaughlin v. Lunde Truck Sales, Inc., 777
- McLean v. *United States*, 363
- McLennan, *United States v.*, 534
- McMillan, *United States v.*, 253
- McQueen v. Napel, 414
- McVeigh, *United States v.*, 342
- Meacham, *United States v.*, 352
- Meaney v. *United States*, 592
- Medic Alert Foundation U.S., Inc. v. Corel Corp., 520
- Medico, *United States v.*, 678
- Mejia, *United States v.*, 228
- Melendez-Diaz v. Massachusetts, 600, 617, 980
- Meling, *United States v.*, 693
- Melton, *United States v.*, 533
- Mendiola, *United States v.*, 694
- Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Flanders-Borden, 687
- Merritt, *State v.*, 600

- Messian, *United States v.*, 419
Metzger, *United States v.*, 616
Mezzanatto, *United States v.*, 868
Miami Beach, City of, *v. Wolfe*, 883
Michaels, *State v.*, 983
Michelson *v. United States*, 344, 379
Michigan *v. Bryant*, 968
Michiotto *v. Hobby Lobby Stores, Inc.*, 875
Microsoft Corp. *v. i4i Ltd. Partnership*, 926
Milkiewicz, *United States v.*, 747
Millard, *United States v.*, 866
Millenium Partners, L.P. *v. Colmar Storage, LLC*, 872
Miller *v. Crown Amusements, Inc.*, 567, 568
Miller *v. District Court*, 802
Miller *v. State*, 670
Miller *v. Transamerican Press, Inc.*, 756
Miller *v. United States*, 56, 544
Miller, *Ex parte*, 361
Miller, *People v.*, 502
Miller, *State v.*, 627
Miller, *United States ex rel.*, *v. Bill Harbert International Construction, Inc.*, 326
Miller, *United States v.*, 465
Mills, *People v.*, 277
Milwaukee Electric Tool Corp. *v. Snap-On Inc.*, 65
Minnesota *v. Loss*, 379
Miranda *v. Arizona*, 544
Mitchell *v. United States*, 768
Mitchell, *United States v.*, 468
Mobil Exploration *v. Cajun Const. Services*, 369
Mobile Materials, Inc., *United States v.*, 411
Modern Air Conditioning, Inc. *v. Cinderella Homes, Inc.*, 927
Modjewski, *United States v.*, 69
Mohamed *v. Jeppesen Dataplan, Inc.*, 841
Molinos Valle del Cibao, C. Por A. *v. Lama*, 852
Monsalvatge, *United States v.*, 275
Montague *v. State*, 326
Montague, *United States v.*, 500
Montana *v. Egelhoff*, 946, 1006
Montas, *United States v.*, 64
Montes, *People v.*, 260
Montgomery *v. State*, 480
Montoya *v. Sheldon*, 451
Moore, *State v.*, 144
Moore, *United States v.*, 209
Morales, *United States v.*, 724
Moran, *United States v.*, 78
Moreta *v. First Transit of PR, Inc.*, 857
Morgan *v. Florida*, 150
Morgan *v. State*, 365
Morgan, *United States v.*, 559, 561
Morissette *v. United States*, 936, 937
Morris *v. Cain*, 791
Morrison *v. Ocean State Jobbers, Inc.*, 390
Morrison, *State v.*, 250
Morse, *People v.*, 366
Moschale *v. Mock*, 737
Mosley, *In re*, 690
Moss *v. Ole South Real Estate, Inc.*, 619
Moss *v. State*, 239
Motta, *State v.*, 531
Mound, *United States v.*, 353
MSP Recovery Claims *v. American National Property*, 510
Muehlhauser *v. Erickson*, 689
Mulholland *v. DEC Int'l Corp.*, 703
Mullaney *v. Wilbur*, 932, 938, 941, 943, 945
Multi-Piece Rims Prods. Liability Litig., *In re*, 619
Mundo-Violante *v. Kerry*, 207
Murzyn, *United States v.*, 323
Musgrave, *United States v.*, 446
Mutual Life Insurance Co. *v. Hillmon*, 583
Myers, *United States v.*, 376

- Myrick v. United States, 741
Napier, United States v., 570
Natale, United States v., 195
National Western Life v. Merrill, Lynch,
Pierce, 675
Nationwide Mut. Fire Ins. Co. v. Ford
Motor Co., 69
Nautilus Motor Tanker Co., Ltd.,
In the Matter of, 439
Nava, State v., 630
Neal, United States v., 263
Needleman v. Golden 1 Credit Union,
733
Negron v. Caleb Brett U.S.A., Inc.,
737
Negron, State v., 451
Neighbors, United States v., 245
Nelson v. City of Chicago, 442
Nelson, People v., 317
Nesbitt, State v., 281
Nevada v. Jackson, 365, 463
Nevis v. Rideout Mem'l Hosp., 469, 478
New England Life Ins. Co. v. Anderson,
641
New Jersey Turnpike Authority v. PPG
Industries, 642, 855
New Jersey v. Portash, 482
New York, C. & St. L. R.R v. Kovatch,
572
Newman v. United States, 450
Newsome v. Penske Truck Leasing
Corp., 398
Nguyen v. IBP, Inc., 927
Nicholas v. Pennsylvania State Univ.,
462
Nicholas v. State, 479
Nichols v. McCoy, 232
Nickl, United States v., 163
Nival, People v., 401
Nixon, United States v. (11th Cir. 1990),
255
Nixon, United States v. (1974), 113, 792,
842, 843
NLRB v. Federal Dairy Co., 626
Noble v. Kertz & Sons Feed & Fuel Co.,
337, 338
Nobrega v. Commonwealth, 152
Noe, United States v., 493
Noriega, People v., 74
Norman, United States v., 254, 255
North Dakota v. United States, 770
Northern Pacific R.E. v. Urlin, 593
Novick v. Shipcom Wireless, Inc., 877
Nunes v. Duffy, 848
O'Brien v. Ed Donnelly Enterprises,
Inc., 736
O'Bryan v. State, 355
O'Dell v. Hercules, Inc., 877
O'Toole v. Northrop Grumman Corp.,
39
Oakie, United States v., 510
Oates, United States v., 611
Obergefell v. Hodges, 819
Offill, United States v., 304
Ohio v. Clark, 670, 676, 979
Ohio v. Roberts, 644, 956, 957, 959, 962,
964, 965, 969
Ohlendorf v. Feinstein, 539, 540
Ohler v. United States, 483
Ojo v. Farmers Group, Inc., 557
Okoronkwo, United States v., 908
Old Chief v. United States, 322
Olden v. Kentucky, 366, 448
Oliveira v. Jacobson, 894
Oliver, In re, 994
Oliver, United States v. (8th Cir. 1974),
355
Oliver, United States v. (8th Cir. 2021)
524
Olsen v. Stark Homes, Inc., 610
One Feather, United States v., 365
Onyx Films LLC v. Koch, 858
Oppenheimer Fund, Inc. v. Sanders,
179
Option Resource Group v. Chambers
Development Company, Inc., 855
Opus 3 Ltd. v. Heritage Park, Inc., 63
Orantes-Hernandez v. Smith, 37

- Oregon v. Hass, 546
 Orlandez-Gamboa, United States v., 867
 Orlando-Figueroa, United States v., 476
 Orr v. Bank of America, 663
 Ortiz v. Principi, 924
 Ortiz, United States v., 483
 OTR Wheel Engineering v. West Worldwide Services, 926
 Overton v. State, 227
 Owens, United States v. (C.M.A. 1985), 464
 Owens, United States v. (1988), 406, 656, 966
 Owens-El, United States v., 188
 Pagerie, United States v., 227
 Paige v. Safeway, Inc., 621
 Paladine, State v., 227
 Paldo Sign & Display v. Wagener Equities, Inc., 462
 Palisades Collection, L.L.C. v. Graubard, 39
 Palmer v. Hoffman, 445, 605
 Palmer, People v., 287
 Palmer, State v., 688
 Panzer v. Verde Energy USA, Inc., 919
 Paoli R.R. Yard PCB Litig., In re, 715
 Pappadiakis, People v., 541
 Pappas v. Middle Earth Condominium Ass'n, 551
 Parento v. Palumbo, 896
 Paresky v. United States, 647
 Parker, United States v. (10th Cir. 2009), 460
 Parker, United States v. (9th Cir. 1977), 374
 Parris, State v., 492
 Parsons v. Velasquez, 550
 Pasley, United States v., 265
 Patrick v. South Cent. Bell Tel. Co., 876
 Patrick, People v., 93
 Patten, United States v., 742
 Patterson v. Caterpillar, Inc., 824
 Patterson v. New York, 938, 942
 Patterson v. State, 497
 Patterson, United States v., 629
 Payne v. Payne, 589
 Payne, United States v. (6th Cir. 2006), 493
 Payne, United States v. (9th Cir. 1991), 497
 Peake, United States v., 554
 Peals v. Terre Haute Police Dept., 52
 Peckham v. Cont'l Cas. Ins. Co., 305
 Peete, People v., 379
 Peña-Rodriguez v. Colorado, 166, 1005
 Penguin Books U.S.A. Inc. v. New Christian Church of Full Endeavor, Ltd., 254
 Pennsylvania v. Serge, 268
People v. (See Name of Defendant)
 Pereira v. United States, 810, 818
 Perez, People v., 385
 Perez, State v., 533
 Perez, United States v., 399
 Perez-Franco, United States v., 866
 Perez-Ruiz, United States v., 493
 Perkins v. United States, 824
 Perry v. Parker, 672
 Perryman v. H&R Trucking, Inc., 478
 Perzinski v. Chevron Chemical Co., 854
 Pescatore v. Pan American World Airways, Inc., 64
 Petree v. Victor Fluid Power, Inc., 874
 Phaknikone, United States v., 376
 Pheaster, United States v., 586, 587
 Philadelphia, City of, v. Westinghouse Electric Corp., 798
 Philips v. Neil, 599
 Phoenix Mut. Life Ins. Co. v. Adams, 568
 Photias v. Graham, 394
 Picciandra, United States v., 616, 821
 Pickard, United States v., 539
 Piedmont and Arlington Life-Ins. Co. v. Ewing, 918
 Pierce, United States v., 694

- Pineda v. Ford Motor Co., 702
Pintado-Isiordia, United States v., 610
Pippin v. Commonwealth, 650
Pirwani, People v., 676
Pivot Point International, Inc. v. Charlene Products, Inc., 723
Plate v. State, 770
Podzelewski, People v., 791
Pointer v. Texas, 639, 956, 994, 1002
Polecat Motors. Carlisle v. Deere & Co., 550
Popenas, United States v., 673
Porges, United States v., 399
Portugues-Santana v. Rekomdiv Intern., 851
Posado, United States v., 419
Posey, United States v., 866
Postell v. State, 415
Powers v. Temple, 572
Pratt, State v., 803
Preciado, United States v., 647
Precision Piping & Instruments, Inc. v. E.I. du Pont de Nemours & Co., 550
Prentiss & Carlisle Co. v. Koehring-Waterous Div. of Timberjack, Inc., 877, 885
Prewitt, United States v., 868
Price v. Trans Union, L.L.C., 855
Prime, United States v., 204
Pristine Jewelers NY, Inc. v. Broner, 926
Pritchett v. Steinker Trucking Co., 32
Proctor & Gamble Co. v. Bankers Trust Co., 816
Prudential Ins. Co. of America v. Sagers, 518
Pruett, United States v., 472
Pulliam, United States v., 511, 512
Pursley, United States v., 571
Queen's Univ. at Kingston, In re, 758
Quercia v. United States, 66
Quigley v. Travelers Property Cas. Ins. Co., 539
Quinto, United States v., 497
R.L.G. v. State, 524
Rahm, United States v., 724
Ramirez v. Bolster & Jeffries Health Care Corp., 640
Ramos, United States v., 400
Ramsey, United States v., 597, 598
Randolph v. Collectramatic, Inc., 692
Rathbun v. Brancatella, 628
Raullerson v. People, 227
Ray, United States v., 409
R-BOC Representatives, Inc. v. Mine- myer, 435
Rea, United States v., 695
Read, United States v., 948
Redman v. State, 734
Redman v. Watch Tower Bible and Tract Society, 414
Redmond v. Yachting Solutions, LLC, 745
Reed v. Lieurance, 425, 503, 504
Reep v. United States, 555
Regents of the University of California, In re, 796
Reichenbach v. Smith, 848
Reid, United States v., 988
Reilly, United States v., 227
Reliance Steel & Aluminum Co. v. Sevick, 326
Rembert, United States v., 265
Renda v. King, 403, 501, 502
Renzi v. Paredes, 263
Resolution Trust Corp. v. Diamond, 773
Rex v. Woodcock, 648
Reynolds, United States v., 837
Rhode Island v. Innis, 961
Rhone, State v., 600
Ride, Inc. v. APS Technology, Inc., 854
Riggi, United States v., 493
Riley, United States v., 552
Rivera, United States v., 574
Rivera-Izquierdo, United States v., 428
Rivers v. United States, 675
Roach, United States v., 265
Roberts, State v., 936

- Roberts, United States v., 385
Robertson, United States v. (5th Cir. 1978), 864
Robertson, United States v. (C.M.A. 1994), 465
Robinson v. California, 345
Robinson v. Commonwealth, 234
Robinson v. Missouri Pacific R. Co., 267
Robinson v. Shell Oil Co., 463
Robinson, United States v., 447
Rock v. Arkansas, 150, 997
Rocky Mountain Helicopters v. Bell Helicopters, 877
Rodrigues, People v., 543
Rodriguez v. State, 206
Rodriguez, United States v. (1st Cir. 1976), 610
Rodriguez, United States v. (D.N.M. 2015), 725
Rodriguez-Felix, United States v., 284
Rodriguez-Garcia, State v., 414
Rodriguez-Hernandez v. Miranda-Velez, 367
Rogers v. State of Ala. Dept. of Mental Health, 690
Rogers, State v., 574
Romani v. State, 116
Romano v. Howarth, 603
Romano, United States v., 932
Roosa v. Boston Loan Co., 593
Rosa v. Taser Intern., Inc., 875
Rosado-Perez, United States v., 748
Rose v. Brown & Williamson Tobacco Corp., 176
Rosen v. United States, 988
Rosenthal v. Walker, 916, 918
Ross v. State, 265
Rotec Industries, Inc. v. Mitsubishi Corp., 675
Roviaro v. United States, 842
Rowe, State v., 332
Rowell, State v., 228
Roy v. State, 266
Rubalcava Gonzales, United States v., 539
Rubicon Global Ventures v. Chongqing Zongshen GRP, 927
Rudzinski v. Warner, 549
Ruiz v. Gap, Inc., 39
Ruiz-Castro, United States v., 479
Rutherford, State v., 544
S.B. Penick & Co., United States v., 231
Saada, United States v., 479
Safety Nat. Cas. Corp. v. United States Dept. of Homeland Sec., 277
Salameh, United States v., 529
Saldana, State v., 504
Salem v. United States Lines Co., 282
Salerno, United States v., 559, 561, 644
Salim, United States v., 639
Salinas v. Texas, 547
Samaniego v. State, 234
Samet, United States v., 693, 695
Samia v. United States, 58
Sampol, United States v., 414
Sampson, United States v., 335
San Antonio Traction Co. v. Cox, 390
San Francisco v. Superior Court, 803
Sanchez, People v., 522, 717, 983
Sanchez, United States v., 419
Sandini, State v., 767
Sandstrom v. Montana, 934
Santa Clara, County of, v. Trump, 39
Santana Gonzalez v. Att’y Gen., 916
Santarelli, In re, 823
Santiago, United States v. (9th Cir. 1995), 403
Santiago, United States v. (D. Colo. 2016), 336
Santilli v. Otis Elevator Co., 872
Santobello v. New York, 847
Santos, United States v., 541, 558
Sargent v. Massachusetts Accident Co., 909
Sarkisian, United States v., 493
Satterfield, State v., 532
Satterfield, United States v., 652

- Sauget v. Johnston, 741
- Savage v. Sutherland Global Services, Inc., 922
- Scarborough, United States v., 255
- Schand, Commonwealth v., 449
- Scheffer, United States v., 150, 418, 998, 1006
- Schenet v. Anderson, 772
- Schleigh, State v., 381
- Schmidt v. City of Bella Villa, 260
- Schnapp, United States v., 438
- Schuetz, State v., 256
- Schultz v. Butcher, 330
- Scott v. City of Chicago, 331
- Scott v. Sears, Roebuck & Co., 281
- Scott, People v., 989
- Sealed Case, In re, 756
- Sears, United States v., 190, 929
- SEC v. Espuelas, 686
- SEC v. Jasper, 647
- SEC v. Nacchio, 510
- Seese, Commonwealth v., 719
- Segines, United States v., 255
- Seiber, United States v., 767
- Seibert v. City of San Jose, 436
- Seidman v. Fishburne-Hudgins Educ. Found., Inc., 764
- Seifert v. Winter, 39
- Seifert, United States v., 270
- Seiler v. Lucasfilm, Ltd., 733
- SEIU Nat. Industry Pension Fund v. Rosen Realty, 745
- September 11 Litigation, In re, 658
- Sepulveda, United States v. (1st Cir. 1993), 61
- Sepulveda, United States v. (S.D.N.Y. 2023), 488
- Serge, Commonwealth v., 328
- Shabazz v. Scurr, 837
- Shaffer v. Honeywell, Inc., 884, 885
- Shatz v. TEC Technical Adhesives, 873
- Sheffey, United States v., 692
- Sheffield v. State, 659
- Shelly, State v., 477
- Sheng v. M&T Bank Corporation, 852
- Shepard v. United States, 340, 445
- Shinners v. K-Mart Corp., 573
- Shipman v. State, 462
- Shirley, People v., 146, 150
- Shukh v. Seagate Tech., LLC, 797
- Silva, State v., 430
- Silverstein v. Chase, 658
- Silvey v. State, 495
- Simmons, State v., 231
- Sims v. Hyatte, 151
- Sims, United States v., 657
- Sinclair, State v., 984
- Singer, People v., 498, 499
- Singer, United States v., 230
- Slater v. State, 462
- Slatten, United States v., 676
- Sluis v. Ethicon, Inc., 919
- Smallwood, State v., 866
- Smart v. City of Miami, 510
- Smith v. Illinois, 74, 406, 1003
- Smith v. Rapid Transit, Inc., 909
- Smith v. Secrist, 921
- Smith v. Smith, 241
- Smith v. Southland Corp., 395
- Smith v. State (Tex. App. 1993), 524
- Smith v. State (Tex. Crim. App. 1983), 387
- Smith, People v., 266
- Smith, State v., 531
- Smith, United States v. (4th Cir. 2006), 554
- Smith, United States v. (4th Cir. 2009), 738
- Smith, United States v. (6th Cir. 1977), 66
- Smith, United States v. (7th Cir. 1989), 249, 294
- Smith, United States v. (9th Cir. 1990), 553
- Smith, United States v. (D.C. Cir. 1975), 613
- Smithers, United States v., 284
- Snyder v. Massachusetts, 337

- Soliman v. Gonzales, 321
 Solomon v. Miami Woman's Club, 37
 Sorge, People v., 461
 Soundingsides, United States v., 440
 Southern and Eastern Dist. Asbestos Litig., In re, 777
 Southern Calif. Edison Co., United States v., 38
 Spalding v. City of Chicago, 518
 Sparf v. United States, 109
 Spaulding, State v., 629
 Speers v. University of Akron, 464
 Spencer, United States v., 450
 Spriggs, People v., 659, 663
 Spriggs, United States v., 400
 Springer v. Reimers, 422
 Sprint/United Mgmt. Co. v. Mendelson, 394
 St. Clair v. United States, 408
 St. Mary's Honor Ctr. v. Hicks, 905, 920
 Stabl, United States v., 541
 Stagman v. Ryan, 552
 Standard Oil Co. v. Moore, 598
 Standefer v. United States, 326
 Stapleton, United States v., 411
 Stark v. Allis Chalmers & Northwest Rds. Inc., 393
 Starr, People v., 33
 Starski v. Kirzhnev, 218
 Starzeczyzel, United States v., 55, 204
 State Auto Property v. Sigismondi Foreign Car, 925
State ex rel. (See Name of Relator)
State v. (See Name of Defendant)
 Stearns, United States v., 259
 Stecyk v. Bell Helicopter Textron, Inc., 880
 Steele, People v., 488
 Steele, United States v., 567
 Stein v. Bowman, 811
 Stephens v. Miller, 461
 Stephens, United States v., 746
 Stepney, United States v., 796
 Sternhagen v. Dow Co., 675
 Stevens v. Provitt, 259
 Stevenson v. Commonwealth, 532
 Stewart v. Mut. of Omaha Ins. Co., 260
 Stoll, People v., 356
 Stone, United States v., 254, 255
 Stowers, State v., 719
 Straughn v. State, 266
 Street, United States v., 469
 Stuart v. Alabama, 984
 Suarez Corp. Industries v. Earthwise Technologies, 520
 Sullivan v. Minneapolis, St. Paul & S.S.M. Railroad, 338
 Sunset Bay Associates, In re, 550
 Supermarket of Marlinton v. Meadow Gold Dairies, 642
 Swanigan v. Trotter, 522
 Swanson, State v., 484
 Swidler & Berlin v. United States, 759, 765, 783, 790, 845
 Swinton v. Potomac Corporation, 880
 Tanner v. United States, 165
 Tanner, People v., 861
 Tarasoff v. Regents of Univ. of Cal., 833
 Tatum v. Commonwealth, 524
 Tax Analysts v. I.R.S., 895
 Taylor v. Director, 504
 Taylor v. Shields, 463
 Taylor, People v., 416, 503
 Teleglobe Communications Corp., In re, 797
 Tennenbaum v. Deloitte & Touche, 758
 Tennessee v. Street, 531
 Texas Dept. of Community Affairs v. Burdine, 920
 Thakore v. Universal Machine Co. of Pottstown, Inc., 874
 Thomas v. Astrue, 234
 Thomas, Commonwealth v., 230
 Thompson v. City of Chicago, 328
 Thompson, United States v. (7th Cir. 2002), 662
 Thompson, United States v. (D. Nev. 2022), 425

- Thornton v. Vonallmon, 450
 Tinen v. Lederer, 266
 Tipton v. Socony Mobil Oil Co., 320
 Tobin v. Leland, 451
 Toledo v. State, 241
 Tome v. United States, 495, 498, 528, 560
 Toombs v. Manning, 395
 Torres v. Rock & River Food Inc., 875
 Tot v. United States, 930, 931, 932, 933
 Totten v. United States, 837
 Trammel v. United States, 811, 819
 Transbay Auto Service, Inc. v. Chevron USA Inc., 541
 Transclean Corp. v. Bridgewood Services, Inc., 227
 Transportes Aereos Pegaso v. Bell Helicopters, 517
 Trent, United States v., 244
 Trigones v. Bissonette, 644
 Trump v. Mazars, 763
 Tunstall v. Manning, 703
 Turner v. United States, 931, 932, 933
 Turner, State v., 659
 Turner, United States v. (7th Cir. 2010), 233
 Turner, United States v. (E.D. Mich. 1978), 652
 Tveraas v. Coffey, 619
 Tyler Group Partners, LLC v. Madera, 853
 U.S. Fish & Wildlife Service v. Sierra Club, Inc., 843
 Ueland v. United States, 663
 Uforma/Shelby Business Forms, Inc. v. NLRB, 857
 U-Haul Int'l, Inc. v. Lumbermens Mut. Cas. Co., 213
 Ulster County Ct. v. Allen, 931, 934
 United States Bank Trust, N.A. v. Verhagen, 518
United States ex rel. (See Name of Relator)
 United States Gypsum, United States v., 937
United States v. (See Name of Defendant)
 University of Pennsylvania v. EEOC, 877
 Unmack v. Deaconess Medical Center, 463
 Upjohn Co. v. United States, 764, 770, 792, 793, 798
 Usery v. Turner Elkhorn Mining Co., 920
 Valadez-Lara v. Barr, 919
 Valencia, United States v., 556
 Valenzuela, People v., 929
 Vallabhapurapu v. First Nat'l Bank of Chicago, 519
 Vallejo, United States v., 725
 Valley Housing LP v. City of Derby, 924
 Vander Missen v. Kellogg-Citizens Nat'l Bank, 875
 Vargas, State v., 867
 Vargas, United States v., 572
 Veamatahau, People v., 704
 Vee Vinhnee, In re, 209
 Vega v. Colorado, 448
 Velez, United States v., 868
 Venegas, People v., 708
 Vera v. Alstom Power, Inc., 857
 Verdoorn, United States v., 861, 868
 Victaulic Co. v. Tieman, 39
 Vincent v. State, 493
 Vineyard House v. Constellation Brands U.S. Ops., 926
 Virgin Islands, Government of the, v. Grant, 356
 Virgin Islands, Government of the, v. Knight, 685
 Virgin Islands, Government of the, v. Petersen, 414
 Visser v. Packer Engineering Associates, Inc., 689
 Visual Scene, Inc. v. Pilkington Bros., plc, 796

- Vitrano, United States v., 253
Vockie v. General Motors Corp.,
 Chevrolet Div., 877
Vogt v. State Farm Life Ins. Co., 746
von Bulow v. von Bulow, 771
von Bulow, In re, 778
Vosburgh v. Thayer, 601
Wade, United States v., 926
Wadsworth, State v., 370
Wahl v. Commonwealth, 591
Waldemer, United States v., 938
Walden v. Georgia-Pacific Corp., 93
Walder v. United States, 546
Waldron, United States v., 377
Walker v. Larson, 629
Walker v. State, 227, 234
Walker, State v., 532
Wallace v. Jaffree, 414
Wallace, United States v., 428
Walls, State v., 540
Waran v. Christie's, Inc., 925
Ward, United States v., 141
Warger v. Shauer, 165
Warren, United States v., 560
Warshak, United States v., 767
Washburn v. Beatt Equipment Co., 335
Washington St. Physicians Ins. v. Fisons
 Corp., 369
Washington v. Texas, 986, 996
Watkins, People v., 821
Watkins, United States v., 440
Weatherly v. Miskle, 453
Webb v. CSX Transp., Inc., 268
Webb, United States v., 356, 385
Weber v. Chicago, R.I. & P. Ry., 659
Webster, Commonwealth v., 941
Webster, United States v., 534
Wegman-Fakunle v. State, 260
Weil v. Citizens Telecom Services
 Company, LLC, 552
Weis v. Weis, 598
Weiss, United States v., 453
Weitzel v. State, 435
Werner v. Upjohn Co., 880
Wesley, People v., 471
West, People v., 861
Westberry v. State, 649
Westbrook, United States v., 180
Westwood v. State, 227
Wetherill v. University of Chicago, 609
Whalen v. Roe, 824
Wharton, United States v., 936
Wheatley, People v., 502
Wheeler v. John Deere Co., 702
Wheeler v. United States, 141, 447
White Owl, United States v., 822
White v. Illinois, 594, 669, 961
White v. Old Dominion S.S. Co., 854
White v. Wireman, 875
White, Ex parte, 687
Whitesell Corp. v. Whirlpool Corp., 510
Whitfield v. State, 257
Whittington, United States v., 154
Whorton v. Bockting, 966
Wild v. NBC Universal, Inc., 38
Willco Kuwait Trading S.A.K. v.
 deSavary, 598
Williams v. Employers Mut. Cas. Co.,
 37
Williams v. Illinois, 522, 982
Williams, State v. (Me. 1978), 250
Williams, State v. (Neb. 1979), 333
Williams, State v. (Ohio 1983), 250
Williams, United States v. (11th Cir.
 2008), 245
Williams, United States v. (2d Cir.
 1978), 249
Williams, United States v. (8th Cir.
 1974), 941
Williams, United States v. (N.D. Cal.
 2019), 709
Williamson v. United States, 652
Williamson, United States v., 554
Wills, United States v., 565
Wilson v. City of Des Moines, 365
Wilson v. Flack, 702
Wilson v. Groaning, 476, 478
Wilson v. State, 257

- Wilson v. Union P.R.R. Co., 476
Wilson v. Vermont Castings, 351
Wilson, United States v., 192
Winant v. Bostic, 693
Winship, In re, 113, 928, 931, 936, 937,
940, 944
Wireco Worldgroup, Inc. v. Liberty
Mut. Fire Ins. Co., 647
Wisinski v. State, 459
Wolfe v. United States, 815, 816
Wong Sun v. United States, 522, 767
Wood, Estate of, v. Commissioner, 916
Wood, People v., 414
Wood, United States v. (10th Cir. 2007),
440
Wood, United States v. (9th Cir. 1991),
238
Woodard v. State, 402
Woodland Joint U. School Dist. v.
Comm'n, 30
Woods v. United States, 400
Woods, United States v., 379
World Boxing Council v. Cosell, 875
Wright v. Doe D. Tatham, 513
Wright v. State, 234
Wright-Simmons v. City of Oklahoma
City, 541
Yakovov, United States v., 616
Yamin, United States v., 735
Yarbrough, United States v., 422
Yarbrough, People v., 416
Yarbrough, United States v., 351
Yildiz, United States v., 559
York, State v., 287
Young, United States v. (6th Cir, 2017),
691
Young, United States v. (D.N.M. 2019),
326
Young, United States v. (N.D. Iowa
1999), 869
Zambrano, People v., 426
Zang v. Financial Services of Illinois,
Ltd., 159
Zannino, United States v., 674
Zeigler v. Fisher-Price, Inc., 62, 539
Zemo v. State, 522
Zenith Radio Corp. v. United States,
775
Zima, State v., 69
Zizzo, United States v., 153, 561
Zola v. Kelley, 484
Zolin, United States v., 805
Zurich American Life Ins. Co. v. Nagel,
857

Preface to the Ninth Edition

This edition continues to emphasize the themes of expert testimony, scientific evidence, and statutory construction in the law of evidence. It also retains an interdisciplinary approach, referencing social science and psychology research where relevant to particular evidentiary doctrines. In addition, we hope that students and professors alike will appreciate a more concise, streamlined approach throughout the text.

The seventh edition came on the heels of the publication of the NAS report, *STRENGTHENING FORENSIC SCIENCE IN THE UNITED STATES: A PATH FORWARD* (2009). Numerous courts cited that report as a basis for either excluding flawed expert testimony or at least restricting the definiteness of the expert's final opinion. Similarly, the eighth edition went to press shortly after the President's Council of Advisors on Science and Technology's 2016 report, *FORENSIC SCIENCE IN CRIMINAL COURTS: ENSURING SCIENTIFIC VALIDITY OF FEATURE-COMPARISON METHODS* (2016). That report was highly critical of such forensic disciplines as forensic odontology, firearms identification, and hair analysis. The reports were released at the same time that the Supreme Court and lower courts were scrutinizing the application of the Sixth Amendment Confrontation Clause to forensic reports. This coursebook frequently cites to *GIANNELLI ET AL., SCIENTIFIC EVIDENCE*. The sixth edition of that treatise was released in 2020. As we are writing this Preface, more amendments to Federal Rule of Evidence 702 are pending. From the release of our first edition, the intersection of science, evidence, and the Constitution has been one of the principal foci of this text. We shall continue to monitor developments at that intersection in future editions and supplements.

Another major focus of this text has been "legisprudence," notably statutory construction. The seventh edition coincided with the 2011 "restyling" of the Federal Rules of Evidence. To be sure, each new rule was accompanied by an Advisory Committee Note asserting that "[t]here is no intent to change any result in any ruling on evidence admissibility." However, particularly given the textualist approach that many judges take to statutory interpretation, it was probably inevitable that the restyling would have unintended substantive consequences. We are now beginning to see the impact of the Rules' revised wording. Moreover, since the release of the seventh edition, several rules, including Rules 801 and 902, have been amended. More amendments are scheduled to take effect in December 2023 and still others in late 2024. Together with the restyling, those amendments confirm the student's need to develop skill in statutory interpretation.

Finally, like the eighth edition, this edition contains a number of changes to the format of the text from prior editions. To tighten organization, we have merged some chapters. In addition, Carolina Academic Press has kindly allowed us to revert to our previous, preferred practice of having a pocket part supplement of the Federal Rules. That should make it easier for students to readily consult the text of relevant rules while reading the coursebook.

The seventh edition went to press after the departure of two coauthors, Edward (Ted) Kionka and Kristine Strachan. The eighth edition was completed shortly after the death of a third coauthor, Erica Beecher-Monas. We dedicated that edition to the memory of Erica, who had volunteered to serve as its general editor. The loss of her leadership, insight, and enthusiasm made the preparation of that edition a genuine challenge. Sadly, as we began preparations for this edition, our longtime coauthor, Julie Seaman, decided to transition back to practice. Professor Seaman not only substantially revised a large number of chapters; she also served as the General Editor for our seventh edition. We owe Professor Kionka, Dean Strachan, and Professor Seaman a huge debt for their enormous contributions to earlier editions. Ted was one of the original coauthors, and he was the primary author of the excellent, comprehensive teachers' manual that has accompanied this coursebook since its inception. For several editions, Kristine provided the impetus to shorten and simplify the text, forcing us to make tough coverage choices. Julie found the time to serve as General Editor for recent editions. We hope that Erica, Ted, Kristine, and Julie would be pleased with this new edition, since in large part it still reflects their invaluable contributions.

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