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**Commission on
State Mandates**

County of San Diego

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August 14, 2020

Via Drop Box

Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

RE: Interested Party County of San Diego’s Comments on Proposed Decision

Accomplice Liability for Felony Murder, 19-TC-02
Penal Code Sections 188, 189, and 1170.95; Statutes 2018, Chapter 1015 (SB 1437)

Dear Ms. Halsey:

The County of San Diego (the “County”) respectfully requests the Commission reconsider the conclusion in its proposed decision that Section 1170.95 of the Penal Code (“Section 1170.95”) falls within the exception set forth in Section 17556(g) of the Government Code (“Section 17556(g)”). Section 1170.95 does not eliminate a crime. Section 1170.95 simply creates a post-conviction petition procedure.

Section 1170.95 does not Eliminate a Crime

Section 1170.95 does not eliminate the crime of murder. Section 1170.95 does not define the crime of murder. Indeed, Section 1170.95 has absolutely no substantive impact on the crime of murder. It simply creates a procedural mechanism for a person previously convicted of murder to challenge their conviction.

Section 1170.95 is found in Part 2 of the Penal Code, which is entitled “Of Criminal Procedure,” instead of Part 1, entitled “Of Crimes and Punishments.” This indicates Section 1170.95 sets forth a procedure, not a substantive crime.¹ Section

¹ See Decision in *Youth Offender Parole Hearings*, 17-TC-29, at 53 (noting that a statute fell within Part 3 of the Penal Code (“Of Imprisonment and the Death Penalty”) and not Part 2 (“Of Criminal Procedure”) and finding that fact persuasive as to whether the statute related to procedure or penalties).

1170.95 is purely a procedural device, not a substantive change in the existence of a crime.²

The Commission's proposed decision holds that the amendments to Sections 188 and 189 of the Penal Code "changed the elements of the crime of murder." (Proposed Decision at 26-27.)³ But Section 1170.95 should be analyzed separately from Sections

² Nor does the statute "change[] the penalty for a crime," another exception set forth Section 17556(g). In order to change the penalty for a crime, a crime must have been committed in the first place. Section 1170.95 provides a methodology to vacate a sentence based on the assumption that the crime of murder was not even committed. "The effect of a successful petition under section 1170.95 is to vacate the judgment...as if no judgment had ever been rendered." *People v. Superior Court (Gooden)*, 42 Cal. App. 5th 270, 286, (2019), *review denied* (Feb. 19, 2020) (internal quotation marks and citations omitted); *see also People v. Nash*, -- Cal. Rptr. 3d --, 2020 WL 4461245, at *12 (Cal. Ct. App. Aug. 3, 2020). ("[S]ection 1170.95 does not provide for resentencing a defendant who stands convicted of murder, but for resentencing a defendant whose murder conviction has been vacated based on a change to the offense of murder.")

³ The County respectfully disagrees with this conclusion as well and submits that Sections 188 and 189 also did not eliminate a crime. Those sections merely changed a **theory of liability** for the crime of murder. The crime of murder still exists. *See, e.g., People v. Chun*, 45 Cal. 4th 1172, 1184 (2009) (explaining the felony-murder rule is a **theory** of malice that supports a conviction for the crime of murder); *People v. Chiu*, 59 Cal. 4th 155, 166 (2014) (natural and probable consequences is a **theory of liability** for the crime of murder).

Indeed, in order to convict a defendant of the crime of murder, a jury need not reach a unanimous decision as to the defendant's theory of liability for the crime of murder—it must only agree that the defendant is liable for the crime of murder. *See People v. Quiroz*, 215 Cal. App. 4th 65, 74 (2013) ("[W]e have also held that a jury need not agree on the legal theory underlying a single murder charge. This rule applies whether the choice is between premeditated murder and felony-murder theories, or between direct liability and aiding and abetting liability theories") (internal citations omitted); *People v. Jenkins*, 22 Cal. 4th 900, 1024–25, *as modified* (June 28, 2000) ("It is settled that as long as each juror is convinced beyond a reasonable doubt that defendant is guilty of murder as that offense is defined by statute, it need not decide unanimously by which theory he is guilty.")

However, the Commission need not necessarily reach this question because the test claim seeks reimbursement for the increased costs incurred due to the resentencing petition process, which is found only in Section 1170.95. (Test Claim at 5 (test claim statute "requires the County to provide representation, prosecution, and housing to petitioners who file a resentencing petition under the subject law."))

188 and 189. Test claims seek reimbursement for “increased costs which a local agency...is required to incur...as a result of **any statute**...which mandates a new program or higher level of service...” Cal. Gov’t Code § 17514. Section 1170.95 is a separate statute enacted by SB 1437, and thus in this test claim, the Commission should independently consider the specific issue of whether Section 1170.95 eliminated a crime.

Indeed, in the Commission’s proposed decision, the Commission initially analyzed Sections 188 and 189 distinctly from Section 1170.95, finding that Sections 188 and 189 are not a state-mandated program because they do not impose requirements on local government, but finding that Section 1170.95 does impose requirements on local government. (See Proposed Decision at pp. 24-26.) The Commission should similarly separately analyze whether the Section 17556(g) exception applies to each individual statute.

The proposed decision also implicitly acknowledges in some places that Section 1170.95 did not make a substantive change to the crime of murder but only provides a petition process. See Proposed Decision at 16 (“Penal Code section 1170.95 was added to provide a **petition and hearing process** by which [petitioners] **can obtain a review by filing a petition**”); *id.* at 26 (County employees must “represent their clients during **the petition proceedings** under section 1170.95”); *id.* at 27 (“Penal Code section 1170.95 was enacted to provide a **petition and hearing process**”) (emphasis added). This petition and hearing process provides a method to reverse a conviction, but it does not change the crime of murder itself. See *id.* at 27. Accordingly, Section 1170.95 does not fall within the exception set forth in Section 17556(g).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my personal knowledge, information or belief.

THOMAS E. MONTGOMERY, County Counsel


By: 
CHRISTINA SNIDER, Senior Deputy

EXHIBIT A

42 Cal.App.5th 270
Court of Appeal, Fourth District, Division 1, California.

The PEOPLE, Petitioner,
v.
The SUPERIOR COURT OF SAN
DIEGO COUNTY, Respondent;
Allen Gooden, Real Party in Interest.
The People, Petitioner,
v.
The Superior Court of San
Diego County, Respondent;
Marty Dominguez, Real Party in Interest.

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Do75790
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Filed 11/19/2019

Synopsis

Background: Petitioners, who had been convicted of murder, filed petitions to vacate their convictions and for resentencing under procedures established in senate bill that amended mens rea requirement for murder and restricted application of felony-murder rule and natural and probable consequences doctrine. Following consolidation, the Superior Court, San Diego County, Nos. CR61365 and CR105918, [Louis R. Hanoian, J.](#), denied the People's motions to dismiss petitions on grounds that senate bill invalidly amended voter-approved initiatives that increased punishments for murder and augmented list of predicate offenses for first degree felony-murder liability. The People filed petitions for writs of mandate and/or prohibition, seeking order directing the Superior Court to vacate its order and enter new order granting dismissal motions.

Holdings: The Court of Appeal, [McConnell, P.J.](#), held that:

senate bill did not amend initiative that increased punishments for first- and second-degree murder, and

senate bill did not amend initiative that augmented list of predicate offenses for first degree felony-murder liability.

Petitions denied.

[O'Rourke, J.](#), dissented with statement.

See also, [2019 WL 6125910](#).

Procedural Posture(s): Appellate Review; Post-Conviction Review.

****241** Original consolidated proceedings in mandate challenging order of the Superior Court of San Diego County, [Louis R. Hanoian](#), Judge. Petitions denied. (Super. Ct. No. CR61365) (Super. Ct. No. CR105918)

Attorneys and Law Firms

[Summer Stephan](#), District Attorney, Mark A. Amador, Linh Lam and Christine Bannon, Deputy District Attorneys, for Petitioner.

No appearance for Respondent.

Angela Bartosik, Randy Mize, Chief Deputy Public Defenders, Robert Ford and Troy A. Britt, Deputy Public Defenders, for Real Parties in Interest.

[Xavier Becerra](#), Attorney General, [Thomas S. Patterson](#), Assistant Attorney General, [Tamar Pachter](#) and [Nelson R. Richards](#), Deputy Attorneys General, as Amicus Curiae on behalf of Real Parties in Interest, upon the request of the Court of Appeal.

[McCONNELL](#), P.J.

*274 I

INTRODUCTION

In 2018, the Legislature passed and the Governor signed into law Senate Bill No. 1437 (Senate Bill 1437), legislation that prospectively amended the mens rea requirements for the offense of murder and restricted the circumstances under which a person can be liable for murder under the felony-murder rule or the natural and probable consequences doctrine. (Stats. 2018, ch. 1015.) Senate Bill 1437 also established a procedure permitting certain qualifying persons who were previously convicted of felony murder or murder under the natural and probable consequences doctrine to petition the courts that sentenced them to vacate their murder convictions and obtain resentencing on any remaining counts. (*Id.*, § 3.)

Real parties in interest were convicted of murder and petitioned for vacatur of their convictions and resentencing under the procedures established by Senate Bill 1437. The People moved to dismiss the petitions on grounds that Senate Bill 1437, which the voters did not approve, invalidly amended Proposition 7 (Prop. 7, as approved by voters, Gen. Elec. (Nov. 7, 1978); Proposition 7) and Proposition 115 (Prop. 115, as approved by voters, Primary Elec. (June 5, 1990); Proposition 115), voter initiatives that increased the punishments for murder and augmented the list of predicate offenses for first degree felony-murder liability, respectively. The trial court rejected the People’s argument and denied the motions to dismiss. The People filed petitions for writs of mandate and/or prohibition in our court, asking us to *275 direct the trial court to vacate its order denying the motions to dismiss and enter a new order granting the motions.

**242 Like the trial court, we conclude Senate Bill 1437 was not an invalid amendment to Proposition 7 or Proposition 115 because it neither added to, nor took away from, the initiatives. Therefore, we deny the People’s petitions for writ relief.

II

BACKGROUND

A

In 2018, the Legislature enacted and the Governor signed Senate Bill 1437, effective January 1, 2019. (Stats. 2018, ch. 1015.) An uncodified section of the law expressing the Legislature’s findings and declarations states the law was “necessary to amend the felony murder rule and the natural and probable consequences doctrine, as it relates to murder, to ensure that murder liability is not imposed on a person who is not the actual killer, did not act with the intent to kill, or was not a major participant in the underlying felony who acted with reckless indifference to human life.” (*Id.*, § 1, subd. (f).) It further provides that the legislation was needed “to limit convictions and subsequent sentencing so that the law of California fairly addresses the culpability of the individual and assists in the reduction of prison overcrowding, which partially results from lengthy sentences that are not commensurate with the culpability of the individual.” (*Id.*, § 1, subd. (e).)

Under the felony-murder rule as it existed prior to Senate Bill 1437, a defendant who intended to commit a specified felony could be convicted of murder for a killing during the felony, or attempted felony, without further examination of his or her mental state. (*People v. Chun* (2009) 45 Cal.4th 1172, 1182, 91 Cal.Rptr.3d 106, 203 P.3d 425 (*Chun*).) “The felony-murder rule impute[d] the requisite malice for a murder conviction to those who commit[ted] a 1 homicide during the perpetration of a felony inherently dangerous to human life.’ ”¹ (*Id.* at p. 1184, 91 Cal.Rptr.3d 106, 203 P.3d 425.) “The purpose of the felony-murder rule [was] to deter those who commit[ted] the enumerated felonies from killing by holding them strictly responsible for any killing committed by a cofelon, whether intentional, negligent, or accidental, during *276 the perpetration or attempted perpetration of the felony.” (*People v. Cavitt* (2004) 33 Cal.4th 187, 197, 14 Cal.Rptr.3d 281, 91 P.3d 222.)

1 Felony murder was designated as first degree murder if the predicate felony was enumerated in Penal Code section 189 and second degree murder if it was not specified in section 189, but was still inherently dangerous to human life. (*Chun, supra*, 45 Cal.4th at p. 1182, 91 Cal.Rptr.3d 106, 203 P.3d 425.)

Independent of the felony-murder rule, the natural and probable consequences doctrine rendered a defendant liable for murder if he or she aided and abetted the commission of a criminal act (a target offense), and a principal in the target offense committed murder (a nontarget offense) that, even if unintended, was a natural and probable consequence of the target offense. (*People v. Chiu* (2014) 59 Cal.4th 155, 161–162, 172 Cal.Rptr.3d 438, 325 P.3d 972.) “Because the nontarget offense [was] unintended, the mens rea of the aider and abettor with respect to that offense [was] irrelevant and culpability [was] imposed simply because a reasonable person could have foreseen the commission of the nontarget crime.’ ” (*People v. Flores* (2016) 2 Cal.App.5th 855, 867, 206 Cal.Rptr.3d 732.)

Senate Bill 1437 restricted the application of the felony murder rule and the natural and probable consequences doctrine, as applied to murder, by amending **243 Penal 2 Code section 189,² which defines the degrees of murder. (Stats. 2018, ch. 1015, § 3.) Section 189, subdivision (e), as amended, provides that a participant in a specified felony is liable for murder for a death during the commission of the

offense only if one of the following is proven: “(1) The person was the actual killer. [¶] (2) The person was not the actual killer, but, with the intent to kill, aided, abetted, counseled, commanded, induced, solicited, requested, or assisted the actual killer in the commission of murder in the first degree. [¶] (3) The person was a major participant in the underlying felony and 3 acted with reckless indifference to human life”³

2 All further statutory references are to the Penal Code, unless otherwise noted.

3 Section 189, subdivision (e) does not apply when the victim is a peace officer who was killed while in the course of his or her duties, where the defendant knew or reasonably should have known that the victim was a peace officer engaged in the performance of his or her duties. (*Id.*, subd. (f).)

Senate Bill 1437 also “added a crucial limitation” to section 188, the statutory provision that defines malice for purposes of murder. (*People v. Lopez* (2019) 38 Cal.App.5th 1087, 1099, 252 Cal.Rptr.3d 33, review granted (Nov. 13, 2019, S258175) — Cal.5th —, 254 Cal.Rptr.3d 638, 451 P.3d 777, 2019 WL 5997422.) As amended, section 188 provides in pertinent part as follows: “Except as stated in subdivision (e) of [s]ection 189, in order to be convicted of murder, a principal in a crime shall act with malice aforethought. Malice shall not be imputed to a person based solely on his or her participation in a crime.” (*Id.*, subd. (a)(3).)

Finally, Senate Bill 1437 added section 1170.95 to the Penal Code. Section 1170.95 permits a person convicted of felony murder or murder under a *277 natural and probable consequences theory to petition the sentencing court to vacate the murder conviction and resentence the person on any remaining counts if the following conditions are met: “(1) A complaint, information, or indictment was filed against the petitioner that allowed the prosecution to proceed under a theory of felony murder or murder under the natural and probable consequences doctrine. [¶] (2) The petitioner was convicted of first degree or second degree murder following a trial or accepted a plea offer in lieu of a trial at which the petitioner could be convicted for first degree or second degree murder. [¶] (3) The petitioner could not be convicted of first or second degree murder because of [the] changes to [s]ection 188 or 189 made effective January 1, 2019.” (*Id.*, subd. (a).)

If the petitioner makes a prima facie showing of entitlement to relief, the court must issue an order to show cause and, absent

a waiver and stipulation by the parties, hold a hearing to determine whether to vacate the murder conviction, recall the sentence, and resentence the petitioner. (§ 1170.95, subs. (c) & (d)(1).) At the resentencing hearing, the parties may rely on the record of conviction or offer new or additional evidence, and the prosecution bears the burden of proving beyond a reasonable doubt the petitioner is ineligible for resentencing. (*Id.*, subd. (d)(3).)

If the petitioner is found eligible for relief, the murder conviction must be vacated and the petitioner resented “on any remaining counts in the same manner as if the petitioner had not been [*sic*] previously been sentenced, provided that the new sentence, if any, is not greater than the initial sentence.” (§ 1170.95, subd. (d)(1).) If the petitioner is found eligible for relief, but “murder was charged generically[] and the target offense was not charged,” the petitioner’s murder conviction **244 must be “redesignated as the target offense or underlying felony for resentencing purposes.” (*Id.*, subd. (e).)

The Legislature passed Senate Bill 1437 by a two-thirds vote in the Senate and a less-than-two-thirds majority in the Assembly.

B

Real parties in interest Allen Gooden and Marty Dominguez were convicted of murder in unrelated proceedings. Gooden was convicted of first degree felony murder in 1982 for the death of a neighbor during a burglary. He was sentenced to 25 years to life for the murder conviction. Dominguez was found guilty of second degree murder in 1990 after a companion killed a pedestrian under facts suggesting the jury may have relied on the natural and probable consequence doctrine. He was sentenced to 15 years to life for the murder conviction. Real parties in interest filed petitions under section 1170.95 requesting vacatur of their murder convictions and resentencing.

*278 The People moved to dismiss the petitions on grounds that Senate Bill 1437, which voters did not approve, impermissibly amended two voter-approved initiatives, Proposition 7 and Proposition 115. According to the People, these alleged amendments violated article II, section 10, subdivision (c) of the California Constitution, which states in pertinent part as follows: “The Legislature may amend or repeal an initiative statute by another statute that becomes

effective only when approved by the electors unless the initiative statute permits amendment or repeal without the electors' approval.”⁴

⁴ In the trial court, the People argued [section 1170.95](#) violates the separation of powers doctrine and The Victim's Bill of Rights Act of 2008, commonly known as Marsy's Law. The People do not pursue these arguments on appeal. However, we have considered and rejected these arguments in a companion case issued concurrently herewith. (*People v. Lamoureux* (Nov. 19, 2019, D075794) — Cal.App.5th —, 255 Cal.Rptr.3d 253, 2019 WL 6125910.)

Proposition 7, commonly known as the Briggs Initiative, increased the punishment for first degree murder from a term of life imprisonment with parole eligibility after seven years to a term of 25 years to life. (Prop. 7, §§ 1–2.) It increased the punishment for second degree murder from a term of five, six, or seven years to a term of 15 years to life. (*Ibid.*) Further, it amended section 190.2 to expand the special circumstances under which a person convicted of first degree murder may be punished by death or life imprisonment without the possibility of parole (LWOP). (*Id.*, §§ 5–6.) Proposition 7 did not authorize the Legislature to amend or repeal its provisions without voter approval.

Proposition 115, known as the “Crime Victims Justice Reform Act,” amended [section 189](#), among other statutory and constitutional provisions. It amended [section 189](#) to add kidnapping, train wrecking, and certain sex offenses to the list of predicate offenses giving rise to first degree felony-murder liability. (Prop. 115, § 9.) Proposition 115 authorized the Legislature to amend its provisions, but only by a two-thirds vote of each house. (*Id.*, § 30.)

The trial court consolidated real party in interests' cases and denied the motions. The court found Senate Bill 1437 did not amend Proposition 7 because it did “not reduce sentences for first or second degree-murder.” Further, the court found Senate Bill 1437 did not amend Proposition 115 because it did not “in any way modif[y]” the predicate offenses on which first degree felony-murder liability may be ****245** based. Therefore, the court found Senate Bill 1437 was not an invalid legislative amendment.

The People filed petitions for writs of mandate and/or prohibition in our court, requesting us to direct the trial court

to vacate its order and enter a new ***279** order granting the motions. We issued orders to show cause why the requested relief should not be granted and consolidated the appellate proceedings. At our request, the Attorney General filed an amicus curiae brief on the issues presented in the petitions. In its brief, the Attorney General urged us to deny the People's petitions on grounds that Senate Bill 1437 did not amend Proposition 7 or Proposition 115.

III

DISCUSSION

A

Under [article II, section 10 of the California Constitution](#), a statute enacted by voter initiative may be amended or repealed by the Legislature only with the approval of the electorate, unless the initiative statute provides otherwise. (*Cal. Const., art. II, § 10*, subd. (c).) The purpose of this limitation is to “ ‘protect the people's initiative powers by precluding the Legislature from undoing what the people have done, without the electorate's consent.’ ” (*People v. Kelly* (2010) 47 Cal.4th 1008, 1025, 103 Cal.Rptr.3d 733, 222 P.3d 186 (*Kelly*)).

An issue that often arises in litigation involving the constitutionality of a legislative enactment under [article II, section 10 of the California Constitution](#) is whether the legislative enactment in question in fact amends an initiative statute. Our Supreme Court has described an amendment as “ ‘a legislative act designed to change an existing initiative statute by adding or taking from it some particular provision.’ ”⁵ (*Pearson, supra*, 48 Cal.4th at pp. 570–571, 107 Cal.Rptr.3d 265, 227 P.3d 858; *Kelly, supra*, 47 Cal.4th at pp. 1026–1027, 103 Cal.Rptr.3d 733, 222 P.3d 186 [“[F]or purposes of [article II, section 10](#), subdivision (c), an amendment includes a legislative act that changes an existing initiative statute by taking away from it.”].) When confronted with the task of determining whether legislation amends a voter initiative, the Supreme Court has asked the following question: “[W]hether ***280** [the legislation] prohibits what the initiative authorizes, or authorizes what the initiative prohibits.” (*Pearson*, at p. 571, 107 Cal.Rptr.3d 265, 227 P.3d 858; see *People v. Cooper* (2002) 27 Cal.4th 38, 47, 115 Cal.Rptr.2d 219, 37 P.3d 403 (*Cooper*)).

5 Citing language used by the Courts of Appeal in *Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473, 76 Cal.Rptr.2d 342, and *Mobilepark West Homeowners Association v. Escondido Mobilepark West* (1995) 35 Cal.App.4th 32, 41 Cal.Rptr.2d 393, the People contend legislation amends an initiative statute whenever it alters the “scope or effect” of the initiative statute. However, the Supreme Court has declined to “endorse such an expansive definition,” which “in some respects conflicts with the language” the Supreme Court has applied in its decisions. (*Kelly, supra*, 47 Cal.4th at p. 1026, fn. 19, 103 Cal.Rptr.3d 733, 222 P.3d 186; see *People v. Superior Court (Pearson)* (2010) 48 Cal.4th 564, 570–571, 107 Cal.Rptr.3d 265, 227 P.3d 858 (*Pearson*).) Without addressing the viability of the definitions discussed in the *Quackenbush* and *Mobilepark* decisions, we will apply the definition of amendment endorsed by our Supreme Court.

In undertaking this analysis, the Supreme Court has cautioned that not all legislation concerning “the same subject matter as an initiative, or event augment[ing] an initiative’s provisions, is necessarily an amendment” to the initiative. (*Pearson, supra*, 48 Cal.4th at p. 571, 107 Cal.Rptr.3d 265, 227 P.3d 858.) On the **246 contrary, “[t]he Legislature remains free to address a “ ‘related but distinct area’ ” [citations] or a matter that an initiative measure “does not specifically authorize or prohibit.” ’ ” (*Ibid.*; see also *Cooper, supra*, 27 Cal.4th at p. 47, 115 Cal.Rptr.2d 219, 37 P.3d 403; *County of San Diego v. San Diego NORML* (2008) 165 Cal.App.4th 798, 830, 81 Cal.Rptr.3d 461.)

B

This appeal turns on whether Senate Bill 1437 amended Proposition 7 or Proposition 115 under the standards just discussed. If Senate Bill 1437 amended one or both initiatives, as the People contend, Senate Bill 1437 violates [article II, section 10, subdivision \(c\) of the California Constitution](#) because it was not approved by the voters (or for purposes of the alleged amendments to Proposition 115, two-thirds of each legislative house). However, if Senate Bill 1437 did not amend either initiative, as the real parties in interest and Attorney General claim, there is no constitutional violation.

1

a

We begin with whether Senate Bill 1437 amended Proposition 7. To resolve this question, we must determine what the voters contemplated when they enacted the initiative. (*Pearson, supra*, 48 Cal.4th at p. 571, 107 Cal.Rptr.3d 265, 227 P.3d 858.) “We first consider the initiative’s language, giving the words their ordinary meaning and construing this language in the context of the statute and initiative as a whole. If the language is not ambiguous, we presume the voters intended the meaning apparent from that language, and we may not add to the statute or rewrite it to conform to some assumed intent not apparent from that language. If the language is ambiguous, [we] may consider ballot summaries and arguments in determining the voters’ intent and understanding of a ballot measure.” (*Ibid*)

Therefore, we start with the express language of Proposition 7. In pertinent part, the initiative provided as follows: “Every person guilty of murder in the first degree shall suffer death, confinement in state prison for life without *281 possibility of parole, or confinement in the state prison for a term of 25 years to life ... [¶] Every person guilty of murder in the second degree shall suffer confinement in the state prison for a term of 15 years to life.” (Prop. 7, § 2.) Additionally, the initiative expanded the special circumstances which can subject a person convicted of first degree murder to a punishment of death or LWOP. (*Id.*, §§ 5-6.) Each of these provisions increases the possible punishments for the offense of murder. From the language of Proposition 7, therefore, it is apparent voters approved the initiative to enhance punishments for persons who have been convicted of murder.

The People contend Senate Bill 1437—which, as noted *ante*, amended the mens rea requirements for the offense of murder—“effectively change[d] the penalties for murder,” and therefore “took away” from Proposition 7, “by changing the very definitions [of murder] relied upon by the voters” In so doing, the People conflate two distinct concepts—the elements of murder and the punishment imposed for murder. The elements of an offense and punishment are, as all parties seemingly agree, closely and historically related. Indeed, for a crime to exist, there must exist both a prohibited act and punishment. (§ 15 [a crime is an “act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction ... [a] punishment[]”];

****247** *People v. Vasilyan* (2009) 174 Cal.App.4th 443, 449–450, 94 Cal.Rptr.3d 260 [“That there must be a substantive crime and a punishment for that crime in order to constitute a criminal offense has been long recognized.”]; see *Alleyne v. United States* (2013) 570 U.S. 99, 106, 133 S.Ct. 2151, 186 L.Ed.2d 314 [recognizing the “historic link between crime and punishment”].)

However, the elements of an offense and the punishment for an offense plainly are not synonymous. (*People v. Anderson* (2009) 47 Cal.4th 92, 119, 97 Cal.Rptr.3d 77, 211 P.3d 584 [“A ... penalty provision is not an element of an offense”]; see *People v. Banks* (2015) 61 Cal.4th 788, 801, 189 Cal.Rptr.3d 208, 351 P.3d 330 [“ [T]he definition of crimes generally has not been thought automatically to dictate what should be the proper penalty. ’ ”].) “Every crime consists of a group of elements laid down by the statute or law defining the offense and every one of these elements must exist or the statute is not violated. This group of essential elements is known as the “corpus delicti,” the body or the elements of the crime.’ ” (*Anderson*, at p. 101, 97 Cal.Rptr.3d 77, 211 P.3d 584.) Punishment, however, “has always meant a “fine, penalty, or confinement inflicted upon a person by the authority of the law and the judgment and sentence of a court, for [the] crime or offense committed by him.” ’ ” (*People v. Ruiz* (2018) 4 Cal.5th 1100, 1107, 232 Cal.Rptr.3d 714, 417 P.3d 191.) In other words, a punishment is the consequence of a finding of guilt intended to further the public policy goals of retribution and deterrence. (*Ibid.*)

***282** As discussed *ante*, the language of Proposition 7 demonstrates the electorate intended the initiative to increase the punishments, or consequences, for persons who have been convicted of murder. Senate Bill 1437 did not address the same subject matter. It did not prohibit what Proposition 7 authorizes by, for example, prohibiting a punishment of 25 years to life for first degree murder or 15 years to life for second degree murder. Nor did it authorize what Proposition 7 prohibits by, for instance, permitting a punishment of less than 25 years for first degree murder or less than 15 years for second degree murder. In short, it did not address punishment at all. Instead, it amended the mental state requirements for murder, which “is perhaps as close as one might hope to come to a core criminal offense ‘element.’ ” (*Apprendi v. New Jersey* (2000) 530 U.S. 466, 493, 120 S.Ct. 2348, 147 L.Ed.2d 435.)

Thus, Senate Bill 1437 presents a classic example of legislation that addresses a subject related to, but distinct

from, an area addressed by an initiative. (*Kelly, supra*, 47 Cal.4th at pp. 1025–1026, 103 Cal.Rptr.3d 733, 222 P.3d 186; see *Pearson, supra*, 48 Cal.4th at pp. 572–573, 107 Cal.Rptr.3d 265, 227 P.3d 858 [legislation allowing postconviction discovery addressed area related to, but distinct from, initiative governing pretrial discovery]; *Cooper, supra*, 27 Cal.4th at pp. 46–47, 115 Cal.Rptr.2d 219, 37 P.3d 403 [legislation limiting availability of presentence conduct credits for offenders did not amend Briggs Initiative provision authorizing postsentence conduct credits]; *Knight v. Superior Court* (2005) 128 Cal.App.4th 14, 27, 26 Cal.Rptr.3d 687 (*Knight*) [legislation according rights and responsibilities for domestic partners did not amend initiative limiting marriage to persons of the opposite sex].) The Legislature is free to enact such legislation without voter approval. (*Kelly*, at p. 1025, 103 Cal.Rptr.3d 733, 222 P.3d 186.)

The People concede Proposition 7 addressed “the penalties for murder,” not the elements of murder. However, they claim the electorate intended its voter-approved ****248** penalties to apply to murder as the offense was understood at the time Proposition 7 was passed, not as murder may later be defined based on subsequent legislative changes. They point to language in the initiative indicating the increased punishments were for persons convicted of “murder in the first-degree” and “murder in the second-degree,” and claim these terms specifically incorporated by reference the then-existing definitions of first and second degree murder, as interpreted by statute and judicial authorities. In support of this argument, they rely on a tool of statutory construction discussed in *Palermo v. Stockton Theatres, Inc.* (1948) 32 Cal.2d 53, 195 P.2d 1 (*Palermo*), which provides: “[W]here a statute adopts by specific reference the provisions of another statute, regulation, or ordinance, such provisions are incorporated in the form in which they exist at the time of the reference and not as subsequently modified” (*Id.* at pp. 58–59, 195 P.2d 1.)

We do not find this rule applicable here. Instead, we believe a cognate rule discussed in the *Palermo* decision is more apt under the circumstances: ***283** “[W]here the reference is general instead of specific, such as a reference to a system or body of laws or to the general law relating to the subject in hand, the referring statute takes the law or laws referred to not only in their contemporary form, but also as they may be changed from time to time” (*Palermo, supra*, 32 Cal.2d at p. 59, 195 P.2d 1.)

The Supreme Court decision of *People v. Hernandez* (2003) 30 Cal.4th 835, 134 Cal.Rptr.2d 602, 69 P.3d 446, is instructive. There, the defendant was convicted of conspiracy to commit murder and sentenced under a statute, enacted in 1955, which provided as follows: “[T]he punishment [for conspiracy to murder] shall be that *prescribed for murder in the first degree.*” (*Id.* at p. 864, 134 Cal.Rptr.2d 602, 69 P.3d 446.) The *Hernandez* court considered whether the statutory reference to punishment “‘prescribed for murder in the first degree’” was intended to fix the penalty permanently at the punishment for first degree murder as it existed in 1955, when the conspiracy statute was enacted, or whether it was intended to account for subsequent changes in the penalty for first degree murder. (*Id.* at pp. 864–865, 134 Cal.Rptr.2d 602, 69 P.3d 446.) It concluded the reference was general and therefore not intended to freeze the punishment for first degree murder as it existed in 1955. (*Id.* at p. 865, 134 Cal.Rptr.2d 602, 69 P.3d 446.) We find the *Hernandez* court’s analysis applicable in this case, given the clear similarities between the language at issue here (“‘murder in the first degree’” and “murder in the second degree”) and the language considered in the *Hernandez* decision (punishment “‘prescribed for murder in the first degree’”). (*Id.* at pp. 864, 865, 134 Cal.Rptr.2d 602, 69 P.3d 446.)

Additionally, we note that Proposition 7 did not identify specific provisions of the Penal Code pertaining to the offense of murder, as opposed to the punishments for murder. If the drafters of Proposition 7 had intended to incorporate the definition of murder as the offense was understood in 1978, we expect the initiative, at minimum, would have cited or referred to the statutory provisions defining murder (§ 187), malice (§ 188), or the degrees of murder (§ 189). (*People v. Jones* (1995) 11 Cal.4th 118, 123, 44 Cal.Rptr.2d 164, 899 P.2d 1358 [statute cited Penal Code provision “all but expressly ... [b]ut that [did] not effect adoption by specific reference”]; cf. *In re Oluwa* (1989) 207 Cal.App.3d 439, 445, 255 Cal.Rptr. 35 [statute incorporated Penal Code article through “specific and pointed reference”].) However, it did not, which suggests the voters did not intend to **249 freeze the definition of murder in place as it existed in 1978.

Further, Proposition 7 did not include any time-specific limitations when referring to first or second degree murder, as we might expect if the voters had intended to permanently wall off the definition of murder from future consideration by the Legislature. (*Doe v. Saenz* (2006) 140 Cal.App.4th 960, 981, 45 Cal.Rptr.3d 126 [reference to statute was general, not specific, *284 where it did not incorporate statute in a “time-

specific way”]; *Sneed v. Saenz* (2004) 120 Cal.App.4th 1220, 1238, 16 Cal.Rptr.3d 563 [same].) For example, Proposition 7 did not state, “Every person guilty of murder in the first degree, *as that offense is presently defined by statute and judicial authorities*, shall suffer death, confinement in state prison for life without possibility of parole, or confinement in the state prison for a term of 25 years to life.” It is not our role to rewrite the initiative by inserting language the drafters never included and the voters never considered. (*People v. Guzman* (2005) 35 Cal.4th 577, 587, 25 Cal.Rptr.3d 761, 107 P.3d 860 [“ ‘[I]nser[ing]’ additional language into a statute ‘violate[s] the cardinal rule of statutory construction that courts must not add provisions to statutes.’ ”]; see § 1858.) For all these reasons, we reject the People’s argument that Proposition 7 specifically incorporated, thereby freezing in place, the definition of murder as it existed in 1978.

b

“Since the language of the initiative is unambiguous, we need not look to other indicia of the voters’ intent.” (*Knight, supra*, 128 Cal.App.4th at p. 25, 26 Cal.Rptr.3d 687.) To the extent the ballot materials are relevant, however, they do not support the People’s contention that Senate Bill 1437 thwarted the voters’ intent in passing Proposition 7.

The Analysis prepared by the Legislative Analyst described Proposition 7 as follows: “**Background:** [¶] Under existing law, a person convicted of *first degree murder* can be punished in one of three ways: (1) by death, (2) by a sentence of life in prison without the possibility of parole, or (3) by a life sentence with the possibility of parole, in which case the individual would become eligible for parole after serving seven years. A person convicted of *second degree murder* can be sentenced to 5, 6, or 7 years in prison.... [¶] **Proposal:** [¶] This proposition would (1) increase the penalties for first and second degree murder, (2) expand the list of special circumstances requiring a sentence of either death or life imprisonment without the possibility of parole, and (3) revise existing law relating to mitigating and aggravating circumstances.” (Ballot Pamp., Gen. Elect. (Nov. 7, 1978), analysis by Legis. Analyst, at p. 32 (Ballot Pamphlet).)

In the portion of the ballot materials presenting the argument in favor of Proposition 7, proponents urged voters to approve the initiative because “the people ha[d] been demanding a tough, effective death penalty law to protect our families from ruthless killers. But, every effort to enact such a law ha[d]

been thwarted by powerful anti-death penalty politicians in the State Legislature. [¶] In August of 1977, when the public outcry for a capital punishment law became too loud to ignore, the anti-death penalty politicians used their *285 influence to make sure that the death penalty law passed by the State Legislature was as weak and ineffective as possible. [¶] That is why 470,000 concerned citizens signed petitions to give [voters] the opportunity to vote on this new, tough death penalty law.” (Ballot Pamphlet, argument in favor of Prop. 7, p. 34.)

These materials all concern the issue of punishment. By contrast, they are silent **250 on the critical issues addressed by Senate Bill 1437. They do not mention the mens rea element of murder or any other requirement necessary for a person to be liable for murder. They do not mention sections 187 (defining murder), 188 (defining malice), or 189 (defining the degrees of murder). Further, they do not discuss the felony-murder rule or the natural and probable consequences doctrine. These ballot materials buttress our conclusion that voters intended Proposition 7 to strengthen the punishments for persons convicted of murder, not to reaffirm or amend the substantive offense of murder.

The legislative history of Senate Bill 1437 does not assist the People either. The People note that the Office of Legislative Counsel sent an opinion letter to Assemblymember Jim Cooper, dated June 20, 2018, in which it purportedly advised that Senate Bill 1437 was an invalid amendment to Proposition 7. However, as real parties in interest explain, there is some uncertainty as to whether the letter—which did not identify by title the pending legislation on which the Office of Legislative Counsel was commenting—pertained to Senate Bill 1437 or, alternatively, Assembly Bill No. 3104, a bill that was not enacted, but would have amended *Penal Code* sections 189, 190, and 190.2, among others, if it had passed.

We need not resolve this uncertainty because, even assuming the letter pertained to Senate Bill 1437, opinions of the Office of Legislative Counsel, while entitled to considerable weight, are not binding. (*Mundy v. Superior Court* (1995) 31 Cal.App.4th 1396, 1404, 37 Cal.Rptr.2d 568.) Here, the two-page Office of Legislative Counsel’s letter was not persuasive, as it defined a legislative amendment in a manner our Supreme Court has never endorsed (using the *Quackenbush* definition of amendment discussed *ante*). Further, it gave no consideration to the differences between the elements of a crime and the punishment for a crime. It also did not address whether the references in Proposition

7 to “first degree murder” and “second degree murder” were specific or general under the *Palermo* rule of statutory construction. For all these reasons, we do not find the letter persuasive. (See *St. John’s Well Child & Family Child Center v. Schwarzenegger* (2010) 50 Cal.4th 960, 982, 116 Cal.Rptr.3d 195, 239 P.3d 651.)

*286 c

Finally, the People contend that irrespective of whether the Legislature may make prospective changes to the offense of murder, it may not retroactively “allow[] someone who was convicted of murder, lawfully and as a matter of historical fact, to secure a sentence less than that mandated in section 190 when they were convicted by eliminating their sentence altogether.” Therefore, they argue the resentencing procedure established by section 1170.95 violates Proposition 7, even if the remainder of Senate Bill 1437 does not.

The People’s constitutional attack on the resentencing procedure established in section 1170.95 assumes a petitioner’s murder conviction is fixed and the resentencing procedure merely provides an avenue by which a petitioner may obtain a more lenient sentence for the extant conviction. However, that is not the case. The effect of a successful petition under section 1170.95 “ ‘is to vacate the judgment ... as if no judgment had ever been rendered.’ ” (*People v. Martinez* (2017) 10 Cal.App.5th 686, 718, 216 Cal.Rptr.3d 814; cf. *People v. Sumstine* (1984) 36 Cal.3d 909, 920, 206 Cal.Rptr. 707, 687 P.2d 904 [“When the issuance of a writ of habeas corpus vacates the underlying judgment of conviction, the judgment ceases to exist for **251 all purposes.”].) Thus, the resentencing procedure established by section 1170.95—like the remainder of the statutory changes implemented by Senate Bill 1437—does not amend Proposition 7.

d

In sum, the voters who enacted Proposition 7 considered and approved increased punishments for persons convicted of murder, including additional means by which such persons could be punished by death or LWOP. However, the text of the initiative and the ballot materials for the initiative do not demonstrate an intent to freeze the substantive elements of murder in place as they existed in 1978. Therefore, Senate Bill 1437—which did not address the issue of punishments

for persons convicted of murder—cannot be considered an amendment to Proposition 7.

2

We turn now to whether Senate Bill 1437 amended Proposition 115. For many of the same reasons discussed *ante*, we conclude the issues addressed by Senate Bill 1437 are distinct from the subject matter of Proposition 115. Therefore, we agree with the real parties in interest and Attorney General that Senate Bill 1437 did not amend Proposition 115.

***287** As noted, Proposition 115 added kidnapping, train wrecking, and certain sex offenses to the list of predicate felonies giving rise to first degree felony-murder liability. (Prop. 115, § 9.) Because Proposition 115 altered the circumstances under which a person may be liable for murder, Senate Bill 1437—which likewise changed the conditions under which a person may be liable for murder—indisputably addresses a matter related to the subject considered by voters. However, as our Supreme Court has cautioned, that alone does not render the Legislature’s actions invalid. (*Kelly, supra*, 47 Cal.4th at p. 1025, 103 Cal.Rptr.3d 733, 222 P.3d 186.) Instead, the question we must ask ourselves is whether Senate Bill 1437 addresses a matter that the initiative specifically authorizes or prohibits. (*Ibid.*)

We conclude it does not. Senate Bill 1437 did not augment or restrict the list of predicate felonies on which felony murder may be based, which is the pertinent subject matter of Proposition 115.⁶ It did not address any other conduct which might give rise to a conviction for murder. Instead, it amended the mental state necessary for a person to be liable for murder, a distinct topic not addressed by Proposition 115’s text or ballot materials.

⁶ In addition to augmenting the list of predicate felonies for first degree felony murder, Proposition 115 amended numerous constitutional and statutory provisions that, according to the People, are not at issue here.

The People do not contend otherwise. Instead, they emphasize that Proposition 115 reenacted [section 189](#) in full. Because the initiative reenacted [section 189](#) in full, they argue the following language from Proposition 115 precludes the Legislature from amending, by simple majority, *any* portion

of [section 189](#), even those portions of [section 189](#) that the initiative did not change in any substantive way: “*The statutory provisions contained in this measure may not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.*” (Prop. 115, § 30, italics added.) We disagree.

Under [article IV, section 9 of the California Constitution](#), a statute must be reenacted in full as amended if any part of ****252** it is amended. (Cal. Const., art. IV, § 9.) “The rationale for compelling reenactment of an entire statutory section when only a part is being amended is to avoid ‘the enactment of statutes in terms so blind that legislators themselves [are] ... deceived in regard to their effect’ ” and the risk that “the public, from the difficulty of making the necessary examination and comparison, [will] fail[] to become appr[]ised of the changes made in the laws.” [Citation.] Consequently, a substantial part of almost any statutory initiative will include a restatement of existing provisions with only minor, nonsubstantive changes—or no changes ***288** at all.” (*County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 208, 240 Cal.Rptr.3d 52, 430 P.3d 345 (*Commission*)).

In view of this constitutional mandate, the Supreme Court has rejected the claim the People present here. In *Commission*, voters approved an initiative: (1) reenacting an existing statutory section, including provisions with minor changes or no changes (to comply with [Cal. Const., art. IV, § 9](#)); and (2) limiting future legislative enactments to the initiative, unless approved by voters or two-thirds of each house in the Legislature (as permitted by [Cal. Const., art. II, § 10, subd. \(c\)](#)). (*Commission, supra*, 6 Cal.5th at p. 211, 240 Cal.Rptr.3d 52, 430 P.3d 345.) The Supreme Court rejected an argument claiming the limiting language categorically precluded the Legislature from amending those portions of the existing statutory section that were reenacted in the ballot measure without substantive change. (*Id.* at pp. 214–215, 240 Cal.Rptr.3d 52, 430 P.3d 345.) As the court explained, a contrary holding would “unduly burden the people’s willingness to amend existing laws by initiative,” and would not “comport[] with the Legislature’s ability to change statutory provisions outside the scope of the existing provisions voters plausibly had a purpose to supplant through an initiative.” (*Id.* at p. 214, 240 Cal.Rptr.3d 52, 430 P.3d 345.) Thus, the court concluded: “When technical reenactments are required under [article IV, section 9 of the](#)

Constitution—yet involve no substantive change in a given statutory provision—the Legislature in most cases retains the power to amend the restated provision through the ordinary legislative process.” (*Ibid.*)

As in *Commission*, the initiative in question restates a statutory provision in full (§ 189) to comply with constitutional mandates. Further, as noted *ante*, there are no indicia in the language of the initiative or its ballot materials indicating the voters intended to address any provision of section 189, except the list of predicate felonies for purposes of the felony-murder rule. Therefore, we conclude the limiting language in Proposition 115, like the limiting language in *Commission*, does not preclude the Legislature from amending provisions of the reenacted statute that were subject to technical restatement to ensure compliance with article IV, section 9 of the California Constitution.⁷

⁷ The People argue the *Commission* decision is distinguishable because the limiting language in the initiative considered in *Commission* (“The provisions of this act shall not be amended by the Legislature,” *Commission, supra*, 6 Cal.5th at p. 211, 240 Cal.Rptr.3d 52, 430 P.3d 345), differs from the limiting language used in Proposition 115 (“The statutory provisions contained in this measure may not be amended by the Legislature,” Prop. 115, § 30). We disagree and, therefore, ascribe no significance to these minor differences.

In closing, we reiterate a bedrock principle underpinning the rule limiting legislative amendments to voter initiatives: “[T]he voters should get *289 what they enacted, not

more and not less.” (**253 *Hodges v. Superior Court* (1999) 21 Cal.4th 109, 114, 86 Cal.Rptr.2d 884, 980 P.2d 433.) Here, the voters who approved Proposition 7 and Proposition 115 got, and still have, precisely what they enacted—stronger sentences for persons convicted of murder and first degree felony-murder liability for deaths occurring during the commission or attempted commission of specified felony offenses. By enacting Senate Bill 1437, the Legislature has neither undermined these initiatives nor impinged upon the will of the voters who passed them.

IV

DISPOSITION

The petitions are denied.

I CONCUR:

IRION, J.

O’Rourke, J., dissenting.

I respectfully dissent. For the reasons expressed in my dissent in *People v Lamoureux* (Nov. 19, 2019, D075794) — Cal.App.5th —, 255 Cal.Rptr.3d 253, 2019 WL 6125910, filed concurrently herewith, I would grant the People’s petition.

All Citations

42 Cal.App.5th 270, 255 Cal.Rptr.3d 239, 19 Cal. Daily Op. Serv. 10,984, 2019 Daily Journal D.A.R. 10,676

EXHIBIT B

2020 WL 4461245

Court of Appeal, Fifth District, California.

The PEOPLE, Plaintiff and Respondent,

v.

Angelique Elandra NASH, Defendant and Appellant.

F079509

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Filed 08/03/2020

Synopsis

Background: After being convicted of felony murder with a burglary special-circumstance finding and having the finding reversed on appeal, [2015 WL 4880841](#), petitioner sought relief from her felony murder conviction under procedures established in senate bill which amended felony murder rule and natural and probable consequences doctrine by restricting murder liability to those who actually killed, who acted with intent to kill, or who were major participants in underlying felony and acted with reckless indifference. The Superior Court, Kern County, No. BF131808B, [John S. Somers, J.](#), dismissed petition. Petitioner appealed.

Holdings: The Court of Appeal, [Meehan, J.](#), held that:

senate bill did not unconstitutionally amend voter-approved initiative that increased punishments for first- and second-degree murder;

senate bill did not unconstitutionally amend voter-approved initiative that expanded the scope of felony-murder rule by adding five qualifying felonies;

petition process available to those convicted of felony murder under senate bill did not unconstitutionally amend voter-approved initiative providing crime victims with the right to prompt and final conclusion of the case and requiring consideration of victims' safety prior to post-judgment release decision; and

petition process available under senate bill did not violate the separation of powers doctrine.

Reversed and remanded.

[Poochigian, J.](#), filed concurring and dissenting opinion.

Procedural Posture(s): Appellate Review; Post-Conviction Review.

West Codenotes**Prior Version Recognized as Unconstitutional**

[Cal. Penal Code § 803](#).

APPEAL from a judgment of the Superior Court of Kern County. [John S. Somers](#), Judge. (Super. Ct. No. BF131808B)

Attorneys and Law Firms

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[Cynthia J. Zimmer](#), District Attorney, [Terrance J. McMahon](#) and [Terry P. Pelton](#), Deputy District Attorneys, for Plaintiff and Respondent.

OPINION

[MEEHAN, J.](#)

INTRODUCTION

*1 In 2010, appellant Angelique Elandra Nash participated in a residential burglary during which one of her codefendants struck the elderly homeowner.¹ The victim later died as the result of blunt force [trauma to the head](#). Appellant; her sister, Katila Nash; and her sister's boyfriend, David Moses, all of whom were under the age of 18 years at the time of the crime, were subsequently arrested and charged as adults in connection with the victim's murder. ([Welf. & Inst. Code, § 707](#), former subd. (d)(1), (d)(2).) In her third trial, appellant was convicted of first degree felony murder with the special circumstance finding that the murder was committed while appellant was engaged in the commission of burglary. ([Pen. Code, §§ 187, subd. \(a\), 189, 190.2, subds. \(a\)\(17\)\(G\) & \(d\).](#))^{2, 3} Appellant was sentenced to 25 years to life in prison. (§ 190.5, subd. (b).)

1 We rely on our prior decision in the nonpublished opinion of *People v. Nash*, 2015 WL 4880841 (Aug. 14, 2015, F068239) for the factual and procedural history.

2 Katila Nash and David Moses, both of whom entered the victim's house while appellant remained outside, were convicted in the first trial.

3 All further statutory references are to the Penal Code unless otherwise specified.

In a prior opinion, this court reversed the jury's burglary special-circumstance finding on the ground it was unsupported by substantial evidence that appellant was a major participant in the underlying burglary, in accordance with the California Supreme Court's then-recent decision in *People v. Banks* (2015) 61 Cal.4th 788, 189 Cal.Rptr.3d 208, 351 P.3d 330. Appellant's sentence remained 25 years to life in prison. (§ 190, subd. (a).)

On September 30, 2018, the Governor signed Senate Bill No. 1437 into law. Effective January 1, 2019, Senate Bill No. 1437 “amend[ed] the felony murder rule and the natural and probable consequences doctrine, as it relates to murder, to ensure that murder liability is not imposed on a person who is not the actual killer, did not act with the intent to kill, or was not a major participant in the underlying felony who acted with reckless indifference to human life.” (Stats. 2018, ch. 1015, § 1, subd. (f) (Senate Bill No. 1437 or Sen. Bill No. 1437).) The bill amended sections 188 and 189, and added section 1170.95, which provides a process for those convicted of felony murder or murder under a natural and probable consequences theory to petition for relief based on the change to the law. (Sen. Bill No. 1437, §§ 2–4.)

When Moses hit the victim inside her residence, appellant was outside acting as a lookout and, as previously stated, this court concluded she was not a major participant in the underlying burglary. Following the enactment of Senate Bill No. 1437, appellant, represented by counsel, filed a petition under section 1170.95, subdivision (a), seeking relief from her felony murder conviction on the ground that she was “not the actual killer, did not act with the intent to kill, [and] was not a major participant in the underlying felony who acted with reckless indifference to human life.” (Stats. 2018, ch. 1015, § 1, subd. (f).) The prosecutor opposed the motion on the same grounds now advanced by respondent on appeal, as discussed in the sections that follow.

*2 After hearing argument and taking the matter under submission, the trial court rejected the prosecutor's contentions that Senate Bill No. 1437 amends Proposition 115 (the Crime Victims Justice Reform Act) and Proposition 9 (the Victims' Bill of Rights Act of 2008: Marsy's Law (Marsy's Law)) in violation of the California Constitution, but the court agreed that at least as to retroactive application, Senate Bill No. 1437 is an unconstitutional amendment of Proposition 7 (the Briggs Initiative). The trial court dismissed appellant's petition and she filed a timely notice of appeal challenging the judgment. (§ 1237.)

Appellant and the Attorney General, through an amicus brief, argue that Senate Bill No. 1437 is constitutional and urge reversal of the judgment.⁴ Respondent, the Kern County District Attorney, argues that Senate Bill No. 1437 is an unconstitutional amendment of Propositions 7, 115 and 9, and that it impermissibly infringes on powers vested in the judicial and executive branches of government, in violation of the separation of powers doctrine.

4 We grant appellant's unopposed requests for judicial notice of the ballot material for Proposition 7 and Proposition 115, and the prior record on appeal. (Evid. Code, §§ 452, subd. (c), 459; *Vargas v. City of Salinas* (2009) 46 Cal.4th 1, 22, fn. 10, 92 Cal.Rptr.3d 286, 205 P.3d 207.)

These arguments were considered and rejected by the Court of Appeal for the Fourth District, Division One, in *People v. Lamoureux* and *People v. Superior Court (Gooden)*. (*People v. Lamoureux* (2019) 42 Cal.App.5th 241, 246, 255 Cal.Rptr.3d 253 [Sen. Bill No. 1437 does not violate Props. 7, 115 or 9, or separation of powers doctrine] (*Lamoureux*); *People v. Superior Court (Gooden)* (2019) 42 Cal.App.5th 270, 289, 255 Cal.Rptr.3d 239 [Sen. Bill No. 1437 does not violate Props. 7 or 115] (*Gooden*).)⁵ Subsequently, the other Courts of Appeal considering these issues have agreed with the analyses in *Lamoureux* and *Gooden*. (*People v. Solis* (2020) 46 Cal.App.5th 762, 784, 259 Cal.Rptr.3d 854 (*Solis*); *People v. Cruz* (2020) 46 Cal.App.5th 740, 747, 260 Cal.Rptr.3d 166 (*Cruz*); accord, *People v. Lopez* (2020) 51 Cal.App.5th 589, 594, — Cal.Rptr.3d —; *People v. Alaybue* (2020) 51 Cal.App.5th 207, 211, — Cal.Rptr.3d —; *People v. Johns* (2020) 50 Cal.App.5th 46, 54-55, 263 Cal.Rptr.3d 611; *People v. Prado* (2020) 49 Cal.App.5th 480, 492, 263 Cal.Rptr.3d 79; *People v. Smith* (2020) 49 Cal.App.5th 85, 91–92, review granted July 22, 2020, No. S262835; *People v. Bucio* (2020) 48 Cal.App.5th 300, 306,

261 Cal.Rptr.3d 692.) We find the aforementioned decisions well-reasoned and persuasive, and we join them.

⁵ *Lamoureux* and *Gooden* were decided by the same panel, with one justice dissenting

On the grounds set forth below, we conclude the trial court erred in finding that Senate Bill No. 1437 unconstitutionally amends Proposition 7. We also reject respondent's claims that Senate Bill No. 1437 unconstitutionally amends Proposition 115 and Proposition 9 and that it violates the separation of powers doctrine. Accordingly, we reverse the judgment and remand this matter for further proceedings under section 1170.95.

DISCUSSION

I. Claim Senate Bill No. 1437 Amends Voter Initiatives in Violation of California Constitution

A. Constitutional Limitation on Amendment of Voter Initiatives

This appeal requires us to determine whether Senate Bill No. 1437, which effected changes to the Penal Code relating to murder, unconstitutionally amends Proposition 7, Proposition 115 or Proposition 9, all ballot initiatives passed by voters. When laws are enacted by voter initiative, subsequent legislative acts are limited by the California Constitution, which provides that “[t]he Legislature may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without the electors' approval.” (Cal. Const., art. II, § 10, subd. (c); accord, *People v. Superior Court (Pearson)* (2010) 48 Cal.4th 564, 568, 107 Cal.Rptr.3d 265, 227 P.3d 858 (*Pearson*); *People v. Kelly* (2010) 47 Cal.4th 1008, 1025, 103 Cal.Rptr.3d 733, 222 P.3d 186 (*Kelly*).

*3 “[T]he purpose of California's constitutional limitation on the Legislature's power to amend initiative statutes is to “protect the people's initiative powers by precluding the Legislature from undoing what the people have done, without the electorate's consent.” [Citation.]” (*Kelly, supra*, 47 Cal.4th at p. 1025, 103 Cal.Rptr.3d 733, 222 P.3d 186, quoting *Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473, 1484, 76 Cal.Rptr.2d 342 (*Proposition 103 Enforcement Project*)). “[C]ourts have a duty to “ ‘jealously guard’ ” the people's initiative power, and hence to “ ‘apply a liberal construction to this power wherever it is

challenged in order that the right’ ” to resort to the initiative process “ ‘be not improperly annulled’ ” by a legislative body.” (*Kelly, supra*, at p. 1025, 103 Cal.Rptr.3d 733, 222 P.3d 186, quoting *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 776, 38 Cal.Rptr.2d 699, 889 P.2d 1019.)

An amendment in this context has been described “as ‘a legislative act designed to change an existing initiative statute by adding or taking from it some particular provision.’ ” (*Pearson, supra*, 48 Cal.4th at p. 571, 107 Cal.Rptr.3d 265, 227 P.3d 858; accord, *People v. Cooper* (2002) 27 Cal.4th 38, 44, 115 Cal.Rptr.2d 219, 37 P.3d 403 (*Cooper*)). In contrast with the restrictions on amendment, the Legislature is not “precluded from enacting laws addressing the general subject matter of an initiative” (*Kelly, supra*, 47 Cal.4th at p. 1025, 103 Cal.Rptr.3d 733, 222 P.3d 186), and it “remains free to address a “related but distinct area” [citations] or a matter that an initiative measure ‘does not specifically authorize or prohibit’ ” (*id.* at pp. 1025–1026, 103 Cal.Rptr.3d 733, 222 P.3d 186; accord, *Pearson, supra*, at p. 571, 107 Cal.Rptr.3d 265, 227 P.3d 858).

B. Standard of Review

We review questions of statutory and voter initiative interpretation de novo (*People v. Gonzales* (2018) 6 Cal.5th 44, 49, 237 Cal.Rptr.3d 193, 424 P.3d 280 (*Gonzales*); *John v. Superior Court* (2016) 63 Cal.4th 91, 95, 201 Cal.Rptr.3d 459, 369 P.3d 238), and the same principles that govern statutes enacted by the Legislature apply to voter initiatives (*Gonzales, supra*, at p. 49, 237 Cal.Rptr.3d 193, 424 P.3d 280; *Pearson, supra*, 48 Cal.4th at p. 571, 107 Cal.Rptr.3d 265, 227 P.3d 858). “We first consider the initiative's language, giving the words their ordinary meaning and construing this language in the context of the statute and initiative as a whole. If the language is not ambiguous, we presume the voters intended the meaning apparent from that language, and we may not add to the statute or rewrite it to conform to some assumed intent not apparent from that language. If the language is ambiguous, courts may consider ballot summaries and arguments in determining the voters' intent and understanding of a ballot measure.” (*Pearson, supra*, at p. 571, 107 Cal.Rptr.3d 265, 227 P.3d 858; accord, *Gonzales, supra*, at pp. 49–50, 237 Cal.Rptr.3d 193, 424 P.3d 280; *John v. Superior Court, supra*, at pp. 95–96, 201 Cal.Rptr.3d 459, 369 P.3d 238.)

C. Overview of Senate Bill No. 1437

Senate Bill No. 1437 was enacted “to limit convictions and subsequent sentencing so that the law of California fairly addresses the culpability of the individual and assists in the reduction of prison overcrowding, which partially results from lengthy sentences that are not commensurate with the culpability of the individual.” (Stats. 2018, ch. 1015, § 1, subd. (e).) The Legislature declared, as previously set forth, that it was necessary to “amend the felony murder rule and the natural and probable consequences doctrine, as it relates to murder, to ensure that murder liability is not imposed on a person who is not the actual killer, did not act with the intent to kill, or was not a major participant in the underlying felony who acted with reckless indifference to human life.” (*Id.*, subd. (f).)

To that end, Senate Bill No. 1437 amended [section 188](#), defining malice, and [section 189](#), defining the degrees of murder, to address liability based on felony murder and the natural and probable consequences doctrine. As amended, [section 188](#) now provides, “Except as stated in [subdivision \(e\) of Section 189](#), in order to be convicted of murder, a principal in a crime shall act with malice aforethought. Malice shall not be imputed to a person based solely on his or her participation in a crime.” (*Id.*, subd. (a)(3).)

*4 [Subdivision \(e\) of section 189](#), added by Senate Bill No. 1437, provides: “A participant in the perpetration or attempted perpetration of a felony listed in [subdivision \(a\)](#) in which a death occurs is liable for murder only if one of the following is proven: (1) The person was the actual killer[;] [\[¶\]](#) (2) The person was not the actual killer, but, with the intent to kill, aided, abetted, counseled, commanded, induced, solicited, requested, or assisted the actual killer in the commission of murder in the first degree[; and] [\[¶\]](#) (3) The person was a major participant in the underlying felony and acted with reckless indifference to human life, as described in [subdivision \(d\) of Section 190.2](#).” However, [subdivision \(e\)](#) is inapplicable “when the victim is a peace officer who was killed while in the course of the peace officer's duties, where the defendant knew or reasonably should have known that the victim was a peace officer engaged in the performance of the peace officer's duties.” (§ 89, subd. (f).)

Senate Bill No. 1437 also added [section 1170.95 to the Penal Code](#), which provides, in relevant part: “A person convicted of felony murder or murder under a natural and probable consequences theory may file a petition with the court that sentenced the petitioner to have the petitioner's murder conviction vacated and to be resentenced on any remaining

counts when all of the following conditions apply: [\[¶\]](#) (1) A complaint, information, or indictment was filed against the petitioner that allowed the prosecution to proceed under a theory of felony murder or murder under the natural and probable consequences doctrine[;] [\[¶\]](#) (2) The petitioner was convicted of first degree or second degree murder following a trial or accepted a plea offer in lieu of a trial at which the petitioner could be convicted for first degree or second degree murder[; and] [\[¶\]](#) (3) The petitioner could not be convicted of first or second degree murder because of changes to [Section 188 or 189](#) made effective January 1, 2019.” (*Id.*, subd. (a).)

If a petition is filed, as in this case, [section 1170.95](#) provides that “[t]he court shall review the petition and determine if the petitioner has made a prima facie showing that the petitioner falls within the provisions of this section. If the petitioner has requested counsel, the court shall appoint counsel to represent the petitioner. The prosecutor shall file and serve a response within 60 days of service of the petition and the petitioner may file and serve a reply within 30 days after the prosecutor response is served. These deadlines shall be extended for good cause. If the petitioner makes a prima facie showing that he or she is entitled to relief, the court shall issue an order to show cause.” (*Id.*, subd. (c).) “[T]he court shall hold a hearing to determine whether to vacate the murder conviction and to recall the sentence and resentence the petitioner on any remaining counts in the same manner as if the petitioner had not been previously been sentenced, provided that the new sentence, if any, is not greater than the initial sentence....” (*Id.*, subd. (d)(1).)

D. Proposition 7

1. Background

Although the trial court rejected the prosecutor's other arguments, it agreed that at least as to retroactive application in this case, Senate Bill No. 1437 unconstitutionally amends Proposition 7 and it dismissed appellant's petition for relief under [section 1170.95](#) on that ground. Appellant and the Attorney General claim error.

Proposition 7, which was passed by voters on November 7, 1978, repealed and replaced [sections 190, 190.1, 190.2, 190.3, 190.4 and 190.5](#). (Voter Information Guide, Gen. Elec. (Nov. 7, 1978) text of Prop. 7, §§ 1–12, pp. 33, 41–46 (Voter Information Guide); see [Cal. Const., art. IV, § 9](#) [“A section of a statute may not be amended unless the section is re-

enacted as amended.”].) Proposition 7 was a direct response to 1977 death penalty legislation (*People v. Boyce* (2014) 59 Cal.4th 672, 693, 175 Cal.Rptr.3d 481, 330 P.3d 812; Voter Information Guide, *supra*, arguments in favor of and against Prop. 7, pp. 34–35), and it “substantially increase[d] the punishment for persons convicted of first and second degree murder” (*Cooper, supra*, 27 Cal.4th at p. 42, 115 Cal.Rptr.2d 219, 37 P.3d 403; accord, *People v. Bright* (1996) 12 Cal.4th 652, 662, fn. 7, 49 Cal.Rptr.2d 732, 909 P.2d 1354 (maj. opn.), abrogated on another ground by *People v. Seel* (2004) 34 Cal.4th 535, 550, fn. 6, 21 Cal.Rptr.3d 179, 100 P.3d 870). Prior to the passage of Proposition 7, the punishment for first degree murder was death, life in prison without the possibility of parole or life in prison with the possibility of parole, and the punishment for second degree murder was five, six or seven years in prison. (Former § 190; Voter Information Guide, *supra*, § 1, p. 33.) Under Proposition 7, the punishment for first degree murder was increased to death, life in prison without the possibility of parole or 25 years to life in prison, and the punishment for second degree murder was increased to 15 years to life in prison. (§ 190; Voter Information Guide, *supra*, § 2, p. 33.)

*5 Proposition 7 also “added several special circumstances to section 190.2 (see subs. (a)(8), (9), (11)–(16), (19)), expanded the list of felonies subject to the ‘felony-murder’ special circumstance, and deleted the requirement that a felony murder be willful, deliberate, and premeditated. (Compare former § 190.2, subd. (c)(3) (Stats. 1977, ch. 316, § 9, p. 1257) with present § 190.2, subd. (a)(17).) For the most part, these additions broadened the class of persons subject to the most severe penalties known to our criminal law.” (*People v. Weidert* (1985) 39 Cal.3d 836, 844, 218 Cal.Rptr. 57, 705 P.2d 380; accord, *People v. Spears* (1983) 33 Cal.3d 279, 281–282, 188 Cal.Rptr. 454, 655 P.2d 1289; *Gooden, supra*, 42 Cal.App.5th at p. 278, 255 Cal.Rptr.3d 239; *People v. Epps* (1986) 182 Cal.App.3d 1102, 1121, 227 Cal.Rptr. 625.)

Proposition 7 “did not authorize the Legislature to amend its provisions without voter approval.” (*Cooper, supra*, 27 Cal.4th at p. 44, 115 Cal.Rptr.2d 219, 37 P.3d 403, citing *In re Oluwa* (1989) 207 Cal.App.3d 439, 445–446, 255 Cal.Rptr. 35 (*Oluwa*)). Therefore, as the parties recognize, amendment of Proposition 7 through legislative action is precluded by the California Constitution (Cal. Const., art. II, § 10, subd. (c)), and we must determine whether Senate Bill No. 1437 takes away from any provision of Proposition 7 (*Pearson, supra*, 48 Cal.4th at p. 571, 107 Cal.Rptr.3d 265, 227 P.3d 858; accord, *Cooper, supra*, at p. 44, 115 Cal.Rptr.2d 219, 37 P.3d 403).⁶

6 Respondent does not claim that Senate Bill No. 1437 adds to Proposition 7 or substitutes any of its provisions.

2. Analysis

In concluding that Senate Bill No. 1437 unconstitutionally amends Proposition 7, the trial court stated the Legislature was “attempting to accomplish indirectly what it cannot do directly” and “drastically reduce sentences for first and second degree murder as to particular individuals previously convicted of those crimes.” Respondent agrees and the arguments she advances on appeal fall into the following general categories: Senate Bill No. 1437 changes the scope or effect of Proposition 7 by limiting the class of persons subject to sentencing for murder, thereby eliminating murder sentences as mandated by the voters; crime and punishment are not merely “ ‘ ‘related but distinct area[s]’ ” the Legislature “remains free to address”; Proposition 7 froze or incorporated by reference murder as it was then defined in 1978; and Senate Bill No. 1437 frustrates voter intent. (*Kelly, supra*, 47 Cal.4th at p. 1025, 103 Cal.Rptr.3d 733, 222 P.3d 186.)

a. Senate Bill No. 1437 Does Not Take Away From Proposition 7's Provisions

We begin with the plain language of Proposition 7. (*Gonzales, supra*, 6 Cal.5th at p. 49, 237 Cal.Rptr.3d 193, 424 P.3d 280; *Pearson, supra*, 48 Cal.4th at p. 571, 107 Cal.Rptr.3d 265, 227 P.3d 858.) As summarized above and set forth by the Court of Appeal in *Gooden*, Proposition 7 provides in relevant part that “ ‘[e]very person guilty of murder in the first degree shall suffer death, confinement in state prison for life without possibility of parole, or confinement in the state prison for a term of 25 years to life... [¶] Every person guilty of murder in the second degree shall suffer confinement in the state prison for a term of 15 years to life.’ (Prop. 7, § 2.) Additionally, the initiative expanded the special circumstances which can subject a person convicted of first degree murder to a punishment of death or LWOP. (*Id.*, §§ 5–6.) Each of these provisions increases the possible punishments for the offense of murder. From the language of Proposition 7, therefore, it is apparent voters approved the initiative to enhance punishments for persons who have been convicted of murder.” (*Gooden, supra*, 42 Cal.App.5th

at pp. 280–281, 255 Cal.Rptr.3d 239; accord, *Cruz, supra*, 46 Cal.App.5th at pp. 753–754, 260 Cal.Rptr.3d 166; *Solis, supra*, 46 Cal.App.5th at pp. 772–773, 259 Cal.Rptr.3d 854.) The intended purpose of Proposition 7 to increase sentences for murder in general and to toughen the death penalty law in particular is clearly articulated in the ballot material, which describes the 1977 death penalty legislation as “weak and ineffective” and urges that “Proposition 7 will give every Californian the protection of the nation’s toughest, most effective death penalty laws.” (Voter Information Guide, *supra*, argument in favor of Prop. 7, p. 34.)

*6 Relying on *Proposition 103 Enforcement Project*, respondent argues that Senate Bill No. 1437 amends Proposition 7 by changing its “ ‘the scope or effect’ ” (*Prop. 103 Enforcement Project, supra*, 64 Cal.App.4th at pp. 1484–1485, 76 Cal.Rptr.2d 342.) Respondent reasons that because Senate Bill No. 1437 narrows the statutory definition of murder, it reduces the number of defendants eligible to be convicted of murder. This, in turn, necessarily reduces the number of defendants serving sentences for murder as provided for in Proposition 7, evidencing change to the scope or effect of the initiative.

The scope or effect language underpinning respondent’s argument traces back more than 40 years to *Franchise Tax Bd. v. Cory* (1978) 80 Cal.App.3d 772, 145 Cal.Rptr. 819, a decision in which the Court of Appeal defined a statutory amendment as “ ‘any change of the scope or effect of an existing statute, whether by addition, omission, or substitution of provisions, which does not wholly terminate its existence, whether by an act purporting to amend, repeal, revise, or supplement, or by an act independent and original in form’ ” (*Id.* at p. 776, 145 Cal.Rptr. 819, quoting Sutherland, *Statutory Construction* (4th ed. 1972) § 22.01, p. 105.) However, in *Kelly*, the California Supreme Court expressly questioned prior decisions defining amendment so broadly, including *Cory* (*Kelly, supra*, 47 Cal.4th at pp. 1026–1027 & fn. 19, 103 Cal.Rptr.3d 733, 222 P.3d 186), and concluded that it was “sufficient to observe that for purposes of article II, section 10, subdivision (c) [of the California Constitution], an amendment includes a legislative act that changes an existing initiative statute by taking away from it[]” (*id.* at pp. 1026–1027, 103 Cal.Rptr.3d 733, 222 P.3d 186). Thus, our analysis is necessarily guided by *Kelly*’s definition of amendment rather than by language parsed from an appellate court opinion and questioned by our high court. (*People v. Letner and Tobin* (2010) 50 Cal.4th 99, 197–198, 112 Cal.Rptr.3d 746, 235 P.3d 62, quoting *Auto Equity Sales, Inc.*

v. Superior Court (1962) 57 Cal.2d 450, 455, 20 Cal.Rptr. 321, 369 P.2d 937 [“ ‘Courts exercising inferior jurisdiction must accept the law declared by courts of superior jurisdiction.’ ”]; accord, *Cruz, supra*, 46 Cal.App.5th at p. 750, fn. 3, 260 Cal.Rptr.3d 166; *Solis, supra*, 46 Cal.App.5th at p. 772, fn. 2, 259 Cal.Rptr.3d 854; *Gooden, supra*, 42 Cal.App.5th at p. 279, fn. 5, 255 Cal.Rptr.3d 239.)

*7 Respondent views the scope or effect language too broadly, disconnected from the plain language of Proposition 7 and Senate Bill No. 1437. In enacting Proposition 7, the voters mandated harsher punishment—that is, increased sentences—for those convicted of murder, but the measure did not speak to the substantive offense of murder. (*Gooden, supra*, 42 Cal.App.5th at p. 282, 255 Cal.Rptr.3d 239; accord, *Cruz, supra*, 46 Cal.App.5th at p. 758, 260 Cal.Rptr.3d 166; *Solis, supra*, 46 Cal.App.5th at pp. 775–776, 259 Cal.Rptr.3d 854.) Respondent asserts that Senate Bill No. 1437 takes away, or eliminates, the sentence mandated by Proposition 7, but Senate Bill No. 1437 does not invalidate or otherwise change the sentence for murder dictated by the voters in enacting Proposition 7. Rather, Senate Bill No. 1437 restricts the bases for murder liability to those individuals who actually killed, who acted with the intent to kill, or who were major participants in the underlying felony and acted with reckless indifference to human life (§ 189, subd. (e)), and in those cases where the law affords relief, the underlying conviction no longer stands. While the class of individuals standing convicted of murder may be reduced in light of Senate Bill No. 1437’s changes to the felony-murder rule and the natural and probable consequences doctrine, the legislation does not change or take away from the sentences those convicted of murder are subject to, which is the mandate of Proposition 7.

The authorities relied on by respondent in support of her argument—*People v. Armogeda* (2015) 233 Cal.App.4th 428, 182 Cal.Rptr.3d 606; *Prop. 103 Enforcement Project, supra*, 64 Cal.App.4th 1473, 76 Cal.Rptr.2d 342; and *Mobilepark West Homeowners Assn. v. Escondido Mobilepark West* (1995) 35 Cal.App.4th 32, 41 Cal.Rptr.2d 393—offer no assistance, either. In those decisions, the Courts of Appeal concluded that the legislation being challenged impermissibly amended prior voter initiatives, but the courts so held on the unremarkable grounds that rather than legislating in a merely related area, the challenged legislation clearly, directly and specifically added to or took away from the law that was enacted by the voters. (*People v. Armogeda, supra*, at pp. 434–436, 182 Cal.Rptr.3d 606 [Postrelease Community Supervision Act of 2011 (the

Act) unconstitutionally amended Prop. 36 where Prop. 36 mandated treatment rather than incarceration for certain nonviolent drug offenses or drug-related parole violations and the Act allowed for incarceration in those instances]; *Prop. 103 Enforcement Project, supra*, at pp. 1486–1494, 76 Cal.Rptr.2d 342 [Legislature took away and changed scope and effect of Prop. 103 when it removed from Insurance Commissioner ratemaking determinations vested by the voters, and statute enacted did not further purposes of Prop. 103, as required for amendment]; *Mobilepark West Homeowners Assn. v. Escondido Mobilepark West, supra*, at pp. 41–43, 41 Cal.Rptr.2d 393 [the city's passage of an ordinance purportedly clarifying a comprehensive rent control measure enacted by voters was an unconstitutional amendment where the measure adequately defined its scope of coverage without need for any follow-up ordinances and ordinance went beyond clarification by expanding the scope of the measure and adding provisions to it].)

b. Crime and Punishment are Related but Distinct Areas

As previously stated, the Legislature is not “precluded from enacting laws addressing the general subject matter of an initiative[]” (*Kelly, supra*, 47 Cal.4th at p. 1025, 103 Cal.Rptr.3d 733, 222 P.3d 186), and it “remains free to address a ‘related but distinct area’ [citations] or a matter that an initiative measure ‘does not specifically authorize or prohibit[]’” (*id.* at pp. 1025–1026, 103 Cal.Rptr.3d 733, 222 P.3d 186; accord, *Pearson, supra*, 48 Cal.4th at p. 571, 107 Cal.Rptr.3d 265, 227 P.3d 858). Respondent argues, however, that “[c]rimes and punishment are not ‘related but distinct areas.’” As the *Gooden* court points out, this conflates the crime of murder with the punishment for murder. (*Gooden, supra*, 42 Cal.App.5th at p. 281, 255 Cal.Rptr.3d 239; accord, *Cruz, supra*, 46 Cal.App.5th at p. 755, 260 Cal.Rptr.3d 166; *Solis, supra*, 46 Cal.App.5th at p. 772, 259 Cal.Rptr.3d 854.)

Crime and punishment are related, with the crime or offense necessarily informing the punishment, but they “plainly are not synonymous.” (*Gooden, supra*, 42 Cal.App.5th at p. 281, 255 Cal.Rptr.3d 239; § 15 [defining crime], 16 [kinds of crime], 18 [punishment], 19 [same], 19.2 [same], 19.4 [same].) A substantive offense defines or sets forth the elements of a crime (*Robert L. v. Superior Court* (2003) 30 Cal.4th 894, 899, 135 Cal.Rptr.2d 30, 69 P.3d 951; *Gooden, supra*, at p. 281, 255 Cal.Rptr.3d 239, citing *People v. Anderson* (2009) 47 Cal.4th 92, 101, 97 Cal.Rptr.3d 77, 211 P.3d 584), while “a punishment is the consequence of

a finding of guilt intended to further the public policy goals of retribution and deterrence” (*Gooden, supra*, at p. 281, 255 Cal.Rptr.3d 239, citing *People v. Ruiz* (2018) 4 Cal.5th 1100, 1107, 232 Cal.Rptr.3d 714, 417 P.3d 191). As such, we agree with *Gooden* that “Senate Bill 1437 presents a classic example of legislation that addresses a subject related to, but distinct from, an area addressed by an initiative.” (*Gooden, supra*, at p. 282, 255 Cal.Rptr.3d 239; accord, *Cruz, supra*, 46 Cal.App.5th at p. 756, 260 Cal.Rptr.3d 166.)

c. Voters Neither Froze Nor Incorporated by Specific Reference Murder as it Stood in 1978

*8 Respondent also argues, as she did in the trial court, that “[w]hen the voters passed Proposition 7, which specifically referenced first and [second] degree murder, they incorporated those provisions (... §§ 187, 188, and 189) into Proposition 7 as those laws existed at that time,” and that Senate Bill No. 1437 requires “a greater mental state for [first] degree murder than was required when Proposition 7 was overwhelmingly passed by voters.” However, respondent's position is not supported by any authority on this point nor is it further elucidated. (*People v. Hovarter* (2008) 44 Cal.4th 983, 1029, 81 Cal.Rptr.3d 299, 189 P.3d 300 [“ ‘[E]very brief should contain a legal argument with citation of authorities on the points made.’ ”]; accord, *People v. Bryant, Smith and Wheeler* (2014) 60 Cal.4th 335, 363–364, 178 Cal.Rptr.3d 185, 334 P.3d 573.) Appellant and the Attorney General agree the argument lacks merit, but they differ in their approaches.

Appellant characterizes the argument as analogous to that in *Californians for Political Reform Foundation v. Fair Political Practices Com.* (1998) 61 Cal.App.4th 472, 485, 71 Cal.Rptr.2d 606 (*Californians for Political Reform Foundation*), which involved a challenge over the definition of the term “contribution.” At issue was whether a Fair Political Practices Commission regulation that “excepted from the statutory definition of ‘contribution’ payments by a sponsoring organization to establish and administer its [political action committee (PAC)]” amended Proposition 208, a voter initiative that “prohibits a PAC from accepting from any person a contribution totaling more than \$500 per calendar year.” (*Id.* at pp. 480–481, 71 Cal.Rptr.2d 606.) The plaintiff, in challenging the regulation, argued that “the electorate expressed its intent to ‘freeze’ into place [a] then-existing definition of ‘contribution’ in the regulations.” (*Id.* at p. 485, 71 Cal.Rptr.2d 606.) The Court of Appeal flatly rejected the argument, pointing out the plaintiff's failure to

cite to any supporting evidence, the absence of any language in the initiative purporting to define or redefine the term, the absence of any language restricting the authority to regulate in the area in question, and the absence of anything in the ballot material evidencing voter intent on the issue. (*Ibid.*)

The Attorney General characterizes the issue as one of incorporation by reference. (*Palermo v. Stockton Theatres, Inc.* (1948) 32 Cal.2d 53, 195 P.2d 1 (*Palermo*)). In *Palermo*, the California Supreme Court stated, “[W]here a statute adopts by specific reference the provisions of another statute, regulation, or ordinance, such provisions are incorporated in the form in which they exist at the time of the reference and not as subsequently modified, and ... the repeal of the provisions referred to does not affect the adopting statute, in the absence of a clearly expressed intention to the contrary.” (*Id.* at pp. 58–59, 195 P.2d 1.) Conversely, “‘where the reference is general instead of specific, such as a reference to a system or body of laws or to the general law relating to the subject in hand, the referring statute takes the law or laws referred to not only in their contemporary form, but also as they may be changed from time to time ...’” (*Id.* at p. 59, 195 P.2d 1.) However, “[t]he *Palermo* rule is not to be applied in a vacuum” (*People v. Fong* (2013) 217 Cal.App.4th 263, 267, 158 Cal.Rptr.3d 221, quoting *People v. Pecci* (1999) 72 Cal.App.4th 1500, 1505, 86 Cal.Rptr.2d 43), and the California Supreme Court has clarified that “where the words of an incorporating statute do not make clear whether it contemplates only a time-specific incorporation, ‘the determining factor will be ... legislative intent[.]’” (*In re Jovan B.* (1993) 6 Cal.4th 801, 816, 25 Cal.Rptr.2d 428, 863 P.2d 673; accord, *People v. Fong, supra*, at p. 267, 158 Cal.Rptr.3d 221; *Doe v. Saenz* (2006) 140 Cal.App.4th 960, 981, 45 Cal.Rptr.3d 126).

The absence of both supporting authority and more specific legal argument leave the contours of respondent's theory undeveloped, but regardless, we agree with appellant's and the Attorney General's position that the argument lacks merit. There is nothing in the plain language of Proposition 7, or in the ballot material, that suggests voters, in calling for harsher punishment for those convicted of murder, intended to “‘freeze’” the substantive offense of murder as it was understood in 1978. (*Californians for Political Reform Foundation, supra*, 61 Cal.App.4th at p. 485, 71 Cal.Rptr.2d 606.) The absence of any support in the plain language or ballot material also dooms respondent's contention that the reference to murder in Proposition 7 specifically incorporated by reference the substantive offense of murder as it stood

in 1978. (*In re Jovan B., supra*, 6 Cal.4th at p. 816, 25 Cal.Rptr.2d 428, 863 P.2d 673; accord, *People v. Fong, supra*, 217 Cal.App.4th at p. 267, 158 Cal.Rptr.3d 221; *Doe v. Saenz, supra*, 140 Cal.App.4th at p. 981, 45 Cal.Rptr.3d 126.)

*9 In *Gooden*, the Court of Appeal found the California Supreme Court's decision in *People v. Hernandez* instructive and we agree. (*Gooden, supra*, 42 Cal.App.5th at p. 283, 255 Cal.Rptr.3d 239, citing *People v. Hernandez* (2003) 30 Cal.4th 835, 864–865, 134 Cal.Rptr.2d 602, 69 P.3d 446, disapproved on another ground by *People v. Riccardi* (2012) 54 Cal.4th 758, 824, fn. 32, 144 Cal.Rptr.3d 84, 281 P.3d 1, disapproved on another ground by *People v. Rangel* (2016) 62 Cal.4th 1192, 1216, 200 Cal.Rptr.3d 265, 367 P.3d 649.) In *People v. Hernandez*, the court, addressing the crime of conspiracy, considered the following language, added by the Legislature in 1955: “[W]hen two or more persons conspire to commit murder, ‘the punishment shall be that prescribed for murder in the first degree.’” (*People v. Hernandez, supra*, at p. 864, 134 Cal.Rptr.2d 602, 69 P.3d 446, quoting § 182.) At that time—1955—“the punishment for conspiracy to commit murder was death or life imprisonment, at the discretion of the jury or the court.” (*Ibid.*, citing former § 190.) The court agreed with the parties that the statutory reference to the penalty for murder was general rather than specific and the statute “incorporates whatever punishment the law prescribed for first degree murder when the conspiracy was committed.” (*Id.* at p. 865, 134 Cal.Rptr.2d 602, 69 P.3d 446.) Proposition 7's reference to first and second degree murder is analogous to the reference found to be general in *People v. Hernandez*. (*Gooden, supra*, at p. 283, 255 Cal.Rptr.3d 239.)

Gooden also observed, “If the drafters of Proposition 7 had intended to incorporate the definition of murder as the offense was understood in 1978, we expect the initiative, at minimum, would have cited or referred to the statutory provisions defining murder (§ 187), malice (§ 188), or the degrees of murder (§ 189).” (*Gooden, supra*, 42 Cal.App.5th at p. 283, 255 Cal.Rptr.3d 239; accord, *Californians for Political Reform Foundation, supra*, 61 Cal.App.4th at p. 485, 71 Cal.Rptr.2d 606 [“If in fact it were the intent of the proponents of the initiative to freeze into place the then-existing regulatory definition of ‘contribution,’ it would have been easy enough to do so.”].) “Further, Proposition 7 did not include any time-specific limitations when referring to first or second degree murder, as we might expect if the voters had intended to permanently wall off the definition of murder from future consideration by the Legislature.” (*Gooden, supra*, at p. 283, 255 Cal.Rptr.3d 239; accord, *Californians for*

Political Reform Foundation, supra, at p. 485, 71 Cal.Rptr.2d 606.)

Also instructive is the decision in *Oluwa*, which interpreted the following language added to section 190 under Proposition 7: “ ‘The provisions of Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 of the Penal Code [article 2.5] shall apply to reduce any minimum term of 25 or 15 years in a state prison imposed pursuant to this section, but such person shall not otherwise be released on parole prior to such time.’ ” (*Oluwa, supra*, 207 Cal.App.3d at p. 442, 255 Cal.Rptr. 35.) The defendant in *Oluwa* claimed that Proposition 7 authorized him to receive more liberal custody credits under section 2933, which was added to article 2.5 several years after the passage of Proposition 7. (*Oluwa, supra*, at pp. 442–444, 255 Cal.Rptr. 35.) The Court of Appeal disagreed, concluding that Proposition 7 specifically incorporated by reference an article of the Penal Code, which at the time contained only sections 2930, 2931 and 2932. (*Oluwa, supra*, at p. 445, 255 Cal.Rptr. 35; accord, *Cooper, supra*, 27 Cal.4th at p. 44, 115 Cal.Rptr.2d 219, 37 P.3d 403.) Further, the *Oluwa* court observed, “[T]he legislative analysis accompanying the initiative specifically addressed the availability of conduct credits and advised voters that those persons sentenced to 15 years to life in prison would have to serve a minimum of 10 years before becoming eligible for parole. Thus, contrary to [the defendant’s] assertion, the electorate clearly intended service of 10 calendar years by a second degree murderer before parole consideration.” (*Oluwa, supra*, at p. 445, 255 Cal.Rptr. 35; accord, *Cooper, supra*, at p. 45, 115 Cal.Rptr.2d 219, 37 P.3d 403.)⁷

⁷ In *Cooper*, the California Supreme Court, while agreeing that the reference to article 2.5 in Proposition 7 is specific rather than general, distinguished the *postsentence* credits at issue in *Oluwa* (*Cooper, supra*, 27 Cal.4th at p. 44, 115 Cal.Rptr.2d 219, 37 P.3d 403) and concluded that “the trial court’s restriction of *presentence* conduct credits under section 2933.1 [was] not inconsistent with former section 190 and [did] not otherwise circumvent the intent of the electorate in adopting the Briggs Initiative[]” (*id.* at p. 48, 115 Cal.Rptr.2d 219, 37 P.3d 403).

*10 In contrast with the article 2.5 credits at issue in *Oluwa*, Proposition 7 contains no such specific references with respect to the substantive offenses of first and second

degree murder, and the ballot material contains nothing suggesting any such intent. Thus, whether characterized as freezing the law of murder as it was in 1978 (*Californians for Political Reform Foundation, supra*, 61 Cal.App.4th at p. 485, 71 Cal.Rptr.2d 606), or incorporating the law of murder as it was in 1978 by specific reference (*Palermo, supra*, 32 Cal.2d at pp. 58–59, 195 P.2d 1), neither the plain language of Proposition 7 nor the ballot material supports respondent’s position.

Finally, to the extent that respondent’s argument suggests mere reference to first and second degree murder in the statutes amended by Proposition 7 evidences voters’ knowledge of the definition of murder and intent to preserve that definition as it existed in 1978, we are unpersuaded. Under the California Constitution, “a statute must be reenacted in full as amended if any part of it is amended.” (*County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 206, 240 Cal.Rptr.3d 52, 430 P.3d 345 (*Com. on State Mandates*), citing Cal. Const., art. IV, § 9; accord, *People v. Guzman* (2019) 8 Cal.5th 673, 686, 256 Cal.Rptr.3d 112, 453 P.3d 1130; Gov. Code, § 9605, subd. (a).) In *Com. on State Mandates*, the California Supreme Court explained, “When technical reenactments are required under article IV, section 9 of the Constitution—yet involve no substantive change in a given statutory provision—the Legislature in most cases retains the power to amend the restated provision through the ordinary legislative process. This conclusion applies *unless* the provision is integral to accomplishing the electorate’s goals in enacting the initiative or other indicia support the conclusion that voters reasonably intended to limit the Legislature’s ability to amend that part of the statute. This interpretation of article II of the Constitution is consistent with the people’s precious right to exercise the initiative power. [Citation.] It also comports with the Legislature’s ability to change statutory provisions outside the scope of the existing provisions voters plausibly had a purpose to supplant through an initiative.” (*Id.* at p. 214, 240 Cal.Rptr.3d 52, 430 P.3d 345.) Here, the references to first and second degree murder were confined to technical restatements of the statutes, in accordance with the California Constitution and Government Code section 9605.

d. Voter Intent Not Ascertainable from Silence on Matter

Finally, respondent contends that “[t]he concern expressed in the arguments, together with the significant changes made to

the penalties for murder, make clear the intent of the electorate to secure the community against violent crime by imposing longer prison terms or the death penalty on defendants who were convicted of murder. Under no reading of the arguments, the Legislative Analyst's discussion or the proposition itself did the people express a willingness or desire to permit the Legislature to re-define what is required for murder so as to narrow the range of offenders to which it would apply." While we agree with the first proposition, the second is contrary to established principles governing statutory interpretation.

It bears repeating that "[i]f the statutory language is not ambiguous, then the plain meaning of the language governs. [Citation.] If, however, the statutory language lacks clarity, we may resort to extrinsic sources, including the analyses and arguments contained in the official ballot pamphlet, and the ostensible objects to be achieved." (*People v. Lopez* (2005) 34 Cal.4th 1002, 1006, 22 Cal.Rptr.3d 869, 103 P.3d 270; accord, *People v. Ruiz*, *supra*, 4 Cal.5th at p. 1106, 232 Cal.Rptr.3d 714, 417 P.3d 191; *Robert L. v. Superior Court*, *supra*, 30 Cal.4th at p. 901, 135 Cal.Rptr.2d 30, 69 P.3d 951; *Gooden*, *supra*, 42 Cal.App.5th at p. 284, 255 Cal.Rptr.3d 239.) "[W]e may not add to the statute or rewrite it to conform to some assumed intent not apparent from that language." (*Pearson*, *supra*, 48 Cal.4th at p. 571, 107 Cal.Rptr.3d 265, 227 P.3d 858; accord, *Wishnev v. The Northwestern Mutual Life Ins. Co.* (2019) 8 Cal.5th 199, 210, 254 Cal.Rptr.3d 638, 451 P.3d 777 (*Wishnev*); *Hampton v. County of San Diego* (2015) 62 Cal.4th 340, 350, 195 Cal.Rptr.3d 773, 362 P.3d 417.)

*11 Here, respondent's argument is not founded on any language in Proposition 7 or information in the ballot material. Instead, respondent purports to divine the electorate's intent on this issue from its silence. Respondent's argument, in other words, is purely speculative. (*People v. Laird* (2018) 27 Cal.App.5th 458, 465, 238 Cal.Rptr.3d 313; *Citizens Assn. of Sunset Beach v. Orange County Local Agency Formation Com.* (2012) 209 Cal.App.4th 1182, 1191, 147 Cal.Rptr.3d 696 ["Just as the silence of a dog trained to bark at intruders suggests the absence of intruders, this silence speaks loudly. It is indicative of a lack of voter intent"].)

As explained in *Gooden*, the ballot materials "all concern the issue of punishment. By contrast, they are silent on the critical issues addressed by Senate Bill 1437. They do not mention the mens rea element of murder or any other requirement necessary for a person to be liable for murder. They do not mention section[s] 187 (defining murder), 188 (defining malice), or 189 (defining the degrees of murder). Further,

they do not discuss the felony-murder rule or the natural and probable consequences doctrine. These ballot materials buttress our conclusion that voters intended Proposition 7 to strengthen the punishments for persons convicted of murder, not to reaffirm or amend the substantive offense of murder." (*Gooden*, *supra*, 42 Cal.App.5th at p. 285, 255 Cal.Rptr.3d 239; accord, *Cruz*, *supra*, 46 Cal.App.5th at p. 756, 260 Cal.Rptr.3d 166.)⁸

8 Respondent mentions that the Legislature "further ignored the Legislative Counsel's advice in pursuit of this unconstitutional assertion of legislative primacy over the voters' will." This passing reference pertains to a letter submitted as an exhibit to the People's opposition to appellant's section 1170.95 petition in the trial court. On appeal, respondent does not place any great weight on the letter, but we note that the letter takes the position we have already rejected: by reducing the class of individuals who may be convicted of murder, Senate Bill No. 1437 amends Proposition 7 by one, changing its scope and two, changing the definition of murder relied on by the voters. The Court of Appeal in *Gooden* addressed the letter, noting uncertainty surrounding whether the letter pertained to Senate Bill No. 1437 or Assembly Bill No. 3104, which was not enacted but would have, in relevant part, amended sections 189, 190 and 190.2. (*Gooden*, *supra*, 42 Cal.App.5th at p. 285, 255 Cal.Rptr.3d 239; Assem. Bill No. 3104 (2017-2018 Reg. Sess.)) *Gooden* concluded that regardless, the letter was neither binding nor persuasive. (*Gooden*, *supra*, at p. 285, 255 Cal.Rptr.3d 239; *St. John's Well Child & Family Center v. Schwarzenegger* (2010) 50 Cal.4th 960, 982, 116 Cal.Rptr.3d 195, 239 P.3d 651 ["[A]n opinion of the Legislative Counsel is entitled to respect, [but] its weight depends on the reasons given in its support."].) As stated, we have already addressed and rejected the reasoning set forth in the letter and nothing in the letter persuades us to the contrary.

e. Retroactive Petition Process Under Section 1170.95

Respondent also argues that even if prospective application of Senate Bill No. 1437 passes constitutional muster, retroactive application does not. Respondent contends that voter intent

to increase sentences for first and second degree murder “unquestionably precludes the Legislature from retroactively redefining murder to vacate convictions that were lawful at the time they were entered, reducing the punishment that the electorate mandated for murder and effectively granting a legislative commutation.” “[T]he voters unquestionably intended that those convicted of murder received life until that sentence was lawfully changed.”

12 Respondent asserts that separating the offense of murder from the punishment requires parsing Proposition 7 with “‘artificial, scalpel-like precision’*” but we disagree. As we have explained, the Legislature may address related areas of law and respondent’s arguments improperly conflate the crime with the punishment. Voters were concerned with ensuring harsh sentences for those convicted of murder, but in enacting Proposition 7, they did not purport to address the substantive offense of murder and thus did not preclude or otherwise restrict the Legislature from acting in this related area. Critically, [section 1170.95](#) does not provide for resentencing a defendant who stands convicted of murder, but for resentencing a defendant whose murder conviction has been vacated based on a change to the offense of murder. (*Id.*, subd. (a).) In our view, this is a distinction with a difference.

In rejecting this line of attack advanced by respondent, the *Gooden* court reasoned that it “assumes a petitioner’s murder conviction is fixed and the resentencing procedure merely provides an avenue by which a petitioner may obtain a more lenient sentence for the extant conviction. However, that is not the case. The effect of a successful petition under [section 1170.95](#) ‘ “ ‘is to vacate the judgment ... as if no judgment had ever been rendered.’ ” ’ [Citations.] Thus, the resentencing procedure established by [section 1170.95](#)—like the remainder of the statutory changes implemented by Senate Bill 1437—does not amend Proposition 7.” (*Gooden, supra*, 42 Cal.App.5th at p. 286, 255 Cal.Rptr.3d 239, quoting *People v. Martinez* (2017) 10 Cal.App.5th 686, 718, 216 Cal.Rptr.3d 814 & citing *People v. Sumstine* (1984) 36 Cal.3d 909, 920, 206 Cal.Rptr. 707, 687 P.2d 904.) We agree with respondent that “[t]he voters should get what they enacted, not more and not less[]” (*Pearson, supra*, 48 Cal.4th at p. 571, 107 Cal.Rptr.3d 265, 227 P.3d 858), but Senate Bill No. 1437 does not deprive them of what they enacted.

E. Proposition 115

1. Background

Next, in 1990, voters enacted Proposition 115, entitled the Crime Victims Justice Reform Act, “to adopt ‘comprehensive reforms ... needed in order to restore balance and fairness to our criminal justice system’ ” (*Raven v. Deukmejian* (1990) 52 Cal.3d 336, 340, 276 Cal.Rptr. 326, 801 P.2d 1077, quoting Voter Information Guide, Primary Elec. (June 5, 1990) text of Prop. 115, §§ 1–30, pp. 33, 65–69), and “[t]o achieve that purpose, the measure adopts a variety of changes and additions to [the] state Constitution and statutes[]” (*Raven v. Deukmejian, supra*, at p. 340, 276 Cal.Rptr. 326, 801 P.2d 1077). Relevant to the constitutional challenge at issue in this appeal, Proposition 115 amended [section 189](#) to add the following offenses to the felony-murder rule: kidnapping, train wrecking and sex offenses under sections 286, 288, 288a and 289. (Voter Information Guide, *supra*, text of Prop. 115, *supra*, § 9, p. 66; *Raven v. Deukmejian, supra*, 52 Cal.3d at p. 344, 276 Cal.Rptr. 326, 801 P.2d 1077.)⁹ Voters provided that Proposition 115 may be amended only “by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors[]” (Voter Information Guide, *supra*, text of Prop. 115, § 30, p. 69).

⁹ Section 288a was subsequently renumbered to section 287. (Stats, 2018, ch. 423, § 49.)

2. Analysis

The trial court rejected the prosecution’s claim that Senate Bill No. 1437 unconstitutionally amends Proposition 115, but on appeal, respondent renews the argument. Respondent acknowledges that Proposition 115 did not alter [section 189](#) other than to add five crimes to the felony-murder rule, that the amendment to [section 189](#) necessitated a full reenactment of the statute pursuant to the California Constitution, and that with respect to technical reenactments involving no substantive change, “the Legislature in most cases retains the power to amend the restated provision through the ordinary legislative process.” (*Com. on State Mandates, supra*, 6 Cal.5th at p. 214, 240 Cal.Rptr.3d 52, 430 P.3d 345, citing Cal. Const., art. IV, § 9.) However, respondent contends that “[t]his conclusion applies *unless* the provision is integral to accomplishing the electorate’s goals in enacting the initiative or other indicia support the conclusion that voters reasonably intended to limit the Legislature’s ability to amend that part of

the statute[] (*Com. on State Mandates, supra*, at p. 214, 240 Cal.Rptr.3d 52, 430 P.3d 345, italics in original),’ ” and here, the voters permitted the Legislature to amend Proposition 115 only “by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors[]” (Voter Information Guide, *supra*, text of Prop. 115, § 30, p. 69). Respondent also contends that Proposition 115 did not merely reenact [section 189](#) because “[r]emoving culpability from accomplices and felony murder cannot be said to be anything other than at odds with” the goals of just punishment for violent criminals and comprehensive reform needed to restore balance and fairness to the criminal justice system.

*13 Distilled to its essence, respondent’s claim is that rather than a technical reenactment, the measure “directly amended” [section 189](#) and requires a two-thirds majority in both houses for legislative amendment, thereby precluding the Legislature from making *any* substantial changes to [section 189](#). We reject the argument.

Proposition 115 expanded the scope of the felony-murder rule by adding five qualifying felonies, but effected no other substantive change to [section 189](#) and the technical reenactment of [section 189](#) in full, required by the California Constitution, did not insulate [section 189](#) from any and all future changes by the Legislature. To the contrary, the Legislature retains authority to amend through the ordinary legislative process unless the provision at issue—here, the elements of murder—is integral to the electorate’s goal in enacting the earlier measure or there is some other indication that the voters intended to limit the Legislature’s ability to amend the provision at issue via the ordinary legislative process. (*Com. on State Mandates, supra*, 6 Cal.5th at p. 214, 240 Cal.Rptr.3d 52, 430 P.3d 345.) To find otherwise is directly contrary to the California Supreme Court’s conclusion in *Com. of State Mandates*, which included the following observation: “Imposing such a limitation as a matter of course on provisions that are merely technically restated would unduly burden the people’s willingness to amend existing laws by initiative.” (*Ibid.*)

The relevant question is whether Senate Bill No. 1437 impermissibly amends Proposition 115 by taking away from the change to [section 189](#) mandated by the voters in enacting the measure. (*Kelly, supra*, 47 Cal.4th at p. 1027, 103 Cal.Rptr.3d 733, 222 P.3d 186.) As the change to [section 189](#) effected by Senate Bill No. 1437 does not take away

from or alter the scope of the felony-murder rule with respect to qualifying offenses, it does not amend Proposition 115. (*Gooden, supra*, 42 Cal.App.5th at p. 287, 255 Cal.Rptr.3d 239; accord, *Cruz, supra*, 46 Cal.App.5th at p. 747, 260 Cal.Rptr.3d 166; *Solis, supra*, 46 Cal.App.5th at p. 773, 259 Cal.Rptr.3d 854.)

We perceive no ambiguity with the text of Proposition 115 and respondent does not argue otherwise, but we note that the absence of any indication that Senate Bill No. 1437 thwarts the voters’ intent in enacting Proposition 115. Respondent asserts that Proposition 115 added language to [section 190.2, subdivisions \(c\) and \(d\)](#), that is nearly identical to [section 189, subdivision \(e\)](#), added by Senate Bill No. 1437, and she argues that “[h]ad the voters wanted the additional requirements for accomplices to apply to ... § 189, they would have codified it as such.” However, “ ‘[w]e cannot presume that ... the voters intended the initiative to effect a change in law that was not expressed or strongly implied in either the text of the initiative or the analyses and arguments in the official ballot pamphlet.’ ” (*People v. Valencia* (2017) 3 Cal.5th 347, 364, 220 Cal.Rptr.3d 230, 397 P.3d 936.)

Here, the stated goals of the initiative were “to restore balance to our criminal justice system, to create a system in which justice is swift and fair, and to create a system in which violent criminals receive just punishment, in which crime victims and witnesses are treated with care and respect, and in which society as a whole can be free from the fear of crime in our homes, neighborhoods, and schools.” (Voter Information Guide, *supra*, text of Prop. 115, § 1, p. 33.) The arguments in favor of Proposition 115 generally focused on cutting down on costs and delays in the criminal justice system, and on improving the death penalty law. (*Id.* at pp. 34–35.) Neither the text of Proposition 115 nor the ballot material speaks to the elements of murder and as that matter was not before the voters, we cannot speculate as to their thoughts on it. (*People v. Valencia, supra*, 3 Cal.5th at p. 380, 220 Cal.Rptr.3d 230, 397 P.3d 936.)

F. Proposition 9

1. Background

*14 Respondent also claims that the [section 1170.95](#) petition process available to those convicted of felony murder or murder under a natural and probable consequences theory violates the California Constitution as amended by

Proposition 9, a crime victims' rights initiative known as Marsy's Law. (*In re Vicks* (2013) 56 Cal.4th 274, 282, 153 Cal.Rptr.3d 471, 295 P.3d 863; *Santos v. Brown* (2015) 238 Cal.App.4th 398, 404, 189 Cal.Rptr.3d 234.) The stated purpose of Proposition 9, enacted by voters in 2008, is to “[p]rovide victims with rights to justice and due process[.]” and to “[i]nvoke the rights of families of homicide victims to be spared the ordeal of prolonged and unnecessary suffering, and to stop the waste of millions of taxpayer dollars, by eliminating parole hearings in which there is no likelihood a murderer will be paroled, and to provide that a convicted murderer can receive a parole hearing no more frequently than every three years, and can be denied a follow-up parole hearing for as long as 15 years.” (Voter Information Guide, *supra*, text of Prop. 9, § 3, ¶¶ 1–2, p. 129.)

The measure “includes both constitutional and statutory amendments. The constitutional provisions recognize various rights of victims of crime and of the people of California” (*In re Vicks, supra*, 56 Cal.4th at p. 282, 153 Cal.Rptr.3d 471, 295 P.3d 863), while “[m]ost of the law's statutory amendments relate to parole” (*id.* at p. 283, 153 Cal.Rptr.3d 471, 295 P.3d 863). The voters limited the legislative amendment of Proposition 9 as follows: “The statutory provisions of this act shall not be amended by the Legislature except by a statute passed in each house by roll-call vote entered in the journal, three-fourths of the membership of each house concurring, or by a statute that becomes effective only when approved by the voters. However, the Legislature may amend the statutory provisions of this act to expand the scope of their application, to recognize additional rights of victims of crime, or to further the rights of victims of crime by a statute passed by a majority vote of the membership of each house.” (Voter Information Guide, *supra*, text of Prop. 9, § 9, p. 132.)

Respondent claims that the petition process under section 1170.95 is unconstitutional because it violates the right of crime victims to finality of judgment and does not consider the safety of victims, their families and the public with respect to release. Relevant to these claims, Proposition 9 amended the California Constitution to include the following findings and declarations: “The rights of victims also include broader shared collective rights that are held in common with all of the People of the State of California and that are enforceable through the enactment of laws and through good-faith efforts and actions of California's elected, appointed, and publicly employed officials....” (Cal. Const., art. I, § 28, subd. (a)(4).) Further, “[v]ictims of crime are entitled to finality in their criminal cases. Lengthy appeals and other post-

judgment proceedings that challenge criminal convictions, frequent and difficult parole hearings that threaten to release criminal offenders, and the ongoing threat that the sentences of criminal wrongdoers will be reduced, prolong the suffering of crime victims for many years after the crimes themselves have been perpetrated. This prolonged suffering of crime victims and their families must come to an end.” (*Id.*, subd. (a)(6).)

Proposition 9 also amended the California Constitution to provide that victims are entitled “[t]o a speedy trial and a prompt and final conclusion of the case and any related post-judgment proceedings” (Cal. Const., art. I, § 28, subd. (b)(9)), and “[t]o have the safety of the victim, the victim's family, and the general public considered before any parole or other post-judgment release decision is made” (*id.*, subd. (b)(16)).

2. Finality

With respect to postconviction release proceedings and decisions, Proposition 9 provides victims with the right to notice, to be present and to be heard. (*Lamoureux, supra*, 42 Cal.App.5th at pp. 264–265, 255 Cal.Rptr.3d 253, citing Cal. Const., art. I, § 28, subd. (b)(7), (b)(8).) Thus, although Proposition 9 provides victims with the right to “prompt and final conclusion of ... any related postjudgment proceedings” (Cal. Const., art. I, § 28, subd. (b)(9)), the measure “did not foreclose post-judgment proceedings altogether” and instead “expressly contemplated the availability of such postjudgment proceedings” (*Lamoureux, supra*, at pp. 264–265, 255 Cal.Rptr.3d 253.) Consistent with this interpretation, other postjudgment proceedings enacted after 2008 have specifically recognized the existence of victims' rights under Proposition 9. (*Id.* at p. 265, 255 Cal.Rptr.3d 253, citing § 1170.126, subd. (m) & *People v. Superior Court (Kaulick)* (2013) 215 Cal.App.4th 1279, 1300, 155 Cal.Rptr.3d 856 [Prop. 36]; § 1170.18, subd. (o) [Prop. 47]; § 1170.91, subd. (b)(6) [providing recall and resentencing process for current or former military members suffering from certain mitigating problems or conditions].)

*15 As the court in *Lamoureux* stated, “[i]t would be anomalous and untenable for us to conclude, as the People impliedly suggest, that the voters intended to categorically foreclose the creation of any new postjudgment proceedings not in existence at the time Marsy's Law was approved simply because the voters granted crime victims a right to a ‘prompt

and final conclusion' of criminal cases." (*Lamoureux, supra*, 42 Cal.App.5th at p. 265, 255 Cal.Rptr.3d 253, quoting Cal. Const., art. I, § 28, subd. (b)(9), fn. omitted.) We agree. Neither the plain language of the initiative nor the ballot material suggests that in enacting Proposition 9, voters intended to prohibit the Legislature from creating new postjudgment proceedings. (*Pearson, supra*, 48 Cal.4th at p. 571, 107 Cal.Rptr.3d 265, 227 P.3d 858.)

Moreover, subdivisions (c) and (d)(1) of section 1170.95 provide specific time limits, which may be extended only upon a showing of good cause. This ensures victims receive a prompt and final conclusion with respect to postjudgment proceedings initiated under section 1170.95. (*Lamoureux, supra*, 42 Cal.App.5th at p. 265, fn. 6, 255 Cal.Rptr.3d 253.)

3. Public Safety Considerations

As well, *Lamoureux*, assuming without deciding that the petition process under section 1170.95 qualifies as a postjudgment release decision, rejected the claim that the process infringes on the "right [t]o have the safety of the victim, the victim's family, and the general public considered before any parole or other post-judgment release decision is made." (*Lamoureux, supra*, 42 Cal.App.5th at p. 265, 255 Cal.Rptr.3d 253, quoting Cal. Const., art. I, § 28, subd. (b)(16).) The court explained, "The People are correct that the safety of the victim and the public are not pertinent to whether a court may vacate the petitioner's murder conviction and resentence the petitioner." (*Lamoureux, supra*, at p. 265, 255 Cal.Rptr.3d 253.) However, under section 1170.95, subdivision (d), "[i]f a court rules a petitioner is entitled to vacatur of his or her murder conviction, it must then resentence the petitioner on any remaining counts. [Citation.] During resentencing, the court may weigh the same sentencing factors it considers when it initially sentences a defendant, including whether the defendant presents 'a serious danger to society' and '[a]ny other factors [that] reasonably relate to the defendant or the circumstances under which the crime was committed.'" (*Cal. Rules of Court, rule 4.421(b)(1), (c)*.) At minimum, [therefore,] the trial court's ability to consider these factors during resentencing ensures the safety of the victim, the victim's family, and the general public are 'considered,' as required by Marsy's Law. (Cal. Const., art. I, § 28, subd. (b)(16).)" (*Lamoureux, supra*, at p. 266, 255 Cal.Rptr.3d 253.)

4. Findings and Declarations Under Subdivision (a)

Finally, respondent cites subdivisions (a)(4) and (a)(6) of article I, section 28 of the California Constitution, quoted in part I.C.1. of the Discussion, in support of her argument. However, unlike subdivision (b), which sets forth victims' rights that are enforceable under subdivision (c) in any court having jurisdiction over the case, the findings and declarations set forth in subdivision (a) are "not an independent source of enforceable rights." (*Lamoureux, supra*, 42 Cal.App.5th at p. 266, 255 Cal.Rptr.3d 253, citing *People v. Superior Court (Johnson)* (2004) 120 Cal.App.4th 950, 956, 15 Cal.Rptr.3d 921; see *Southern California Edison Co. v. Peevey* (2003) 31 Cal.4th 781, 792–793, 3 Cal.Rptr.3d 703, 74 P.3d 795 [statutory findings and declarations provided guidance in carrying out bill's provisions, not binding limitations].) Likewise, to the extent that respondent's argument relies on the preamble in sections 2 and 3 of Proposition 9, these findings and declarations and statements of purpose and intent " 'do not confer power, determine rights, or enlarge the scope of [the] measure.' " (*Lamoureux, supra*, at p. 266, 255 Cal.Rptr.3d 253, quoting *People v. Guzman* (2005) 35 Cal.4th 577, 588, 25 Cal.Rptr.3d 761, 107 P.3d 860.) Accordingly, on these grounds, we reject respondent's claim that section 1170.95 violates Proposition 9.

II. Claim Senate Bill No. 1437 Violates Separation of Powers Doctrine

A. Separation of Powers Doctrine

*16 Next, respondent argues that the petition process under section 1170.95 violates the separation of powers doctrine by impermissibly intruding into a core judicial function insofar as it requires that convictions be vacated even in cases in which judgment is final. Respondent also argues that the availability of relief in cases in which judgment is final usurps the governor's pardon power.

"The California Constitution establishes a system of state government in which power is divided among three coequal branches (Cal. Const., art. IV, § 1 [legislative power]; Cal. Const., art. V, § 1 [executive power]; Cal. Const., art. VI, § 1 [judicial power]), and further states that those charged with the exercise of one power may not exercise any other (Cal. Const., art. III, § 3)." (*People v. Bunn* (2002) 27 Cal.4th 1, 14, 115 Cal.Rptr.2d 192, 37 P.3d 380 (*Bunn*)). The primary purpose of the separation of powers doctrine

“ ‘is to prevent the combination in the hands of a single person or group of the basic or fundamental powers of government[]’ ” (*Manduley v. Superior Court* (2002) 27 Cal.4th 537, 557, 117 Cal.Rptr.2d 168, 41 P.3d 3), as well as to avoid overreaching by one governmental branch against another (*Bunn, supra*, at p. 16, 115 Cal.Rptr.2d 192, 37 P.3d 380). While there is some interdependence among the branches, the Constitution “does vest each branch with certain ‘core’ [citation] or ‘essential’ [citation] functions that may not be usurped by another branch.” (*Id.* at p. 14, 115 Cal.Rptr.2d 192, 37 P.3d 380.)

“ ‘Although the language of California Constitution article III, section 3, may suggest a sharp demarcation between the operations of the three branches of government, California decisions long have recognized that, in reality, the separation of powers doctrine “ ‘does not mean that the three departments of our government are not in many respects mutually dependent’ ” [citation], or that the actions of one branch may not significantly affect those of another branch.’ ” (*Briggs v. Brown* (2017) 3 Cal.5th 808, 846, 221 Cal.Rptr.3d 465, 400 P.3d 29, quoting *Superior Court v. County of Mendocino* (1996) 13 Cal.4th 45, 52, 51 Cal.Rptr.2d 837, 913 P.2d 1046.) Instead, it is violated “only when the actions of a branch of government defeat or materially impair the inherent functions of another branch.” (*In re Rosenkrantz* (2002) 29 Cal.4th 616, 662, 128 Cal.Rptr.2d 104, 59 P.3d 174.)

B. Material Impairment of Core Judicial Function

We turn first to respondent's argument that the retroactive petition process under section 1170.95 intrudes into a core judicial function insofar as it authorizes relief in cases in which judgment is final. “Our Constitution vests ‘[t]he legislative power of this State ... in the California Legislature which consists of the Senate and Assembly’ (Cal. Const. art. IV, § 1.) It is in the nature of state constitutions that they, unlike the federal Constitution, generally do not grant only limited powers. (*Marine Forests Society v. California Coastal Com.* (2005) 36 Cal.4th 1, 29 [30 Cal.Rptr.3d 30, 113 P.3d 1062].) Consequently, ‘unlike the United States Congress, which possesses only those specific powers delegated to it by the federal Constitution, it is well established that the California Legislature possesses *plenary* legislative authority except as specifically limited by the California Constitution.’ (*Id.* at p. 31 [30 Cal.Rptr.3d 30, 113 P.3d 1062].) Lying at the core of that plenary authority is the power to enact laws. (*California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231, 254 [135 Cal.Rptr.3d 683, 267 P.3d 580].) It has been said that pursuant to that

authority, ‘[t]he Legislature has the *actual* power to pass any act it pleases,’ subject only to those limits that may arise elsewhere in the state or federal Constitutions.” (*Howard Jarvis Taxpayers Assn. v. Padilla* (2016) 62 Cal.4th 486, 497–498, 196 Cal.Rptr.3d 732, 363 P.3d 628.)

*17 “[O]rdinarily a final judgment is conclusive.” (*Quarry v. Doe I* (2012) 53 Cal.4th 945, 980, 139 Cal.Rptr.3d 3, 272 P.3d 977; accord, *Marine Forests Society v. California Coastal Com.*, *supra*, 36 Cal.4th at p. 25, 30 Cal.Rptr.3d 30, 113 P.3d 1062) However, as set forth above, “it is the function of the legislative branch to define crimes and prescribe punishments, and ... such questions are in the first instance for the judgment of the Legislature alone.” (*In re Lynch* (1972) 8 Cal.3d 410, 414, 105 Cal.Rptr. 217, 503 P.2d 921; accord, *People v. Chun* (2009) 45 Cal.4th 1172, 1183, 91 Cal.Rptr.3d 106, 203 P.3d 425; *Manduley v. Superior Court, supra*, 27 Cal.4th at p. 552, 117 Cal.Rptr.2d 168, 41 P.3d 3, 27 Cal.4th 887A at p. 552; see *Howard Jarvis Taxpayers Assn. v. Padilla, supra*, 62 Cal.4th at p. 499, 196 Cal.Rptr.3d 732, 363 P.3d 628 [“The principal function of a legislature is ‘to enact wise and well-formed and needful laws [citation]’ ”].)¹⁰

¹⁰ As respondent points out, “ ‘[t]he power of the people through the statutory initiative is coextensive with the power of the Legislature.’ ” (*Manduley v. Superior Court, supra*, 27 Cal.4th at p. 552, 117 Cal.Rptr.2d 168, 41 P.3d 3, 27 Cal.4th 887A at p. 552.) The claim here, however, is that the Legislature impermissibly intruded into core functions of the judicial and executive branches by upending final judgments and exercising clemency.

1. Cases Holding Final Judgments Yield to Broader Penal Reform

As respondent acknowledges, there is authority for the proposition that where broader penal reform is at issue, “some legislative interference with final court judgments is permissible.” In *Way v. Superior Court* (1977) 74 Cal.App.3d 165, 141 Cal.Rptr. 383 (*Way*), the Court of Appeal considered a challenge to the repeal of the Indeterminate Sentencing Law and enactment of the Uniform Determinate Sentencing Act of 1976 (Determinate Sentencing Act), effective July 1, 1977. (*Way, supra*, at pp. 168–169, 141 Cal.Rptr. 383). “In contrast to the [Indeterminate Sentencing Law], which was designed ‘to mitigate the punishment[,] place emphasis upon the reformation of the offender,’ and ‘make the

punishment fit the criminal rather than the crime’ [citation], the [Determinative Sentencing] Act declares that ‘the purpose of imprisonment for crime is *punishment*. This purpose is best served by ... provision for uniformity in the sentences of offenders....’ (Pen. Code, § 1170, subd. (a)(1).) [¶] To achieve *total* uniformity, ... section 1170.2 provides for retroactive application of the [Determinative Sentencing] Act to prisoners incarcerated under the [Indeterminate Sentencing Law].” (*Id.* at p. 169, 141 Cal.Rptr. 383.)

The Determinative Sentencing Act was challenged by a group of judges on the ground that it violated the separation of powers doctrine. (*Way, supra*, 74 Cal.App.3d at pp. 169–170, 141 Cal.Rptr. 383.) The Court of Appeal concluded that the Legislature lacked the power to grant a commutation or pardon, a power vested exclusively in the Governor (*id.* at pp. 175–176, 141 Cal.Rptr. 383), but that the motivation underlying section 1170.2 was “to restructure punishments for criminal conduct and to make them uniform to the extent reasonably possible[]” (*Way, supra*, at p. 177, 141 Cal.Rptr. 383). As such, the statute “undertook no act of mercy, grace, or forgiveness toward past offenders, such as characterizes true commutations.” (*Ibid.*) Although existing prison terms were shortened under the Determinative Sentencing Act, it was “purely incidental to the main legislative purpose” (*Ibid.*)¹¹

¹¹ As discussed further, *post*, the California Supreme Court cited the commutation analysis in *Way* with approval when it rejected a challenge to legislation providing for the destruction of marijuana arrest or conviction records, a challenge premised on legislative interference with executive clemency power. (*Younger v. Superior Court* (1978) 21 Cal.3d 102, 117–118, 145 Cal.Rptr. 674, 577 P.2d 1014 (*Younger*).

*18 The court further concluded that the retroactive change did not disturb the rule “that once a judgment in a criminal case becomes final, it may not be reduced by subsequent legislative action.” (*Way, supra*, 74 Cal.App.3d at p. 179, 141 Cal.Rptr. 383.) The court explained, “The distinction is that in this case final judgments will be reduced only as an incident of a major and comprehensive reform of an entire penal system. In view of the legislative objective, the final judgment rule must yield.” (*Id.* at p. 180, 141 Cal.Rptr. 383.)

Two years later, another Court of Appeal considered whether section 209, which was amended under the Determinative

Sentencing Act to provide that kidnapping for robbery was punishable by life with the possibility of parole, applied retroactively to a defendant serving a sentence of life without the possibility of parole under the prior version of the statute. (*People v. Community Release Bd.* (1979) 96 Cal.App.3d 792, 794, 158 Cal.Rptr. 238.) The amendment to section 209 was not expressly retroactive and the court concluded that because the amendment was ameliorative, it was to be applied retroactively “ ‘to every case to which it constitutionally could apply.’ ” (*People v. Community Release Bd., supra*, at p. 799, 158 Cal.Rptr. 238, quoting *In re Estrada* (1965) 63 Cal.2d 740, 745, 48 Cal.Rptr. 172, 408 P.2d 948.) Relying on *Way*, the court further concluded that the amendment applied retroactively to the case before it, notwithstanding that judgment was final, because “the retroactivity feature was merely incidental to the proper legislative function of revising the penal laws.” (*People v. Community Release Bd., supra*, at p. 800, 158 Cal.Rptr. 238.) The court observed, “We therefore take it as settled that legislation reducing punishment for crime may constitutionally be applied to prisoners whose judgments have become final.” (*Ibid.*)

Subsequently, the Court of Appeal in *In re Chavez* considered a 2001 amendment to a statute criminalizing the filing of a false personal income tax return. (*In re Chavez* (2004) 114 Cal.App.4th 989, 992, 8 Cal.Rptr.3d 395 (*Chavez*)). Under the Determinative Sentencing Act, the punishment for the crime was 16 months, two years or three years. (*Id.* at p. 994, 8 Cal.Rptr.3d 395.) In 1983, the statute was revised pursuant to an extensive bill (*id.* at pp. 994–995, 8 Cal.Rptr.3d 395), and that revision resulted in the inclusion of language reflecting an indeterminate sentence of “ ‘not more than three years’ ” (*id.* at p. 995, 8 Cal.Rptr.3d 395). The statute was renumbered in 1993 but retained the language reflecting an indeterminate sentence. (*Ibid.*) In 2001, the statute was amended again to return the punishment to that provided for under the Determinative Sentencing Act: 16 months, two years or three years. (*Id.* at pp. 991–992, 8 Cal.Rptr.3d 395.)

At issue in *Chavez* was whether the two defendants who were serving indeterminate sentences under the prior version of the statute were entitled to benefit from the 2001 amendment despite the finality of their judgments. (*Chavez, supra*, 114 Cal.App.4th at pp. 992–993, 8 Cal.Rptr.3d 395.) The court concluded that the statute was amended in 2001 to effect a nonsubstantive correction resulting from an earlier drafting error with respect to the indeterminate sentence language and that the amendment was intended to apply retroactively to all whom it could apply. (*Id.* at pp. 998–

999, 8 Cal.Rptr.3d 395.) The Attorney General argued that the amendment did not apply in cases where judgment was final because the “amendment was not passed as part of a major and comprehensive reform of the entire penal system.” (*Id.* at p. 1000, 8 Cal.Rptr.3d 395.) The court rejected the argument, stating, “It ... appears settled that a final judgment is not immune from the Legislature’s power to adjust prison sentences for a legitimate public purpose. [Citations.] We conclude that the purpose of achieving equality and uniformity in felony sentencing is a legitimate public purpose to which the finality of judgment must yield.” (*Ibid.*, fn. omitted.)

2. *Bunn* Decision

*19 Notwithstanding the foregoing authority, respondent relies on the California Supreme Court’s decision in *Bunn* in support of her argument that the Legislature may not subvert final judgments. We are not persuaded that *Bunn* applies, however.

Prior to 1994, the statutes of limitations applicable to felony sex crimes committed against children were three and six years, and the Legislature determined that these periods were inadequate given the problems inherent in sex crimes against children: delay in reporting, the victims’ difficulty in recalling and recounting the abuse, and “their vulnerability to adults in positions of authority and trust.” (*Bunn, supra*, 27 Cal.4th at p. 6, 115 Cal.Rptr.2d 192, 37 P.3d 380 [discussing former §§ 800 & 801].) In response, the Legislature enacted a statute that, following subsequent amendments, “authorize[d] prosecution for criminal acts committed many years beforehand—and where the original limitations period ha[d] expired—as long as prosecution beg[an] within a year of a victim’s first complaint to the police” (*Stogner v. California* (2003) 539 U.S. 607, 609, 123 S.Ct. 2446, 156 L.Ed.2d 544 [addressing § 803, former subd. (g)]) (*Stogner*); *Bunn, supra*, at pp. 6–11, 115 Cal.Rptr.2d 192, 37 P.3d 380.)

In *People v. Frazer*, the California Supreme Court upheld the statute as constitutional in the face of a challenge on ex post facto and due process grounds. (*People v. Frazer* (1999) 21 Cal.4th 737, 742–743, 88 Cal.Rptr.2d 312, 982 P.2d 180, abrogated by *Stogner, supra*, 539 U.S. at pp. 632–633, 123 S.Ct. 2446 [holding § 803, former subd. (g)’s revival of a time-barred prosecution violates ex post facto clause].) Subsequently, in the companion cases of *Bunn* and *King*, the California Supreme Court considered a challenge to section

803, former subdivision (g), on the ground that the statute violated the separation of powers doctrine. (*Bunn, supra*, 27 Cal.4th at p. 5, 115 Cal.Rptr.2d 192, 37 P.3d 380; *People v. King* (2002) 27 Cal.4th 29, 31, 115 Cal.Rptr.2d 214, 37 P.3d 398 (*King*)). Relying on the United States Supreme Court’s separation of powers analysis in *Plaut v. Spendthrift Farm, Inc.* (1995) 514 U.S. 211, 115 S.Ct. 1447, 131 L.Ed.2d 328 (*Plaut*), which involved a statute of limitations issue in a civil suit for damages, the California Supreme Court concluded that section 803, former subdivision (g), was unconstitutional insofar as the “refiling provision supplants final judgments, and thus invades the judicial power in violation of the separation of powers clause of the California Constitution (art. III, § 3).” (*King, supra*, at p. 31, 115 Cal.Rptr.2d 214, 37 P.3d 398; accord, *Bunn, supra*, at p. 25, 115 Cal.Rptr.2d 192, 37 P.3d 380.)

In *Bunn*, the court observed, “*Plaut* ... declared, in almost talismanic form, that Congress lacks the power to ‘reopen’ [citation], ‘correct’ [citation], ‘reverse’ [citation], ‘revise’ [citation], ‘vacate’ [citation], or ‘annul’ [citation] final court judgments. The controlling separation of powers principle was stated as follows: ‘Having achieved finality, ... a judicial decision becomes the last word of the judicial department with regard to a particular case or controversy, and Congress may not declare by retroactive legislation that the law applicable to that very case was something other than what the courts said it was.’ ” (*Bunn, supra*, 27 Cal.4th at p. 19, 115 Cal.Rptr.2d 192, 37 P.3d 380.) “Moreover, notwithstanding the constitutional protection afforded final judgments on an individual basis, [the statute at issue in *Plaut*] did not somehow escape separation of powers scrutiny merely because the reopening provision affected ‘a whole class of cases.’ [Citation.] The court reiterated that a separation of powers violation occurs when postjudgment legislation deprives court decisions ‘of the conclusive effect that they had when they were announced.’ [Citation.] Thus, whether a statute targets particular suits or parties, or whether it purports to apply more generally ..., the critical factor for separation of powers purposes is whether such impermissible legislative interference with final judgments has occurred.” (*Id.* at pp. 20–21, 115 Cal.Rptr.2d 192, 37 P.3d 380.)

*20 Despite the arguably broad language in *Plaut*, its federal constitutional separation of powers analysis is not binding.¹² Furthermore, “[i]t is ... ‘axiomatic that a decision does not stand for a proposition not considered by the court[]’ ” (*Wishnev, supra*, 8 Cal.5th at p. 217, 254 Cal.Rptr.3d 638, 451 P.3d 777) and, in *Bunn*, the California

Supreme Court's specifically held as follows: “[A] *refiling* provision like section 803(g) cannot be retroactively applied to subvert judgments that became final before the provision took effect, and before the law of finality changed. This ban applies even where lawmakers have acted for ‘the very best of reasons’ [citation], and whether or not legislative disagreement with the ‘legal rule’ underlying the judgment has been expressed” (*Bunn, supra*, 27 Cal.4th at pp. 24–25, 115 Cal.Rptr.2d 192, 37 P.3d 380, italics added).

12 “[T]he doctrine of separation of powers embodied in the Federal Constitution is not mandatory on the States” (*Whalen v. United States* (1980) 445 U.S. 684, 689, fn. 4, 100 S.Ct. 1432, 63 L.Ed.2d 715), and federal separation of powers decisions are not binding, although they may have persuasive value (*Marine Forests Society v. California Coastal Com.*, *supra*, 36 Cal.4th at pp. 29–30, 30 Cal.Rptr.3d 30, 113 P.3d 1062).

Both *Plaut* and *Bunn* confronted legislative amendment to statutes of limitation that resulted in the revival of time-barred actions where judgment was final, and both courts concluded that in cases where judgment was final, such legislation violated the separation of powers doctrine by reopening final judgments. (*Plaut, supra*, 514 U.S. at p. 240, 115 S.Ct. 1447; *Bunn, supra*, 27 Cal.4th at p. 24, 115 Cal.Rptr.2d 192, 37 P.3d 380.) While *Plaut*, in interpreting the separation of powers doctrine under the federal constitution, found it “irrelevant ... that the final judgments reopened by [the statute at issue] rested on the bar of a statute of limitations” (*Plaut, supra*, at p. 228, 115 S.Ct. 1447), we decline to divorce the decision in *Bunn* from its context given that “[t]he purpose of separation of powers is to protect individual liberty by preventing concentration of powers in the hands of any one individual or body.” (*O'Brien v. Jones* (2000) 23 Cal.4th 40, 65, 96 Cal.Rptr.2d 205, 999 P.2d 95.)

Relevant to our discussion, post-*Plaut* and *Bunn*, the United States Supreme Court reversed a California Supreme Court decision holding that former section 803 did not, in reviving time-barred criminal cases, violate the ex post facto clause. (*Stogner, supra*, 539 U.S. at p. 609, 123 S.Ct. 2446.) The court addressed four categories of ex post facto laws and although it found the statute unconstitutional because it fell within the category of laws that “‘inflicted punishments, where the party was not, by law, liable to any punishment’ ” (*id.* at p. 612, 123 S.Ct. 2446, italics omitted), the court also recognized that the statute potentially violated the ex post facto clause under another category by violating the rules of evidence (*id.* at p.

615, 123 S.Ct. 2446). Within this context, the court explained, “Significantly, a statute of limitations reflects a legislative judgment that, after a certain time, no quantum of evidence is sufficient to convict. [Citation.] And that judgment typically rests, in large part, upon evidentiary concerns—for example, concern that the passage of time has eroded memories or made witnesses or other evidence unavailable. [Citation.] Indeed, this Court once described statutes of limitations as creating ‘a presumption which renders proof unnecessary.’ [Citation.] [¶] Consequently, to resurrect a prosecution after the relevant statute of limitations has expired is to eliminate a currently existing conclusive presumption forbidding prosecution, and thereby to permit conviction on a quantum of evidence where that quantum, at the time the new law is enacted, would have been legally insufficient.” (*Id.* at pp. 615–616, 123 S.Ct. 2446.)

It is well established that “[o]nce the statute of limitations for an offense expires without the commencement of prosecution, prosecution for that offense is forever time-barred.” (*People v. Robinson* (2010) 47 Cal.4th 1104, 1112, 104 Cal.Rptr.3d 727, 224 P.3d 55, citing *Stogner, supra*, 539 U.S. at pp. 615–616, 123 S.Ct. 2446; see *People v. Williams* (1999) 21 Cal.4th 335, 341, 87 Cal.Rptr.2d 412, 981 P.2d 42; *People v. Gerold* (2009) 174 Cal.App.4th 781, 787, 94 Cal.Rptr.3d 649.) Given both that the specific statute at issue in *Bunn* reached into a final judgment to revive a time-barred criminal action, directly undermining individual liberty interests, and the specific legislative concerns underlying statutes of limitation, as discussed in the preceding paragraph, we reject an expansive view of *Bunn*, and *King*, as standing for the proposition that under no circumstance may a final judgment be disturbed. (*Lamoureux, supra*, 42 Cal.App.5th at p. 260, 255 Cal.Rptr.3d 253.) Such a broad reach would be at odds with the proposition that there is no separation of powers violation where the legislation at issue advances “a legitimate public purpose to which the finality of the judgment must yield.” (*Chavez, supra*, 114 Cal.App.4th at p. 1000, 8 Cal.Rptr.3d 395.)

3. Effect on Final Judgments Incidental to Broader Penal Reform

*21 In sum, the Legislature enjoys plenary power “to define crimes and establish penalties therefor[]” (*People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1400, 70 Cal.Rptr.2d 20; accord, *People v. Chun, supra*, 45 Cal.4th at p. 1183, 91 Cal.Rptr.3d 106, 203 P.3d 425), and a duly

enacted statute is presumed constitutional (*Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055, 1086, 17 Cal.Rptr.3d 225, 95 P.3d 459; accord, *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 509, 53 Cal.Rptr.2d 789, 917 P.2d 628). The central focus of Senate Bill No. 1437 is equity: ensuring that criminal liability for murder aligns with individual culpability. This is not a novel concept and our high court has stated, “[I]t is now firmly established that ‘[t]he concept of proportionality is central to the Eighth Amendment,’ and that ‘[e]mbodied in the Constitution’s ban on cruel and unusual punishments is the ‘precept of justice that punishment for crime should be graduated and proportioned to [the] offense.’” [Citation.]’ ” (*In re Coley* (2012) 55 Cal.4th 524, 538, 146 Cal.Rptr.3d 382, 283 P.3d 1252.)

In *Enmund v. Florida*, the United States Supreme Court concluded that in imposing the death penalty, the Constitution requires individualized consideration of the defendant’s culpability. (*Enmund v. Florida* (1982) 458 U.S. 782, 798, 102 S.Ct. 3368, 73 L.Ed.2d 1140 (*Enmund*)). Subsequently, in *Tison v. Arizona*, the United States Supreme Court held that the *Enmund* standard of culpability that must be met to impose the death penalty is “major participation in the felony committed, combined with reckless indifference to human life[.]” (*Tison v. Arizona* (1987) 481 U.S. 137, 158, 107 S.Ct. 1676, 95 L.Ed.2d 127 (*Tison*)). The court stated, “A critical facet of the individualized determination of culpability required in capital cases is the mental state with which the defendant commits the crime. Deeply ingrained in our legal tradition is the idea that the more purposeful is the criminal conduct, the more serious is the offense, and, therefore, the more severely it ought to be punished.” (*Id.* at p. 156, 107 S.Ct. 1676.) The *Tison* standard was thereafter codified in section 190.2, subdivision (d), which was amended by Proposition 115. (Voter Information Guide, *supra*, text of Prop. 115, § 10, p. 66; *People v. Banks, supra*, 61 Cal.4th at p. 794, 189 Cal.Rptr.3d 208, 351 P.3d 330.)

More recently, there has been a sea change in the law, procedurally and substantively, with respect to juvenile offenders (*Montgomery v. Louisiana* (2016) — U.S. — [136 S.Ct. 718, 734–735, 193 L.Ed.2d 599]), grounded in the recognition that children differ from adults because of their “ ‘diminished culpability and greater prospects for reform’ ” (*id.* at p. 733).

Given the legislative intent underlying Senate Bill No. 1437 and viewed in the context of broader changes in the law

tightening the connection between criminal liability and individual culpability, we conclude that Senate Bill No. 1437, rather than impermissibly targeting a specific case or class of cases, is directed at broader penal reform. Viewed through that lens, that some final judgments will necessarily be reopened pursuant to the change in the law is purely incidental to the broader reformation of the law. As such, the change to the crime of murder is analogous to the change to the sentencing law effected by the Determinate Sentencing Act.

More recently, as detailed by the Court of Appeal in *Lamoureux*, the Three Strikes Reform Act of 2012 (Prop. 36, as approved by voters, Gen. Elec. (Nov. 6, 2012)), which reduced punishment for certain offenders, and the Safe Neighborhoods and Schools Act (Prop. 47, as approved by voters, Gen. Elec. (Nov. 4, 2014)), which reduced certain theft- and drug-related felonies to misdemeanors, are both well-known ameliorative measures that provide for postfinal judgment relief. (*Lamoureux, supra*, 42 Cal.App.5th at pp. 262–263, 255 Cal.Rptr.3d 253.) The court also cited several other less well-known examples (*id.* at p. 263, 255 Cal.Rptr.3d 253, citing Health & Saf. Code, § 11361.8, subd. (a), Pen. Code, §§ 1170.22, 1170.91), and commented, “The prevalence of such legislation is not a sufficient reason on its own to affirm the constitutionality of section 1170.95 on separation of powers grounds. However, in our view, it confirms there is nothing especially unique about section 1170.95, which appears to us to constitute a legitimate and ordinary exercise of legislative authority. Further, it demonstrates the sweeping breadth and potentially drastic implications of the People’s separation of powers argument. Extending the holdings of the *Bunn* and *King* decisions to prohibit the retroactive reopening of final judgments of conviction would call into question the constitutionality of all the statutory provisions described *ante*, and potentially others. Because we conclude such an extension is unwarranted, we need not grapple with those potentially far-reaching consequences any further today” (*Lamoureux, supra*, at p. 264, 255 Cal.Rptr.3d 253).

C. Clemency Power

*22 Respondent also argues Senate Bill No. 1437 violates the separation of powers doctrine by impermissibly infringing upon the governor’s pardon power, a core function of the executive branch. We find this argument similarly unpersuasive.

The power to grant clemency is vested in the executive branch (*Lamoureux, supra*, 42 Cal.App.5th at p. 254, 255

Cal.Rptr.3d 253; *Way, supra*, 74 Cal.App.3d at p. 175, 141 Cal.Rptr. 383), and is an act of mercy or grace (*Lamoureux, supra*, at p. 254, 255 Cal.Rptr.3d 253; *People v. Shepard* (2015) 239 Cal.App.4th 786, 796, 191 Cal.Rptr.3d 429; *Santos v. Brown, supra*, 238 Cal.App.4th at p. 419, 189 Cal.Rptr.3d 234). In *Way*, discussed in the preceding section, the Court of Appeal concluded that in enacting section 1170.2 under the Determinate Sentencing Act, the Legislature's motivation was "to restructure punishments for criminal conduct and to make them uniform to the extent reasonably possible[]" and "[i]t undertook no act of mercy, grace, or forgiveness toward past offenders, such as characterizes true commutations." (*Way, supra*, at p. 177, 141 Cal.Rptr. 383.) The court concluded that "the shortening of existing prison terms by section 1170.2 is purely incidental to the main legislative purpose" (*id.* at p. 177, 141 Cal.Rptr. 383), and is "valid as incidental to a comprehensive reformation of California's penal system[]" (*id.* at p. 178, 141 Cal.Rptr. 383).

Subsequently, the California Supreme Court relied on the reasoning in *Way* and upheld a statute authorizing the destruction of marijuana arrest and conviction records. (*Younger, supra*, 21 Cal.3d at pp. 117–118, 145 Cal.Rptr. 674, 577 P.2d 1014.) The court held the statute "does not authorize destruction of records of a conviction for marijuana possession as an act of grace, but as a means of implementing the Legislature's principal objective of reducing the adverse social and personal effects of that conviction which linger long after the prescribed punishment has been completed. Any infringement on the power of executive clemency is thus purely incidental to the main purpose of the statute—which is well within the province of the Legislature—and hence does not violate the separation of powers." (*Id.* at p. 118, 145 Cal.Rptr. 674, 577 P.2d 1014.)

We agree with the court in *Lamoureux* that the rationale of *Way* and *Younger* applies here. (*Lamoureux, supra*, 42 Cal.App.5th at p. 255, 255 Cal.Rptr.3d 253.) As explained in *Lamoureux*, "in cases where a petitioner makes a prima facie showing of entitlement to relief (§ 1170.95, subd. (c)), and the prosecution fails to carry its burden of proving the petitioner is ineligible for resentencing (*id.*, subd. (d)(3)), murder sentences may be vacated and sentences recalled (*id.*, subd. (d)(1)). Although section 1170.95 requires resentencing on remaining counts, such that a given prisoner's overall sentence may not actually be shortened (*id.*, subd. (d)(1)), it is apparent and undisputed that at least some successful petitioners will obtain shorter sentences or even release from prison. [¶] However, the objective of the Legislature

in approving section 1170.95—like the legislative aims underpinning the challenged laws in the *Way* and *Younger* cases—was not to extend 'an act of grace' to petitioners. [Citations.] Rather, the Legislature's statement of findings and declarations confirms it approved Senate Bill 1437 as part of a broad penal reform effort. The purpose of that undertaking was to ensure our state's murder laws 'fairly address[] the culpability of the individual and assist[] in the reduction of prison overcrowding, which partially results from lengthy sentences that are not commensurate with the culpability of the individual.' [Citations.]

*23 "The outcome of a successful petition under section 1170.95 further underscores the fact that section 1170.95 is not merely an act of grace akin to an exercise of executive clemency. As noted *ante*, '[a] successful Senate Bill 1437 petitioner's criminal culpability does not simply evaporate; a meritorious section 1170.95 petition is not a get-out-of-jail free card. Instead, the petitioner is resentenced on the remaining convictions. If the murder was charged "generically" and the target offense was not charged, the murder conviction must be redesignated as the target offense or underlying felony for resentencing purposes.' [Citation.] Thus, while some qualifying petitioners certainly may obtain reduced prison sentences under section 1170.95, there is no guarantee of such an outcome. [¶] In accordance with the *Younger* and *Way* decisions, it is clear ... that section 1170.95's interference with the executive's clemency authority, if any, is merely incidental to the main legislative purpose of Senate Bill 1437." (*Lamoureux, supra*, 42 Cal.App.5th at pp. 255–256, 255 Cal.Rptr.3d 253.) As such, "section 1170.95 does not impermissibly encroach upon the core functions of the executive." (*Id.* at p. 256, 255 Cal.Rptr.3d 253.)

III. Remaining Claims Seek Advisory Opinion

Finally, although respondent concedes these issues are not presented by this appeal, she argues that the evidentiary hearing provided for under section 1170.95, subdivision (d)(3), potentially violates the double jeopardy clause; the remedies provided for under section 1170.95, subdivision (e), in cases not involving an underlying offense are susceptible to challenge based on the rights to due process and a jury trial; and that in some cases, the statute of limitations, which cannot be revived, will have lapsed for the target offense. These claims, however, are not ripe for adjudication and, therefore, any opinion on these issues would be premature and advisory. (*People v. Miracle* (2018) 6 Cal.5th 318, 337, 240 Cal.Rptr.3d 381, 430 P.3d 847 ["'We will not ... adjudicate hypothetical claims or render purely advisory opinions.'"]; *People v. Buza*

(2018) 4 Cal.5th 658, 693, 230 Cal.Rptr.3d 681, 413 P.3d 1132 [“We ... abide by ... a ‘ ‘cardinal principle of judicial restraint —if it is not necessary to decide more, it is necessary not to decide more.’ ’ ”]; *People v. Mosley* (2015) 60 Cal.4th 1044, 1054–1055, fn. 7, 185 Cal.Rptr.3d 251, 344 P.3d 788 [“[T]rue adherence to judicial restraint and economy counsels against an unnecessary detour into an analysis of ... statutory meaning [on an issue not before the court].”].)

Furthermore, as the court stated in *Lamoureux*, “[t]he People are the individuals on whose behalf violations of criminal laws are prosecuted.” (*Lamoureux, supra*, 42 Cal.App.5th at p. 267, 255 Cal.Rptr.3d 253.) “[T]hey do not represent the particularized interests of persons who have been accused of criminal offenses or petitioners seeking relief from convictions[]” and therefore, they “lack standing to challenge the hearing and remedy provisions of section 1170.95 based on any alleged infringement on petitioners’ constitutional rights.” (*Lamoureux, supra*, at p. 267, 255 Cal.Rptr.3d 253, citing *In re Cregler* (1961) 56 Cal.2d 308, 313, 14 Cal.Rptr. 289, 363 P.2d 305 [“ ‘[O]ne will not be heard to attack a statute on grounds that are not shown to be applicable to himself’ ”]; accord, *Teal v. Superior Court* (2014) 60 Cal.4th 595, 599, 179 Cal.Rptr.3d 365, 336 P.3d 686, italics omitted [“ ‘As a general principle, standing to invoke the judicial process requires an actual justiciable controversy as to which the complainant has a real interest in the ultimate adjudication because he or she has either suffered or is about to suffer an injury of sufficient magnitude reasonably to assure that all of the relevant facts and issues will be adequately presented to the adjudicator.’ ”].) Accordingly, we do not reach these claims.

DISPOSITION

The judgment is reversed and this matter is remanded to the trial court for further proceedings under section 1170.95.

I CONCUR:

SMITH, J.

POOCHIGIAN, Acting P.J., concurring and dissenting.

Several appellate decisions in California have held that Senate Bill No. 1437 (2017–2018 Reg. Sess.) (S.B. 1437) did not amend Proposition 7. Those cases have relied on the premise

that S.B. 1437 dealt with the punishment for murder as a related “but distinct” subject from the substantive elements of murder. (See, e.g., *People v. Superior Court (Gooden)* (2019) 42 Cal.App.5th 270, 282, 255 Cal.Rptr.3d 239.) I do not view the two subjects as distinct and would hold that S.B. 1437 improperly amended Proposition 7. I respectfully dissent from the majority's contrary holding on that issue, but otherwise concur as to the other issues presented.

Courts have a Duty to Jealously Guard the Initiative Power

*24 As noted by the majority, Proposition 7 “ ‘did not authorize the Legislature to amend its provisions without voter approval,’ ” and the amendment of Proposition 7 through legislative action is precluded by the California Constitution (Cal. Const., art. II, § 10, subd. (c)). (Maj. opn., ante, at p. —.)

The majority opinion and other decisions opining on the constitutionality of S.B. 1437 all acknowledge that “[u]nder our constitutional system the Legislature is not the exclusive source of legislative power.” (*Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1042, 56 Cal.Rptr.3d 814, 155 P.3d 226; *People v. Hannon* (2016) 5 Cal.App.5th 94, 100, 209 Cal.Rptr.3d 408.) “The legislative power of this State is vested in the California Legislature which consists of the Senate and the Assembly, but the people reserve to themselves the powers of initiative and referendum.” (Cal. Const., art. IV, § 1.) “The initiative is the power of the electors to propose statutes and amendments to the Constitution and to adopt or reject them.” (Cal. Const., art. II, § 8, subd. (a).)

“It has long been recognized that ‘the initiative is in essence a legislative battering ram which may be used to tear through the exasperating tangle of the traditional legislative procedure and strike directly toward the desired end.’ [Citation.]” (*Raven v. Deukmejian* (1990) 52 Cal.3d 336, 357, 276 Cal.Rptr. 326, 801 P.2d 1077.) “[I]t is our solemn duty ‘ ‘to jealously guard’ ’ the initiative power, it being ‘ ‘one of the most precious rights of our democratic process.’ ’ [Citation.]” (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 248, 149 Cal.Rptr. 239, 583 P.2d 1281; *Kennedy Wholesale, Inc. v. State Bd. of Equalization* (1991) 53 Cal.3d 245, 250, 279 Cal.Rptr. 325, 806 P.2d 1360; *Rossi v. Brown* (1995) 9 Cal.4th 688, 695, 38 Cal.Rptr.2d 363, 889 P.2d 557; *Legislature v. Eu* (1991) 54 Cal.3d 492, 500–501, 286 Cal.Rptr. 283, 816 P.2d 1309.)

As part of their initiative system, the voters also have “ ‘the power to decide whether or not the Legislature can amend or repeal initiative statutes. This power is absolute and includes the power to enable legislative amendment *subject to conditions attached by the voters.* [Citation.]’ [Citation.]” (*Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243, 1251, 48 Cal.Rptr.2d 12, 906 P.2d 1112; *Professional Engineers in California Government v. Kempton, supra*, 40 Cal.4th at p. 1046, fn. 10, 56 Cal.Rptr.3d 814, 155 P.3d 226.) “The people’s reserved power of initiative *is* greater than the power of the legislative body. The latter may not bind future Legislatures [citation], but by constitutional and charter mandate, unless an initiative measure expressly provides otherwise, an initiative measure may be amended or repealed only by the electorate. Thus, through exercise of the initiative power the people *may* bind future legislative bodies other than the people themselves. [Citations.]” (*Rossi v. Brown, supra*, 9 Cal.4th at pp. 715–716, 38 Cal.Rptr.2d 363, 889 P.2d 557.)

“There is a presumption, though not conclusive, that voters are aware of existing laws at the time a voter initiative is adopted. [Citations.]” (*Santos v. Brown* (2015) 238 Cal.App.4th 398, 410, 189 Cal.Rptr.3d 234; *People v. Hannon, supra*, 5 Cal.App.5th at p. 101, 209 Cal.Rptr.3d 408.) “ ‘The purpose of California’s constitutional limitation on the Legislature’s power to amend initiative statutes is to “protect the people’s initiative powers by precluding the Legislature from undoing what the people have done, without the electorate’s consent.” [Citations.]’ [Citation.] In this vein, decisions frequently have asserted that courts have a duty to “ ‘jealously guard’ ” the people’s initiative power, and hence to “ ‘apply a liberal construction to this power wherever it is challenged in order that the right’ ” to resort to the initiative process “ ‘be not improperly annulled’ ” by a legislative body. [Citations.]” (*People v. Kelly* (2010) 47 Cal.4th 1008, 1025, 103 Cal.Rptr.3d 733, 222 P.3d 186.)

Defining Criminal Conduct and Setting the Punishment that Attaches to Criminal Conduct May not be Entirely Distinct

*25 Despite these protections, the Legislature may legislate on “a subject related to, but distinct from, an area addressed by an initiative.” (See *Gooden, supra*, 42 Cal.App.5th at p. 282, 255 Cal.Rptr.3d 239; *Kelly, supra*, 47 Cal.4th at pp. 1025–1026, 103 Cal.Rptr.3d 733, 222 P.3d 186.) Cases addressing whether S.B. 1437 amends Proposition 7 have insisted that punishments and the elements of the crime to which they

apply are related, but “distinct” subjects. (See, e.g., *Gooden, supra*, at pp. 281–282, 255 Cal.Rptr.3d 239.) I disagree.

It is true that the elements of an offense and the punishment for it are not literally synonymous, but neither are they “distinct.” Punishment is the set of consequences the law attaches to certain human conduct classified as a crime. As a result, when the *substantive scope of a crime* is reduced, the direct effect is that at least some real-world conduct is no longer *punishable* as that particular crime.

For example, imagine a jurisdiction where the only crime relating to driving under the influence was defined as “operating a motor vehicle with a blood-alcohol content of over 0.08 percent” and carried a punishment of 6 months in jail. And suppose that statute is subsequently amended to raise the threshold blood-alcohol content to 0.10 percent. One could say such an amendment “merely” redefines the crime and does not expressly speak to punishment. But this formalistic distinction is illusory, because the amendment to the substantive crime had the direct effect of eliminating punishment for certain conduct – e.g., operating a motor vehicle with a blood-alcohol content of 0.09 percent.

Through Proposition 7, the voters said they wanted particular punishments to apply to particular conduct. Under S.B. 1437, some conduct that would previously have constituted murder is no longer punishable as such. In this way, S.B. 1437 *directly* alters the punishment Proposition 7 set for certain conduct.¹

¹ *Gooden* says voters did not intend to “freeze” the substantive offense of murder as it was understood in 1978. (*Gooden, supra*, 42 Cal.App.5th at p. 283, 255 Cal.Rptr.3d 239; see also maj. opn., *ante*, at p. —.)

However, I do not see how to reconcile that conclusion with the fact that, in enacting Proposition 7, the voters were “calling for harsher punishment for those convicted of murder.” (Maj. opn., *ante*, at p. —.) What does “murder” mean in this context if not the real-world conduct legally classified as murder in 1978? What else could they have meant? It is not as if the voters did not care what actual conduct was subject to the harsher penalties in the future so long as that conduct was formally labeled “murder.”

There is simply no limiting principle to the purported distinction between punishment and the elements of the offense being punished.

Imagine the Legislature passed a statute adding an element to murder requiring that the killing be accomplished with a firearm. Would our courts conclude that such a legislative change, which arguably does not directly relate to the breadth of culpability, amends Proposition 7?

Put in slightly different terms, S.B. 1437 “prohibits” something Proposition 7 “authorized.” Specifically, Proposition 7 authorized harsher penalties for murder, *including* the subcategory of conduct that S.B. 1437 subsequently removed from the definition of murder. In contrast, S.B. 1437 effectively *prohibits* punishment of that subcategory of conduct under the harsher penalties *authorized* by Proposition 7.

Conclusion

***26** It is important that criminal punishment is commensurate with the level of culpability involved. S.B.

1437 admirably seeks a better fit between punishment and culpability in the context of felony murder. But the issue before us is not whether S.B. 1437 is wise policy. The issue is whether it amended Proposition 7. If so, S.B. 1437 must yield, even if it better reflects modern views of penology. The reform it seeks must come from the electorate, not the Legislature or the courts.

Whether or not the various opinions upholding the constitutionality of S.B. 1437 ultimately prevail, it is my hope that our commitment to the principle that the people's constitutional initiative power must be jealously guarded and cannot be legislatively nullified remains strong and steadfast.

For these reasons, I respectfully dissent.

All Citations

--- Cal.Rptr.3d ----, 2020 WL 4461245, 20 Cal. Daily Op. Serv. 7930

EXHIBIT C

45 Cal.4th 1172
Supreme Court of California

The PEOPLE, Plaintiff and Respondent,
v.
SARUN CHUN, Defendant and Appellant.

No. S157601.

|
March 30, 2009.

|
Rehearing Denied April 29, 2009.

Synopsis

Background: Defendant was convicted following jury trial in the Superior Court, San Joaquin County, No. SF090168C, [Bernard J. Garber](#), J., of second degree murder. Defendant appealed. The Court of Appeal, [Morrison](#), J., reversed murder conviction and otherwise affirmed the judgment.

Holdings: The Supreme Court granted review, superseding the opinion of the Court of Appeal, and, in an opinion by [Chin](#), J., held that:

although derived from common law, the second degree felony murder rule is based on statute and is therefore constitutionally valid;

when underlying felony is assaultive in nature, felony merges with homicide and cannot be the basis of a second degree felony-murder instruction; overruling [People v. Hansen](#), 9 Cal.4th 300, 36 Cal.Rptr.2d 609, 885 P.2d 1022; [People v. Robertson](#), *supra*, 34 Cal.4th 156, 17 Cal.Rptr.3d 604, 95 P.3d 872; [People v. Randle](#), 35 Cal.4th 987, 28 Cal.Rptr.3d 725, 111 P.3d 987; disapproving [People v. Tabios](#), 67 Cal.App.4th 1, 78 Cal.Rptr.2d 753;

shooting at an occupied vehicle is assaultive in nature and hence cannot serve as underlying felony for second degree felony murder; and

by itself, error in instructing jury on second-degree felony murder was harmless beyond a reasonable doubt, but matter would be remanded for determination of whether that error, in combination with another found by Court of Appeal, was prejudicial.

Judgment of Court of Appeal reversed and matter remanded.

[Baxter](#) and [Moreno](#), JJ., filed concurring and dissenting opinions.

Opinion, [65 Cal.Rptr.3d 738](#), superseded.

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Opinion

CHIN, J.

*[1178](#) **[427](#) In this murder case, the trial court instructed the jury on second degree felony murder with shooting at an occupied vehicle under [Penal Code section 246](#) the ***[109](#) underlying felony.¹ We granted review to consider various issues concerning the validity and scope of the second degree felony-murder rule.

¹ All further statutory citations are to the Penal Code unless otherwise indicated.

We first discuss the rule's constitutional basis. Although the rule has long been part of our law, some members of this court have questioned its constitutional validity. We conclude that the rule is based on statute, specifically [section 188](#)'s definition of implied malice, and hence is constitutionally valid.

Next we reconsider the contours of the so-called merger doctrine this court adopted in [People v. Ireland](#) (1969) 70 Cal.2d 522, 75 Cal.Rptr. 188, 450 P.2d 580 (*Ireland*). After reviewing recent developments, primarily some of our own decisions, we conclude the current state of the law in this

regard is untenable. We will overrule some of our decisions and hold that all assaultive-type crimes, such as a violation of [section 246](#), merge with the charged homicide and cannot be the basis for a second degree felony-murder instruction. Accordingly, the trial court erred in instructing on felony murder in this case. We also conclude, however, that this error, alone, was not prejudicial.

We reverse the judgment of the Court of Appeal, which had found the same error prejudicial. However, the Court of Appeal also found a second error, a finding not before us on review. We remand the matter to the Court of Appeal to decide whether the two errors, in combination, were prejudicial.

I. FACTS AND PROCEDURAL HISTORY

We take our facts primarily from the Court of Appeal's opinion.

****428** Judy Onesavanh and Sophal Ouch were planning a party for their son's birthday. Around 9:00 p.m. on September 13, 2003, they and a friend, Bounthavy Onethavong, were driving to the store in Stockton in a blue Mitsubishi that Onesavanh's father owned. Onesavanh's brother, George, also drives the car. The police consider George to be highly ranked in the Asian Boys street gang (Asian Boys).

***1179** That evening Ouch was driving, with Onesavanh in the front passenger seat and Onethavong behind Ouch. While they were stopped in the left turn lane at a traffic light, a blue Honda with tinted windows pulled up beside them. When the light changed, gunfire erupted from the Honda, hitting all three occupants of the Mitsubishi. Onethavong was killed, having received two bullet [wounds](#) in the head. Onesavanh was hit in the back and seriously [wounded](#). Ouch was shot in the cheek and suffered a [fractured jaw](#).

Ouch and Onesavanh identified the Honda's driver as "T-Bird," known to the police to be Rathana Chan, a member of the Tiny Rascals Gangsters (Tiny Rascals), a criminal street gang. The Tiny Rascals do not get along with the Asian Boys. Chan was never found. The forensic evidence showed that three different guns were used in the shooting, a .22, a .38, and a .44, and at least six bullets were fired. Both the .38 and the .44 struck Onethavong; both shots were lethal. Only the .44 was recovered. It was found at the residence of Sokha and Mao Bun, brothers believed to be members of a gang.

Two months after the shooting, the police stopped a van while investigating another suspected gang shooting. Defendant was a passenger in the van. He was arrested and subsequently made two statements regarding the shooting in this case. He admitted he was in the backseat of the Honda at the time; T-Bird was the driver and there were two other passengers. Later, *****110** he also admitted he fired a .38-caliber firearm. He said he did not point the gun at anyone; he just wanted to scare them.

Defendant, who was 16 years old at the time of the shooting, was tried as an adult for his role in the shooting. He was charged with murder, with driveby and gang special circumstances, and with two counts of attempted murder, discharging a firearm from a vehicle, and shooting into an occupied vehicle, all with gang and firearm-use allegations, and with street terrorism. At trial, the prosecution presented evidence that defendant was a member of the Tiny Rascals, and that the shooting was for the benefit of a gang. Defendant testified, denying being a member of the Tiny Rascals or being involved in the shooting.

The prosecution sought a first degree murder conviction. The court also instructed the jury on second degree felony murder based on shooting at an occupied motor vehicle ([§ 246](#)) either directly or as an aider and abettor. The jury found defendant guilty of second degree murder. It found the personal-firearm-use allegation not true, but found that a principal intentionally used a firearm and the shooting was committed for the benefit of a criminal street ***1180** gang. The jury acquitted defendant of both counts of attempted murder, shooting from a motor vehicle, and shooting at an occupied motor vehicle. It convicted defendant of being an active participant in a criminal street gang.

The Court of Appeal, in an opinion authored by Justice Morrison, reversed the murder conviction and otherwise affirmed the judgment. It found two errors in the case. It held the trial court had properly admitted defendant's first statement that he had been in the car but that the court should have excluded his subsequent statement that he had fired a gun. It concluded that the latter statement was procured by a false promise of leniency. It found this error harmless beyond a reasonable doubt "as a pure evidentiary matter." But, partly due to this error, the Court of Appeal also held the trial court erred in instructing the jury on second degree felony murder. It found this error was prejudicial and reversed the murder conviction. It explained: "Second degree felony murder, the only express theory of second degree murder offered to the

jury, was based on the underlying felony of shooting into an occupied vehicle. The merger doctrine prevents using an assaultive-type crime as the basis for felony murder unless the underlying crime is committed with an ****429** intent collateral to committing an injury that would cause death. Without the evidence of defendant's statements about the shooting, there was no evidence from which a collateral intent or purpose could be found. Accordingly, it was error to instruct on second degree felony murder and the murder conviction must be reversed.”

Justice Nicholson dissented from the reversal of the murder conviction. Relying on *People v. Hansen* (1994) 9 Cal.4th 300, 36 Cal.Rptr.2d 609, 885 P.2d 1022 (*Hansen*), he argued that the underlying felony did not merge with the homicide for purposes of the second degree felony-murder rule and, accordingly, the trial court had properly instructed the jury on second degree felony murder.

We granted review. Later, we issued an order limiting review to the issues concerning whether the trial court prejudicially erred in instructing the jury on second degree felony murder.

II. DISCUSSION

A. The Constitutionality of the Second Degree Felony-murder Rule

Defendant contends California's second degree felony-murder rule is unconstitutional *****111** on separation of power grounds as a judicially created doctrine with no statutory basis. To explain the issue, we first describe how the doctrine fits in with the law of murder. Then we discuss defendant's ***1181** contention. We will ultimately conclude that the doctrine is valid as an interpretation of broad statutory language.

Section 187, subdivision (a), defines murder as “the unlawful killing of a human being, or a fetus, with malice aforethought.” Except for the phrase “or a fetus,” which was added in 1970 in response to this court's decision in *Keeler v. Superior Court* (1970) 2 Cal.3d 619, 87 Cal.Rptr. 481, 470 P.2d 617 (see *People v. Davis* (1994) 7 Cal.4th 797, 803, 30 Cal.Rptr.2d 50, 872 P.2d 591), this definition has been unchanged since section 187 was first enacted as part of the Penal Code of 1872. Murder is divided into first and second degree murder. (§ 189.) “Second degree murder is the unlawful killing of a human being with malice, but without the additional elements (i.e., willfulness, premeditation, and

deliberation) that would support a conviction of first degree murder. (§§ 187, subd. (a), 189; *People v. Nieto Benitez* (1992) 4 Cal.4th 91, 102[, 13 Cal.Rptr.2d 864, 840 P.2d 969].)” (*Hansen, supra*, 9 Cal.4th at p. 307, 36 Cal.Rptr.2d 609, 885 P.2d 1022.)

Critical for our purposes is that the crime of murder, as defined in section 187, includes, as an element, malice. Section 188 defines malice. It may be either express or implied. It is express “when there is manifested a deliberate intention unlawfully to take away the life of a fellow creature.” (§ 188.) It is implied “when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart.” (*Ibid.*) This definition of implied malice is quite vague. Trial courts do not instruct the jury in the statutory language of an abandoned and malignant heart. Doing so would provide the jury with little guidance. “The statutory definition of implied malice has never proved of much assistance in defining the concept in concrete terms.” (*People v. Dellinger* (1989) 49 Cal.3d 1212, 1217, 264 Cal.Rptr. 841, 783 P.2d 200.) Accordingly, the statutory definition permits, even requires, judicial interpretation. We have interpreted implied malice as having “both a physical and a mental component. The physical component is satisfied by the performance of ‘an act, the natural consequences of which are dangerous to life.’ (*People v. Watson* (1981) 30 Cal.3d 290, 300[, 179 Cal.Rptr. 43, 637 P.2d 279].) The mental component is the requirement that the defendant ‘knows that his conduct endangers the life of another and ... acts with a conscious disregard for life.’ (*Ibid.*, internal quotation marks omitted.)” (*People v. Patterson* (1989) 49 Cal.3d 615, 626, 262 Cal.Rptr. 195, 778 P.2d 549 (lead opn. of Kennard, J.) (*Patterson*)).²

² For ease of discussion, we will sometimes refer to this form of malice by the shorthand term, “conscious-disregard-for-life malice.” *Patterson, supra*, 49 Cal.3d 615, 262 Cal.Rptr. 195, 778 P.2d 549, had no majority opinion. Unless otherwise indicated, all further citations to that case are to Justice Kennard's lead opinion.

****430 *1182** A defendant may also be found guilty of murder under the felony-murder rule. The felony-murder rule makes a killing while committing certain felonies murder without the necessity of further examining the defendant's mental state. The rule has two applications: first degree felony murder and second degree felony murder. We have said that first degree felony murder is a “creation of statute” (i.e., §

189) but, because no statute specifically describes it, that second degree felony murder is a “common law doctrine.” ***112 (*People v. Robertson* (2004) 34 Cal.4th 156, 166, 17 Cal.Rptr.3d 604, 95 P.3d 872 (*Robertson*).) First degree felony murder is a killing during the course of a felony specified in section 189, such as rape, burglary, or robbery. Second degree felony murder is “an unlawful killing in the course of the commission of a felony that is inherently dangerous to human life but is not included among the felonies enumerated in section 189....” (*Robertson, supra*, 34 Cal.4th at p. 164, 17 Cal.Rptr.3d 604, 95 P.3d 872.)

In *Patterson*, Justice Kennard explained the reasoning behind and the justification for the second degree felony-murder rule: “The second degree felony-murder rule eliminates the need for the prosecution to establish the *mental* component [of conscious-disregard-for-life malice]. The justification therefor is that, when society has declared certain inherently dangerous conduct to be felonious, a defendant should not be allowed to excuse himself by saying he was unaware of the danger to life because, by declaring the conduct to be felonious, society has warned him of the risk involved. The *physical* requirement, however, remains the same; by committing a felony inherently dangerous to life, the defendant has committed ‘an act, the natural consequences of which are dangerous to life’ ([*People v.*] *Watson, supra*, 30 Cal.3d at p. 300[, 179 Cal.Rptr. 43, 637 P.2d 279]), thus satisfying the physical component of implied malice.” (*Patterson, supra*, 49 Cal.3d at p. 626, 262 Cal.Rptr. 195, 778 P.2d 549.)

The second degree felony-murder rule is venerable. It “has been a part of California's criminal law for many decades. (See *People v. Wright* (1914) 167 Cal. 1, 5[, 138 P. 349]; Pike, *What Is Second Degree Murder in California* (1936) 9 So.Cal.L.Rev. 112, 118–119.)” (*Patterson, supra*, 49 Cal.3d at p. 621, 262 Cal.Rptr. 195, 778 P.2d 549; see also *People v. Doyell* (1874) 48 Cal. 85, 94.) Because of this, we declined to reconsider the rule in *Patterson*. (*Patterson, supra*, at p. 621, 262 Cal.Rptr. 195, 778 P.2d 549.) Even earlier, in 1966, we rejected the argument that we should abandon the doctrine, explaining that “the concept lies imbedded in our law.” (*People v. Phillips* (1966) 64 Cal.2d 574, 582, 51 Cal.Rptr. 225, 414 P.2d 353; see also *People v. Mattison* (1971) 4 Cal.3d 177, 184, 93 Cal.Rptr. 185, 481 P.2d 193 (*Mattison*) [describing the rule as “well-settled”].)

But some former and current members of this court have questioned the rule's validity because no statute specifically

addresses it. Chief Justice Bird argued for its abolition in her concurring opinion in *1183 *People v. Burroughs* (1984) 35 Cal.3d 824, 836–854, 201 Cal.Rptr. 319, 678 P.2d 894. Justice Brown did so in dissent in *Robertson, supra*, 34 Cal.4th at pages 186–192, 17 Cal.Rptr.3d 604, 95 P.3d 872, and again while concurring and dissenting in *People v. Howard* (2005) 34 Cal.4th 1129, 1140–1141, 23 Cal.Rptr.3d 306, 104 P.3d 107. Justices Werdegar and Moreno have viewed the rule as ripe for reconsideration in an appropriate case. (*Robertson, supra*, at pp. 174–177, 17 Cal.Rptr.3d 604, 95 P.3d 872 (conc. opn. of Moreno, J.), 185–186, 17 Cal.Rptr.3d 604, 95 P.3d 872 (dis. opn. of Werdegar, J.)) In *Patterson*, Justice Panelli questioned the rule's constitutional validity. As he pointed out, “There are, or at least should be, no nonstatutory crimes in this state. (*In re Brown* (1973) 9 Cal.3d 612, 624[, 108 Cal.Rptr. 465, 510 P.2d 1017]; see Pen.Code, § 6.)” (*Patterson, supra*, 49 Cal.3d at p. 641, 262 Cal.Rptr. 195, 778 P.2d 549 (conc. & dis. opn. of Panelli, J.)) He was concerned that the second degree felony-murder rule is solely a judicial creation not derived from statute and was thus “not quite convinced” that it “stands on solid constitutional ground.” (*Ibid.*)

***113 In line with these concerns, defendant argues that the second degree felony-murder **431 rule is invalid on separation of powers grounds. As he points out, we have repeatedly said that “ ‘the power to define crimes and fix penalties is vested exclusively in the legislative branch.’ (*Keeler v. Superior Court* (1970) 2 Cal.3d 619, 631[, 87 Cal.Rptr. 481, 470 P.2d 617]; [citations].)” (*People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 516, 53 Cal.Rptr.2d 789, 917 P.2d 628.) Defendant asks rhetorically, “How, then, in light of the statutory abrogation of common law crimes and the constitutional principle of separation of powers, does second degree felony murder continue to exist when this court has repeatedly acknowledged that the crime is a judicial creation?”

This court has never directly addressed these concerns and this argument, or explained the statutory basis of the second degree felony-murder rule. We do so now. We agree with Justice Panelli that there are no nonstatutory crimes in this state. Some statutory or regulatory provision must describe conduct as criminal in order for the courts to treat that conduct as criminal. (§ 6.)³ But, as we explain, the second degree felony-murder rule, although derived from the common law, is based on statute; it is simply another interpretation of section 188's abandoned and malignant heart language.

3 As relevant today, section 6 provides: “No act or omission ... is criminal or punishable, except as prescribed or authorized by this Code, or by some of the statutes, which it specifies as continuing in force and as not affected by its provisions, or by some ordinance, municipal, county, or township regulation, passed or adopted, under such statutes and in force when this Code takes effect.”

Many provisions of the Penal Code were enacted using common law terms that must be interpreted in light of the common law. For example, section 484 defines theft as “feloniously” taking the property of another. The *1184 term “feloniously”—which has little meaning by itself—incorporates the common law requirement that the perpetrator must intend to permanently deprive the owner of possession of the property. Accordingly, we have looked to the common law to determine the exact contours of that requirement. (*People v. Avery* (2002) 27 Cal.4th 49, 55, 115 Cal.Rptr.2d 403, 38 P.3d 1; *People v. Davis* (1998) 19 Cal.4th 301, 304, fn. 1, 79 Cal.Rptr.2d 295, 965 P.2d 1165.) Thus, the intent-to-permanently-deprive requirement, although nonstatutory in the limited sense that no California statute uses those words, is based on statute. The murder statutes are similarly derived from the common law. (*Keeler v. Superior Court*, *supra*, 2 Cal.3d 619, 87 Cal.Rptr. 481, 470 P.2d 617 [looking to the common law to determine the exact meaning of “human being” under section 187].) “It will be presumed ... that in enacting a statute the Legislature was familiar with the relevant rules of the common law, and, when it couches its enactments in common law language, that its intent was to continue those rules in statutory form.” (*Keeler v. Superior Court*, *supra*, at p. 625, 87 Cal.Rptr. 481, 470 P.2d 617.)

Even conscious-disregard-for-life malice is nonstatutory in the limited sense that no California statute specifically uses those words. But that form of implied malice is firmly based on statute; it is an interpretation of section 188's abandoned and malignant heart language. Similarly, the second degree felony-murder rule is nonstatutory in the sense that no statute specifically spells it out, but it is also statutory as another interpretation of the same “abandoned and malignant heart” language. ***114 We have said that the “felony-murder rule eliminates the need for proof of malice in connection with a charge of murder, thereby rendering irrelevant the presence or absence of actual malice, both with regard to first degree felony murder and second degree felony murder.” (*Robertson*, *supra*, 34 Cal.4th at p. 165, 17 Cal.Rptr.3d 604, 95 P.3d 872.) But analytically, this is not precisely correct. The felony-murder rule renders irrelevant *conscious-disregard-*

for-life malice, but it does not render malice itself irrelevant. Instead, the felony-murder rule “acts as a substitute” for conscious-disregard-for-life malice. (*Patterson*, *supra*, 49 Cal.3d at p. 626, 262 Cal.Rptr. 195, 778 P.2d 549.) It simply describes a different form of malice under section 188. “The felony-murder rule imputes the requisite malice for a murder conviction to those who commit a homicide during **432 the perpetration of a felony inherently dangerous to life.” (*Hansen*, *supra*, 9 Cal.4th at p. 308, 36 Cal.Rptr.2d 609, 885 P.2d 1022.)

A historical review confirms this view. California's first penal law was the Crimes and Punishments Act of 1850 (Act of 1850). (Stats.1850, ch. 99, p. 229.) Section 19 of that act defined murder as “the unlawful killing of a human being, with malice aforethought, either express or implied. The unlawful killing may be effected by any of the various means by which death may be occasioned.” (Stats.1850, ch. 99, § 19, p. 231.) Sections 20 and 21 of the Act of 1850 defined express and implied malice, respectively. Section 21 stated, “Malice shall be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and *1185 malignant heart.” (Stats.1850, ch. 99, § 21, p. 231.) It also set the punishment for murder as death. At that time, murder was not divided into degrees. The division of murder into degrees “occurred in 1856, when the Legislature amended section 21 of the Act of 1850 to divide the crime of murder into two degrees: first degree murder was defined as that committed by certain listed means or in the perpetration of certain listed felonies, while all other murders were of the second degree.” (*People v. Dillon* (1983) 34 Cal.3d 441, 466, 194 Cal.Rptr. 390, 668 P.2d 697 (*Dillon*).)

Sections 22 to 25 of the Act of 1850 concerned voluntary and involuntary manslaughter. Section 25 provided, in its entirety, “Involuntary manslaughter shall consist in the killing of a human being, without any intent so to do; *in the commission of an unlawful act*, or a lawful act, which probably might produce such a consequence in an unlawful manner; *Provided*, that *where such involuntary killing* shall happen in the commission of an unlawful act, which in its consequences naturally tends to destroy the life of a human being, or *is committed in the prosecution of a felonious intent*, the offense shall be deemed and adjudged to be murder.” (Stats. 1850, ch. 99, § 25, p. 231, italics of “Provided” in original, all other italics added.)

In 1872, the Legislature adopted the current Penal Code. Section 187 defined murder essentially the same as did the Act of 1850. (*Keeler v. Superior Court*, *supra*, 2 Cal.3d at p. 624, 87 Cal.Rptr. 481, 470 P.2d 617.) As can readily be seen, section 188 also defined implied malice essentially the same as did the Act of 1850.

But the 1872 Penal Code did recast the definition of involuntary manslaughter. The new section 192 defined voluntary and involuntary manslaughter, as it still does today. (In the interim, vehicular manslaughter has been added as another form of manslaughter.) Subdivision 2 of that section defined and, now labeled subdivision (b), still defines, involuntary manslaughter as an unlawful killing without ***115 malice “in the commission of an unlawful act, *not amounting to felony*; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection.” (§ 192, subd. (b), italics added.) The proviso portion of section 25 of the Act of 1850 was deleted and essentially replaced with the italicized language “not amounting to [a] felony.”

In *Dillon*, *supra*, 34 Cal.3d 441, 194 Cal.Rptr. 390, 668 P.2d 697, this court considered issues concerning the first degree felony-murder rule. As part of its discussion, *Dillon* stated that the proviso portion of section 25 of the Act of 1850 “codified the common law felony-murder rule in this state,” and that “the Legislature’s decision not to reenact the felony-murder provision of section 25 in the 1872 codification implied an intent to abrogate the common law felony-murder rule that the section had embodied since 1850.” (*Dillon*, *supra*, at pp. 465, 467, 194 Cal.Rptr. 390, 668 P.2d 697.) If these *1186 statements were correct, it would be difficult to conclude that second degree felony murder is based on statute today. But this language in *Dillon* was dicta because *Dillon* involved the first degree, not second degree, felony-murder rule. Now that the point is critical, we examine it further and, viewing the relevant 1850 and 1872 statutes in context, conclude that *Dillon* was not correct in this regard.

A codification of the felony-murder rule would logically be placed in the statutes defining murder, not in a statute defining involuntary **433 manslaughter such as section 25 of the Act of 1850. Moreover, any reasonable felony-murder rule would apply to *any* killing during the course of a felony, not just an “involuntary killing” as stated in that same section 25. As *Dillon* noted, “It would have been absurd, of course, to punish as murder those killings [i.e., involuntary killings] but not ‘voluntary’ killings during a

felony....” (*Dillon*, *supra*, 34 Cal.3d at p. 465, fn. 12, 194 Cal.Rptr. 390, 668 P.2d 697.) *Dillon* ascribed section 25’s apparent limitation of the felony-murder rule to involuntary killings to a “quirk of draftsmanship.” (*Dillon*, *supra*, at p. 465, fn. 12, 194 Cal.Rptr. 390, 668 P.2d 697.) If that section’s proviso is viewed as a codification of the common law of felony murder, the draftsmanship would, indeed, be quirky. It would be doubly quirky: It would be unusual to codify a common law rule concerning murder in a statute defining involuntary manslaughter, and it would be quirky to include in the felony-murder rule only involuntary killings to the apparent exclusion of voluntary killings. But viewed instead as what it no doubt was—a proviso merely limiting the scope of *involuntary manslaughter*—the draftsmanship makes sense.

Without the proviso, section 25 of the Act of 1850 would have meant, or at least would have been susceptible to the interpretation, that *any* killing “in the commission of an unlawful act”—i.e., *any* unlawful act, whether misdemeanor or felony—is involuntary manslaughter. The proviso simply makes clear that involuntary manslaughter does not include killings in the course of a felony, which remain murder. As this court explained in a case in which the crime was committed before, but the opinion filed after, adoption of the 1872 Penal Code, “Whenever one, in doing an act with the design of committing a felony, takes the life of another, even accidentally, this is murder.” (*People v. Doyell*, *supra*, 48 Cal. at p. 94 [citing section 25 of the Act of 1850].) The new section 192 merely simplified the definition of involuntary manslaughter by replacing the earlier proviso with the new language, “not amounting to felony.” In this way, the Legislature avoided the awkwardness of having a ***116 broad definition of involuntary manslaughter followed by a proviso limiting that definition. So viewed, the language of section 25 of the Act of 1850 and 1872’s new section 192 all make sense; no need exists to ascribe any language to quirky draftsmanship or to view section 192’s simplified definition of *involuntary manslaughter* as abrogating a common law rule concerning *murder*.

*1187 The notes of the California Code Commissioners accompanying the 1872 adoption of the Penal Code, which are entitled to substantial weight (*Keeler v. Superior Court*, *supra*, 2 Cal.3d at p. 630, 87 Cal.Rptr. 481, 470 P.2d 617), provide no hint of an intent to abrogate the felony-murder rule. The note accompanying section 187, although not discussing this precise point, shows that the statutory term “malice aforethought” incorporated the term’s common law

meaning. (Cal.Code commrs. note foll. [Ann. Pen.Code, § 187](#) (1st ed. 1872, Haymond & Burch, commrs.-annotators), pp. 80–81 (1872 Code commissioners note) [citing various common law sources in discussing the meaning of malice aforethought].) Similarly, nothing in the adoption of [Penal Code sections 188 and 189](#) suggests an intent to change the then-existing law of murder, including, as relevant here, the definition of implied malice and its common law antecedents. The Code commissioners note accompanying the 1872 adoption of section 192 states that “[t]his section embodies the material portions of Sections 22, 23, 24, and 25 of the Crimes and Punishment Act of 1850.” (1872 Code commrs. note, p. 85, italics added.) This latter note strongly indicates that the language change from section 25 of the Act of 1850 to section 192 was not intended to change the law of manslaughter, much less to change the law of murder by abrogating the common law felony-murder rule. Any statute that “embodies the material portions” of predecessor statutes would not change the law in such a substantial manner.

We are unaware of any California case even remotely contemporaneous with the adoption of the 1872 Penal Code (i.e., any case before [Dillon, supra, 34 Cal.3d 441, 194 Cal.Rptr. 390, 668 P.2d 697](#)) suggesting that the language change from section 25 of the Act of 1852 to section 192 abrogated the ****434** felony-murder rule or otherwise changed the law of murder. Indeed, cases postdating [People v. Doyell, supra, 48 Cal. 85](#), and the adoption of the 1872 Penal Code, but still ancient from today's perspective, cited [Doyell](#) in applying the second degree felony-murder rule without any hint that [Doyell](#) was obsolete because it had cited section 25 of the Act of 1850. (See [People v. Olsen](#) (1889) 80 Cal. 122, 126–127, 22 P. 125; [People v. Ferugia](#) (1928) 95 Cal.App. 711, 718, 273 P. 99; [People v. Hubbard](#) (1923) 64 Cal.App. 27, 33, 220 P. 315.)

For these reasons, we conclude that the Legislature's replacement of the proviso language of section 25 of the Act of 1850 with the shorthand language “not amounting to felony” in section 192 did not imply an abrogation of the common law felony-murder rule. The “abandoned and malignant heart” language of both the original 1850 law and today's [section 188](#) contains within it the common law second degree felony-murder rule. The willingness to commit a felony inherently dangerous to life is a ***1188** circumstance showing an abandoned and malignant heart. The second degree felony-murder rule is based on statute and, accordingly, stands on firm constitutional ground.⁴

4 For policy reasons, Justice Moreno would abolish the second degree felony-murder doctrine entirely. As we have explained, this court has long refused to abolish it because it is so firmly established in our law. We continue to abide by this long-established doctrine, especially now that we have shown that it is based on statute, while at the same time attempting to make it more workable.

*****117 B. The Merger Rule and Second Degree Felony Murder**

Although today we reaffirm the constitutional validity of the long-standing second degree felony-murder rule, we also recognize that the rule has often been criticized and, indeed, described as disfavored. (E.g., [Patterson, supra, 49 Cal.3d at p. 621, 262 Cal.Rptr. 195, 778 P.2d 549](#).) We have repeatedly stated, as recently as 2005, that the rule “ ‘ ‘deserves no extension beyond its required application.’ ” ’ ” ([People v. Howard, supra, 34 Cal.4th at p. 1135, 23 Cal.Rptr.3d 306, 104 P.3d 107](#).) For these reasons, although the second degree felony-murder rule originally applied to all felonies ([People v. Doyell, supra, 48 Cal. at pp. 94–95](#); Pike, *What Is Second Degree Murder in California, supra*, 9 So.Cal.L.Rev. at pp. 118–119), this court has subsequently restricted its scope in at least two respects to ameliorate its perceived harshness.

First, “[i]n [People v. Ford](#) (1964) 60 Cal.2d 772, 795[, 36 Cal.Rptr. 620, 388 P.2d 892], the court restricted the felonies that could support a conviction of second degree murder, based upon a felony-murder theory, to those felonies that are ‘inherently dangerous to human life.’ ” ([Hansen, supra, 9 Cal.4th at p. 308, 36 Cal.Rptr.2d 609, 885 P.2d 1022](#).) Whether a felony is inherently dangerous is determined from the elements of the felony in the abstract, not the particular facts. ([Patterson, supra, 49 Cal.3d at p. 621, 262 Cal.Rptr. 195, 778 P.2d 549](#).) This restriction is not at issue here. [Section 246](#) makes it a felony to “maliciously and willfully discharge a firearm at an ... occupied motor vehicle...”⁵ In [Hansen, supra, at pages 309–311, 36 Cal.Rptr.2d 609, 885 P.2d 1022](#), we held that shooting at an “inhabited dwelling house” under [section 246](#) is inherently dangerous even though the inhabited dwelling house does not have to be actually occupied at the time of the shooting. That being the case, shooting at a vehicle that is actually occupied clearly is inherently dangerous.

5 In its entirety, [section 246](#) provides: “Any person who shall maliciously and willfully

discharge a firearm at an inhabited dwelling house, occupied building, occupied motor vehicle, occupied aircraft, inhabited housecar, as defined in [Section 362 of the Vehicle Code](#), or inhabited camper, as defined in [Section 243 of the Vehicle Code](#), is guilty of a felony, and upon conviction shall be punished by imprisonment in the state prison for three, five, or seven years, or by imprisonment in the county jail for a term of not less than six months and not exceeding one year.

“As used in this section, ‘inhabited’ means currently being used for dwelling purposes, whether occupied or not.”

1189** But the second restriction—the “merger doctrine”—is very much at issue. The merger doctrine developed due to the understanding that the underlying felony must be an independent crime and not merely the killing *435** itself. Thus, certain underlying felonies “merge” with the homicide and cannot be used for purposes of felony murder. The specific question before us is how to apply the merger doctrine. The Court of Appeal divided on the question and on how to apply our precedents. But the majority and dissent agreed on one thing—that the current state of the law regarding merger is “muddled.” We agree that the scope and application of the merger doctrine as applied to second degree murder needs to be reconsidered. To explain this, we will first review the doctrine's historical development. Then we will discuss what to do with the merger doctrine and, ultimately, will conclude *****118** that the trial court should not have instructed on felony murder.

1. Historical Review

The merger doctrine arose in the seminal case of [Ireland, supra, 70 Cal.2d 522, 75 Cal.Rptr. 188, 450 P.2d 580](#), and hence sometimes is called the “[Ireland](#) merger doctrine.” In [Ireland](#), the defendant shot and killed his wife, and was convicted of second degree murder. The trial court instructed the jury on second degree felony murder with assault with a deadly weapon the underlying felony. We held the instruction improper, adopting the “so-called ‘merger’ doctrine” that had previously been developed in other jurisdictions. ([Id.](#) at p. 540, [75 Cal.Rptr. 188, 450 P.2d 580](#).) We explained our reasons: “[T]he utilization of the felony-murder rule in

circumstances such as those before us extends the operation of that rule ‘beyond any rational function that it is designed to serve.’ ([People v. Washington \(1965\) 62 Cal.2d 777, 783](#)], [44 Cal.Rptr. 442, 402 P.2d 130](#)].) To allow such use of the felony-murder rule would effectively preclude the jury from considering the issue of malice aforethought in all cases wherein homicide has been committed as a result of a felonious assault—a category which includes the great majority of all homicides. This kind of bootstrapping finds support neither in logic nor in law. We therefore hold that a second degree felony-murder instruction may not properly be given when it is based upon a felony which is an integral part of the homicide and which the evidence produced by the prosecution shows to be an offense included *in fact* within the offense charged.” ([Id.](#) at p. 539, [75 Cal.Rptr. 188, 450 P.2d 580](#).)⁶

⁶ [Ireland, supra, 70 Cal.2d 522, 75 Cal.Rptr. 188, 450 P.2d 580](#), was a second degree murder case. The merger doctrine also has a first degree felony-murder counterpart. (See [People v. Wilson \(1969\) 1 Cal.3d 431, 82 Cal.Rptr. 494, 462 P.2d 22](#).) Because first degree felony murder is specifically prescribed by statute (§ 189), what we say about the second degree felony-murder rule does not necessarily apply to the first degree felony-murder rule.

We next confronted the merger doctrine in a second degree felony-murder case in [Mattison, supra, 4 Cal.3d 177, 93 Cal.Rptr. 185, 481 P.2d 193](#). As we later described [Mattison's](#) facts, ***1190** “[i]n that case, the defendant and the victim both were inmates of a correctional institution. The defendant worked as a technician in the medical laboratory. He previously had offered to sell alcohol to inmates, leading the victim, an alcoholic, to seek alcohol from him. The defendant supplied the victim with methyl alcohol, resulting in the victim's death by [methyl alcohol poisoning](#). [¶] At trial, the court instructed on felony murder base upon the felony of mixing poison with a beverage, an offense proscribed by the then current version of section 347 (‘ “Every person who wilfully mingles any poison with any food, drink or medicine, with intent that the same shall be taken by any human being to his injury, is guilty of a felony.” ’) ([4 Cal.3d at p. 184](#)], [93 Cal.Rptr. 185, 481 P.2d 193](#)].) The defendant was convicted of second degree murder.” ([Hansen, supra, 9 Cal.4th at p. 313, 36 Cal.Rptr.2d 609, 885 P.2d 1022](#).)

The [Mattison](#) defendant argued “that the offense of administering poison with the intent to injure is an ‘integral

part of’ and ‘included in fact within the offense’ of murder by poison” within the meaning of *Ireland*, *supra*, 70 Cal.2d 522, 75 Cal.Rptr. 188, 450 P.2d 580. (*Mattison*, *supra*, 4 Cal.3d at p. 185, 93 Cal.Rptr. 185, 481 P.2d 193.) We disagreed. “The instant case ... presents an entirely different situation from the one that confronted us in *Ireland*. The facts before us are very similar ***119 to *People v. Taylor* (1970) 11 Cal.App.3d 57[, 89 Cal.Rptr. 697], in which the victim died as a result of an overdose **436 of heroin which had been furnished to her by the defendant. The defendant was convicted of second degree murder and the question presented was whether application of the felony-murder rule constituted error under *Ireland*. ... [T]he *Taylor* court concluded that application of the felony-murder rule was proper because the underlying felony was committed with a ‘collateral and independent felonious design.’ (*People v. Taylor*, *supra*, 11 Cal.App.3d 57, 63[, 89 Cal.Rptr. 697].) In other words the felony was not done with the intent to commit injury which would cause death. Giving a felony-murder instruction in such a situation serves rather than subverts the purpose of the rule. ‘While the felony-murder rule can hardly be much of a deterrent to a defendant who has decided to assault his victim with a deadly weapon, it seems obvious that in the situation presented in the case at bar, it does serve a rational purpose: knowledge that the death of a person to whom heroin is furnished may result in a conviction for murder should have some effect on the defendant’s readiness to do the furnishing.’ (*People v. Taylor*, *supra*, 11 Cal.App.3d 57, 63[, 89 Cal.Rptr. 697].) The instant case is virtually indistinguishable from *Taylor*; and we hold that it was proper to instruct the jury on second degree felony murder.” (*Mattison*, *supra*, 4 Cal.3d at pp. 185–186, 93 Cal.Rptr. 185, 481 P.2d 193.)

In *People v. Smith* (1984) 35 Cal.3d 798, 201 Cal.Rptr. 311, 678 P.2d 886, the defendant was convicted of the second degree murder of her two-year-old daughter. We had to decide whether the trial court correctly instructed the jury on second degree felony murder with felony child abuse (now § 273a, subd. (a) the underlying felony. We reviewed some of the felonies that do not merge but found them distinguishable. (*People v. Smith*, *supra*, at p. 805, 201 Cal.Rptr. 311, 678 P.2d 886.) *1191 We explained that the crime at issue was “child abuse of the assaultive variety” for which we could “conceive of no independent purpose.” (*Id.* at p. 806, 201 Cal.Rptr. 311, 678 P.2d 886.) Accordingly, we concluded that the offense merged with the resulting homicide, and that the trial court erred in instructing on felony murder.

Our merger jurisprudence took a different turn in *Hansen*, *supra*, 9 Cal.4th 300, 36 Cal.Rptr.2d 609, 885 P.2d 1022. In that case, the defendant was convicted of second degree murder for shooting at a house, killing one person. The trial court instructed the jury on second degree felony murder, with discharging a firearm at an inhabited dwelling house (§ 246) the underlying felony. The majority concluded that the crime of discharging a firearm at an inhabited dwelling house “does not ‘merge’ with a resulting homicide so as to preclude application of the felony-murder doctrine.” (*Hansen*, *supra*, at p. 304, 36 Cal.Rptr.2d 609, 885 P.2d 1022.) We noted that this court “has not extended the *Ireland* doctrine beyond the context of assault, even under circumstances in which the underlying felony plausibly could be characterized as ‘an integral part of’ and ‘included in fact within’ the resulting homicide.” (*Id.* at p. 312, 36 Cal.Rptr.2d 609, 885 P.2d 1022.)

We discussed in detail *Mattison*, *supra*, 4 Cal.3d 177, 93 Cal.Rptr. 185, 481 P.2d 193, and *People v. Taylor*, *supra*, 11 Cal.App.3d 57, 89 Cal.Rptr. 697, the case *Mattison* relied on. We agreed with *Taylor*’s “rejection of the premise that *Ireland*’s ‘integral part of the homicide’ language constitutes the crucial test in determining the existence of merger. Such a test would be inconsistent with the underlying rule that only felonies ‘inherently dangerous to human life’ are sufficiently indicative ***120 of a defendant’s culpable mens rea to warrant application of the felony-murder rule. [Citation.] The more dangerous the felony, the more likely it is that a death may result directly from the commission of the felony, but resort to the ‘integral part of the homicide’ language would preclude application of the felony-murder rule for those felonies that are most likely to result in death and that are, consequently, the felonies as to which the felony-murder doctrine is most likely to act as a deterrent (because the perpetrator could foresee the great likelihood that death may result, negligently or accidentally).” (*Hansen*, *supra*, 9 Cal.4th at p. 314, 36 Cal.Rptr.2d 609, 885 P.2d 1022.)

But the *Hansen* majority also disagreed with **437 *People v. Taylor*, *supra*, 11 Cal.App.3d 57, 89 Cal.Rptr. 697, in an important respect. We declined “to adopt as the critical test determinative of merger in all cases” language in *Taylor* indicating “that the rationale for the merger doctrine does not encompass a felony ‘committed with a collateral and independent felonious design.’” (*People v. Taylor*, *supra*, 11 Cal.App.3d at p. 63[, 89 Cal.Rptr. 697]; see also *People v. Burton* (1971) 6 Cal.3d 375, 387[, 99 Cal.Rptr. 1, 491 P.2d 793].) Under such a test, a felon who acts with a purpose other than specifically to inflict injury upon someone—for

example, with the intent to sell narcotics for financial gain, or to discharge a firearm at a building solely to intimidate the occupants—is subject to greater *1192 criminal liability for an act resulting in death than a person who actually intends to injure the person of the victim. Rather than rely upon a somewhat artificial test that may lead to an anomalous result, we focus upon the principles and rationale underlying the foregoing language in *Taylor*, namely, that with respect to certain inherently dangerous felonies, their use as the predicate felony supporting application of the felony-murder rule will not elevate all felonious assaults to murder or otherwise subvert the legislative intent.” (*Hansen, supra*, 9 Cal.4th at p. 315, 36 Cal.Rptr.2d 609, 885 P.2d 1022.)

Hansen went on to explain that “application of the second degree felony-murder rule would not result in the subversion of legislative intent. Most homicides do not result from violations of section 246, and thus, unlike the situation in *People v. Ireland, supra*, 70 Cal.2d 522[, 75 Cal.Rptr. 188, 450 P.2d 580], application of the felony-murder doctrine in the present context will not have the effect of ‘preclud[ing] the jury from considering the issue of malice aforethought ... [in] the great majority of all homicides.’ (*Id.*, at p. 539[, 75 Cal.Rptr. 188, 450 P.2d 580].) Similarly, application of the felony-murder doctrine in the case before us would not frustrate the Legislature’s deliberate calibration of punishment for assaultive conduct resulting in death, based upon the presence or absence of malice aforethought.... [T]his is not a situation in which the Legislature has demanded a showing of actual malice (apart from the statutory requirement that the firearm be discharged ‘maliciously and willfully’) in order to support a second degree murder conviction. Indeed, as discussed above, application of the felony-murder rule, when a violation of section 246 results in the death of a person, clearly is consistent with the traditionally recognized purpose of the second degree felony-murder doctrine—namely the deterrence of negligent or accidental killings that occur in the course of the commission of dangerous felonies.” (*Hansen, supra*, 9 Cal.4th at p. 315, 36 Cal.Rptr.2d 609, 885 P.2d 1022.)

Hansen generated three separate opinions in addition to the majority opinion. Justice Werdegar authored a concurring opinion arguing that the operative test for the merger doctrine is “whether the underlying ***121 felony was committed with a ‘collateral and independent felonious design.’ ” (*Hansen, supra*, 9 Cal.4th at p. 318, 36 Cal.Rptr.2d 609, 885 P.2d 1022.) She concurred in the judgment because “[t]he evidence in this case supports the conclusion defendant

entertained a collateral and independent felonious design under *Mattison* and *Taylor*; namely to intimidate Echaves by firing shots into his house.” (*Ibid.*)

Justices Mosk and Kennard each authored separate concurring and dissenting opinions. They would have concluded that the underlying felony merged with the resulting homicide, thus precluding use of the felony-murder rule. Justice Kennard argued that “the prosecution’s evidence did not show that defendant had any independent felonious purpose for discharging the firearm at the Echaves residence. That conduct satisfies this court’s definition of an assault.” (*Hansen, supra*, 9 Cal.4th at p. 330, 36 Cal.Rptr.2d 609, 885 P.2d 1022.)

*1193 *People v. Tabios* (1998) 67 Cal.App.4th 1, 78 Cal.Rptr.2d 753 involved the same issue as this case—whether shooting at an occupied vehicle under section 246 merges with the underlying homicide. Relying on *Hansen, supra*, 9 Cal.4th 300, 36 Cal.Rptr.2d 609, 885 P.2d 1022, the Court of Appeal found no merger. (*People v. Tabios, supra*, at p. 11, 78 Cal.Rptr.2d 753.)

**438 In *Robertson, supra*, 34 Cal.4th 156, 17 Cal.Rptr.3d 604, 95 P.3d 872, the issue was whether the trial court properly instructed the jury on felony murder based on discharging a firearm in a grossly negligent manner. (§ 246.3.) As we later summarized, “[t]he defendant in *Robertson* claimed he fired into the air, in order to frighten away several men who were burglarizing his car.” (*People v. Randle* (2005) 35 Cal.4th 987, 1005, 28 Cal.Rptr.3d 725, 111 P.3d 987 (*Randle*).) *Robertson* concluded that the merger doctrine did not bar a felony-murder instruction. (*Robertson, supra*, at p. 160, 17 Cal.Rptr.3d 604, 95 P.3d 872.) Its reasons, however, were quite different than *Hansen*’s reasons.

The *Robertson* majority reviewed some of the cases discussed above, then focused on *Mattison, supra*, 4 Cal.3d 177, 93 Cal.Rptr. 185, 481 P.2d 193. We said that the *Mattison* court believed that finding no merger under its facts “was consistent with the deterrent purpose of the felony-murder rule, because we envisioned that application of the felony-murder rule would deter commission of the underlying inherently dangerous crime. (*Id.* at pp. 185–186[, 93 Cal.Rptr. 185, 481 P.2d 193].) Although a person who has decided to assault another would not be deterred by the felony-murder rule, we declared, a defendant with some collateral purpose may be deterred. The knowledge that a murder conviction may follow if an offense such as furnishing a controlled

substance or tainted alcohol causes death “should have some effect on the defendant's readiness to do the furnishing.”’ (*Id.* at p. 185[, 93 Cal.Rptr. 185, 481 P.2d 193].)” (*Robertson, supra*, 34 Cal.4th at pp. 170–171, 17 Cal.Rptr.3d 604, 95 P.3d 872.)

We noted that *Mattison, supra*, 4 Cal.3d 177, 93 Cal.Rptr. 185, 481 P.2d 193, focused on the fact that the underlying felony's purpose “was independent of or collateral to an intent to cause injury that would result in death.” (*Robertson, supra*, 34 Cal.4th at p. 171, 17 Cal.Rptr.3d 604, 95 P.3d 872.) Then we explained, “Although the collateral purpose rationale may have its drawbacks in some situations (*Hansen, supra*, 9 Cal.4th at p. 315[, 36 Cal.Rptr.2d 609, 885 P.2d 1022]), we believe it provides the most appropriate framework to determine whether, under the facts of the present case, the trial court properly instructed the jury. The ***122 defendant's asserted underlying purpose was to frighten away the young men who were burglarizing his automobile. According to defendant's own statements, the discharge of the firearm was undertaken with a purpose collateral to the resulting homicide, rendering the challenged instruction permissible. As Justice Werdegar pointed out in her concurring opinion in *Hansen*, a defendant who discharges a firearm at an inhabited dwelling house, for example, has a purpose independent from the commission of a resulting *1194 homicide if the defendant claims he or she shot to intimidate, rather than to injure or kill the occupants. (*Hansen, supra*, 9 Cal.4th at p. 318[, 36 Cal.Rptr.2d 609, 885 P.2d 1022] (conc. opn. of Werdegar, J.))” (*Ibid.*)

In *Robertson*, the Court of Appeal had said “that application of the merger doctrine was necessary in order to avoid the absurd consequence that ‘[d]efendants who admit an intent to kill, but claim to have acted with provocation or in honest but unreasonable self-defense, would likely have a stronger chance [than defendants who claimed “I didn't mean to do it”] of being convicted of the lesser offense of voluntary manslaughter.’ ” (*Robertson, supra*, 34 Cal.4th at pp. 172–173, 17 Cal.Rptr.3d 604, 95 P.3d 872.) We responded: “The asserted anomaly identified by the Court of Appeal is characteristic of the second degree felony-murder in general and is inherent in the doctrine's premise that it is reasonable to impute malice—or, more precisely, to eliminate consideration of the presence or absence of actual malice—because of the defendant's commission of an underlying felony that is inherently and foreseeably dangerous. [Citations.] Reliance on section 246.3 as the predicate offense presents no greater anomaly in this regard than such reliance on any other

inherently dangerous felony.” (*Id.* at p. 173, 17 Cal.Rptr.3d 604, 95 P.3d 872.)

Thus, the *Robertson* majority abandoned the rationale of *Hansen, supra*, 9 Cal.4th 300, 36 Cal.Rptr.2d 609, 885 P.2d 1022, and resurrected the collateral purpose rationale **439 of *Mattison, supra*, 4 Cal.3d 177, 93 Cal.Rptr. 185, 481 P.2d 193, at least when the underlying felony is a violation of section 246.3.

Robertson generated four separate opinions in addition to the majority opinion. Justice Moreno's concurring opinion agreed that the refusal to apply the merger doctrine was correct under the current state of the law, but he was concerned whether the court should continue to adhere to the second degree felony-murder doctrine at all. (*Robertson, supra*, at pp. 174–177, 17 Cal.Rptr.3d 604, 95 P.3d 872.) Justice Brown argued in dissent that the second degree felony-murder rule should be abandoned entirely. (*Robertson, supra*, 34 Cal.4th at pp. 186–192, 17 Cal.Rptr.3d 604, 95 P.3d 872.)

In a separate dissent, Justice Kennard disagreed that “defendant's claimed objective to scare the victim” was “a felonious purpose that was *independent of the killing.*” (*Robertson, supra*, 34 Cal.4th at p. 178, 17 Cal.Rptr.3d 604, 95 P.3d 872.) She noted with approval that “the majority, without explanation, abandon[ed] the rationale of the *Hansen* majority, and it return[ed] to the independent felonious purpose standard, which it had criticized in *Hansen, supra*, 9 Cal.4th 300[, 36 Cal.Rptr.2d 609, 885 P.2d 1022].” (*Id.* at p. 180, 17 Cal.Rptr.3d 604, 95 P.3d 872.) That was the test she had advocated in *Hansen*. (*Ibid.*) But she believed that the majority misapplied that test. “An intent to scare a person by shooting at the person is *not independent of the homicide* because it is, in essence, nothing more than the intent required for an assault, which is not considered an independent felonious purpose. ***123 [Citation.] Two examples of *1195 independent felonious purpose come to mind: (1) When the felony underlying the homicide is manufacturing methamphetamine, the intent to manufacture this illegal drug is a felonious intent that is independent of the homicide, thus allowing the manufacturer to be convicted of murder if the methamphetamine laboratory explodes and kills an innocent bystander. (2) When the underlying felony is possession of a destructive device, the intent to possess that device is an independent felonious intent, allowing the possessor to be convicted of murder if the device accidentally explodes, killing an unintended victim. But when, as here, a defendant fires a gun to scare the victim, the intended

harm—that of scaring the victim—is not independent of the greater harm that occurs when a shot fired with the intent to scare instead results in the victim's death.” (*Id.* at p. 183, 17 Cal.Rptr.3d 604, 95 P.3d 872.) “In sum, it makes no sense legally to treat defendant's alleged intent to scare as ‘felonious’ when such an intent is legally irrelevant [to guilt of the underlying felony] and when the jury never decided whether he had that intent.” (*Ibid.*)

Justice Werdegar also dissented, arguing that the underlying felony merged with the resulting homicide. She said she “would like to join in the majority reasoning, which is consistent with my *Hansen* concurrence. But sometimes consistency must yield to a better understanding of the developing law. The anomalies created when assaultive conduct is used as the predicate for a second degree felony-murder theory (see dis. opn. of Kennard, J., *ante*, [34 Cal.4th] at pp. 180–182[, 17 Cal.Rptr.3d 604, 95 P.3d 872]) are too stark and potentially too productive of injustice to be written off as ‘characteristic of the second degree felony-murder rule in general’ (maj. opn., *ante*, at p. 173[, 17 Cal.Rptr.3d 604, 95 P.3d 872]). It simply cannot be the law that a defendant who shot the victim with the intent to kill or injure, but can show he or she acted in unreasonable self-defense, may be convicted of only voluntary manslaughter, whereas a defendant who shot only to scare the victim is precluded from raising that partial defense and is strictly liable as a murderer. The independent and collateral purposes referred to in *Mattison* must be understood as limited to nonassaultive conduct. In circumstances like the present, the merger doctrine should preclude presentation of a second degree felony-murder theory to the jury.” (*Robertson, supra*, 34 Cal.4th at p. 185, 17 Cal.Rptr.3d 604, 95 P.3d 872 (dis. opn. of Werdegar, J.).)

In *Randle, supra*, 35 Cal.4th 987, 28 Cal.Rptr.3d 725, 111 P.3d 987, the trial court, as in *Robertson*, instructed the jury on second degree felony murder, with discharging a firearm in a grossly negligent manner the **440 underlying felony. (*Randle, supra*, at p. 1004, 28 Cal.Rptr.3d 725, 111 P.3d 987.) We found the instruction erroneous under the facts. “Here, unlike *Robertson*, defendant admitted, in his pretrial statements to the police and to a deputy district attorney, he shot at Robinson [the homicide victim].... [¶] The fact that defendant admitted shooting at Robinson distinguishes *Robertson* and supports application of the merger rule here. Defendant's claim that he shot Robinson in order to rescue [another person] simply provided a *motive* for the shooting;

it was not a purpose independent of the shooting.” (*Id.* at p. 1005, 28 Cal.Rptr.3d 725, 111 P.3d 987.)

*1196 In *People v. Bejarano* (2007) 149 Cal.App.4th 975, 57 Cal.Rptr.3d 486, as in *People v. Tabios, supra*, 67 Cal.App.4th 1, 78 Cal.Rptr.2d 753, and this case, the trial court instructed the jury on second degree felony murder, with shooting at an occupied vehicle under section 246 the underlying felony. The court concluded that the ***124 collateral purpose requirement of *Robertson, supra*, 34 Cal.4th 156, 17 Cal.Rptr.3d 604, 95 P.3d 872, and *Randle, supra*, 35 Cal.4th 987, 28 Cal.Rptr.3d 725, 111 P.3d 987, applied. “The facts of this case show that appellant discharged the firearm once, intending to shoot the motor vehicle's occupants, rival gang members, and not intending merely to frighten them. The bullet, however, struck and killed an unintended victim, the driver of another vehicle.” (*People v. Bejarano, supra*, at p. 978, 57 Cal.Rptr.3d 486.) Relying primarily on *Randle, supra*, 35 Cal.4th 987, 28 Cal.Rptr.3d 725, 111 P.3d 987, the Court of Appeal concluded that the trial court erred in instructing on felony murder. “Thus, *Randle* controls this case, the predicate felony merged with the homicide, and the trial court erred in instructing the jury on second degree felony murder based on discharging a firearm at an occupied motor vehicle in violation of section 246.” (*People v. Bejarano, supra*, at p. 990, 57 Cal.Rptr.3d 486.)

The most recent significant development is the Court of Appeal's opinion in this case. The majority noted that *People v. Tabios, supra*, 67 Cal.App.4th 1, 78 Cal.Rptr.2d 753, had relied on *Hansen, supra*, 9 Cal.4th 300, 36 Cal.Rptr.2d 609, 885 P.2d 1022, in finding no merger, but then it also noted that this court “returned to the *Mattison* collateral purpose rationale in” *Robertson, supra*, 34 Cal.4th 156, 17 Cal.Rptr.3d 604, 95 P.3d 872. After reviewing other recent cases, it stated, “From this muddled state of the law, we discern the rule to be that second degree felony murder is applicable to an assaultive-type crime, such as when shooting at a person is involved, provided that the crime was committed with a purpose independent of and collateral to causing injury. Since the Supreme Court could have upheld instruction on felony murder in *Randle* on the basis that most homicides are not committed by negligently discharging a gun and did not, we conclude the collateral purpose rule is the proper test of merger in these type of cases.”

Regarding whether a collateral purpose exists in this case, the Court of Appeal majority noted that it had held defendant's statement that he had fired the gun “ ‘to scare them’ ”

should have been excluded. “Without defendant's statements about firing the gun,” the majority concluded, “there was no admissible evidence of a collateral purpose by defendant or any of his companions. Indeed, the reasonable inference is that one who shoots another at close range intends to harm, if not to kill.” Thus it found the court erred, prejudicially, in instructing on second degree felony murder.

In dissent, Justice Nicholson agreed with the majority that the present state of the law is muddled. But he concluded that this court has not overruled *Hansen*, *supra*, 9 Cal.4th 300, 36 Cal.Rptr.2d 609, 885 P.2d 1022, and found that case, rather than *Robertson*, *supra*, 34 Cal.4th 156, 17 Cal.Rptr.3d 604, 95 P.3d 872, or *Randle*, *supra*, 35 Cal.4th 987, 28 Cal.Rptr.3d 725, 111 P.3d 987, to be on point. He ***1197** believed that “the only rule that can be gleaned from *Robertson* and *Randle* is that the collateral purpose rationale applies to cases involving a violation of section 246.3, which this case does not.” Accordingly, he would have held “that merger is inappropriate when the underlying offense is a violation of section 246.”

2. Analysis

The current state of the law regarding the *Ireland* merger doctrine is problematic in at least two respects.

****441** First, two different approaches currently exist in determining whether a felony merges. *****125** *Hansen*, *supra*, 9 Cal.4th 300, 36 Cal.Rptr.2d 609, 885 P.2d 1022, which we have never expressly overruled, held that a violation of section 246, at least when predicated on shooting at an inhabited dwelling house, *never* merges. *Robertson*, *supra*, 34 Cal.4th 156, 17 Cal.Rptr.3d 604, 95 P.3d 872, and *Randle*, *supra*, 35 Cal.4th 987, 28 Cal.Rptr.3d 725, 111 P.3d 987, held that a violation of section 246.3 *does* merge unless it is done with a purpose collateral to the resulting homicide. If *Hansen*, on the one hand, and *Robertson* and *Randle* on the other hand, are all still valid authority, the question arises which approach applies here. *People v. Tabios*, *supra*, 67 Cal.App.4th 1, 78 Cal.Rptr.2d 753, relied on *Hansen* to conclude that shooting at an occupied vehicle under section 246 never merges. *People v. Bejarano*, *supra*, 149 Cal.App.4th 975, 57 Cal.Rptr.3d 486, relied on the more recent *Robertson* and *Randle* opinions to conclude that the same felony *does* merge unless accompanied by a collateral purpose. The Court of Appeal here, rather understandably, divided on the question. This court has never explained whether *Hansen* retains any viability after *Robertson* and *Randle* and, if so, how a court is

to go about determining which approach to apply to a given underlying felony.

Second, *Randle*, when juxtaposed with *Robertson*, brings into sharp focus the anomaly that we noted in *Robertson* and accepted as inherent in the second degree felony-murder rule, and that we noted in *Hansen* and avoided by concluding that the merger rule never applies to shooting at an inhabited dwelling house. In combination, *Robertson* and *Randle* hold that, when the *Hansen* test does not apply (i.e., at least when the underlying felony is a violation of 246.3), the underlying felony merges, and the felony-murder rule does *not* apply, if the defendant intended to shoot *at* the victim (*Randle*), but the underlying felony does not merge, and the felony-murder rule *does* apply, if the defendant merely intended to frighten, perhaps because he believed the victim was burglarizing his car (*Robertson*). This result is questionable for the reasons discussed in the separate opinions in *Robertson*. Moreover, as we discuss further below, the *Robertson* and *Randle* approach injected a factual component into the merger question that did not previously exist.

***1198** In light of these problems, we conclude we need to reconsider our merger doctrine jurisprudence. As Justice Werdegar observed in her dissenting opinion in *Robertson*, “sometimes consistency must yield to a better understanding of the developing law.” (*Robertson*, *supra*, 34 Cal.4th at p. 185, 17 Cal.Rptr.3d 604, 95 P.3d 872.) In considering this question, we must also keep in mind the purposes of the second degree felony-murder rule. We have identified two. The purpose we have most often identified “is to deter felons from killing negligently or accidentally by holding them strictly responsible for killings they commit.” (*People v. Washington*, *supra*, 62 Cal.2d at p. 781, 44 Cal.Rptr. 442, 402 P.2d 130.) Another purpose is to deter commission of the inherently dangerous felony itself. (*Robertson*, *supra*, 34 Cal.4th at p. 171, 17 Cal.Rptr.3d 604, 95 P.3d 872 [“the second degree felony-murder rule is intended to deter both carelessness in the commission of a crime and the commission of the inherently dangerous crime itself”]; *Hansen*, *supra*, 9 Cal.4th at pp. 310–311, 314, 36 Cal.Rptr.2d 609, 885 P.2d 1022.)

We first consider whether *Hansen*, *supra*, 9 Cal.4th 300, 36 Cal.Rptr.2d 609, 885 P.2d 1022, has any continuing vitality after *Robertson*, *supra*, 34 Cal.4th 156, 17 Cal.Rptr.3d 604, 95 P.3d 872, and *Randle*, *supra*, 35 Cal.4th 987, 28 Cal.Rptr.3d 725, 111 P.3d 987. In *Robertson* and *Randle*, *****126** we unanimously rejected the *Hansen* test, at least when the

underlying felony is a violation of section 246.3. Although *Hansen* avoided the problems inherent in the *Robertson* approach by simply stating the felony at issue will never merge, we see no basis today to resurrect the *Hansen* approach for a violation of section 246.3. Indeed, doing so would arguably be inconsistent with *Hansen*'s reasoning. *Hansen* explained that most homicides do not involve violations of section 246, and thus holding that such homicides do not merge would not “subvert the legislative intent.” (*Hansen, supra*, at p. 315, 36 Cal.Rptr.2d 609, 885 P.2d 1022.) But most fatal shootings, **442 and certainly those charged as murder, do involve discharging a firearm in at least a grossly negligent manner. Fatal shootings, in turn, are a high percentage of all homicides. Thus, holding that a violation of section 246.3 never merges would greatly expand the range of homicides subject to the second degree felony-murder rule. We adhere to *Robertson* and *Randle* to the extent they declined to extend the *Hansen* approach to a violation of section 246.3.

But if, as we conclude, the *Hansen* test does not apply to a violation of section 246.3, we must decide whether it still applies to *any* underlying felonies. The tests stated in *Hansen* and in *Robertson* and *Randle* cannot both apply at the same time. If *Hansen* governs, the underlying felony will *never* merge. If *Robertson* and *Randle* governs, the underlying felony will *always* merge unless the court can discern some independent felonious purpose. But we see no principled basis by which to hold that a violation of section 246 never merges, but a violation of section 246.3 does merge unless done with an independent purpose. We also see no principled test that another court could use to determine which approach applies to other possible underlying felonies. The court in *People v. Bejarano, supra*, 149 Cal.App.4th 975, 57 Cal.Rptr.3d 486, implicitly concluded that *Robertson* and *Randle* now govern to the exclusion *1199 of the *Hansen* test. We agree. The *Robertson* and *Randle* test and the *Hansen* test cannot coexist. Our analysis in *Robertson* and *Randle* implicitly overruled the *Hansen* test. We now expressly overrule *People v. Hansen, supra*, 9 Cal.4th 300, 36 Cal.Rptr.2d 609, 885 P.2d 1022, to the extent it stated a test different than the one of *Robertson* and *Randle*. Doing so also requires us to disapprove of *People v. Tabios, supra*, 67 Cal.App.4th 1, 78 Cal.Rptr.2d 753.

But the test of *Robertson, supra*, 34 Cal.4th 156, 17 Cal.Rptr.3d 604, 95 P.3d 872, and *Randle, supra*, 35 Cal.4th 987, 28 Cal.Rptr.3d 725, 111 P.3d 987, has its own problems that were avoided in *Hansen* but resurfaced when we abandoned the *Hansen* test. Our holding in *Randle* made stark

the anomalies that Justices Kennard and Werdegar identified in *Robertson*. On reflection, we do not believe that a person who claims he merely wanted to frighten the victim should be subject to the felony-murder rule (*Robertson*), but a person who says he intended to shoot at the victim is not subject to that rule (*Randle*). Additionally, *Robertson* said that the intent to frighten is a collateral *purpose*, but *Randle* said the intent to rescue another person is not an independent purpose but merely a *motive*. (*Robertson, supra*, at p. 171, 17 Cal.Rptr.3d 604, 95 P.3d 872; *Randle, supra*, at p. 1005, 28 Cal.Rptr.3d 725, 111 P.3d 987.) It is not clear how a future court should decide whether a given intent is a purpose or merely a motive.

The *Robertson* and *Randle* test presents yet another problem. In the past, we have treated the merger doctrine as a legal question with little or no factual content. Generally, we have held that an underlying felony either never or always merges (e.g., ***127 *People v. Smith, supra*, 35 Cal.3d at p. 805, 201 Cal.Rptr. 311, 678 P.2d 886 [identifying certain underlying felonies that do not merge]), not that the question turns on the specific facts. Viewed as a legal question, the trial court properly decides whether to instruct the jury on the felony-murder rule, but if it does so instruct, it does not also instruct the jury on the merger doctrine. The *Robertson* and *Randle* test, however, turns on potentially disputed facts specific to the case. In *Robertson*, the defendant claimed he merely intended to frighten the victim, which caused this court to conclude the underlying felony did not merge. But the jury would not necessarily have to believe the defendant. Whether a defendant shot *at* someone intending to injure, or merely tried to frighten that someone, may often be a disputed factual question.

Defendant argues that the factual question whether the defendant had a collateral felonious purpose—and thus whether the felony-murder rule applies—involves an element of the crime and, accordingly, that the *jury* must decide that factual question. When the merger issue turns on potentially disputed factual questions, there is no obvious answer to this argument. Justice Kennard alluded to the problem in her dissent in *Robertson* when she observed that “the jury never decided **443 whether he had that intent [to frighten].” (*Robertson, supra*, 34 Cal.4th at p. 183, 17 Cal.Rptr.3d 604, 95 P.3d 872.) Because this factual *1200 question determines whether the felony-murder rule applies under *Robertson* and *Randle*, and thus whether the prosecution would have to prove some other form of malice, it is not clear why the jury should not have to decide the factual question.

To avoid the anomaly of putting a person who merely intends to frighten the victim in a worse legal position than the person who actually intended to shoot at the victim, and the difficult question of whether and how the jury should decide questions of merger, we need to reconsider our holdings in *Robertson, supra*, 34 Cal.4th 156, 17 Cal.Rptr.3d 604, 95 P.3d 872, and *Randle, supra*, 35 Cal.4th 987, 28 Cal.Rptr.3d 725, 111 P.3d 987. When the underlying felony is assaultive in nature, such as a violation of section 246 or 246.3, we now conclude that the felony merges with the homicide and cannot be the basis of a felony-murder instruction. An “assaultive” felony is one that involves a threat of immediate violent injury. (See *People v. Chance* (2008) 44 Cal.4th 1164, 1167–1168, 81 Cal.Rptr.3d 723, 189 P.3d 971.) In determining whether a crime merges, the court looks to its elements and not the facts of the case. Accordingly, if the elements of the crime have an assaultive aspect, the crime merges with the underlying homicide even if the elements also include conduct that is not assaultive. For example, in *People v. Smith, supra*, 35 Cal.3d at page 806, 201 Cal.Rptr. 311, 678 P.2d 886, the court noted that child abuse under section 273a “includes both active and passive conduct, i.e., child abuse by direct assault and child endangering by extreme neglect.” Looking to the facts before it, the court decided the offense was “of the assaultive variety,” and therefore merged. (*Smith, supra*, 35 Cal.3d at pp. 806–807, 201 Cal.Rptr. 311, 678 P.2d 886.) It reserved the question whether the nonassaultive variety would merge. (*Id.* at p. 808, fn. 7, 201 Cal.Rptr. 311, 678 P.2d 886.) Under the approach we now adopt, both varieties would merge. This approach both avoids the necessity of consulting facts that might be disputed and extends the protection of the merger doctrine to the potentially less culpable defendant whose conduct is not assaultive.

This conclusion is also consistent with our repeatedly stated view that the ***128 felony-murder rule should not be extended beyond its required application. (*People v. Howard, supra*, 34 Cal.4th at p. 1135, 23 Cal.Rptr.3d 306, 104 P.3d 107.) We do not have to decide at this point exactly what felonies are assaultive in nature, and hence may not form the basis of a felony-murder instruction, and which are inherently collateral to the resulting homicide and do not merge. But shooting at an occupied vehicle under section 246 is assaultive in nature and hence cannot serve as the underlying felony for purposes of the felony-murder rule.⁷

⁷ Justice Baxter makes some provocative arguments in favor of abolishing the *Ireland* merger doctrine entirely. However, just as we have refused to

abolish the second degree felony-murder doctrine because it is firmly established, so too we think it a bit late to abolish the four-decades-old merger doctrine. Instead, we think it best to attempt to make it and the second degree felony-murder doctrine more workable.

*1201 We overrule *People v. Robertson, supra*, 34 Cal.4th 156, 17 Cal.Rptr.3d 604, 95 P.3d 872, and the reasoning, although not the result, of *People v. Randle, supra*, 35 Cal.4th 987, 28 Cal.Rptr.3d 725, 111 P.3d 987. This conclusion means the trial court erred in instructing the jury on the second degree felony-murder rule.⁸ We now turn to a consideration of whether this error was prejudicial.

⁸ When we say the trial court erred, we mean, of course, only in light of our reconsideration of past precedents. As of the time of trial, after *Hansen, supra*, 9 Cal.4th 300, 36 Cal.Rptr.2d 609, 885 P.2d 1022, and *People v. Tabios, supra*, 67 Cal.App.4th 1, 78 Cal.Rptr.2d 753, and before *People v. Bejarano, supra*, 149 Cal.App.4th 975, 57 Cal.Rptr.3d 486, ample authority supported the trial court's decision to instruct on felony murder.

C. Prejudice

California Constitution, article VI, section 13, prohibits a reviewing court from setting aside a judgment due to trial court error unless it finds the error prejudicial. Accordingly, we must decide whether the error in **444 instructing on felony murder prejudiced defendant.

Instructional error regarding the elements of the offense requires reversal of the judgment unless the reviewing court concludes beyond a reasonable doubt that the error did not contribute to the verdict. (*People v. Cross* (2008) 45 Cal.4th 58, 69–71, 82 Cal.Rptr.3d 373, 190 P.3d 706 (conc. opn. of Baxter, J.); *People v. Swain* (1996) 12 Cal.4th 593, 607, 49 Cal.Rptr.2d 390, 909 P.2d 994; *People v. Calderon* (2005) 129 Cal.App.4th 1301, 1306–1307, 29 Cal.Rptr.3d 277 [erroneous instruction on the second degree felony-murder rule]; see *Hedgpeth v. Pulido* (2008) 555 U.S. 57, 129 S.Ct. 530, 172 L.Ed.2d 388 [reiterating that error of this nature is subject to harmless error analysis]; *Neder v. United States* (1999) 527 U.S. 1, 15, 119 S.Ct. 1827, 144 L.Ed.2d 35 [stating the reasonable doubt test].)

In finding prejudice, the Court of Appeal noted that the trial court “did not give CALJIC No. 8.30 on second degree

express malice murder or CALJIC No. 8.31 on second degree implied malice murder.” It also stated, “While it is possible the jury selected second degree murder on another theory after finding no premeditation and deliberation, we cannot determine which theory the jury relied on, so if the second degree felony-murder instruction was legally flawed, the verdict must be reversed. (*People v. Guiton* (1993) 4 Cal.4th 1116, 1129[, 17 Cal.Rptr.2d 365, 847 P.2d 45].)” Later, after it did find error, the court reiterated that the error was prejudicial: “Since ... the record does not show the murder conviction was based on a valid ground, we reverse the conviction for second degree murder. (*People v. Guiton*, ***129 *supra*, 4 Cal.4th 1116, 1129[, 17 Cal.Rptr.2d 365, 847 P.2d 45].)”

*1202 Defendant argues that the trial court did not adequately instruct the jury on conscious-disregard-for-life malice as a theory of second degree murder, and therefore the jury could not have based its verdict on that theory. We disagree. Although the trial court did not give CALJIC Nos. 8.30 and 8.31, and hence did not instruct on implied (or express) malice murder precisely the way the authors of CALJIC intended, it did give CALJIC No. 8.11, which contains everything necessary to fully instruct the jury on this form of malice as a possible theory of second degree murder.

Specifically, the court instructed the jury that to prove murder, the prosecution had to prove an unlawful killing that “was done with malice aforethought *or* occurred during the commission or attempted commission of shooting at an occupied motor vehicle....” (Italics added.) It also defined malice: “Malice may be either express or implied. Malice is express when there is manifested an intention unlawfully to kill a human being.

“Malice is implied when:

- “1. The killing resulted from an intentional act;
- “2. The natural consequences of the act are dangerous to human life; and
- “3. The act was deliberately performed with knowledge of the danger to and with conscious disregard for human life.

“When it is shown that a killing resulted from the intentional doing of an act with express or implied malice, no other mental state need be shown to establish the mental state of malice aforethought.”

As the Attorney General notes, the only language from CALJIC No. 8.30 or No. 8.31 not included in CALJIC No. 8.11, which the court gave, is the last sentence of CALJIC No. 8.31: “When the killing is the direct result of such an act [an act committed with implied malice], it is not necessary to prove that the defendant intended that the act would result in the death of a human being.” But omission of this sentence, favorable to the prosecution, could neither have prejudiced defendant nor prevented the jury from finding implied malice.

Later, the court instructed the jury that a killing during the commission of shooting at an occupied motor vehicle is second degree murder “when the perpetrator had the specific intent to commit that crime.” The trial court did not reiterate at this point the conscious-disregard-for-life theory of second degree murder, but doing so was not necessary to adequately instruct the jury on that theory. The instructions permitted the jury to **445 base a second degree *1203 murder verdict on either malice *or* the felony-murder rule. Accordingly, the court *did* instruct the jury on conscious-disregard-for-life malice as a possible basis of murder.

Moreover, the prosecutor explained the applicable law to the jury. He explained that murder was an unlawful killing committed with malice *or* during the commission of a dangerous felony. He discussed what implied malice is and included examples. Defendant correctly notes that the prosecutor did not argue that defendant acted with implied malice. He argued for first degree, not second degree, murder. But the instructions, especially in light of the prosecutor's explanation, permitted the jury to base a second degree murder verdict on a finding of malice separate from the felony-murder rule.

In this situation, to find the error harmless, a reviewing court must conclude, beyond a reasonable doubt, that the jury based its verdict on a legally valid theory, ***130 i.e., either express or conscious-disregard-for-life malice. Citing *People v. Guiton*, *supra*, 4 Cal.4th 1116, 17 Cal.Rptr.2d 365, 847 P.2d 45, the Court of Appeal believed it could not do so. But *Guiton* does not dispose of this issue. In his concurring opinion in *People v. Cross*, *supra*, 45 Cal.4th at page 70, 82 Cal.Rptr.3d 373, 190 P.3d 706, Justice Baxter discussed *Guiton*'s significance in this context: “Although *Guiton* observed that reliance on other portions of the verdict is ‘[o]ne way’ of finding an instructional error harmless (*Guiton*, at p. 1130 [, 17 Cal.Rptr.2d 365, 847 P.2d 45]), we have never intimated that this was the *only* way to do

so. Indeed, *Guiton* noted that we were not then presented with the situation of a jury having been instructed with a legally adequate and a legally inadequate theory and that we therefore ‘need not decide the exact standard of review’ in such circumstances—although we acknowledged that ‘[t]here may be additional ways by which a court can determine that error in [this] situation is harmless. We leave the question to future cases.’ (*Id.* at pp. 1130, 1131[, 17 Cal.Rptr.2d 365, 847 P.2d 45].) Because this case only now presents that issue, *Guiton* does not provide a dispositive answer to the question.” (See also *People v. Harris* (1994) 9 Cal.4th 407, 419, fn. 7, 37 Cal.Rptr.2d 200, 886 P.2d 1193.)

The Attorney General argues that the actual verdict *does* show that the jury did not base its murder verdict on the felony-murder rule but necessarily based it on a valid theory. He notes that the jury *acquitted* defendant of the separately charged underlying crime of shooting at an occupied vehicle. A jury that based a murder verdict solely on felony murder, the Attorney General argues, would not acquit a defendant of the underlying felony. Defendant counters with the argument that the verdict as a whole—finding defendant guilty of murder but *not* guilty of either shooting at or from a motor vehicle—is internally inconsistent. On these facts, it is hard to reconcile this verdict. If defendant did not commit *this* murder by firing at or from a vehicle, how *did* he commit it? There was no evidence the victims *1204 were killed or injured by any method other than shooting from *and* at an occupied vehicle. The overall verdict had to have been either a compromise or an act of leniency.

Defendant recognizes that he may not argue that the murder conviction must be reversed due to this inconsistency. He may not argue that the acquittals imply that defendant could not have committed murder, and therefore the jury found he did not commit murder. Instead, courts necessarily tolerate, and give effect to all parts of, inconsistent verdicts. (See generally *People v. Palmer* (2001) 24 Cal.4th 856, 103 Cal.Rptr.2d 13, 15 P.3d 234.) But, defendant argues, this being the case, a reviewing court should not read more than is warranted into one part of an inconsistent verdict. Defendant posits the possibility that one or more jurors found him guilty of second degree murder on a felony-murder theory but then agreed to acquit him of the underlying felony either out of leniency or as a compromise, or perhaps simply out of confusion. In that event, defendant suggests, those jurors may simply have believed defendant was guilty of murder on the invalid felony-murder theory without ever considering a valid theory of malice.

Defendant's argument has some force. The acquittal of the underlying felony **446 strongly suggests the jury based its murder conviction on a valid theory of malice but, under the circumstances, we do not believe that it alone does so beyond a reasonable doubt. But for other reasons we find the error harmless. In his concurring ***131 opinion in *California v. Roy* (1996) 519 U.S. 2, 117 S.Ct. 337, 136 L.Ed.2d 266, Justice Scalia stated a test that fits the error of this case well. In *Roy*, the error was permitting a defendant to be convicted of a crime as an aider and abettor solely due to the defendant's *knowledge* of the perpetrator's intent without requiring a finding the aider and abettor shared that intent. That error is similar to the error of this case, which permitted defendant to be convicted of murder on a felony-murder theory without requiring a finding of a valid theory of malice. The high court held that the error was subject to harmless error analysis and remanded for the lower court to engage in that analysis.

California v. Roy, supra, 519 U.S. 2, 117 S.Ct. 337, 136 L.Ed.2d 266, involved collateral review of a state court judgment in a federal habeas corpus matter, a procedural posture in which the standard of review for prejudice is more deferential than the harmless-beyond-a-reasonable-doubt standard applicable to direct review. (*Id.* at pp. 4–5, 117 S.Ct. 337.) But Justice Scalia, in a concurring opinion, stated a test that is adaptable to the reasonable doubt standard of direct review: “The error in the present case can be harmless only if the jury verdict on other points effectively embraces this one or if it is impossible, upon the evidence, to have found what the verdict *did* find without finding this point as well.” (*Id.* at p. 7, 117 S.Ct. 337.) Without holding that this is the only way to find error harmless, we *1205 think this test works well here, and we will use it. If other aspects of the verdict or the evidence leave no reasonable doubt that the jury made the findings necessary for conscious-disregard-for-life malice, the erroneous felony-murder instruction was harmless.

For felony murder, the court's instructions required the jury to find that defendant had the *specific intent* to commit the underlying felony of shooting at an occupied vehicle. Later, it instructed that to find defendant committed that crime, the jury had to find these elements:

“1. A person discharged a firearm at an occupied motor vehicle; and

“2. The discharge of the firearm was willful and malicious.”

Thus any juror who relied on the felony-murder rule necessarily found that defendant willfully shot at an occupied vehicle. The undisputed evidence showed that the vehicle shot at was occupied by not one but three persons. The three were hit by multiple gunshots fired at close range from three different firearms. No juror could have found that defendant participated in this shooting, either as a shooter or as an aider and abettor, without also finding that defendant committed an act that is dangerous to life and did so knowing of the danger and with conscious disregard for life—which is a valid theory of malice. In other words, on this evidence, no juror could find felony murder without also finding conscious-disregard-for-life malice. The error in instructing the jury on felony murder was, by itself, harmless beyond a reasonable doubt.

However, this instructional error is not the only error in the case. The Court of Appeal held that the jury should not have heard evidence that defendant admitted firing the gun, but said he did not point it at anyone and just wanted to scare them, and that this error was harmless “as a pure evidentiary matter.” Neither of these holdings is before us on review. The Court of Appeal also held that the error in instructing on felony murder was, by itself, prejudicial, a holding we are reversing. But the Court of Appeal never considered whether the two errors, *in combination*, were prejudicial. The parties have, understandably, not focused on this precise ***132 question. Under the circumstances, we think it prudent to remand the matter for the Court of Appeal to consider and decide whether the two errors, in combination, were prejudicial.

III. CONCLUSION

Although we agree with the Court of Appeal that the trial court erred in instructing the jury on second degree felony murder, we **447 also conclude that *1206 the error, alone, was harmless. Accordingly, we reverse the judgment of the Court of Appeal and remand the matter to that court for further proceedings consistent with this opinion.

WE CONCUR: [GEORGE, C.J.](#), [KENNARD](#), [WERDEGAR](#) and [CORRIGAN, JJ.](#)

Concurring and Dissenting Opinion by [BAXTER, J.](#)

I concur in the majority's decision to reaffirm the constitutional validity of the long-standing second degree felony-murder rule. (Maj. opn., [ante](#), 91 Cal.Rptr.3d at p. 117, 203 P.3d at p. 434.) Ever since the Penal Code¹ was enacted in 1872, and going back even before that, to California's first penal law, the Crimes and Punishments Act of 1850 (Stats.1850, ch. 99, p. 229), the second degree felony-murder rule has been recognized as a rule for imputing malice under the statutory definition of implied malice (§ 188)² where the charge is second degree murder. (Maj. opn., [ante](#), 91 Cal.Rptr.3d at pp. 113–117, 203 P.3d at pp. 431–434.) As the majority explains, “The willingness to commit a felony inherently dangerous to life is a circumstance showing an abandoned and malignant heart. The second degree felony-murder rule is based on statute and, accordingly, stands on firm constitutional ground.” (Maj. opn., [ante](#), 91 Cal.Rptr.3d at p. 116, 203 P.3d at p. 434.)

¹ All further statutory references are to the Penal Code.

² Section 188 provides that malice is implied “when no considerable provocation appears or when the circumstances attending the killing show an abandoned and malignant heart.” (§ 188.) We have, however, recognized that “[t]he statutory definition of implied malice has never proved of much assistance in defining the concept in concrete terms.” (*People v. Dellinger* (1989) 49 Cal.3d 1212, 1217, 264 Cal.Rptr. 841, 783 P.2d 200 (*Dellinger*)). Under the modern understanding of the “abandoned and malignant heart” definition of implied malice, malice is presumed when “ ‘the killing proximately resulted from an act, the natural consequences of which are dangerous to life, which act was deliberately performed by a person who knows that his conduct endangers the life of another and who acts with conscious disregard for life.’ ” (*Dellinger, supra*, 49 Cal.3d at p. 1218, 264 Cal.Rptr. 841, 783 P.2d 200; see also *People v. Sedeno* (1974) 10 Cal.3d 703, 719, 112 Cal.Rptr. 1, 518 P.2d 913; *People v. Phillips* (1966) 64 Cal.2d 574, 587, 51 Cal.Rptr. 225, 414 P.2d 353.)

Although the majority reaffirms the constitutional validity of the second degree felony-murder rule, it goes on to render the rule useless in this and future cases out of strict adherence to the so-called “merger rule” announced in *People v. Ireland*

(1969) 70 Cal.2d 522, 75 Cal.Rptr. 188, 450 P.2d 580 (*Ireland*). Under the merger rule, no assaultive-type felony can be used as a basis for a second degree felony-murder conviction. The single rationale given in *Ireland* for the merger rule was that to allow assaultive-type felonies to serve as a basis for a second degree felony-murder conviction “would effectively preclude the jury from considering the issue of malice aforethought in all cases wherein homicide has been committed as a result of a felonious assault ... a category which includes the great majority of all homicides. This kind of bootstrapping ***133 finds support neither in logic nor in law.” (*Id.* at p. 539, 75 Cal.Rptr. 188, 450 P.2d 580.)

*1207 In the 40 years since the *Ireland* court announced its sweeping “merger rule,” this court has struggled mightily with its fallout in an attempt to redefine the contours of the venerable second degree felony-murder rule. The history of our “ ‘muddled’ ” (maj. opn., *ante*, 91 Cal.Rptr.3d at p. 117, 203 P.3d at p. 435) case law on the subject is accurately recounted in painstaking detail in the majority opinion. (*Id.*, 91 Cal.Rptr.3d at pp. 117–128, 203 P.3d at pp. 434–444.) Two decisions in particular are noteworthy here.

In *People v. Hansen* (1994) 9 Cal.4th 300, 36 Cal.Rptr.2d 609, 885 P.2d 1022 (*Hansen*), we concluded that maliciously and willfully shooting at an inhabited dwelling in violation of section 246, “involves a high probability that death will result and therefore is an inherently dangerous felony ... for purposes of the second degree felony-murder doctrine.” (*Hansen*, at p. 309, 36 Cal.Rptr.2d 609, 885 P.2d 1022.) *Hansen* explained that, “application of the second degree felony-murder rule to a homicide resulting from a violation **448 of section 246 directly would serve the fundamental rationale of the felony-murder rule—the deterrence of negligent or accidental killings in the course of the commission of dangerous felonies. The tragic death of innocent and often random victims, both young and old, as the result of the discharge of firearms, has become an alarmingly common occurrence in our society—a phenomenon of enormous concern to the public. By providing notice to persons inclined to willfully discharge a firearm at an inhabited dwelling—even to those individuals who would do so merely to frighten or intimidate the occupants, or to ‘leave their calling card’—that such persons will be guilty of murder should their conduct result in the all-too-likely fatal injury of another, the felony-murder rule may serve to deter this type of reprehensible conduct, which has created a climate of fear for significant numbers of Californians even in the privacy of

their own homes.” (*Hansen*, at pp. 310–311, 36 Cal.Rptr.2d 609, 885 P.2d 1022.)

I signed the majority opinion in *Hansen*, and continue to find that decision well-reasoned and most directly on point in the matter now before us.³ I would follow *Hansen* and conclude the jury below was properly instructed on second degree felony murder based on defendant's commission of the inherently dangerous felony of shooting at an occupied vehicle in violation of section 246 and the inference of malice that follows therefrom. The majority, *1208 in contrast, rejects the analysis and holding in *Hansen* and expressly overrules it. (Maj. opn., *ante*, 91 Cal.Rptr.3d at pp. 126–127, 203 P.3d at p. 442.)

3 The case before us involves a homicide resulting from defendant shooting at an occupied vehicle in violation of section 246. In *Hansen*, we held that shooting at an “inhabited dwelling house” in violation of that same section (§ 246) is an act inherently dangerous to human life even though the house is not actually occupied at the time of the shooting. (*Hansen*, *supra*, 9 Cal.4th at pp. 309–311, 36 Cal.Rptr.2d 609, 885 P.2d 1022.) We then explained that “[t]he nature of the other acts proscribed by section 246 reinforces the conclusion that the Legislature viewed the offense of discharging a firearm at an *inhabited dwelling* as posing a risk of death comparable to that involved in shooting at an *occupied* building or motor vehicle.” (*Id.* at p. 310, 36 Cal.Rptr.2d 609, 885 P.2d 1022.) The majority agrees that shooting at an occupied vehicle, as occurred here, is an inherently dangerous felony. (Maj. opn., *ante*, 91 Cal.Rptr.3d at p. 117, 203 P.3d at p. 434–435.) So do I.

In *People v. Robertson* (2004) 34 Cal.4th 156, 166, 17 Cal.Rptr.3d 604, 95 P.3d 872 (*Robertson*), we again considered whether the trial court had properly instructed the ***134 jury on second degree felony murder, this time based on the felony of discharging a firearm in a grossly negligent manner. (§ 246.3.) The defendant in *Robertson* claimed he fired his gun “upwards into the air” merely intending to “scare people away.” (*Robertson*, *supra*, 34 Cal.4th at p. 162, 17 Cal.Rptr.3d 604, 95 P.3d 872.) The *Robertson* majority rejected (although did not overrule) the rationale of *Hansen*, *supra*, 9 Cal.4th 300, 36 Cal.Rptr.2d 609, 885 P.2d 1022, and went on to resurrect and apply the so-called “collateral purpose” rule derived from two earlier decisions: *People v.*

Mattison (1971) 4 Cal.3d 177, 93 Cal.Rptr. 185, 481 P.2d 193 (*Mattison*) and *People v. Taylor* (1970) 11 Cal.App.3d 57, 89 Cal.Rptr. 697. Briefly, *Robertson* concluded that, under the collateral purpose rule, the merger doctrine did not bar a second degree felony-murder instruction based on the violation of section 246.3. (*Robertson*, at p. 160, 17 Cal.Rptr.3d 604, 95 P.3d 872.) The “collateral purpose” rule can be summarized as a test that reaches a compromise on the all-or-nothing approach taken in *Ireland* regarding assaultive-type felonies and their nonavailability as a basis for second degree felony-murder treatment. Under the collateral purpose rule or test, application of the second degree felony-murder rule is proper only where the underlying felony, although assaultive in nature, is nonetheless committed with a “ ‘collateral and independent felonious design.’ ” (*Mattison*, *supra*, 4 Cal.3d at p. 186, 93 Cal.Rptr. 185, 481 P.2d 193; *Taylor*, *supra*, 11 Cal.App.3d at p. 63, 89 Cal.Rptr. 697.)

I signed the majority opinion in *Robertson* as well, but I have since come to appreciate that the collateral purpose rule on which it relied is unduly deferential to *Ireland*'s flawed merger doctrine. The majority itself points to several serious concerns raised in the wake of *Robertson*'s reliance on the collateral **449 purpose rule in its effort to mitigate the harsh effects of *Ireland*'s all-or-nothing merger rule. (Maj. opn., *ante*, 91 Cal.Rptr.3d at pp. 126–127, 203 P.3d at pp. 442–443.) Nonetheless, it can fairly be observed that the decision in *Robertson*, right or wrong, did represent a compromise, for under its holding inherently dangerous felonies, though they be of the assaultive type, could still *1209 be used as a basis for second degree felony-murder rule treatment as long as a “collateral purpose” for the commission of such a felony could be demonstrated. (*Robertson*, *supra*, 34 Cal.4th at p. 160, 17 Cal.Rptr.3d 604, 95 P.3d 872.)

The majority, in contrast, rejects the analysis and holding of *Robertson* and expressly overrules it along with our earlier decision in *Hansen*. (Maj. opn., *ante*, 91 Cal.Rptr.3d at p. 127–128, 203 P.3d at p. 443.) The majority, to put it bluntly, is unwilling to ameliorate the harsh effects of *Ireland*'s merger doctrine. The majority instead broadly holds that all felonies that are “assaultive in nature” (maj. opn., 91 Cal.Rptr.3d at p. 127, 203 P.3d at p. 443) henceforth may not be used as a basis for a second degree felony-murder prosecution. In short, this court's various attempts over the course of several decades to salvage the second degree felony-murder rule in the wake of *Ireland*'s merger doctrine, and to ameliorate the harsh effects of that all-or-nothing rule, have been wiped clean from the slate. The majority has effectively returned the law to

where it stood 40 years ago, just after *Ireland* was decided. I cannot join in the majority's wholesale capitulation to such a seriously flawed decision.

In the end, this case presented us with a clear opportunity to finally get this complex and difficult issue right. The majority's recognition and unequivocal pronouncement, in part II.A of its opinion—that the second degree felony-murder rule ***135 is simply a rule for imputing malice under section 188—furnishes the missing piece to this complex and confusing legal jigsaw puzzle. With that clear pronouncement of the second degree felony-murder rule's true nature and function firmly in hand, I would go on to reach the following logical conclusions with regard to the long-standing tension between that rule and *Ireland*'s merger doctrine.

First, when a homicide has occurred during the perpetration of a felony inherently dangerous to human life, a jury's finding that the perpetrator satisfied all the elements necessary for conviction of that offense, without legal justification or defense, *is* a finding that he or she acted with an “abandoned and malignant heart” (i.e., acted with malice) within the meaning of section 188. Put in terms of the modern definition of implied malice, where one commits a felony inherently dangerous to human life without legal justification or defense, then under operation of the second degree felony-murder rule, a homicide resulting therefrom *is* a killing “ ‘ ‘proximately result[ing] from an act, the natural consequences of which are dangerous to life, which act was deliberately performed by a person who knows that his conduct endangers the life of another and who acts with conscious disregard for life.’ ” ’ ” (*Dellinger*, *supra*, 49 Cal.3d at p. 1218, 264 Cal.Rptr. 841, 783 P.2d 200.)

Once it is understood and accepted that the second degree felony-murder rule is simply *a rule for imputing malice* from the circumstances attending the commission of an inherently dangerous felony during which a homicide occurs, no grounds remain to support the sole rationale offered by the *Ireland* court for the merger doctrine—that use of an assaultive-type felony as the basis for a second degree felony-murder instruction “effectively preclude[s] the jury from considering the issue of malice aforethought in all cases wherein homicide has been committed as a result of a felonious assault.” (*Ireland*, *supra*, 70 Cal.2d at p. 539, 75 Cal.Rptr. 188, 450 P.2d 580.) The majority's holding in part II.A of its opinion makes clear it understands and accepts that the second degree felony-murder rule is but a means by which juries impute malice under the *1210 Legislature's statutory definition of

second degree implied malice murder. The majority's holding in part II.B of its opinion nonetheless fails to follow through and reach the logical conclusions to be drawn from the first premise, and instead simply rubberstamps the *Ireland* court's misguided belief ****450** that the second degree felony-murder rule improperly removes consideration of malice from the jury's purview.

Second, when a jury convicts of second degree murder under the second degree felony-murder rule, it *has* found the statutory element of malice necessary for conviction of murder. (§§ 187, 188.) Hence, there are no constitutional concerns with regard to whether the jury is finding all the elements of the charged murder, or is not finding all the “facts” that can increase punishment where the defendant is convicted of second degree murder in addition to being convicted of the underlying inherently dangerous felony. (See *Apprendi v. New Jersey* (2000) 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435.)

Third, our recognition today that the second degree felony-murder rule is simply a rule under which the jury may impute malice from the defendant's commission of inherently dangerous criminal acts, thereby undercutting the very rationale given by the *Ireland* court for the merger rule, should logically *eliminate* any impediment to the use of inherently dangerous felonies—such as the violation of [section 246](#) (maliciously and willfully shooting at an occupied vehicle) at issue in this case— *****136** as the basis for an instruction on second degree felony murder.

The majority's holding, in contrast, works just the opposite result. Prior to this court's decision in *Ireland*, this court had already restricted the felonies that could support a second degree felony-murder conviction to those “inherently dangerous to human life.” (*People v. Ford* (1964) 60 Cal.2d 772, 795, 36 Cal.Rptr. 620, 388 P.2d 892.) The justification for the imputation of implied malice under these circumstances is that, “when society has declared certain inherently dangerous conduct to be felonious, a defendant should not be allowed to excuse himself by saying he was unaware of the danger to life.” (*People v. Patterson* (1989) 49 Cal.3d 615, 626, 262 Cal.Rptr. 195, 778 P.2d 549 (*Patterson*).) Hence, whatever felonies may remain available for use in connection with the second degree felony-murder rule after today's holding will both have to qualify as inherently dangerous felonies (*Ford*, at p. 795, 36 Cal.Rptr. 620, 388 P.2d 892), and not be “assaultive in nature” or contain any elements that have “an assaultive aspect.” (Maj. opn., *ante*, 91 Cal.Rptr.3d at pp. 127, 128, 203

P.3d at pp. 442, 443.) I fail to see how the second degree felony-murder rule, thus emasculated, will continue to serve its intended purposes of “ ‘deter[ring] felons from killing negligently or accidentally’ ” while “deter[ring] commission of the inherently dangerous felony itself.” (Maj. opn., *ante*, 91 Cal.Rptr.3d at p. 125, 203 P.3d at p. 441.)

***1211** In sum, the majority has turned the second degree felony-murder rule on its head by excluding *all felonies* that are “assaultive in nature” (maj. opn., *ante*, 91 Cal.Rptr.3d at p. 127, 203 P.3d at p. 442–443), including a violation of [section 246](#), in whatever form, from future use as a basis for second degree felony-murder treatment. In reaching its holding, the majority has rejected decades of sound felony-murder jurisprudence in deference to *Ireland*'s merger rule, a doctrine grounded on a single false premise, that use of the second degree felony-murder rule improperly insulates juries from the requirement of finding malice and thereby constitutes unfair “bootstrapping.” (*Ireland, supra*, 70 Cal.2d at p. 539, 75 Cal.Rptr. 188, 450 P.2d 580.)

In concluding that *Ireland*'s merger doctrine trumps the second degree felony-murder rule in this and all future cases involving “assaultive-type” felonies (maj. opn., *ante*, 91 Cal.Rptr.3d at p. 109, 203 P.3d at pp. 427–428), the majority professes to heed the concerns raised by some members of this court in past decisions that have addressed the tension between the second degree felony-murder rule and the merger doctrine. (*Id.*, 91 Cal.Rptr.3d at pp. 122–124, 203 P.3d at pp. 438–440.) I do not believe those concerns justify the result reached by the majority in this case.

For example, in *Robertson, supra*, 34 Cal.4th 156, 17 Cal.Rptr.3d 604, 95 P.3d 872, the issue was whether the trial court properly instructed the jury on second degree felony murder based on discharging a firearm in a grossly negligent manner. (§ 246.3.) In that case the defendant claimed he had heard a sound resembling “either a car backfire or ****451** the discharge of a firearm,” and merely “fired two warning shots” “upwards into the air” in order to “ ‘scare people away from my domain.’ ” (*Robertson*, at p. 162, 17 Cal.Rptr.3d 604, 95 P.3d 872.) The physical evidence was otherwise; the defendant had fired at least three shots, two of which hit a car parked across the street “two feet above ground level.” (*Ibid.*) The homicide victim, found 50 yards from where defendant was standing when he fired his weapon, died from a *****137** bullet wound to the back of his head. (*Ibid.*) The majority in *Robertson* concluded *Ireland*'s merger rule did not bar a

second degree felony-murder instruction. (*Robertson*, at p. 160, 17 Cal.Rptr.3d 604, 95 P.3d 872.)

As the majority observes, Justice Werdegar dissented in *Robertson*, arguing that the underlying felony merged with the resulting homicide. She wrote: “The anomalies created when assaultive conduct is used as the predicate for a second degree felony-murder theory [citation] are too stark and potentially too productive of injustice to be written off as ‘characteristic of the second degree felony-murder rule in general’ ([*Robertson*] at p. 173[, 17 Cal.Rptr.3d 604, 95 P.3d 872]). It simply cannot be the law that a defendant who shot the victim with the intent to kill or injure, but can show he or she acted in unreasonable self-defense, may be convicted of only voluntary manslaughter, whereas a defendant who shot only to scare the victim is precluded from raising that partial defense and is strictly liable as a murderer. The independent and *1212 collateral purposes referred to in *Mattison* must be understood as limited to nonassaultive conduct. In circumstances like the present, the merger doctrine should preclude presentation of a second degree felony-murder theory to the jury.” (*Robertson*, *supra*, 34 Cal.4th at p. 185, 17 Cal.Rptr.3d 604, 95 P.3d 872 (dis. opn. of Werdegar, J.).)

I appreciate and share the concerns voiced by Justice Werdegar in her dissent in *Robertson*. At the threshold, I fail to see why a bald claim by the defendant that he fired his gun “upwards into the air” intending merely to “ ‘scare people away’ ” (*Robertson*, *supra*, 34 Cal.4th at p. 162, 17 Cal.Rptr.3d 604, 95 P.3d 872), a claim that was flatly contradicted by all the physical evidence in the case, including the dead victim who was found 50 yards away felled by a single shot to the back of his head, should be found controlling on the matter of what theory or theories of murder were rightfully available to the prosecution in trying the case. (*In re Christian S.* (1994) 7 Cal.4th 768, 783, 30 Cal.Rptr.2d 33, 872 P.2d 574 (*Christian S.*) [trial courts need only instruct on defenses supported by substantial evidence].)

The particular facts of *Robertson* aside, I agree with Justice Werdegar that defendants are entitled to present all viable defenses supported by substantial evidence, like imperfect self defense, in a second degree murder prosecution, whether it be tried on a theory of straight implied malice second degree murder or under the second degree felony-murder rule. But as we recognize today, the second degree felony-murder rule is simply a common law rule for imputing malice, a required element of murder under [sections 187](#)

and 188. Understood in that way, there is nothing in the rule, or in relevant murder statutes, to prevent a defendant from establishing that, even where the circumstances show he satisfied all the elements of an alleged inherently dangerous felony during which a homicide occurred, his *actual state of mind* nonetheless precludes drawing an inference of malice from those attending circumstances.

Under the modern construction of the statutory definition of implied malice (§ 188), “malice is presumed when ‘the killing proximately resulted from an act, the natural consequences of which are dangerous to life, which act was deliberately performed by a person who knows that his conduct endangers the life of another *and who acts with conscious disregard for life.*’ ” (*Dellinger*, *supra*, 49 Cal.3d at p. 1218, 264 Cal.Rptr. 841, 783 P.2d 200, italics added; see also *People v. Sedeno*, *supra*, 10 Cal.3d at p. 719, 112 Cal.Rptr. 1, 518 P.2d 913.) Notwithstanding a charge ***138 that a homicide occurred during the commission of an underlying inherently dangerous felony, a finding of second degree felony murder could still be negated by substantial evidence establishing unreasonable or imperfect self defense, **452 thereby reducing the murder to voluntary manslaughter (see *Christian S.*, *supra*, 7 Cal.4th at p. 783, 30 Cal.Rptr.2d 33, 872 P.2d 574), where the defendant, given his conduct and state of mind under the circumstances surrounding the crimes, is shown not to have actually harbored *1213 a “ ‘conscious disregard for life.’ ” (*Dellinger*, at p. 1218, 264 Cal.Rptr. 841, 783 P.2d 200.) Even a defendant who claims he “shot into the air” to scare away the homicide victim in an unreasonable or mistaken belief he had to do so in order to defend himself might successfully avoid an imputed inference of malice, and conviction under the second degree felony-murder rule, if substantial evidence bears out his claim and establishes he did not act with a conscious disregard for life.

One might reasonably speculate that if the *Ireland* court had had the benefit of our modern jurisprudence on second degree implied malice murder, including decisions like *Christian S.*, *supra*, 7 Cal.4th 768, 30 Cal.Rptr.2d 33, 872 P.2d 574, and *People v. Flannel* (1979) 25 Cal.3d 668, 160 Cal.Rptr. 84, 603 P.2d 1, which only firmly established the defense of unreasonable or imperfect self defense years after *Ireland* was decided (see *Flannel*, at p. 683, 160 Cal.Rptr. 84, 603 P.2d 1), the concerns that led the *Ireland* court to fashion its sweeping merger rule could have been alleviated.

In conclusion, I concur in the majority's holding that the second degree felony-murder rule is a rule for imputing malice, and as such, withstands constitutional scrutiny. (Maj. opn., part II.A, *ante*, 91 Cal.Rptr.3d at pp. 110–117, 203 P.3d at pp. 429–434.) I respectfully dissent from the analysis and conclusions reached by the majority with regard to *Ireland*'s merger rule. (Maj. opn., part II.B, *ante*, 91 Cal.Rptr.3d at pp. 117–128, 203 P.3d at pp. 434–444.) I would follow the well-reasoned decision in *Hansen, supra*, 9 Cal.4th 300, 36 Cal.Rptr.2d 609, 885 P.2d 1022, and conclude that the jury below was properly instructed on second degree felony murder based on defendant's commission of the inherently dangerous felony of shooting at an occupied vehicle in violation of [section 246](#).

Concurring and Dissenting Opinion by MORENO, J.

The second degree felony-murder rule is deeply flawed. The majority attempts once more to patch this judicially created rule and improves the state of the law considerably, but several years ago I expressed my willingness to “reassess [] the rule in an appropriate case.” (*People v. Robertson* (2004) 34 Cal.4th 156, 176, 17 Cal.Rptr.3d 604, 95 P.3d 872 (conc. opn. of Moreno, J.); see *People v. Burroughs* (1984) 35 Cal.3d at p. 829, fn. 3, 201 Cal.Rptr. 319, 678 P.2d 894 [“the time may be ripe to reconsider [the] continued validity” of the second degree felony-murder rule].) This is that case. The time has come to abandon the second degree felony-murder rule.

“The felony-murder rule has been roundly criticized both by commentators and this court. As one commentator put it, ‘[t]he felony murder rule has an extensive history of thoughtful condemnation.’ [Citation.]” (*People v. Robertson, supra*, 34 Cal.4th 156, 174, 17 Cal.Rptr.3d 604, 95 P.3d 872 (conc. opn. of Moreno, J.)) As the majority notes, “[t]he felony-murder rule makes a killing while committing certain felonies murder without the necessity of further examining the *1214 defendant's mental state.” (Maj. opn., ***139 *ante*, 91 Cal.Rptr.3d at p. 111, 203 P.3d at p. 430.) Regardless of this court's view of the wisdom of doing so, it is within the Legislature's prerogative to remove the necessity to prove malice when a death result from the commission of certain felonies, and the Legislature has done so by codifying the first degree felony-murder rule in [Penal Code section 189](#). (*People v. Dillon* (1983) 34 Cal.3d 441, 472, 194 Cal.Rptr. 390, 668 P.2d 697.) Thus, we cannot abrogate the first degree felony-murder rule because it “is a creature of statute.... [T]his court does not sit as a super-legislature with the power to judicially abrogate a statute merely because it is unwise or outdated. [Citations.]” (*Id.* at p. 463, 194 Cal.Rptr. 390, 668 P.2d 697.)

We do, however, possess the authority to abrogate the second degree felony-murder doctrine because “ ‘the second degree felony-murder rule remains, as it has been since 1872, a judge-made doctrine without any express **453 basis in the Penal Code.’ ” (*People v. Robertson, supra*, 34 Cal.4th at p. 174, 17 Cal.Rptr.3d 604, 95 P.3d 872 (conc. opn. of Moreno, J.))

My concerns about the felony murder rule are neither new nor original. Nearly 45 years ago, this court acknowledged that “[t]he felony-murder rule has been criticized on the grounds that in almost all cases in which it is applied it is unnecessary and that it erodes the relation between criminal liability and moral culpability. [Citations.] Although it is the law in this state [citation], it should not be extended beyond any rational function that it is designed to serve.” (*People v. Washington* (1965) 62 Cal.2d 777, 783, 44 Cal.Rptr. 442, 402 P.2d 130, fn. omitted.) We have described the felony-murder rule as “a ‘ ‘highly artificial concept’ ’ ” that this court long has held “in disfavor” (*People v. Burroughs, supra*, 35 Cal.3d 824, 829, 201 Cal.Rptr. 319, 678 P.2d 894) “because it relieves the prosecution of the burden of proving one element of murder, malice aforethought” (*People v. Henderson* (1977) 19 Cal.3d 86, 92, 137 Cal.Rptr. 1, 560 P.2d 1180). “The felony-murder doctrine has been censured not only because it artificially imposes malice as to one crime because of defendant's commission of another but because it anachronistically resurrects from a bygone age a ‘barbaric’ concept that has been discarded in the place of its origin.” (*People v. Phillips* (1966) 64 Cal.2d 574, 583, fn. 6, 51 Cal.Rptr. 225, 414 P.2d 353, overruled on other grounds in *People v. Flood* (1998) 18 Cal.4th 470, 490, fn. 12, 76 Cal.Rptr.2d 180, 957 P.2d 869.)

The second degree felony-murder doctrine suffers from all the same infirmities as its first degree counterpart, and more. In *People v. Satchell* (1971) 6 Cal.3d 28, 33, footnote 11, 98 Cal.Rptr. 33, 489 P.2d 1361 (overruled on other grounds in *People v. Flood, supra*, 18 Cal.4th 470, 490, fn. 12, 76 Cal.Rptr.2d 180, 957 P.2d 869) we observed that the second degree felony-murder rule is largely unnecessary and, in those unusual cases in which it would mandate a different result, may be unfair: “ ‘It may be that the rule is unnecessary in almost all cases in which it is applied, that is to say, that conviction in those cases can be predicated on the normal rules as to murder and as to accomplice liability. In the small residuum of cases, there may be a substantial question whether *1215 the rule reaches a rational result or does not at least distract attention from more relevant

criteria.’ ” (Fn. omitted.) [Citation.] [¶] “If the defendant commits the felony in a highly reckless manner, he can be convicted of second degree murder independently of the shortcut of the felony-murder rule. Under California’s interpretation of the implied malice provision of the [Penal Code \[§ 188\]](#), proof of conduct evidencing extreme or wanton recklessness establishes the element of malice aforethought required *****140** for a second degree murder conviction. [Citation.] ... The jury would decide whether the evidence, including the defendant’s conduct and inferences rising from it, established the requisite malice aforethought; they would not be bound by the conclusive presumption of malice which the felony murder rule compels.’ ”

The majority acknowledges the criticism heaped on the second degree felony-murder rule and describes this court’s halting and sometimes inconsistent attempts to circumscribe the scope of the rule, most notably by creating the [Ireland merger doctrine](#). The majority’s reformulation of the merger doctrine is an improvement, but it does not correct the basic flaw in the felony-murder rule; that it is largely unnecessary and, in those unusual instances in which it would produce a different result, may be unfair. “In most cases involving a felony-murder theory, prosecutors should have little difficulty proving second degree murder with implied malice. ‘[M]alice is implied “when the killing results from an intentional act, the natural consequences of which are dangerous to life, which act was deliberately performed by a person who knows that his conduct endangers the life of another and who acts with conscious disregard for life” [citation].’ [Citation.] Eliminating second degree felony murder from the prosecution’s arsenal would not have a detrimental effect on the prosecution’s ability to secure second

degree murder convictions, but it would go a long way to restoring the proper balance between culpability and punishment.” ****454** ([People v. Robertson, supra, 34 Cal.4th 156, 177, 17 Cal.Rptr.3d 604, 95 P.3d 872](#) (conc. opn. of Moreno, J.).)

The lack of necessity for the second degree felony-murder rule is demonstrated by the majority’s conclusion that the error in instructing the jury on second degree felony-murder in this case was harmless because no reasonable juror could have found that defendant participated in this shooting without also concluding that he harbored at least implied malice. I agree. This will be the rule, rather than the exception. In most instances, a juror who finds that the defendant killed the victim while committing a felony that is inherently dangerous to human life necessarily also will conclude that the defendant harbored either express or implied malice and thus committed second degree murder without relying upon the second degree felony-murder rule. Only in those rare cases in which it is not clear that the defendant acted in conscious disregard of life will the second degree felony-murder rule make a difference, ***1216** but those are precisely the rare cases in which the rule might result in injustice. I would eliminate the second degree felony-murder rule and rely instead upon the wisdom of juries to recognize those situations in which a defendant commits second degree murder by killing the victim during the commission of a felony that is inherently dangerous to life.

All Citations

45 Cal.4th 1172, 203 P.3d 425, 91 Cal.Rptr.3d 106, 09 Cal. Daily Op. Serv. 3977, 2009 Daily Journal D.A.R. 4745

EXHIBIT D

59 Cal.4th 155
Supreme Court of CaliforniaThe PEOPLE, Plaintiff and Respondent,
v.
Bobby CHIU, Defendant and Appellant.

No. S202724.

|
June 2, 2014.**Synopsis**

Background: Defendant was convicted in the Superior Court, Sacramento County, No. 03F08566, [Lloyd G. Connelly, J.](#), of first degree murder. Defendant appealed. The Court of Appeal reversed. The People petitioned for review. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

Holdings: The Supreme Court, [Chin, J.](#), held that:

an aider and abettor may not be convicted of first degree premeditated murder under natural and probable consequences doctrine, and

trial court's erroneous instruction on natural and probable consequences doctrine was not harmless beyond a reasonable doubt.

Affirmed.

[Kennard, J.](#), filed concurring and dissenting opinion, in which [Cantil-Sakauye, C.J.](#), [And Liu, J.](#), joined.

Opinion, [2012 WL 1383596](#), superseded.

Attorneys and Law Firms

***440 [Scott Concklin](#), Redding, under appointment by the Supreme Court, for Defendant and Appellant.

[Kamala D. Harris](#), Attorney General, [Dane R. Gillette](#), Chief Assistant Attorney General, [Michael P. Farrell](#), Assistant Attorney General, [Donald E. de Nicola](#), Deputy State Solicitor General, [Carlos A. Martinez](#), Eric L. Christoffersen

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Opinion[CHIN, J.](#)

*158 **974 There are two distinct forms of culpability for aiders and abettors. “First, an aider and abettor with the necessary mental state is guilty of the intended crime. Second, under the natural and probable consequences doctrine, an aider and abettor is guilty not only of the intended crime, but also ‘for any other offense that was a “natural and probable consequence” of the crime aided and abetted.’ ” ([People v. McCoy \(2001\) 25 Cal.4th 1111, 1117, 108 Cal.Rptr.2d 188, 24 P.3d 1210 \(McCoy\)](#).) This case involves the second form of aider and abettor culpability.

In this case, a jury found defendant, Bobby Chiu, guilty of first degree willful, deliberate and premeditated murder (premeditated murder), on the theory that either he directly aided and abetted the murder or he aided and abetted the “target offense” of assault or of disturbing the peace, the natural and probable consequence of which was murder. On the natural and probable consequences theory, the trial court instructed that the jury could find defendant guilty of first degree murder if it determined that *murder* was a natural and probable consequence of either target offense aided and abetted, and if in committing murder, the perpetrator acted willfully, deliberately, and with premeditation.

The Court of Appeal held that the trial court erred in failing to instruct that the jury must find first degree *premeditated* murder was the natural and probable consequence of either target offense. If the jury relied on the natural and probable consequences theory to return the first degree murder conviction, it “necessarily convicted defendant of first degree murder simply because that was the degree of murder the jury found the perpetrator committed.” Being unable to find the error ***441 harmless, it reversed defendant's first degree murder conviction.

Like the Court of Appeal, we find instructional error, but for a different reason. We now hold that an aider and abettor may not be convicted of first *159 degree *premeditated* murder under the natural and probable consequences doctrine. Rather, his or her liability for that crime must be based on direct aiding and abetting principles. (See [McCoy, supra, 25 Cal.4th at pp. 1117–1118, 108 Cal.Rptr.2d 188, 24 P.3d 1210.](#)) Because the error here was prejudicial, we affirm the Court of

Appeal's judgment reversing defendant's first degree murder conviction.

I. FACTS AND PROCEDURAL HISTORY

On September 29, 2003, McClatchy High School students Sarn Saeturn and Mackison Sihabouth argued over two girls in an instant message exchange. Saeturn challenged Sihabouth to an after-school fight outside a pizzeria, Famous Pizza, the next day. Saeturn told Sihabouth that he was going to bring his "homies" with him, and threatened to shoot Sihabouth's father if his father tried to stop the fight. Sihabouth called Simon Nim, a member of the Hop Sing gang, for **975 help. Defendant Bobby Chiu also learned about the fight.

The next day, defendant told American Legion High School student Toang Tran about the fight. Defendant asked Tran if he "want[ed to] see someone get shot," told Tran that there was going to be a fight over a girl, and said his "friend" would shoot if his "friend feels pressured." Sihabouth showed up for the fight but left after he saw a crowd. Saeturn did not show up for the fight because he learned that Hop Sing members planned to be there and he believed they " 'are crazy and they kill people.' " Defendant and his friends, Tony Hoong and Rickie Che, went to Famous Pizza that day.

McClatchy High School student Teresa Nguyen met her boyfriend, American Legion student Antonio Gonzales, outside Famous Pizza the day of the fight. Defendant said something to Nguyen which she did not hear. Defendant snickered when Nguyen asked if he was mocking her. Nguyen told defendant to "shut up," and Gonzales left a conversation he was having with another friend to see what was the matter. Gonzales and defendant exchanged fighting words, and Gonzales walked toward defendant, who got off the trunk of the car on which he had been sitting with Hoong and Che. As Gonzales walked toward defendant, Gonzales's friend, Roberto Treadway, told Gonzales, "I got your back." Che and Hoong stood alongside defendant. After the groups exchanged more words and glared at one another, Che punched Treadway. Defendant swung at Gonzales, and Gonzales swung back. Defendant then tackled Gonzales and started hitting him while he lay on the ground. Soon, a full-scale brawl was underway, with as many as 25 people fighting. Gonzales's cousin, Angelina Hernandez, struck defendant eight or nine times in the head with her fists, allowing Gonzales to get off the ground and resume fighting

defendant. Treadway's cousin, Joshua Bartholomew, also hit defendant hard in the back of the head soon after.

*160 Bartholomew testified that after he struck defendant, he heard defendant tell Che to "[g]rab the gun." However, Gonzales, who had been fighting in close contact with defendant, did not hear defendant mention a gun. Soon, Bartholomew and Treadway attempted to leave the scene because they feared the police officer assigned to McClatchy High School could appear at any moment. Hoong pulled out a pocket knife and stabbed ***442 Treadway in the arm. Che appeared with a gun he had retrieved from a car trunk and pointed it at Gonzales's face and said, "Run now, bitch, run." Gonzales ran. Che then pointed the gun at Bartholomew and Treadway. When he hesitated rather than shoot, defendant and Hoong yelled "shoot him, shoot him." Che shot Treadway dead. Che, defendant, and Hoong then fled together in a car.

Defendant testified that he heard about the fight the night before the incident. He claimed that he did not know that Che had a gun. He said he mocked Nguyen in an attempt to "hit on her." Defendant testified that during the fight with Gonzales, he felt continuous punches into the back of his head, received a blow to the face, and bled from his nose. Defendant denied calling for anyone to get a gun, and claimed that he did not want or expect Che to shoot Treadway.

The prosecution charged defendant with murder ([Pen.Code, § 187, subd. \(a\)](#)), with gang enhancement and firearm use allegations. At trial, the prosecution set forth two alternate theories of liability. First, defendant was guilty of murder because he directly aided and abetted Che in the shooting death of Treadway. Second, defendant was guilty of murder because he aided and abetted Che in the target offense of assault or of disturbing the peace, the natural and probable consequence of which was murder.

Regarding the natural and probable consequences theory, the trial court instructed that before it determined whether defendant was guilty of murder, the jury had to decide (1) whether he was guilty of the target offense (either assault or disturbing the peace); (2) whether a coparticipant committed a murder during the commission of the target offense; and (3) whether a reasonable person in defendant's position would have known that the commission of the *murder* was a natural and probable consequence of the commission of either target offense. ([CALCRIM No. 403.](#))

****976** The trial court instructed that to find defendant guilty of murder, the People had to prove that the perpetrator committed an act that caused the death of another person, that the perpetrator acted with malice aforethought, and that he killed without lawful justification. (CALCRIM No. 520.)

The trial court further instructed that if the jury found defendant guilty of murder as an aider and abettor, it had to determine whether the murder was in ***161** the first or second degree. It then instructed that to find defendant guilty of first degree murder, the People had to prove that the perpetrator acted willfully, deliberately, and with premeditation, and that all other murders were of the second degree. (CALCRIM No. 521.)

The jury found defendant guilty of first degree murder and the gang and firearm use allegations true.

As noted, the Court of Appeal reversed the first degree murder conviction. It held that the trial court erred in failing to instruct sua sponte that the jury must determine not only that the murder was a natural and probable consequence of the target crime, but also that the perpetrator's willfulness, deliberation, and premeditation were natural and probable consequences.

We granted the People's petition for review.

II. DISCUSSION

Penal Code section 31,¹ which governs aider and abettor liability, provides in *****443** relevant part, “All persons concerned in the commission of a crime, whether it be felony or misdemeanor, and whether they directly commit the act constituting the offense, or aid and abet in its commission ... are principals in any crime so committed.” An aider and abettor is one who acts “with knowledge of the criminal purpose of the perpetrator *and* with an intent or purpose either of committing, or of encouraging or facilitating commission of, the offense.” (*People v. Beeman* (1984) 35 Cal.3d 547, 560, 199 Cal.Rptr. 60, 674 P.2d 1318.)

¹ All statutory references are to the Penal Code.

“ ‘A person who knowingly aids and abets criminal conduct is guilty of not only the intended crime [target offense] but also of any other crime the perpetrator actually commits [nontarget offense] that is a natural and probable consequence of the intended crime.’ ” (*People v. Medina* (2009) 46 Cal.4th 913,

920, 95 Cal.Rptr.3d 202, 209 P.3d 105 (*Medina*), citing *People v. Prettyman* (1996) 14 Cal.4th 248, 260–262, 58 Cal.Rptr.2d 827, 926 P.2d 1013 (*Prettyman*).) “Thus, for example, if a person aids and abets only an intended assault, but a murder results, that person may be guilty of that murder, even if unintended, if it is a natural and probable consequence of the intended assault.” (*McCoy, supra*, 25 Cal.4th at p. 1117, 108 Cal.Rptr.2d 188, 24 P.3d 1210.)

A nontarget offense is a “natural and probable consequence” of the target offense if, judged objectively, the additional offense was reasonably foreseeable. (*Medina, supra*, 46 Cal.4th at p. 920, 95 Cal.Rptr.3d 202, 209 P.3d 105.) The inquiry does not ***162** depend on whether the aider and abettor actually foresaw the nontarget offense. (*Ibid.*) Rather, liability “ ‘is measured by whether a reasonable person in the defendant's position would have or should have known that the charged offense was a reasonably foreseeable consequence of the act aided and abetted.’ ” (*Ibid.*) Reasonable foreseeability “is a factual issue to be resolved by the jury.” (*Id.* at p. 920, 95 Cal.Rptr.3d 202, 209 P.3d 105.)

We have not previously considered how to instruct the jury on aider and abettor liability for first degree premeditated murder under the natural and probable consequences doctrine. In *People v. Favor* (2012) 54 Cal.4th 868, 143 Cal.Rptr.3d 659, 279 P.3d 1131 (*Favor*), we held that under the natural and probable consequences doctrine as applied to the premeditation allegation under section 664, subdivision (a) (section 664(a)), a trial court need only instruct that the jury find that attempted murder, not attempted *premeditated* murder, was a foreseeable consequence of the target offense. (*Id.* at p. 872, 143 Cal.Rptr.3d 659, 279 P.3d 1131.) The premeditation finding—based on the direct ****977** perpetrator's mens rea—is determined after the jury decides that the nontarget offense of attempted murder was foreseeable. (*Id.* at pp. 879–880, 143 Cal.Rptr.3d 659, 279 P.3d 1131.)

Relying on *People v. Bright* (1996) 12 Cal.4th 652, 665–667, 49 Cal.Rptr.2d 732, 909 P.2d 1354, we reasoned that section 664(a), which imposes an increased punishment for an attempt to commit a murder that is willful, deliberate, and premeditated, was a penalty provision and did not create a greater offense or degree of attempted murder. (*Favor, supra*, 54 Cal.4th at pp. 877, 879, 143 Cal.Rptr.3d 659, 279 P.3d 1131.) Relying on *People v. Lee* (2003) 31 Cal.4th 613, 616, 3 Cal.Rptr.3d 402, 74 P.3d 176 (*Lee*), we held

that the direct perpetrator's heightened state of mind would be a sufficient basis upon which to apply section 664(a)'s penalty provision to an aider and abettor under the natural and probable consequences ***444 doctrine. (*Favor, supra*, 54 Cal.4th at p. 879, 143 Cal.Rptr.3d 659, 279 P.3d 1131.)

In *Lee*, we applied section 664(a)'s penalty provision to direct aiders and abettors. Relying on its statutory language, we noted that section 664(a) “makes no distinction between an attempted murderer who is guilty as a direct perpetrator and an attempted murderer who is guilty as an aider and abettor” and does not require personal willfulness, deliberation, and premeditation of an attempted murderer. (*Lee, supra*, 31 Cal.4th at p. 623, 3 Cal.Rptr.3d 402, 74 P.3d 176.) We observed that although the Legislature would have been justified in refusing to extend section 664(a)'s penalty provision to an aider and abettor who fails to personally act with premeditation, it did not. Although *Lee* did not involve the natural and probable consequences doctrine, we commented in dictum that “where the natural-and-probable consequences doctrine does apply, an attempted murderer who is guilty as an aider and abettor may be less blameworthy. In light of such a possibility, it would not have been irrational for the Legislature to limit section 664(a) only to those attempted murderers *163 who personally acted willfully and with deliberation and premeditation. But the Legislature has declined to do so.” (*Lee, at pp.* 624–625, 3 Cal.Rptr.3d 402, 74 P.3d 176.) Thus, we indicated in *Lee* that section 664(a) applies to all aiders and abettors. (*Favor, supra*, 54 Cal.4th at p. 878, 143 Cal.Rptr.3d 659, 279 P.3d 1131.)

Relying on *Favor*, the People urge us to reach the same result here. However, we find that case distinguishable in several respects. Unlike *Favor*, the issue in the present case does not involve the determination of legislative intent as to whom a statute applies. Also, unlike *Favor*, which involved the determination of premeditation as a requirement for a statutory penalty provision, premeditation and deliberation as it relates to murder is an element of first degree murder. In reaching our result in *Favor*, we expressly distinguished the penalty provision at issue there from the substantive crime of first degree premeditated murder on the ground that the latter statute involved a different *degree* of the offense. (*Favor, supra*, 54 Cal.4th at pp. 876–877, 143 Cal.Rptr.3d 659, 279 P.3d 1131.) Finally, the consequence of imposing liability for the penalty provision in *Favor* is considerably less severe than in imposing liability for first degree murder under the natural and probable consequences doctrine. Section 664(a) provides that a defendant convicted of attempted murder is subject to a

determinate term of five, seven, or nine years. If the jury finds the premeditation allegation true, the defendant is subject to a sentence of life with the possibility of parole. (*Ibid.*) With that life sentence, a defendant is eligible for parole after serving a term of at least seven years. (§ 3046, subd. (a)(1).) On the other hand, a defendant convicted of first degree murder must serve a sentence of 25 years to life. (§ 190, subd. (a).) He or she must serve a minimum term of 25 years before parole eligibility. (§ 3046, subd. (a)(2).) A defendant convicted of second degree murder must serve a sentence of 15 years to life, with a minimum term of 15 years before parole eligibility. (§§ 190, subd. (a), 3046, subd. (a)(2).)

Finding *Favor* not dispositive, we turn to the statutory and doctrinal bases of the natural and probable consequence doctrine to determine its application. The natural and probable consequences doctrine was recognized **978 at common law and is firmly entrenched in California law as a theory of criminal liability. (*Prettyman, supra*, 14 Cal.4th at pp. 260–261, 58 Cal.Rptr.2d 827, 926 P.2d 1013; *People v. Durham* (1969) 70 Cal.2d 171, 181–185 & fn. 11, 74 Cal.Rptr. 262, 449 P.2d 198; cf. *People v. ***445 Kauffman* (1907) 152 Cal. 331, 334, 92 P. 861 [conspiracy liability]; see *Keeler v. Superior Court* (1970) 2 Cal.3d 619, 625, 87 Cal.Rptr. 481, 470 P.2d 617 [“It will be presumed ... that in enacting a statute the Legislature was familiar with the relevant rules of the common law, and, when it couches its enactments in common law language, that its intent was to continue those rules in statutory form”], superseded by statute on other grounds as stated in *People v. Taylor* (2004) 32 Cal.4th 863, 870, 11 Cal.Rptr.3d 510, 86 P.3d 881.)

*164 As noted, section 31 provides in relevant part that “[a]ll persons concerned in the commission of a crime, whether it be felony or misdemeanor, and whether they directly commit the act constituting the offense, or aid and abet in its commission ... are principals in any crime so committed.” It does not expressly mention the natural and probable consequences doctrine. Where the statutory language is vague, “the statutory definition permits, even requires, judicial interpretation.” (*People v. Chun* (2009) 45 Cal.4th 1172, 1181, 91 Cal.Rptr.3d 106, 203 P.3d 425.) We may, as a court, determine the extent of aiding and abetting liability for a particular offense, keeping in mind the rational function that the doctrine is designed to serve and with the goal of avoiding any unfairness which might redound from too broad an application. (See *Chun, at pp.* 1188–1189, 91 Cal.Rptr.3d 106, 203 P.3d 425; *People v. Patterson* (1989) 49

Cal.3d 615, 622, 627, 262 Cal.Rptr. 195, 778 P.2d 549 (lead opinion of Kennard, J.).²

² “[A]iding and abetting is one means under which derivative liability for the commission of a criminal offense is imposed. It is not a separate criminal offense.” (*People v. Francisco* (1994) 22 Cal.App.4th 1180, 1190, 27 Cal.Rptr.2d 695; accord, *People v. Brigham* (1989) 216 Cal.App.3d 1039, 1049, fn. 8, 265 Cal.Rptr. 486.)

Aider and abettor culpability under the natural and probable consequences doctrine is vicarious in nature. (*People v. Garrison* (1989) 47 Cal.3d 746, 778, 254 Cal.Rptr. 257, 765 P.2d 419 [accomplice liability is vicarious]; *People v. Croy* (1985) 41 Cal.3d 1, 12, fn. 5, 221 Cal.Rptr. 592, 710 P.2d 392 [“The requirement that the jury determine the intent with which a person tried as an aider and abettor has acted is not designed to ensure that his conduct constitutes the offense with which he is charged. His liability is vicarious.”]; *People v. Brigham, supra*, 216 Cal.App.3d at p. 1054, 265 Cal.Rptr. 486 [aider and abettor is derivatively liable for reasonably foreseeable consequence of principal's criminal act knowingly aided and abetted].) “By its very nature, aider and abettor culpability under the natural and probable consequences doctrine is not premised upon the intention of the aider and abettor to commit the nontarget offense because the nontarget offense was not intended at all. It imposes vicarious liability for any offense committed by the direct perpetrator that is a natural and probable consequence of the target offense. [Citation.] Because the nontarget offense is unintended, the mens rea of the aider and abettor with respect to that offense is irrelevant and culpability is imposed simply because a reasonable person could have foreseen the commission of the nontarget crime.” (*People v. Canizalez* (2011) 197 Cal.App.4th 832, 852, 128 Cal.Rptr.3d 565, italics added.)

The natural and probable consequences doctrine is based on the principle that liability extends to reach “the actual, rather than the planned or ‘intended’ crime, committed on the *policy* [that] ... aiders and abettors should be responsible for the criminal *harms* they have naturally, probably, and foreseeably put in motion.” ***446 *165 *People v. Luparello* (1986) 187 Cal.App.3d 410, 439, 231 Cal.Rptr. 832, italics added; see *Prettyman, supra*, 14 Cal.4th at p. 260, 58 Cal.Rptr.2d 827, 926 P.2d 1013, quoting *Luparello*.) We have never held that the application of the natural and probable consequences doctrine depends on the foreseeability of every element of

the nontarget offense.³ Rather, in the context of **979 murder under the natural and probable consequences doctrine, cases have focused on the reasonable foreseeability of the actual resulting harm or the criminal act that caused that harm. (See, e.g., *Medina, supra*, 46 Cal.4th at pp. 922, 928, 95 Cal.Rptr.3d 202, 209 P.3d 105 [“shooting” or “escalation of the confrontation to a deadly level” was a foreseeable consequence of simple assault]; *People v. Ayala* (2010) 181 Cal.App.4th 1440, 1450, 105 Cal.Rptr.3d 575 [“fatal shooting” was a natural and probable consequence of aiding and abetting an assault with a deadly weapon during a gang confrontation]; *People v. Gonzales* (2001) 87 Cal.App.4th 1, 10, 104 Cal.Rptr.2d 247 [“fatal shooting” was a natural and probable consequence of a gang fight]; *People v. Olguin* (1994) 31 Cal.App.4th 1355, 1376, 37 Cal.Rptr.2d 596 [“shooting” was a natural and probable consequence of assault and “escalation of this confrontation to a deadly level was much closer to inevitable than it was to unforeseeable”]; *People v. Rogers* (1985) 172 Cal.App.3d 502, 515, 217 Cal.Rptr. 809 [“ ‘the natural and probable consequences of any armed robbery are that someone may be hurt, someone may be shot, [an] innocent bystander may be hurt’ ”].)

³ Although our cases have referred generally to the foreseeability of the nontarget “crime” or “offense” (see, e.g., *Medina, supra*, 46 Cal.4th at p. 920, 95 Cal.Rptr.3d 202, 209 P.3d 105; *Prettyman, supra*, 14 Cal.4th at pp. 261, 267, 269, 271, 58 Cal.Rptr.2d 827, 926 P.2d 1013), we were not called on in those cases to decide whether all of the elements of the nontarget offense must be foreseeable.

In the context of murder, the natural and probable consequences doctrine serves the legitimate public policy concern of deterring aiders and abettors from aiding or encouraging the commission of offenses that would naturally, probably, and foreseeably result in an unlawful killing. A primary rationale for punishing such aiders and abettors—to deter them from aiding or encouraging the commission of offenses—is served by holding them culpable for the perpetrator's commission of the nontarget offense of second degree murder. (*People v. Knoller* (2007) 41 Cal.4th 139, 143, 151–152, 59 Cal.Rptr.3d 157, 158 P.3d 731 [second degree murder is the intentional killing without premeditation and deliberation or an unlawful killing proximately caused by an intentional act, the natural consequences of which are dangerous to life, performed with knowledge of the danger and with conscious disregard for human life].) It

is also consistent with reasonable concepts of culpability. Aider and abettor liability under the natural and probable consequences doctrine does not require assistance with or actual knowledge and intent relating to the nontarget offense, nor subjective foreseeability of either that offense or the perpetrator's state of mind in committing it. (*People v. Nguyen* (1993) 21 Cal.App.4th 518, 531, 26 Cal.Rptr.2d 323 *166 [inquiry is strictly objective and does not depend on defendant's subjective state of mind].) It only requires that under all of the circumstances presented, a reasonable person in the defendant's position would have or should have known that the nontarget offense was a reasonably foreseeable consequence of the act aided and abetted by the defendant. (*Ibid.*)

However, this same public policy concern loses its force in the context of ***447 a defendant's liability as an aider and abettor of a first degree premeditated murder. First degree murder, like second degree murder, is the unlawful killing of a human being with malice aforethought, but has the additional elements of willfulness, premeditation, and deliberation which trigger a heightened penalty. (*People v. Knoller, supra*, 41 Cal.4th at p. 151, 59 Cal.Rptr.3d 157, 158 P.3d 731.) That mental state is uniquely subjective and personal. It requires more than a showing of intent to kill; the killer must act deliberately, carefully weighing the considerations for and against a choice to kill before he or she completes the acts that caused the death. (*People v. Koontz* (2002) 27 Cal.4th 1041, 1080, 119 Cal.Rptr.2d 859, 46 P.3d 335; *People v. Anderson* (1968) 70 Cal.2d 15, 26–27, 73 Cal.Rptr. 550, 447 P.2d 942.) Additionally, whether a direct perpetrator commits a nontarget offense of murder with or without premeditation and deliberation has no effect on the resultant harm. The victim has been killed regardless of the perpetrator's premeditative mental state. Although we have stated that an aider and **980 abettor's “punishment need not be finely calibrated to the criminal's mens rea” (*Favor, supra*, 54 Cal.4th at p. 878, 143 Cal.Rptr.3d 659, 279 P.3d 1131), the connection between the defendant's culpability and the perpetrator's premeditative state is too attenuated to impose aider and abettor liability for first degree murder under the natural and probable consequences doctrine, especially in light of the severe penalty involved and the above-stated public policy concern of deterrence.

Accordingly, we hold that punishment for second degree murder is commensurate with a defendant's culpability for aiding and abetting a target crime that would naturally, probably, and foreseeably result in a murder under the

natural and probable consequences doctrine. We further hold that where the direct perpetrator is guilty of first degree premeditated murder, the legitimate public policy considerations of deterrence and culpability would not be served by allowing a defendant to be convicted of that greater offense under the natural and probable consequences doctrine. An aider and abettor's liability for murder under the natural and probable consequences doctrine operates independently of the felony-murder rule. (*People v. Culuko* (2000) 78 Cal.App.4th 307, 322, 92 Cal.Rptr.2d 789.) Our holding in this case does not affect or limit an aider and abettor's liability for first degree felony murder under section 189.

Aiders and abettors may still be convicted of first degree premeditated murder based on direct aiding and abetting principles. *167 *McCoy, supra*, 25 Cal.4th 1111, 1117–1118, 108 Cal.Rptr.2d 188, 24 P.3d 1210.) Under those principles, the prosecution must show that the defendant aided or encouraged the commission of the murder with knowledge of the unlawful purpose of the perpetrator and with the intent or purpose of committing, encouraging, or facilitating its commission. (*Id.* at p. 1118, 108 Cal.Rptr.2d 188, 24 P.3d 1210.) Because the mental state component—consisting of intent and knowledge—extends to the entire crime, it preserves the distinction between assisting the predicate crime of second degree murder and assisting the greater offense of first degree premeditated murder. (*McCoy, supra*, 25 Cal.4th at p. 1118, 108 Cal.Rptr.2d 188, 24 P.3d 1210 [“an aider and abettor's mental state must be at least that required of the direct perpetrator”]; cf. *Rosemond v. United States* (2014) 572 U.S. —, —, 134 S.Ct. 1240, 1248, 188 L.Ed.2d 248.) An aider and abettor who knowingly and intentionally assists a confederate to kill someone could be found to have acted willfully, deliberately, and with ***448 premeditation, having formed his own culpable intent. Such an aider and abettor, then, acts with the mens rea required for first degree murder.

Because we now hold that a defendant cannot be convicted of first degree premeditated murder under the natural and probable consequences doctrine, we must determine whether giving the instructions here allowing the jury to so convict defendant was harmless error. When a trial court instructs a jury on two theories of guilt, one of which was legally correct and one legally incorrect, reversal is required unless there is a basis in the record to find that the verdict was based on a valid ground. (*People v. Guiton* (1993) 4 Cal.4th 1116, 1128–1129, 17 Cal.Rptr.2d 365, 847 P.2d 45; *People v. Green* (1980) 27

Cal.3d 1, 69–71, 164 Cal.Rptr. 1, 609 P.2d 468.) Defendant's first degree murder conviction must be reversed unless we conclude beyond a reasonable doubt that the jury based its verdict on the legally valid theory that defendant directly aided and abetted the premeditated murder. (*People v. Chun, supra*, 45 Cal.4th at pp. 1201, 1203–1205, 91 Cal.Rptr.3d 106, 203 P.3d 425.) We cannot so conclude.

The record shows that the jury may have based its verdict of first degree premeditated murder on the natural and probable consequences theory. During deliberations, the jury sent the trial court a note asking, “We are stuck on Murder I or Murder II due to personal views. What do we do?” While the court and counsel were discussing the note, the jury sent another note, stating, “We are at a stalemate.”

The trial court then questioned several jurors. Some of the jurors stated that one juror was unable to follow or objected to the law relating to aiding and abetting. The **981 foreman explained, “Well, she could not see [defendant] stepping in. Basically, the way we explained it was [defendant] stepping into Rickie Che's position as the murder happened, and she could not understand how he could be put into that position at that time with those circumstances that it happened after we had deliberated through what we thought was *168 murder one or murder two which she went along with.” Another juror also stated that the holdout juror said “something along the lines of not being able to put [defendant] in [Che's] shoes as the shooter.”

The court then asked the holdout juror if she ever expressed the view that she could not put defendant in the perpetrator's shoes because she “object[ed] to the law that the Judge has given.” She responded that she was bothered by the principle of aiding and abetting and putting an aider and abettor in the shoes of a perpetrator. The trial court removed the juror and replaced her with an alternate juror. The jury continued deliberating and found defendant guilty of first degree premeditated murder.

From the trial court's discussion with the jurors, it appears that the jury was deadlocked on whether defendant should be held guilty of first degree murder or of second degree murder. Also, it appears that the holdout juror could not find defendant guilty of first degree murder, being unable to place defendant in the “shoes of” Che, and thus could not attribute Che's premeditated murder to defendant. These events indicate that the jury may have been focusing on the natural and probable consequence theory of aiding and

abetting and that the holdout juror prevented a unanimous verdict on first degree premeditated murder based on that theory. Thus, we cannot conclude beyond a reasonable doubt that the jury ultimately based its first degree murder verdict on a different theory, i.e., the legally valid theory that ***449 defendant directly aided and abetted the murder.

The Court of Appeal found the trial court's instructions on murder relating to the natural and probable consequences doctrine to be error for reasons different than in our decision. However, the effect of the instructional error was the same, affecting only the degree of the crime of which defendant was convicted. Moreover, like us, the Court of Appeal determined there was no basis in the record to conclude that the verdict was based on the legally valid theory that defendant directly aided and abetted the murder. Regarding the remedy, the Court of Appeal reversed the first degree murder conviction, allowing the People to accept a reduction of the conviction to second degree murder or to retry the greater offense. That disposition is also appropriate under our decision. If the People choose to retry the case, they may seek a first degree murder conviction under a direct aiding and abetting theory.

III. CONCLUSION

Accordingly, we affirm the judgment of the Court of Appeal.

WE CONCUR: [BAXTER](#), [WERDEGAR](#), and [CORRIGAN](#), JJ.

Concurring and Dissenting Opinion by [KENNARD](#), J.*

* Retired Associate Justice of the Supreme Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

*169 I agree with the majority's affirmance of the Court of Appeal's decision, which reverses the judgment convicting defendant of first degree murder. I disagree, however, with the majority's reasons for the affirmance.

As pertinent here, first degree murder requires that the killing be willful, deliberate, and premeditated, whereas second degree murder does not.¹ Defendant was convicted of first degree murder, not as the perpetrator but as an accomplice. An accomplice to a crime is guilty not only of the intended, or target, crime, but also of “any other offense **982 that was

a ‘natural and probable consequence’ of the crime aided and abetted.” (*People v. Prettyman* (1996) 14 Cal.4th 248, 260, 58 Cal.Rptr.2d 827, 926 P.2d 1013 (*Prettyman*).)

1 For convenience, I refer to willful, deliberate, and premeditated first degree murder, at issue here, as “premeditated murder” or “premeditated first degree murder.” An unlawful killing is also first degree murder when it is committed with certain specified weapons; by poison, lying in wait, or torture; or when it occurs in the commission of certain specified felonies. (§ 189.) Here, however, there was no evidence that any of these circumstances applied.

An offense is the natural and probable consequence of a target crime if the perpetrator's commission of that nontarget offense was foreseeable by a reasonable person in the defendant accomplice's position. This court granted review on the following question: Did the trial court here correctly instruct the jury that it could convict defendant of *first degree murder* under the natural and probable consequences rule if the jury found that some form of *murder*, irrespective of degree, was a natural and probable consequence of the target crime of either assault or disturbing the peace? I would hold, as did the Court of Appeal, that the trial court committed prejudicial error by instructing the jury that it could convict defendant as an accomplice to *first degree murder* under the natural and probable consequences rule without any need to determine whether the particular circumstances that elevated the murder to first degree were reasonably foreseeable.

***450 The majority, however, sidesteps that question. Instead, the majority establishes a new exception to the scope of accomplice liability under the natural and probable consequences rule, holding that the rule does not apply to first degree murder (maj. opn., *ante*, 172 Cal.Rptr.3d at pp. 440, 447, 325 P.3d at pp. 974, 979). As I explain, this court lacks the authority to create exceptions to rules governing criminal liability.

I

Defendant, a Sacramento high school student, was a member of Hop Sing, a local Asian street gang. He heard that two youths planned to have a fight on *170 September 29, 2009, in front of a local pizza place. Defendant told a classmate about the upcoming fight and asked if the classmate “want[ed]

to] see someone get shot,” adding that an unspecified friend of defendant's would use a gun if “pressured.”

On September 29, a crowd of high school students gathered in front of the pizza place. Among them were defendant and two friends (Tony Hoong and Rickie Che) who, like defendant, were Hop Sing members. Also present were members of the Norteños, a Hispanic street gang. Defendant began arguing with Antonio Gonzales, a Norteño, and their friends gathered around them. When defendant's friend Che punched Gonzales's friend Roberto Treadway, a Norteño, a fight broke out between Asian and Hispanic youths.

Treadway's cousin, Joshua Bartholomew, hit defendant and then heard defendant tell Che to “[g]rab the gun.” Gonzales (who was fighting defendant at the time) did not hear this. When Treadway and Bartholomew tried to leave, defendant's friend Hoong stabbed Treadway in the arm. Che retrieved a gun from the trunk of a car, pointed it in Gonzales's face, and told him to run. Gonzales did so. Che then pointed the gun at Bartholomew and Treadway. When defendant and Hoong yelled “shoot him,” Che shot and killed Treadway.

Defendant was charged with murder. At trial, he denied being a Hop Sing member, denied knowing that Che had a gun at the fight, denied telling Che to grab the gun, and denied telling Che to shoot. Defendant claimed he did not want or expect Che to shoot Treadway.

In closing argument to the jury, the prosecutor said that defendant was guilty of premeditated first degree murder based on two theories. First, the prosecutor argued that Che's killing of Treadway was premeditated first degree murder and that defendant, by telling Che to “grab the gun” and to shoot, was guilty of the same offense because he had encouraged Che to commit it. Second, the prosecutor argued that under the natural and probable consequences rule defendant was guilty of premeditated first degree murder because he had aided and abetted Che in committing the target crimes of assault and disturbing the peace; because some form of murder, irrespective of degree, was a natural and probable consequence of those target crimes; and because Che, the actual killer, committed premeditated first degree murder.

**983 The trial court gave the jury this instruction on the natural and probable consequences rule: “Before you may decide whether the defendant is guilty of murder under a theory of natural and probable consequences, you must decide whether he is guilty of the crime of assault or disturbing the

peace. To prove the defendant is guilty of murder, the People must prove that: [¶] 1. *171 The defendant is guilty of assault or disturbing the peace; [¶] 2. During the commission of assault or disturbing the peace, a co-participant in that assault or disturbing the peace committed the crime of murder, and [¶] 3. Under all of the circumstances, a reasonable person in the defendant's position would have known that the *commission of the murder* was a natural and probable consequence of the commission of the assault or disturbing the peace.” (Italics added.) The court also instructed the jury that to prove defendant guilty of first degree murder the prosecution had to prove that the *perpetrator* acted willfully, deliberately, and with premeditation, but it did not tell the jury that it must find that a willful, deliberate, and premeditated act of murder was a natural and probable consequence of assault or disturbing the peace.

The jury convicted defendant of *first degree* murder. The Court of Appeal reversed the judgment of conviction. The court explained that the trial court committed prejudicial error by failing to instruct the jury that to convict defendant of *first degree murder* under the natural and probable consequences rule it must decide “whether a reasonable person in defendant's position would have known that premeditated murder (i.e., first degree murder) was likely to happen ... as a consequence of either target offense.” The Court of Appeal gave the prosecution a choice between retrying defendant for first degree murder and accepting a reduction of the conviction to second degree murder. This court granted the Attorney General's petition for review.

II

Penal Code section 31 (all later citations are to the Penal Code) states: “All persons concerned in the commission of a crime, ... whether they directly commit the act constituting the offense, or *aid and abet* in its commission, ... are principals in any crime so committed.” (Italics added.) Section 31 does not expressly define the term “aid and abet,” but this court has described two types of accomplices who fall within the statutory definition: those who directly encourage or assist in the commission of the charged offense and those who are liable under the natural and probable consequences rule.

A defendant is a *direct* aider and abettor if “ ‘he or she, (i) with knowledge of the unlawful purpose of the perpetrator, (ii) and with the intent or purpose of committing, facilitating or encouraging commission of the crime, (iii) by act or advice,

aids, promotes, encourages or instigates the commission of the crime.’ ” (*People v. Delgado* (2013) 56 Cal.4th 480, 486, 154 Cal.Rptr.3d 621, 297 P.3d 859, quoting *People v. Cooper* (1991) 53 Cal.3d 1158, 1164, 282 Cal.Rptr. 450, 811 P.2d 742.) *Indirect* liability of the aider and abettor, under the natural and probable consequences rule, is more complex, requiring a five-step process. The jury must find that “the defendant (1) with knowledge of the confederate's unlawful purpose; and (2) with the intent of committing, *172 encouraging, or facilitating the commission of any target crime(s); (3) aided, promoted, encouraged, or instigated the commission of the target crimes.” (*Prettyman, supra*, 14 Cal.4th at p. 271, 58 Cal.Rptr.2d 827, 926 P.2d 1013.) The jury must also find that “(4) the defendant's confederate committed an offense other than the target crime(s); and ... (5) the offense committed by the confederate was a natural and probable consequence of the target crime(s) that the defendant encouraged or facilitated.” (*Ibid.*, italics omitted.) Requirements (4) and (5) are at issue here.

Under the natural and probable consequences rule, liability “is ‘derivative,’ that is, it results from an act by the perpetrator to which the accomplice contributed.” (***452 *Prettyman, supra*, 14 Cal.4th at p. 259, 58 Cal.Rptr.2d 827, 926 P.2d 1013.) A crime is the natural and probable consequence of an intended or target crime if its commission by the perpetrator was reasonably foreseeable. “The ... question is not whether the aider ***984 and abettor *actually* foresaw the additional crime, but whether, judged objectively, it was *reasonably* foreseeable.” (*People v. Medina* (2009) 46 Cal.4th 913, 920, 95 Cal.Rptr.3d 202, 209 P.3d 105.) “A reasonably foreseeable consequence is to be evaluated under all the factual circumstances of the individual case ... and is a factual issue to be resolved by the jury.” (*Ibid.*)

The Court of Appeal here agreed with defendant accomplice, as I do, that the trial court erred in its instructions to the jury. The jury was instructed that it could convict him of *first degree* murder under the natural and probable consequences rule simply by finding that some form of *murder* (irrespective of degree) was a natural and probable consequence of the target crimes of either assault or disturbing the peace that defendant had aided and abetted. Under the instructions, the jury was not required to decide whether *first degree murder* was a natural and probable consequence of the target crime.

As mentioned earlier (see 172 Cal.Rptr.3d at p. 440, 325 P.3d at p. 974, *ante*), to convict an accomplice defendant under the natural and probable consequences rule, the jury

must find that “the *offense* ” committed by the perpetrator was “a natural and probable consequence of the target crime that the defendant aided and abetted.” (*Prettyman, supra*, 14 Cal.4th at p. 262, 58 Cal.Rptr.2d 827, 926 P.2d 1013, italics added.) Every offense is made up of factual elements, each of which must be proven by the prosecution to establish the commission of the offense. (*Richardson v. U.S.* (1999) 526 U.S. 813, 817, 119 S.Ct. 1707, 143 L.Ed.2d 985.) Thus, under the natural and probable consequences rule, *every element* of the offense must be foreseeable to a reasonable person in the accomplice defendant's position. If *any* element is not reasonably foreseeable, the commission of the offense is not reasonably foreseeable.

Here, the jury convicted defendant of *first degree murder*, which, as pertinent here, is statutorily defined as a willful, deliberate, and premeditated *173 killing with malice aforethought. (See fn. 1, *ante*.) But the trial court did not instruct the jury that to convict defendant accomplice of first degree murder the jury must find that it was reasonably foreseeable that the actual perpetrator, Che, would commit a *premeditated* murder. Instead, the court essentially instructed the jury that it could convict defendant of *first degree* murder if *any* murder was reasonably foreseeable. Murder includes not only premeditated (first degree) murder, but also unpremeditated (second degree) murder. Thus, the trial court's instructions here permitted the jury, applying the natural and probable consequences rule, to convict defendant of premeditated first degree murder based on a conclusion that only second degree murder was a reasonably foreseeable consequence of the target crimes of either assault or disturbing the peace.

Insisting that the jury instructions were proper, the Attorney General contends that to convict an accomplice of first degree murder under the natural and probable consequences rule, the prosecution need not prove that the actual killer's *mental state* of premeditation (a requirement for first degree murder) was reasonably foreseeable; the prosecution, the Attorney General argues, need prove only that the perpetrator's *homicidal act* was foreseeable. Although the majority does not expressly say so, it appears to embrace the Attorney General's view. (See maj. ***453 *opn.*, *ante*, 172 Cal.Rptr.3d at p. 446, 325 P.3d at p. 979 [“cases have focused on the reasonable foreseeability of the actual resulting harm or the criminal act that caused that harm”].) I do not share that view. As this court has repeatedly held, the natural and probable consequences rule does not apply unless the perpetrator's *crime*, not just the perpetrator's *act*, is reasonably foreseeable. (See, e.g., *People*

v. Favor (2012) 54 Cal.4th 868, 874, 143 Cal.Rptr.3d 659, 279 P.3d 1131; *People v. Pearson* (2012) 53 Cal.4th 306, 321, 135 Cal.Rptr.3d 262, 266 P.3d 966; *People v. Medina* (2009) 46 Cal.4th 913, 920, 95 Cal.Rptr.3d 202, 209 P.3d 105; *People v. Mendoza* (1998) 18 Cal.4th 1114, 1133, 77 Cal.Rptr.2d 428, 959 P.2d 735; *Prettyman, supra*, 14 Cal.4th at pp. 254, 259, 261, 267, 269, 271, 58 Cal.Rptr.2d 827, 926 P.2d 1013; *People v. Croy* (1985) 41 Cal.3d 1, 12, fn. 5, 221 Cal.Rptr. 592, 710 P.2d 392.) Because the **985 mental state of premeditation is an element of first degree murder, an accomplice may be convicted of first degree murder under the natural and probable consequences rule only if the killer's premeditation of the homicide was foreseeable by a reasonable person in the accomplice's position.

III

The majority sidesteps the question I discussed in the preceding section—that is, whether under the natural and probable consequences rule the jury here had to find that *each element* of premeditated first degree murder was reasonably foreseeable, or whether, as the Attorney General argues, only the actual perpetrator's homicidal *act* was reasonably foreseeable. Instead, the *174 majority creates an exception to the natural and probable consequences rule, declaring that it can *never* be the basis for a first degree murder conviction. (Maj. *opn.*, *ante*, 172 Cal.Rptr.3d at pp. 440, 447, 325 P.3d at pp. 974, 979.) That exception was not sought by defendant, and thus it could not have been anticipated by the Attorney General. The majority's justifications for its newly created exception are unpersuasive, as explained below.

The majority says that imposing liability for *first degree* murder under the natural and probable consequences rule does not serve the purpose of that rule, which, according to the majority, is to “deter[] aiders and abettors from aiding or encouraging the commission of offenses that would naturally, probably, and foreseeably result in an unlawful killing.” (Maj. *opn.*, *ante*, 172 Cal.Rptr.3d at p. 446, 325 P.3d at p. 979.) Noting that an unlawful killing is first degree murder only if it is premeditated, the majority observes: “That mental state is *uniquely subjective* and personal. It requires more than a showing of intent to kill; the killer must act deliberately, carefully weighing the considerations for and against a choice to kill before he or she completes the acts that caused the death. [Citations.] Additionally, whether a direct perpetrator commits a nontarget offense with or without premeditation and deliberation has *no effect on the resultant harm*.” (Maj.

opn., *ante*, at p. 447, 325 P.3d at p. 979, italics added.) Thus, the majority concludes, “the connection between the defendant’s culpability and the perpetrator’s premeditative state is too attenuated to impose aider and abettor liability for first degree murder under the natural and probable consequences doctrine.” (Maj. opn., *ante*, at p. 447, 325 P.3d at p. 980.)

The essence of the majority’s reasoning is that premeditation is “uniquely subjective” and does not affect the “resultant harm.” (Maj. opn., *ante*, 172 Cal.Rptr.3d at p. 447, 325 P.3d at p. 979.) But the majority does not explain why malice is ***454 any less subjective, or has any greater effect on the resultant harm. Therefore, the majority’s reasoning proves too much. It precludes not only a first degree murder conviction based on the natural and probable consequences rule, but also a second degree murder conviction based on that rule.

Yet the majority insists that holding defendants liable for second degree murder under the natural and probable consequences rule “serves the legitimate public policy concern of deterring aiders and abettors from aiding or encouraging the commission of offenses that would naturally, probably, and foreseeably result in an unlawful killing.” (Maj. opn., *ante*, 172 Cal.Rptr.3d at p. 446, 325 P.3d at p. 979.) Why is the mental state of malice foreseeable, but not the mental state of premeditation? The majority does not say. And why are the deterrent purposes of the natural and probable consequences rule served by applying it to second degree murder, but not to first degree murder? Again, the majority does not say.

*175 When the California Legislature enacted the Penal Code in 1872, it said in section 31 that persons who “aid and abet” the commission of a crime are punishable as principals, but it left undefined the words “aid and abet.” Because the natural and probable consequences rule has long been “an ‘established rule’ of American jurisprudence” (*Prettyman, supra*, 14 Cal.4th at p. 260, 58 Cal.Rptr.2d 827, 926 P.2d 1013) and was part of English common law (*ibid*), it is reasonable to infer that the 1872 Legislature intended to include that rule within the meaning of “aid and abet” as that phrase is used in section 31. But it is *not* reasonable to infer, as the majority impliedly does here, **986 that the 1872 Legislature intended to apply the rule to every crime *except* first degree murder. The majority makes no effort to tether that inference to anything in the common law, in this court’s decisions preceding the Legislature’s enactment of the Penal Code in 1872, or in the legislative history of section 31 to

show a legislative intent to create a “ first degree murder exception” to the applicability of the natural and probable consequences rule. What research *does* reveal is that for more than 40 years this court has upheld *first degree* murder convictions by juries instructed on the natural and probable consequences rule, without any hint that this might be legally problematic. (See, e.g., *People v. Gonzales and Soliz* (2011) 52 Cal.4th 254, 297–300, 128 Cal.Rptr.3d 417, 256 P.3d 543; *People v. Richardson* (2008) 43 Cal.4th 959, 1021–1022, 77 Cal.Rptr.3d 163, 183 P.3d 1146; *People v. Coffman and Marlow* (2004) 34 Cal.4th 1, 106–108, 17 Cal.Rptr.3d 710, 96 P.3d 30; *People v. Williams* (1997) 16 Cal.4th 635, 691, 66 Cal.Rptr.2d 573, 941 P.2d 752; *Prettyman, supra*, 14 Cal.4th 248, 58 Cal.Rptr.2d 827, 926 P.2d 1013; *People v. Garrison* (1989) 47 Cal.3d 746, 777–778, 254 Cal.Rptr. 257, 765 P.2d 419; *People v. Bunyard* (1988) 45 Cal.3d 1189, 1231–1232, 249 Cal.Rptr. 71, 756 P.2d 795; *People v. Durham* (1969) 70 Cal.2d 171, 181–185, 74 Cal.Rptr. 262, 449 P.2d 198.)

In the majority’s view here, the punishment for second degree murder (imprisonment for 15 years to life) is “commensurate with a defendant’s culpability for aiding and abetting a target crime that would naturally, probably, and foreseeably result in a murder.” (Maj. opn., *ante*, 172 Cal.Rptr.3d at p. 447, 325 P.3d at p. 980; see *id.* at p. 444, 325 P.3d at p. 977.) But as this court has repeatedly stated, “in our tripartite system of government it is the function of the legislative branch to define crimes and prescribe punishments, and ... such questions are in the first instance for the judgment of the Legislature alone,” not the judiciary. (***455 *In re Lynch* (1972) 8 Cal.3d 410, 414, 105 Cal.Rptr. 217, 503 P.2d 921; see *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 516, 53 Cal.Rptr.2d 789, 917 P.2d 628 [“ ‘the power to define crimes and fix penalties is vested exclusively in the legislative branch’ ”].) It is thus for the Legislature, not this court, to determine whether a defendant who aids a target crime that naturally and probably results in first degree murder deserves a prison sentence of 25 years to life (the punishment for first degree murder) or 15 years to life (the punishment for second degree murder).

*176 IV

The trial court’s instructional error here requires reversal of defendant’s first degree murder conviction. In the words of the Court of Appeal, with which I agree: “[T]he instructions were deficient because they failed to inform the jury it needed to decide whether first degree murder, rather than just ‘murder,’

was a natural and probable consequence of the target offense. The absence of such an instruction means that if the jury used the natural and probable consequences theory to return the first degree murder conviction, the jury necessarily convicted defendant of first degree murder simply because that was the degree of murder the jury found the perpetrator committed, and the jury never determined whether a reasonable person in defendant's position would have known that premeditated murder (i.e., first degree murder) was likely to happen ... as a consequence of either target offense. Because this possibility exists, we must reverse defendant's first degree murder conviction. When a trial court instructs a jury on two theories of guilt, one of which was legally correct and one legally incorrect, reversal is required unless there is a basis in the record to find that the verdict was actually based on a valid ground. (*People v. Guiton* (1993) 4 Cal.4th 1116, 1126–1129,

17 Cal.Rptr.2d 365, 847 P.2d 45.) There is no such basis here, as it is impossible for us to determine from the instructions given, the verdict returned, or other circumstances of the case on which theory the jury based its first degree murder conviction.”

I would affirm the Court of Appeal's judgment.

WE CONCUR: CANTIL-SAKAUYE, C.J., and LIU, J.

All Citations

59 Cal.4th 155, 325 P.3d 972, 172 Cal.Rptr.3d 438, 14 Cal. Daily Op. Serv. 6064, 2014 Daily Journal D.A.R. 6979

EXHIBIT E

215 Cal.App.4th 65
Court of Appeal, Second
District, Division 6, California.

The PEOPLE, Plaintiff and Respondent,

v.

Raul Becerra QUIROZ, Defendant and Appellant.

2d Crim. No. B229432

Filed April 3, 2013

Review Denied July 10, 2013

Synopsis

Background: Defendant was convicted in the Superior Court, Ventura County, No. 2006036885, [Kevin DeNoce](#), J., of first-degree murder and being a felon in possession. Defendant appealed.

Holdings: The Court of Appeal, [Hoffstadt](#), J., held that:

defendant received adequate notice of aiding and abetting theory;

jury unanimity was not required on whether defendant was guilty of murder as killer or aider and abettor;

no additional instruction that post-shooting conduct was insufficient for murder liability was required;

witness's statement that defendant was present during murder was not coerced; and

defendant's confession to jailhouse informant was not coerced.

Affirmed.

****203** [Kevin DeNoce](#), Judge. Superior Court County of Ventura. (Super. Ct. No. 2006036885)

Attorneys and Law Firms

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Opinion

[HOFFSTADT](#), J.*

* (Judge of the Superior Court of Los Angeles County, assigned by the Chief Justice pursuant to [art. 6, § 6 of the Cal. Const.](#))

***68** A jury unanimously agrees that a defendant is guilty of murder. Must all jurors either unanimously agree defendant is the killer, or unanimously agree that he aided and abetted the killer? Appellant Raul Becerra Quiroz (Quiroz) argues that [Apprendi v. New Jersey \(2000\) 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 \(Apprendi\)](#) requires all jurors to agree on the same theory of legal liability. We disagree. We also reject Quiroz's arguments that the People's request for an aiding and abetting instruction deprived him of his right to counsel and that such an instruction may be given only if the People name the killer. We further conclude that Quiroz's remaining arguments lack merit. We affirm his conviction for first-degree murder.

FACTS AND PROCEDURAL HISTORY

The Crime

Early in the morning of August 27, 2005, Brian Szostek (Szostek) was shot four times while sitting in the rear passenger's seat of a gold Pontiac. He was dumped in an alley in Oxnard and died soon thereafter.

Quiroz and Szostek were childhood friends. Several months prior to his death, Szostek had called Quiroz for the telephone numbers of two drug dealers. Unbeknownst to Quiroz, Szostek was cooperating with law enforcement. Both dealers were subsequently arrested after drug buys Szostek arranged. One of those dealers, Hector Flores, later asked Quiroz about Szostek's connection to undercover officers. Flores closed their discussion by asking, "Are we on?" Quiroz replied, "Right on, dude."

The night before the shooting, Quiroz borrowed the gold Pontiac, picked up Szostek, and dropped him off at a house in Oxnard. Later that evening, Szostek and three other men drove around in the Pontiac for hours. Quiroz's presence in the car was disputed. Quiroz admitted to two fellow inmates that he had been present (and had shot Szostek), and Quiroz's account was corroborated by one of the car's passengers and by two other witnesses who had seen Quiroz or someone who looked "very familiar" to Quiroz in the car that night. At trial, however, the passenger **204 recanted his prior statement and said Quiroz was not present.

Just hours after the shooting, Quiroz was driving around in the Pontiac with the same passenger who initially said Quiroz was present when Szostek *69 was shot that morning. Quiroz showed up uninvited at the home of one of the two people who had picked up Szostek's body at the scene and transported it to the coroner's office. Quiroz also vacuumed up the glass of the Pontiac's window shattered by the gunshots. Quiroz then returned the car to its owner, and told him to "lay low."

Prosecution

The People charged Quiroz with the first-degree murder of Szostek ([Pen.Code, § 187, subd. \(a\)](#))¹, and being a felon in possession (former § 12021, subd. (a)(1), repealed by Stats. 2010, ch. 711, § 4). The People also alleged Quiroz personally used a firearm in committing the murder (former § 12022.5, subd. (a)(1)).

¹ Unless otherwise indicated, all references are to the Penal Code.

In the midst of voir dire, the People submitted proposed jury instructions, including an aiding and abetting instruction. After the People rested their case-in-chief and after Quiroz had called two of his witnesses, the trial court held its initial jury instruction conference. At that conference, the People again requested that the jury be instructed on the theories of aiding and abetting liability and direct liability. Over Quiroz's objection, the court tentatively ruled that substantial evidence supported Quiroz's liability as an aider and abettor. Quiroz then called another six witnesses.

At the final conference on jury instructions, Quiroz renewed his objection to any aiding and abetting instruction. He did not request an instruction requiring juror unanimity in selecting between aiding-and-abetting liability and direct liability. The

trial court instructed the jury on direct and aiding and abetting liability. During his closing argument, Quiroz criticized the People for shifting its story from Quiroz as the shooter, to Quiroz as an aider and abettor.

The jury found Quiroz guilty of murder and being a felon-in-possession, but split 11 to 1 on whether Quiroz personally used a firearm. The court declared a mistrial on the firearm allegation, and sentenced Quiroz to 28 years to life in prison.

DISCUSSION

Quiroz argues that the trial court erred in instructing the jury on aiding and abetting liability because (1) the People requested the instruction so late in the trial as to deny him the effective assistance of his counsel; and (2) the People never identified the shooter. Quiroz further contends that any aiding *70 and abetting instruction, even if properly given, should have been accompanied by an instruction requiring the jurors to agree unanimously that Quiroz was either the principal or an aider and abettor.

I. Timeliness of Request for Instruction

Quiroz asserts that the People unconstitutionally interfered with his right to counsel by proposing its alternative, aiding-and-abetting theory too late in the trial proceedings. Quiroz contends that his counsel had no ability to respond to this new theory due to this late notice. Drawing on [Sheppard v. Rees](#) (9th Cir.1989) 909 F.2d 1234 (*Sheppard*) and cases addressing state interference with the right to counsel, Quiroz argues that this error is structural and automatically reversible. Because this involves questions of constitutional law and mixed questions that are **205 predominantly legal, we review Quiroz's contentions de novo. (*See Redevelopment Agency v. County of Los Angeles* (1999) 75 Cal.App.4th 68, 74, 89 Cal.Rptr.2d 10; *People v. Waidla* (2000) 22 Cal.4th 690, 730–731, 94 Cal.Rptr.2d 396, 996 P.2d 46.) We conclude that Quiroz had ample notice, and that his deprivation of counsel claim accordingly lacks merit.

Under California's practice of short-form pleading, an instrument charging a defendant as a principal is deemed to charge him as an aider and abettor as well. (§ 971.) This "notice as a principal is sufficient to support a conviction as an aider and abettor ... without the accusatory pleading reciting the aiding and abetting theory...." (*People v. Garrison*

(1989) 47 Cal.3d 746, 776, fn.12, 254 Cal.Rptr. 257, 765 P.2d 419; *People v. Ardoin* (2011) 196 Cal.App.4th 102, 131, 130 Cal.Rptr.3d 1 (*Ardoin*).) Because Quiroz was charged with murder as a principal, he received adequate notice under California law.

A criminal defendant also has a federal constitutional right to “ ‘be informed of the nature and cause of the accusation.’ ” (*Gray v. Raines* (9th Cir.1981) 662 F.2d 569, 571.) It is unsettled whether California's short-form pleading practice, without more, confers constitutionally adequate notice of the People's decision to proceed on an implicitly charged alternative legal theory. (Compare *People v. Scott* (1991) 229 Cal.App.3d 707, 716–717, 280 Cal.Rptr. 274 [holding it does] with *People v. Lucas* (1997) 55 Cal.App.4th 721, 737–738, 64 Cal.Rptr.2d 282 (*Lucas*) [holding it may not].) Nevertheless, we have deemed notice of a new theory to be constitutionally sufficient when the defendant is further alerted to the theory by the evidence presented at the preliminary hearing (*Scott, supra*, at p. 717, 280 Cal.Rptr. 274; *People v. Jenkins* (2000) 22 Cal.4th 900, 1024, 95 Cal.Rptr.2d 377, 997 P.2d 1044 (*Jenkins*)), or by the People's express mention of that theory before or during trial sufficiently in advance of closing argument (*71 *People v. Crawford* (1990) 224 Cal.App.3d 1, 8–9, 273 Cal.Rptr. 472 [initial, pretrial instructional conference]; *Lucas, supra*, at p. 738, 64 Cal.Rptr.2d 282 [same]; *Stephens v. Borg* (9th Cir.1995) 59 F.3d 932, 936 [five days prior to closing argument]). What due process will not tolerate is the People affirmatively misleading or ambushing the defense with its theory. (See *Sheppard, supra*, 909 F.2d at p. 1238; *United States v. Gaskins* (9th Cir.1988) 849 F.2d 454, 458 (*Gaskins*); *Suniga v. Bunnell* (9th Cir.1993) 998 F.2d 664, 667, overruled by *Hedgpeth v. Pulido* (2008) 555 U.S. 57, 129 S.Ct. 530, 532, 172 L.Ed.2d 388; *Ardoin, supra*, 196 Cal.App.4th at p. 134, 130 Cal.Rptr.3d 1.)

The People submitted an aiding and abetting instruction as part of its proposed jury instructions early on—during voir dire. The prosecutor explicitly renewed his request for that instruction at the initial charging conference five days before closing argument, and while Quiroz was still presenting his case. Indeed, the defense called six more witnesses *after* that charging conference. Quiroz had more than sufficient notice of the People's intention to proceed on an aiding and abetting theory. Furthermore, because the People in no way ambushed Quiroz with its aiding and abetting theory, *Sheppard* is distinguishable. (See *Lucas, supra*, 55 Cal.App.4th at p. 738, 64 Cal.Rptr.2d 282 [confining *Sheppard* to its facts].)

Any late notice is harmless in any event. *Sheppard* adopted a rule of automatic reversal because the State's “ambush” had effectively denied Sheppard the assistance of counsel. (*Sheppard, supra*, 909 F.2d at pp. 1237–1238.) By contrast, **206 in cases where a new theory is introduced late in the game for reasons other than prosecutorial gamesmanship, courts have employed a harmless error test. That test looks to whether the late notice “unfairly prevented [defense counsel] from arguing his or her defense to the jury or ... substantially mislead [counsel] in formulating and presenting arguments.” (*Gaskins, supra*, 849 F.2d at p. 458; *People v. Bishop* (1996) 44 Cal.App.4th 220, 234, 51 Cal.Rptr.2d 629.) *Gaskins* and *Bishop* applied this test to evaluate whether supplemental instructions responding to jury notes prejudiced the defendant. However, we find their approach appropriate here as well. Otherwise, we would be left with the illogical result that reversal of a conviction would be automatic when a new theory is added *before* closing argument, but not *after*.

Quiroz had ample time to call witnesses and tailor his closing argument after the People reaffirmed its request for an aiding and abetting instruction. Indeed, Quiroz capitalized on the People's midtrial shift in emphasis during his closing argument. Any late notice was therefore also harmless.

II. Identification of the Principal

Quiroz also argues that an aiding and abetting instruction may not be given unless and until the People produce sufficient evidence of the identity of the *72 principal. Quiroz reasons that the jury cannot assess whether the aider and abettor shares the principal's intent unless it names the principal. We independently review the legal requirements of aiding and abetting liability. (*People v. Rolon* (2008) 160 Cal.App.4th 1206, 1212, 73 Cal.Rptr.3d 358.)

On occasion, courts have observed that an aider and abettor must act with the same “specific intent” as the principal. (*People v. McCoy* (2001) 25 Cal.4th 1111, 1117–1118, 108 Cal.Rptr.2d 188, 24 P.3d 1210; *People v. Beeman* (1984) 35 Cal.3d 547, 560, 199 Cal.Rptr. 60, 674 P.2d 1318; *People v. Prettyman* (1996) 14 Cal.4th 248, 259, 58 Cal.Rptr.2d 827, 926 P.2d 1013.) However, these cases are always careful to note that they are referring to the requirement of aiding and abetting liability that the aider and abettor know the principal's purpose and intend to encourage or aid that purpose.

No court has required a specific perpetrator to be identified. Quiroz directs us to *People v. Singleton* (1987) 196 Cal.App.3d 488, 241 Cal.Rptr. 842. In *Singleton*, the court overturned a conviction for aiding and abetting a drug offense because there was a “total absence of any proof of a perpetrator.” (*Id.*, at p. 493, 241 Cal.Rptr. 842.) *Singleton* stands for the unremarkable proposition that there can be no aider and abettor without a principal; it says nothing about whether a specific person must be identified as the principal.

Nor will we create such a requirement now. If we did so, we would effectively preclude aiding and abetting liability in those cases in which it is unclear which of several persons involved in a crime was the perpetrator, but equally clear that those persons acted together in committing the crime.

This case illustrates why Quiroz's novel proposal is unnecessary and unwise. No one disputes that someone shot Szostek. Moreover, the People presented sufficient evidence that this perpetrator—whoever he was—acted with premeditation. The evidence showed that one or more people who drove with Szostek in the Pontiac knew he was an informant, shot Szostek four times while he was still in the back seat, dumped him in an alley, and subsequently concealed the damage to the car. Quiroz hypothesizes that Szostek could ****207** have been shot impulsively, but this speculation does not undermine the substantial evidence that the shooter acted with premeditation. More to the point, we are able to make this assessment regarding the principal's intent without knowing which of the Pontiac's three other occupants pulled the trigger. Requiring the People to name a principal is accordingly unnecessary. It is also unwise because Quiroz's proposal would compel us to conclude that no one could be held liable for Szostek's murder, despite the evidence that his murder was premeditated.

*73 III. Unanimity

Quiroz further argues that the trial court was obligated to give a unanimity instruction. This instruction would have required all 12 jurors to agree on whether Quiroz was the shooter or a person who aided and abetted the shooter. Quiroz argues that the United States Supreme Court's decisions in *Apprendi*, *supra*, 530 U.S. 466, 120 S.Ct. 2348, and *Ring v. Arizona* (2002) 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (*Ring*) refused to defer to legislative labels. Quiroz reasons that, because our Legislature chose to classify aiding and abetting as an alternative theory of liability rather than a

separate crime, *Apprendi* requires us to reject the Legislature's classification and to insist upon unanimity. Quiroz did not request a unanimity instruction, but we may overlook this forfeiture because he is now arguing that the trial court is under a sua sponte duty to instruct. (*People v. Valdez* (2012) 55 Cal.4th 82, 151, 144 Cal.Rptr.3d 865, 281 P.3d 924.) We consider this issue de novo. (*People v. Canizalez* (2011) 197 Cal.App.4th 832, 850, 128 Cal.Rptr.3d 565.)

For decades now, California law has conditioned the duty to give a unanimity instruction on whether the evidence at trial indicates that the defendant committed more than one “discrete criminal event.” (*People v. Russo* (2001) 25 Cal.4th 1124, 1134–1135, 108 Cal.Rptr.2d 436, 25 P.3d 641 (*Russo*)). Where the evidence suggests that the defendant might have committed more than one crime, the court must instruct the jury that it must agree on *which* of the acts—and, hence, which of the *crimes*—the defendant committed. (See *People v. Diedrich* (1982) 31 Cal.3d 263, 281, 182 Cal.Rptr. 354, 643 P.2d 971; *People v. Napoles* (2002) 104 Cal.App.4th 108, 118–119, 127 Cal.Rptr.2d 777.) Otherwise, a guilty verdict might not reflect that all 12 jurors agreed that the defendant committed the same crime. (*People v. Beardslee* (1991) 53 Cal.3d 68, 92, 279 Cal.Rptr. 276, 806 P.2d 1311 (*Beardslee*)) [“A requirement of jury unanimity typically applies to acts that could have been charged as separate offenses”].)

Where, however, the evidence suggests that a defendant committed only one discrete criminal event—but may have done so in one of several different ways—no unanimity instruction is required. (*Russo*, *supra*, 25 Cal.4th at p. 1135, 108 Cal.Rptr.2d 436, 25 P.3d 641; *People v. Millwee* (1998) 18 Cal.4th 96, 160, 74 Cal.Rptr.2d 418, 954 P.2d 990 [“It is settled ... that unanimity as to the theory under which a killing is deemed culpable is not compelled as a matter of state or federal law”].) Unanimity is not required in this situation even if the jurors might conclude that the defendant is guilty based on different facts, or on different findings about the acts the defendant committed or his mental state. (*Jenkins*, *supra*, 22 Cal.4th at pp. 1025–1026, 95 Cal.Rptr.2d 377, 997 P.2d 1044; *People v. Pride* (1992) 3 Cal.4th 195, 249–250, 10 Cal.Rptr.2d 636, 833 P.2d 643 (*Pride*); *People v. Davis* (1992) 8 Cal.App.4th 28, 45, 10 Cal.Rptr.2d 381.) That is because, in this situation, ***74** the jury's ****208** guilty verdict will still reflect unanimous agreement that the defendant committed a single crime.

On the basis of this authority, we have held that a unanimity instruction is not required as to which overt act was

committed in furtherance of a conspiracy (*Russo, supra*, 25 Cal.4th at pp. 1135–1136, 108 Cal.Rptr.2d 436, 25 P.3d 641); which felony the defendant intended to commit when burglarizing a house (*People v. Failla* (1966) 64 Cal.2d 560, 567–569, 51 Cal.Rptr. 103, 414 P.2d 39); which acts constitute lying in wait for a murder conviction (*People v. Edwards* (1991) 54 Cal.3d 787, 824, 1 Cal.Rptr.2d 696, 819 P.2d 436); or which aggravating factors render the defendant eligible for the death penalty (*People v. Cook* (2006) 39 Cal.4th 566, 618–619, 47 Cal.Rptr.3d 22, 139 P.3d 492.)

For the same reasons, we have also held that a jury need not agree on the legal theory underlying a single murder charge. This rule applies whether the choice is between premeditated murder and felony-murder theories (*Beardslee, supra*, 53 Cal.3d at pp. 92–93, 279 Cal.Rptr. 276, 806 P.2d 1311; *Ardoin, supra*, 196 Cal.App.4th at pp. 126–127, 130 Cal.Rptr.3d 1; *Pride, supra*, 3 Cal.4th at pp. 249–250, 10 Cal.Rptr.2d 636, 833 P.2d 643), or between direct liability and aiding and abetting liability theories (*People v. Wilson* (2008) 44 Cal.4th 758, 801–802, 80 Cal.Rptr.3d 211, 187 P.3d 1041; *Jenkins, supra*, 22 Cal.4th at pp. 1025–1026, 95 Cal.Rptr.2d 377, 997 P.2d 1044; *People v. Majors* (1998) 18 Cal.4th 385, 408, 75 Cal.Rptr.2d 684, 956 P.2d 1137 (*Majors*); *People v. Santamaria* (1994) 8 Cal.4th 903, 918–919, 35 Cal.Rptr.2d 624, 884 P.2d 81; *People v. Forbes* (1985) 175 Cal.App.3d 807, 816–817, 221 Cal.Rptr. 275; *People v. Perez* (1993) 21 Cal.App.4th 214, 220–222, 26 Cal.Rptr.2d 691.)

The United States Supreme Court has declared our approach to defining when unanimity instructions are required to be consistent with the requirements of due process. In *Schad v. Arizona* (1991) 501 U.S. 624, 111 S.Ct. 2491, 115 L.Ed.2d 555, the Court upheld an Arizona law which, like California law, treated premeditation and felony murder as alternative theories upon which a person could be convicted of murder. Arizona accordingly did not require juror unanimity. The Court explained that due process placed some limits “on a State’s capacity to define different courses of conduct, or states of mind, as merely alternative means of committing a single offense....” (*Id.* at p. 632, 111 S.Ct. 2491.) However, the Court held that Arizona’s decision to treat premeditated murder and felony murder as different theories rather than different offenses did not exceed those limits. The Court therefore upheld Arizona’s decision not to require unanimity as to which theory the jurors adopted. (*Id.* at pp. 636–638, 111 S.Ct. 2491) Because these rules did not violate due process, “judicial restraint” counseled against gainsaying Arizona’s approach. (*Ibid.*)

Do *Apprendi* and *Ring* undermine *Schad* and thereby compel a change in our approach to jury unanimity? The specific holdings of *Apprendi* and *Ring* *75 do not. In each case, the Court held that due process required any facts triggering a higher maximum penalty for a crime to be found by the jury beyond a reasonable doubt. (*Apprendi, supra*, 530 U.S. at pp. 490, 494, 120 S.Ct. 2348 [longer jail term]; *Ring, supra*, 536 U.S. at pp. 589, 603–604, 122 S.Ct. 2428 [imposition of death penalty].) The Court further held that States could not sidestep this constitutional requirement by labeling such facts “sentencing factors” rather than elements. (*Ibid.*) Because the choice between alternative theories does not in any sense trigger a higher **209 maximum penalty, these cases do not themselves abrogate *Schad* or require us to modify our approach to juror unanimity.

Nor do the rationales of *Apprendi* or *Ring* dictate or counsel any change. Contrary to what Quiroz asserts, *Apprendi* and *Ring* did not decree a wholesale abandonment of deference to how states define their crimes. To the contrary, these two cases reaffirmed *Schad’s* deference to the authority of states to delineate crimes. They also embraced *Schad’s* reluctance to discard state-law labels except when compelled by constitutional necessity. As we note above, the rights at issue in *Apprendi* and its progeny do not create such necessity in this case. Moreover, Quiroz has not identified any other constitutional right at issue here that would justify overriding California’s longstanding authority to treat direct liability and aiding and abetting liability as alternative legal theories rather than as two separate crimes. Absent a superseding constitutional right, we would be disregarding deference to state law just for the sake of doing so. *Apprendi, Ring* and *Schad* speak in a uniform voice in decrying such judicial activism.

Given this dynamic, it is no surprise that courts have not read *Apprendi* as vitiating California’s authority to distinguish between alternative theories and separate crimes, and to insist upon unanimity only for separate crimes. Following *Apprendi*, numerous cases have reaffirmed the rule that a jury need not unanimously agree whether the defendant committed premeditated murder or felony murder. (*People v. Moore* (2011) 51 Cal.4th 386, 413, 121 Cal.Rptr.3d 280, 247 P.3d 515; *People v. Taylor* (2010) 48 Cal.4th 574, 626, 108 Cal.Rptr.3d 87, 229 P.3d 12; *People v. Nakahara* (2003) 30 Cal.4th 705, 712–713, 134 Cal.Rptr.2d 223, 68 P.3d 1190.)

This is the first case to squarely confront *Apprendi's* application to the alternative theories of direct and aiding and abetting liability. Quiroz argues that these alternative theories are different from the alternative theories of premeditation and felony murder because a jury choosing between the theories of felony murder or premeditation will still have to unanimously agree on what the defendant did. But this is not always true. In *Perez*, for example, the defendant was alternatively charged with felony murder and premeditation on theories entailing two entirely different factual scenarios. *76 (*Perez, supra*, 21 Cal.App.4th at pp. 217–222, 26 Cal.Rptr.2d 691.) He could have been the get-away driver or the shooter inside the store, yet unanimity was not required. (*Ibid.*) We therefore see no principled basis upon which to require unanimity for direct liability versus aiding-and-abetting liability, but not for premeditated versus felony-murder liability.

Reading *Apprendi* to require unanimity for alternative theories would jettison decades of precedent and, at the same time, abrogate deference to state legislators' definitions of crimes without any constitutional imperative. It would also lead to absurd results: As our Supreme Court has noted, “if 12 jurors must agree on the role played by the defendant, the defendant may go free, even if the jurors all agree [he] committed the crime.” (*Russo, supra*, 25 Cal.4th at p. 1136, 108 Cal.Rptr.2d 436, 25 P.3d 641.) We therefore conclude that *Apprendi* and *Ring* have not altered existing law, and the trial court ruled properly in not giving a unanimity instruction in this case.

IV. Remaining Instructional Challenges

A. Substantial Evidence to Support Aiding and Abetting Instruction

Quiroz argues that the trial court should have refused to give the aiding and ****210** abetting instruction because substantial evidence did not support a finding that he knew of the shooter's intent to kill or that Quiroz intended to aid the shooting. (*People v. Beeman, supra*, 35 Cal.3d at p. 560, 199 Cal.Rptr. 60, 674 P.2d 1318; *People v. Perez* (2005) 35 Cal.4th 1219, 1225, 29 Cal.Rptr.3d 423, 113 P.3d 100.) A trial court may instruct on a theory only if it is supported by “substantial evidence.” (*People v. Young* (2005) 34 Cal.4th 1149, 1200–1201, 24 Cal.Rptr.3d 112, 105 P.3d 487.) We review the trial court's assessment de novo. (*People v. Cole* (2004) 33 Cal.4th 1158, 1206, 17 Cal.Rptr.3d 532, 95 P.3d 811.)

Substantial evidence supports the trial court's decision to instruct on aiding and abetting liability. The evidence adequately demonstrated Quiroz's awareness and complicity in Szostek's killing. Quiroz spoke with Flores about Szostek's role in bringing down Flores's drug organization; Quiroz borrowed the Pontiac and picked up Szostek on the night of his death; Quiroz may have been present in the car at the time Szostek was shot; Quiroz showed up unbidden at the home of the woman who picked up Szostek's body just hours after the shooting; also just hours after the shooting, Quiroz was driving around in the Pontiac with one of the witnesses to the shooting; Quiroz cleaned up the Pontiac, returned it to its owner, and advised the owner to “lay low”; and Quiroz admitted to the shooting and knowing many of its details to two fellow inmates.

*77 B. Accessory instruction

Quiroz also asserts that the trial court erred in not instructing the jury that his post-shooting conduct was insufficient, by itself, to convict him of aiding and abetting. Quiroz never requested such an instruction prior to closing argument. To the extent Quiroz argues that the trial court was obligated to instruct the jury on the crime of being an accessory after the fact, he is incorrect because doing so would have been error in light of the People's objection. (*Majors, supra*, 18 Cal.4th at p. 408, 75 Cal.Rptr.2d 684, 956 P.2d 1137 [accessory after the fact is a lesser-related offense to murder]; *People v. Birks* (1998) 19 Cal.4th 108, 137, 77 Cal.Rptr.2d 848, 960 P.2d 1073 [court may not instruct on lesser-related offenses unless all parties agree].) To the extent Quiroz is arguing that the court should have given a pinpoint instruction clarifying the differences between an aider and abettor and an accessory after the fact, any such instruction would have been duplicative and unwarranted. (*People v. Coffman & Marlow* (2004) 34 Cal.4th 1, 99, 17 Cal.Rptr.3d 710, 96 P.3d 30.) The aiding and abetting instruction already informed the jury that Quiroz had to have the intent to aid and abet the killing “before or during the commission of the offense”; as long as Quiroz satisfied this intent requirement, even his post-killing acts would render him an aider and abettor. (*People v. Cooper* (1991) 53 Cal.3d 1158, 1164, 282 Cal.Rptr. 450, 811 P.2d 742.)

V. Evidentiary Challenges

A. Statement of Ruben Gonzales (Gonzales)

1. Pertinent facts

Gonzales was a defense witness. He testified that Quiroz was not in the Pontiac when Szostek was shot. Quiroz's counsel asked Gonzales about a prior statement Gonzales made to police. In response to counsel's specific questions about the circumstances under which Gonzales made that statement, Gonzales indicated that the police had told him that he could cooperate or face 50 years-to-life in prison and that they knew all the answers, including that ****211** Quiroz was in the Pontiac at the time of the shooting.

In rebuttal, the People called one of the detectives who had interviewed Gonzales. The detective relayed the substance of Gonzalez's statement—namely, that Quiroz had been in the Pontiac, and had told Gonzales to keep quiet about the shooting. The detective also described the circumstances of Gonzales's two-hour interview. Gonzales had not been under arrest. The detective and other officer gave Gonzales the information they believed to be true, told Gonzales that they knew he was not the shooter, and told him he ***78** was still potentially liable for the murder. They explained that Gonzales faced 50 or more years in prison, but could provide them accurate information that the district attorney might view favorably. The officers also told Gonzales that Quiroz and others were talking to the police, which was untrue.

2. Analysis

Quiroz argues that the trial court should have excluded Gonzales's statement as coerced. Because he is seeking to suppress Gonzales's statement (and not his own), Quiroz bears the burden of proving the statement was coerced. (*People v. Badgett* (1995) 10 Cal.4th 330, 348, 41 Cal.Rptr.2d 635, 895 P.2d 877.) We review this question de novo. (*People v. Richardson* (2008) 43 Cal.4th 959, 992–993, 77 Cal.Rptr.3d 163, 183 P.3d 1146 (*Richardson*)).²

² We would evaluate the trial court's resolution of any evidentiary disputes for substantial evidence (*ibid.*), except that we have no such findings because Quiroz never asked the court to make them.

Quiroz has forfeited this claim by failing to object below. (*People v. Kennedy* (2005) 36 Cal.4th 595, 611–612, 31 Cal.Rptr.3d 160, 115 P.3d 472 [failure to object to admission of involuntary statement forfeits issue on appeal], overruled on other grounds in *People v. Williams* (2010) 49 Cal.4th 405, 111 Cal.Rptr.3d 589, 233 P.3d 1000; *People v. Kelly* (1992) 1 Cal.4th 495, 519 & fn 5, 3 Cal.Rptr.2d 677, 822 P.2d 385 [casting significant doubt on *In re Cameron* (1968) 68 Cal.2d

487, 67 Cal.Rptr. 529, 439 P.2d 633, which heard a challenge to a confession as involuntary despite its forfeiture].) Because the question of coercion turns on the intensely factual inquiry into the totality of the circumstances (*People v. Dykes* (2009) 46 Cal.4th 731, 752, 95 Cal.Rptr.3d 78, 209 P.3d 1), it is an especially poor candidate for first-time consideration on appeal. (*Accord In re Ana C.* (2012) 204 Cal.App.4th 1317, 1325, 139 Cal.Rptr.3d 686.)

Quiroz argues we should nevertheless consider his claim because his trial counsel was constitutionally ineffective for not objecting and there is “no satisfactory explanation” for counsel's lapse. (*People v. Huggins* (2006) 38 Cal.4th 175, 206, 41 Cal.Rptr.3d 593, 131 P.3d 995.) We disagree. Quiroz's trial counsel did more than not object—he called Gonzales as a witness and, during his direct examination, elicited facts about the alleged coerciveness of the earlier police interrogation. What is more, counsel then used those facts in his closing argument to make the point that the police were coercing statements from Gonzales and others to fit their theory that Quiroz was the shooter. Counsel's decision to call Gonzales and elicit these facts in the service of his closing argument is a classic tactical decision. It defeats any contention that counsel was asleep at the switch or otherwise ineffective. (See *Strickland v. Washington* (1984) 466 U.S. 668, 689, 104 S.Ct. 2052, 80 L.Ed.2d 674.)

****212 *79** In any event, Gonzales's interrogation did not transgress the guidelines that govern police interrogations. It is well settled that law enforcement may confront a witness with what they know. (*People v. Holloway* (2004) 33 Cal.4th 96, 115, 14 Cal.Rptr.3d 212, 91 P.3d 164.) They may also discuss any advantages that “‘naturally accrue’” from making a truthful statement. (*People v. Ray* (1996) 13 Cal.4th 313, 340, 52 Cal.Rptr.2d 296, 914 P.2d 846; *People v. Jones* (1998) 17 Cal.4th 279, 297–298, 70 Cal.Rptr.2d 793, 949 P.2d 890.) They may explain the possible consequences of the failure to cooperate as long as their explanation does not amount to a threat contingent upon the witness changing her story. (*People v. McClary* (1977) 20 Cal.3d 218, 228–229, 142 Cal.Rptr. 163, 571 P.2d 620, overruled on other grounds in *People v. Cahill* (1993) 5 Cal.4th 478, 510, fn. 17, 20 Cal.Rptr.2d 582, 853 P.2d 1037.) They may even engage in deception as long as it is not of a type “‘reasonably likely to produce an untrue statement.’” (*People v. Scott* (2011) 52 Cal.4th 452, 481, 129 Cal.Rptr.3d 91, 257 P.3d 703 (*Scott*)).

Quiroz points out that Gonzales may have been unlawfully “seized” in violation of the Fourth Amendment or in

“custody” for purposes of *Miranda v. Arizona* (1966) 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694. These observations are irrelevant. Seizure and “custody” hinge on *objective* inquiries. (*People v. Leonard* (2007) 40 Cal.4th 1370, 1400, 58 Cal.Rptr.3d 368, 157 P.3d 973; *People v. Hughes* (2002) 27 Cal.4th 287, 328, 116 Cal.Rptr.2d 401, 39 P.3d 432.) They add nothing to the *subjective* inquiry that defines coercion under due process. (*People v. Gutierrez* (2002) 28 Cal.4th 1083, 1133, 124 Cal.Rptr.2d 373, 52 P.3d 572.)

Nor does Gonzales's interrogation suffer from the same flaws as the interrogation in *People v. Lee* (2002) 95 Cal.App.4th 772, 115 Cal.Rptr.2d 828. In *Lee*, the police falsely told the witness that the lie detector test he took indicated he was guilty with 97 percent accuracy and threatened him with a murder charge unless he named the defendant. The vice in *Lee* was that the interrogation “was not designed to produce the truth as [the witness] knew it but to produce evidence to support a version of events the police had already decided upon.” (*Id.* at p. 786, 115 Cal.Rptr.2d 828.) Quiroz did not establish the same or any similar dynamic here.

B. *Quiroz's jailhouse statement to Ismael Cano*

1. *Pertinent facts*

In January 2006, jail officials moved Quiroz into a cell beside Ismael Cano (Cano). They told Quiroz the move was for security reasons—namely, that the Mexican Mafia had ordered a “hit” on Quiroz. In truth, they moved him to be near Cano, a jailhouse informant. Cano told Quiroz that he was part of *80 Flores's drug organization (which was true) and was Flores's cousin (which was untrue). Cano explained that Flores's drug operation had been dismantled by the Drug Enforcement Administration, due in large part to a few snitches. At that point, Quiroz indicated that he shot “Brian.” An officer listening in on their conversation also heard Quiroz admit to the shooting, but did not hear Quiroz use the same words as Cano heard to describe.

2. *Analysis*

Quiroz contests the admission of his incriminating statements to Cano. Because Quiroz raises this objection for the first time on appeal, it is forfeited. It is also without merit.

**213 Quiroz argues that three aspects of his statement render it involuntary: (1) Quiroz faced a credible threat of physical violence because he was told he was moved to

a different cell for safety reasons; (2) the prison officials lied about why he was moved and Cano lied about being Flores's cousin; and (3) Cano made an indirect offer to call off Flores's organization if Quiroz confessed to killing Szostek. This situation, Quiroz claims, is indistinguishable from the confession held to be involuntary in *Arizona v. Fulminante* (1991) 499 U.S. 279, 111 S.Ct. 1246, 113 L.Ed.2d 302 (*Fulminante*).

To begin with, the factors Quiroz cites do not amount to coercion on the record we have before us. Although the jail officials moved Quiroz because of an alleged “threat” of a hit, there is no evidence that Quiroz had any reason to believe those threats originated with Flores. Moreover, the two deceptions involved—(1) that the prison officials did not honestly tell Quiroz he was being moved so Cano could try to surreptitiously befriend him and elicit incriminating statements and (2) that Cano exaggerated his connection to Flores (as a cousin rather than business associate)—are not of the type “reasonably likely to produce an untrue statement.” (*People v. Scott, supra*, 52 Cal.4th at p. 481, 129 Cal.Rptr.3d 91, 257 P.3d 703.) Additionally, the evidence does not support Quiroz's contention on appeal that Cano suggested he would call off the Mexican Mafia hit on Quiroz if Quiroz admitted killing Szostek. To the contrary, the thrust of Cano's ploy was that Flores would be grateful to whoever had eliminated Szostek. Consequently, the undercover conversations in this case are unlike those in *Fulminante*, where the informant promised to protect the defendant from ongoing jailhouse violence against him only if he confessed to murder. (*Fulminante, supra*, 499 U.S. at pp. 287–288, 111 S.Ct. 1246.)

*81 DISPOSITION

The judgment is affirmed.

We concur:

GILBERT, P.J.

PERREN, J.

All Citations

215 Cal.App.4th 65, 155 Cal.Rptr.3d 200, 13 Cal. Daily Op. Serv. 3683, 2013 Daily Journal D.A.R. 4353

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EXHIBIT F

22 Cal.4th 900, 997 P.2d 1044, 95 Cal.Rptr.2d 377,
00 Cal. Daily Op. Serv. 3495, 2000 Daily Journal
D.A.R. 4725, 2000 Daily Journal D.A.R. 7030
Supreme Court of California

THE PEOPLE, Plaintiff and Respondent,

v.

DANIEL STEVEN JENKINS,

Defendant and Appellant.

No. S007522.

May 4, 2000.

SUMMARY

C"lwt { "lqwpf "f ghgpf cpv'i wkn{ "qh"htuv"fi tgg"o wtf gt"cpf
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f'k'f "p'q'v'g'tt' "lp'f' k'ue'j c'ti k'pi "y q'lw'q't'u'd'w'p'q'v'c'v'j k'f' "y j q
j cf "d'g'g'p'g'z'r q'ug'f "v'q'p'g'i c'v'k'g'r w'd'k'k'v' { "c'd'q'w'v'j g'ec'ug'0Vj g
eq'w'v'j grf "y cv'f ghgp' cpv'y cu'p'q'v'f gr t'kxgf "qh'f w'g'r t'q'egu
d' { "cp' { "ko r'c't'v'k'c'k'v' { "q't' d'lcu'q'p'v'j g'r c't'v'q'h'v'j g't'k'c'n'eq'w'v'0Vj g
eq'w'v'j grf "y cv'v'j g'ur g'ek'n'ek't'ewo u'nc'p'egu'ug'v'ht'v'j "lp' "Rgp0
Eq'f'g'."E'3; 20f."ct'g'p'q'v'q'x'g't'k'p'ew'k'g'0Vj g'eq'w'v'j grf "y cv
Rgp0Eq'f'g'."E'3; 20f."h'ce'v'q't' "c' "h'eq'p'k'f g't'c'v'k'p'q'h'ek't'ewo u'nc'p'egu
qh'v'j ku'et'ko g'v' "ku'p'q'v'x'k'p'v'x'g'q'h' "WLU'Eq'p'u0": v' "Co g'p'f'0
Vj g'eq'w'v'j grf "y cv'f k'p'k'v'k'p' "lp'v'g'ewo g'p'v'd'g'y g'p' "ec'r k'c'n
f ghgp' cpw' "cp'f "q'v' g't' "r g'tu'p'u'eq'p'x'k'v'g'f' "qh'o w'f' g'tu'ku'p'q'v
c't'd'k't'c't' { 0Vj g'eq'w'v'j grf "y cv'v'j g'f' g'c'v'j "r g'p'c'n' { "v'y "f' q'gu'p'q'v
x'k'p'v'g' "WLU'Eq'p'u0": v' "cp'f "36v' "Co g'p'f' u'0 "lp'ku' "h'c'k'w'g'v'q

tgs wkt'g'y g'eq'w'v'v'q'lp'ut'w'ev'v'j g'lw' { 'cu'v'q'v'j g'd'w'f'g'p'qh'r' t'q'q'h
k'p'ug'g'ev'k'pi "y g'r g'p'c'n' { "v'q'd'g'ko r'q'ug'f'0Vj g'eq'w'v'j grf "y cv
v'j g'k'p'v'q'f w'ev'k'p'q'h'g'x'k'f g'peg."r w'uw'c'p'v'v'q' "Rgp0Eq'f'g'."E'3; 20f.
h'ce'v'q't' "d' "qh'v'j g'h'cew'w'p'f'g't'n' k'pi "ej c'ti g'u'f' k'uo k'ug'f' "cu'r c'tv
qh'c' "r'g'c'ci t'g'go g'p'v'f'k'f "p'q'v'x'k'p'v'g'f' ghgp' cpv'u'eq'p'k'w'k'p'c'n
t'ki j w'0Vj g'eq'w'v'j grf "y cv' "Rgp0Eq'f'g'."E'3; 20f."h'ce'v'q't' "h' "f'k'f
p'q'v'ko r'q'r g'rn' "h'o k'f'eq'p'k'f g't'c'v'k'p'q'h'o k'k'i c'v'k'pi "g'x'k'f g'peg'qh
f ghgp' cpv'u'w'p't'g'c'u'q'p'c'd'g' "d'g'k'g'f'v'j cv'v'j ku'x'k'v'ko "j cf "ug'v'j ko
w' "h'q't'c'p'g'c't'k'g'f' "r t'q'ug'ew'k'p'0*Q'r'k'p'k'p'd' { "I g'q'ti g'."E'0L0'y kj
O qum' "M'g'p'p'c't'f'."D'c'z'v'g't'."Y g'tf' g'i c't'."cp'f "E'j k'p'."L0'eq'p'ew't'k'pi 0
Eq'p'ew't'k'pi "q'r'k'p'k'p'd' { "D't'q'y p'."L0'ug'g'r'03278+0-

HEADNOTES

Classified to California Digest of Official Reports

*3c.'3d+
Xgpw'g' "E' 5: //Et'ko k'p'c'n' Ec'ug'u//E'j c'p'i g' q'h' Xgpw'g'//C'r r'g'c'n'/
H'ce'v'q'tu' Eq'p'k'f' g't'g'f' //R't'g'w'k'c'n' R'w'd'k'k'v' //E'c'r k'c'n' O w'f' g't' " qh
R'q'r'k'g' " *903 "Q'h'k'g't'0
k'p'c' "ec'r k'c'n' o w'f' g't' "r t'q'ug'ew'k'p'."y g'v'k'c'n'eq'w'v'f'k'f "p'q'v'g'tt
k'p'f' g'p' { k'pi "f ghgp' cpv'u'o q'v'k'p' "h'q't' "ej c'p'i g'qh'x'g'p'w'g'd'c'ug'f' "q'p
p'g'i c'v'k'g'r' t'g't'k'c'n'p'gy ur c'r g't' "r w'd'k'k'v' { 0Vj g'et'ko g'y cu'qh'v'j g
i t'c'x'g'u'q't'f' g't'."k'p'x'q'k'k'pi "y g'o w'f' g't' "qh'c' "r' q'r'k'g' "q'h'k'g't'."cpf
c'nj q'wi j "y ku'ek't'ewo u'nc'p'eg'y g'k'i j u'lp' "h'c'x'q't' "qh'c' "ej c'p'i g'qh
x'g'p'w'g'."k'f' q'gu'p'q'v'd' { "k'ug'h't'g's w'k't'g'c' "ej c'p'i g'qh'x'g'p'w'g'0Vj g
f' g'p'k'v' { 'q'h'v'j g't' q'r w'v'k'p' "lp'v'j g'c't'g'c'."y g'h'c'r u'g'q'h'v'ko g'd'g'y g'g'p
v'j g'eq'p'ew'k'p'q'h'v'j g't' w'd'k'k'v' { 'cp'f "y g'j g'c't'k'pi "q'p'v'j g'b' q'v'k'p.
cp'f "y g'v' "m'c'n' q'h' "r t'q'o k'p'g'peg' "qh'v'j g' "x'k'v'ko "cp'f "f ghgp' cpv'
c'n'y g'k'i j g'f' "ci c'k'p'u'v'c' "ej c'p'i g'qh'x'g'p'w'g'0 k'p' "cf f' k'k'p'."y kj
t'g'ur g'ev'v'q'r t'g'lw'f' k'g'."y g't'ge'q'f' "f'k'f' "p'q'v'g'u'c'd'r'k'j "c' "t'g'c'u'q'p'c'd'g'
r'k'g'k'j q'q'f "y cv'f ghgp' cpv'f'k'f "p'q'v'lp' "h'ce'v't'g'eg'k'g'c' "h'c'k'v'k'c'n
u'k'p'eg'v'j g't'g'y cu'p'q' "k'p'f' k'ec'v'k'p' "y cv'v'j g'r t'g't'k'c'n' r' w'd'k'k'v' { "j cf
c' "r' t'g'lw'f' k'ek'n' g'h'g'ev'q'p' "y g'lw'q't'u'c'd'k'k'v' { "v'q' "t'go c'k'p' "h'c'k'c'p'f
ko r'c't'v'k'c'n'0Q'p'n' "y t'g'g'lw'q't'u'y j q' "u'g't'x'g'f' "q'p'f' ghgp' cpv'u'lw' {
k'p'f' k'ec'v'g'f' "k'p'v'j g'k't'lw'q't' "s' w'g'u'k'p'p'c'k'g'u'v'j cv'v'j g' { "j cf "j g'c't'f' "qh
v'j g'ec'ug' "r t'k'q't' "v'q'v'k'c'n'cp'f "y g'k't' "g'z'r q'uw'g' "v'q'r w'd'k'k'v' { "y cu
o k'p'ko c'n'cp'f "j c'to r'guu'0O k'p'ko c'n'g'z'r q'uw'g' "v'q'r w'd'k'k'v' { "y gm
d'g'h'q't'g'v'j g'eq'o o g'p'ego g'p'v'q'h'v'k'c'n'd' { "c' "u'o c'm'p'w'o d'g't'q'h'l'w'q't'u
y j q' "t'g'k'c'd'n' { "t'g'r q't'v'v'j cv'v'j g'k't' "g'z'r q'uw'g' "y k'n'p'q'v'eq'm't' "y g'k't
x'k'g'y "qh'v'j g'ec'ug'."f' q'gu'p'q'v'g'u'c'd'r'k'j "c' "t'g'c'u'q'p'c'd'g' "r'k'g'k'j q'q'f
v'j cv'f ghgp' cpv'f'k'f "p'q'v'lp' "h'ce'v't'g'eg'k'g'c' "h'c'k'v'k'c'n'0H'w'v'j g't'."k'y cu
p'q'v'g't'q't' "v'q'v'c'p'uh'g't' "y g'v'k'c'n'lw'q't'o "y g'f' q'y p'v'q'y p' "c't'g'c'v' "y g
c't'g'c'y j g't'g'v'j g'et'ko g'j cf "q'ee'w't'g'f'0H'k'p'c'm'."f' ghgp' cpv'y c'kxgf
cp' { "er'ko "qh'g't'q't' "d'c'ug'f' "w'q'p' "q'ee'w't'g'p'egu'f' w'k'pi "x'q'k'f'k'g'd' {
h'c'k'k'pi "v'q' "t'g'p'gy "j ku'o q'v'k'p' "cv'v'j cv'v'ko g'0

JUgg"6"Y knkp("Gr uvglp."Ecr0'Etlo kpcn'Ncy "4f"gf 03; ; +E 3: ; 90

*4+

Xgpwg"È'54//Etlo kpcn'Ecugu//Ej cpi g"qh'Xgpwg//I tqwpf u// Hcvqtu'Eqpukf gt gf 0

Rgp0Eqf g. È'3255."uwdf 0*c+."tgs wkt gu'c'tkcn'eqwtv'v'q'i tcpv'c o qvqp'ht'ej cpi g'qh'xgpwg'kh'vj gt g'ku'c'tgcuqpcdrng'hngrkj qqf vj cv'c'hck'cpf "ko r ctvkn'tkcn'ecppqv'dg'j cf "lp'vj g'eqwpv'0 Vj g'r j tcug'ötgcuppcdrng'hngrkj qqf ö'lp'vj ku'eqpvz'v' o gcpu uqo gvj kpi "rguu'vj cp'o qtg'r tqdcdng'vj cp'pqv.cpf"uqo gvj kpi o qtg'vj cp'o gtgn' r quukdrng'0'k'p'twkp'i "qp'uwej "c"o qvqp."cu vq'y j lej "vj g'f ghgpf cpv'dgctv'vj g'dwtf gp'qh'r tqqh'vj g'tkcn eqwtv'eqpukf gtu'cu'hcvtu'vj g'i tckxk'cpf'pcwtg'qh'vj g'etlo g. vj g'gzv'p'cpf'pcwtg'qh'vj g'r wdrlek'f. 'vj g'uk' g'cpf'pcwtg'qh vj g'eqo o wplk'f. 'vj g'ucwu'qh'vj g'xlevo . 'cpf'vj g'ucwu'qh'vj g ceewugf 0

*5+

Xgpwg"È' 57//Etlo kpcn'Ecugu//Ej cpi g"qh'Xgpwg//Cr r gcn// Ueqr g'qh'T gxly // "Dwtf gp'qh'Rtqqh//Hcvqtu'Eqpukf gt gf 0

Qp"cr r gcn'htqo "f gpkcn'qh'c" f ghgpf cpv'u" o qvqp'ht'ej cpi g qh'xgpwg'lp'c'etlo kpcn'r tqugewkqp."vj g'f ghgpf cpv'o wuv'uj qy dqv'vj cv'vj g'tkcn'eqwtv'gtt'gf "lp'f gp'f kpi "vj g'ej cpi g'qh'xgpwg o qvqp."k00'vj cv'cv'vj g'vko g'qh'vj g'o qvqp'k'y cu'tgcuqpcdrng' hngrkj "vj cv'c'hck'tkcn'eqwtv'pqv'dg'j cf. 'cpf'vj cv'vj g'gtt'qt'y cu r tglwf lekcn'k00'vj cv'k'y cu'tgcuqpcdrng'hngrkj "vj cv'c'hck'tkcn *904 "y cu'pqv'lp'hcv'j cf 0'Qp"cr r gcn'vj g'tgxly kpi "eqwtv wpf gtvncgu" c'f g'pqxq'tgxly "qh'hkxg"eqpv'qm'kpi "hcvqtu."cu f go qpwtcv'gf 'd'f "vj g'g'xkf gpeg'dgh'g'vj g'tkcn'eqwtv'v'vj g'vko g qh'vj g'o qvqp."lp'qt'f gt "vq'tgu'k'g'vj g'htu'v's wgu'k'p'y j gvj gt vj g'tkcn'eqwtv'gtt'gf 0'Vj qug'hkxg'hcvqtu'ctg'vj g'i tckxk' "cpf pcwtg'qh'vj g'etlo g.'vj g'gzv'p'cpf'pcwtg'qh'vj g'r wdrlek'f.'vj g uk' g'cpf'pcwtg'qh'vj g'eqo o wplk'f.'vj g'ucwu'qh'vj g'xlevo . 'cpf vj g'ucwu'qh'vj g'ceewugf 0'Hwt'vj gt."y kj "tgi ctf "vq'vj g'ugeqpf uj qy kpi . "lp'qt'f gt "vq' f gyto lpg" y j gvj gt" r tglwf lekcn' r wdrlek'f j cf "c'r tglwf lekcn'gh'g'v'qp'vj g'lw'f. 'vj g'tgxly kpi "eqwtv'cuq g'zco kpgu'vj g'xqk'f'ktg'qh'vj g'lw'qtu0

*6+

Etlo kpcn' Ncy " È' 77; //Cr r gnc'v'g" Tgxly //Rtgugpv'kpi cpf" Tgugtxkpi " Qdlgev'kpu//Eqpf wev' qh' Rtqugewqt// Kó r gto kuukdrng'Rwtr qug'lp'O qxkpi 'ht'Ugxgtcpeg0 Kp'c'ecr kcn'r tqugewkqp'ht' b wtf gt'cpf'eqpur k'ce'f'f ghgpf cpv y ckgf. 'd'f "hck'kpi "vq'qdlgev'qp'vj cv'i tqwpf'cv'tkcn"j ku'tki j v vq'eqo r rkp'qh'vj g'r tqugewqt'u'cmgi gf "ko r gto kuukdrng.'tcekn r wtr qug'lp" o qxkpi "ht'ugxgtcpeg"qh'f ghgpf cpv'u'tkcn'htqo

vj cv'qh'j ku'eqepur k'cvqtu'0'k'p'cp'f'gxgpv.'vj g'tgeqtf 'f luenqugf vj cv'vj g'r tqugewqt'y cu'o qv'x'cv'gf 'd'f "c'f gult'g'vq'ugxgt'vj g f gcvj "r gpcn'f'ecug"ci clpu'v'f ghgpf cpv'htqo "vj g'ecug"ci clpuv j ku'eqf ghgpf cpv'lp'y j lej "vj g'f gcvj "r gpcn'f'y cu'pqv'dgkpi uqwi j v"vq'cxqk'f'cp'wpo cpci gedng'tkcn'lp'xq'k'kpi "vq'q" o cp'f ghgpf cpv'u."vj cv'vj g'r tqugewqt'y cpv'gf "vq't'f "dqy'ecugu'lp vj g'rqecv'k'p'lp'y j lej "vj g'etlo g'y cu'eqo o kxgf. 'cpf'vj cv'vj g f k'cxqy gf 'cp'f'wngt'k'q't'wtr qug0

*7c.'7d+

Etlo kpcn'Ncy "È'424//Vtkcn//F gpkcn'qh'O qvqp'ht'Ugr ctcvg Vtkcn" qp" F khtgtgpv' Eqwpw//Tgrg'xcpv' Hcvqtu//Etqu/ cf o kuukdrng'f'qh'G'xkf gpeg//Rt g'lw' leg0

Kp'c'ecr kcn'r tqugewkqp'ht' o wtf gt'cpf'eqpur k'ce'f'cu'vq'qpg xlevo 'cpf'v'wgo r v'gf' b wtf gt'qh'c'ugeqpf'xlevo . 'vj g'tkcn'eqwtv f k'f'pqv'gtt'lp'f'gp'f kpi "f ghgpf cpv'u" o qvqp'vq'ugxgt'vj g'tkcn'qh vj g'qht'g'pugu'ci clpu'v'vj g'v'q'xlevo u'0'Vj g'qht'g'pugu'dgm'pi gf vq'vj g'uco g'ercu'qh'etlo gu."uq'vj cv'lq'p'f'gt'y cu'cr r tq'rl'cv'g wpf gt "Rgp0Eqf g. È'; 76."wprgu'c'engt'uj qy kpi "qh'r qv'p'v'cn r tglwf leg'y cu'o cf g'0'G'xkf gpeg'qh'vj g'ugr ctcvg'ej cti gu'y qw'f j cxg'dggp'cf o kuukdrng'v'ugr ctcvg'tkcn.'uk'peg'g'x'kf gpeg'lp'g'cej ecug'lw'r r qt'v'f'vj g'k'p'ht'g'peg'vj cv'f ghgpf cpv'v'cv'gf'ht'vj g'uco g o qv'x'g'cpf'y kj "vj g'uco g'k'p'v'p'v'cu'lp'vj g'q'y gt'ecug."k00'vq nkn'y kpgu'gu'lp'q'tf gt'vq't' t'gxgp'v'vj go 'htqo 'v'gu'k'h'k'kpi "ci clpuv j lo 'cv'j ku'q'pi q'kpi 'tqddgt'f'v'kcn'0'Hwt'vj gt.'vj g'tg'y cu'p'q'lw'r r qt v k'p'vj g'tgeqtf'ht'f'ghgpf cpv'u'erclo "vj cv'vj g'v'wgo r v'gf' b wtf gt ej cti g'y cu'pqv'dt'qwi j v'lp'i qqf "hck'j . "dw'y cu'h'k'gf" o gtgn' vq'lw'r r qt'v'vj g'ecr kcn'ej cti gu'0'k'p'cf'f'k'k'p'f'ghgpf cpv'f'k'f'pqv f go qpwtcv'g'vj cv'vj g'g'x'kf gpeg'w'p'f'gt'k'p'kpi "q'p'g'qh'vj g'qht'g'pugu y cu'uki p'h'k'ecp'w'f" o qtg'k'p'hc'o o cv'qt'f' "qt'ut'q'pi gt'vj cp'vj g g'x'kf gpeg'lp'vj g'q'y gt'0'H'k'p'cm'f. "f ghgpf cpv'y ckgf" j ku'erclo vj cv'vj g'y cu'f'gr t'k'x'gf'qh'f'k'ue'q'x'gt'f'p'ge'gu'ct'f'v'q'j ku'ugx'gt'c'peg o qv'k'p'0 *905

*8+

Etlo kpcn'Ncy "È'424//Vtkcn//F gpkcn'qh'O qvqp'ht'Ugr ctcvg Vtkcn'qp" F khtgtgpv'Eqwpw//Cr r gnc'v'g" Tgxly 0

Qp"cr r gcn'qh'c"v'kcn'eqwtv'u'f'gpkcn'qh'c'etlo kpcn'f'ghgpf cpv'u o qvqp'ht'ugxgtcpeg"qh'vj g'tkcn'qh'ugr ctcvg'eqwpw."vj g t'gxly kpi "eqwtv'g'zco kpgu'vj g'tkcn'eqwtv'u'tw'kpi "ht'cdwug qh'f'k'ue't'g'k'p'p." y j lej "y kn' dg" h'q'w'p'f" y j gp"vj g'tkcn'eqwtv'u tw'kpi 'h'cm'u'q'w'uk'f'g'vj g'd'q'w'p'f'u'q'ht'g'cu'p'0'F'gr'gp'f'kpi 'w'qp'vj g r ct'v'k'w'ct'ek'ewo u'v'p'egu'qh'g'cej'ecug.'c't'gh'w'uc'n'v'q'ugxgt' b c'f dg'cp'cdwug'qh'f'k'ue't'g'k'p'p'y j gp'<3+g'x'kf gpeg'qp"vj g'etlo gu vq'dg'l'q'k'p'v'f'v'k'gf'y qw'f'pqv'dg'et'qu'f'cf o kuukdrng'lp'ugr ctcvg v'kcn'4+eg't'v'k'p'qh'vj g'ej cti gu'ct'g'v'p'w'w'cm'f'hngr'f'v'q'k'p'hc'o g vj g'lw'f'f'ci clpu'v'vj g'f ghgpf cpv'5+<b'v' g'cm'k'ecug'j cu'dggp'l'q'k'p'gf y kj 'b'lw'q'pi 'ecug.'qt'y kj 'cp'q'y gt'y g'cm'k'ecug.'uq'vj cv'vj g'gh'g'ev

qh'ci i tgi cvg'gxf ppeg'qp'ugxgtcn'ej cti gu'o ki j v'y gmi'cngt'vj g qweqo g'qh'uqo g'qt'cm'qh'vj g'ej cti gu=cpf '*6'+cp' { "ppg'qh vj g'ej cti gu'ectt'kgu'vj g'f gc'vj 'r gpcn' { "qt'lqkpf gt'qh'vj go 'wtpu vj g'o cwtg'lp'v'c'ecr kcn'ecug'OP qv'cm'qh'vj gug'eqpuk' gtc'v'kpu ctg'qh'gs wcn'y g'ki j v'Vj g'hktuv'wgr "lp'cuugukpi "y j gvj gt" c eqo d'kpg'f'v'kcn'y qwf "j cxg'dggp'r tglwf lekcn'ku"v'f gvgto kpg y j gvj gt" gxf ppeg'qp'gcej "qh'vj g'lqkpf'ej cti gu'y qwf "j cxg dggp'cf o kuukdr. 'w'pf gt "Gxf 0E qf g. 'E'3323. 'lp'ugr ctcvg'v'kcn' qp'vj g'qv' gtu'K'uq. "cp' { "kphgt'ppeg'qh'r tglwf leg'ku'f kur gmg'f 0 Etquu'cf o kuukdr' { "uw'hlegu'v'p'gi cvg'r tglwf leg. "dw'k'ku'pqv guugp'v'kcn'ht'vj cv'r wtr qug0

*9+

Etlo kpcn'Ncy "E'364//Rtgrko kpc' { "Rtqeggf kpi u//F kueqxt { // H'kntg' v'q' F kuenug' Rtqegw'kqp' Y kpguugu' Rtkt' v'q Rtgrko kpc' { "J gctkpi //Rtglwf leg0

K'c' ecr kcn' o wtf gt" r tqugew'kqp. "vj g' v'kcn' eqw'v' f'k' "pqv gtt' k'p' tghw'kpi "v'q' ucpe'v'kqp' vj g' r tqugew'kqp' hqt' h'k'kpi "v'q f'kuenug'v'q'v'j g'f g'hpug'dghqtg'v'j g'r tgrko kpc' { "j gctkpi "vj cv vj g'r tqugew'kqp'r quugu'g' g'xf ppeg'v'j cv'f g'hp'f'cp'v'j cf "o cf g' k'pewr cvqt' { "ucvgo gpw'v'q'c'l'ckj qwug'kphqto cp'OC' r'ko kcv'kqp qp'c'f g'hp'f'cp'v'u'cd'k'k' { "v'q'f kueqxt' g'xf ppeg'cp'f "v'q'f g'xgr c'f g'hp'f'cp'v'j vj g'r tgrko kpc' { "j gctkpi "ku' pqv' t'g'x'g'uk'drg' qp cr r gcn'lp'v'j g'cdug'peg'qh'c'uj qy kpi "qh'r tglwf leg'cv'v'kcn'K'ku'c'f g'hp'f'cp'v'u' d'w'f gp'v'q'uj qy "vj cv'v'j g'h'k'ntg'v'q'v'ko g'nf eqo r n' "y k'j "cp' { "f kueqxt' { "q'f gt' ku' r tglwf lekcn' cp'f "vj cv c'eq'v'k'p'w'p'eg'v'q'wf "pq'v'j cxg'ewt'g'f "vj g'j cto 0'F g'hp'f'cp'v' h'k'k'g'f "v'q'f go qp'w'cv'g'r tglwf leg'OC'v'v'kcn'f' g'hp'f'cp'v'v' cu'cd'rg v'q'eq'p'ht'qp'v' cp'f "etquu'gzco kpg'v'j g'kphqto cp'v'j cxkpi "j cf co r ng'qr r qt'w'p'k'v' "v'q'lp'x'g'uk' cvg'v'j g'dcuku'ht'v'j g'y k'p'gu'u' v'g'uko qp' { "cp'f'cp' { "c'ht'ko cv'k'g'f g'hp'f'cp'v'v' u'w' i gu'g'f "d' { "k'OVj g' f'gr' { "lp'f kuenug'v'f k' "pq'v'ko r'k'ec'v'f g'hp'f'cp'v'u'f w'g'r tqe'guu t'ki j v'v'q'dg'kphqto g'f "qh'v' cv'gt'kcn'g'xf ppeg'h'x'q'cd'rg'v'q'v'j g' f'g'hp'f'cp'v'v'j g'y cu'kphqto g'f "qh'v'j g'g'xf ppeg'cp'f "j cf "co r ng' v'ko g'v'q'lp'x'g'uk' cvg'dghqtg'v'kcn'00 q'g'x'g'v'j g'g'xf ppeg'lp'v'j g' r tqugew'kqp'u'r quugu'k'p'y cu'p'q'v'v'x'q'cd'rg'v'q'v'j g'ceew'g'f 0

* +

Etlo kpcn' Ncy "E' 799//C'r r g'nc'v'g' T'g'x'k'g'y //T'g'e'q't'f//T'g'x'k'g'y N'ko k'g'f "v'q'Cr r g'nc'v'g'T'g'e'q't'f 0

K'c' ecr kcn' o wtf gt" r tqugew'kqp. "vj g' r tqugew'kqp' f'k' "pqv x'k'q'v'g'f g'hp'f'cp'v'u't'ki j v'v'q'f w'g'r tqe'guu'qh'nc'y "d' { "h'k'k'pi "v'q *906 "f kuenug'kphqto cv'kqp'tgi ctf kpi "cp'cmgi g'f "kphqto cpv u'f u'vgo "lp'v'j g'eq'w'p'v' { "l'cn'v'j cv'f g'hp'f'cp'v'cuug'v'g'f "g'p'eq'w'c' i g'f k'po cv'gu'v'q'ug'gn'qt' "h'cd'k'ec'v'g'eq'p'hu'k'p'u'ht'qo "f g'hp'f'cp'v'u'lp' p'q'v'q'k'q'w'ec'ug'u'w'ej "cu'j ku'OF w'g'r tqe'guu'qh'nc'y 't'gs w'kt'gu'v'j cv vj g'r tqugew'kqp'f kuenug'o cv'gt'kcn'gzewr cvqt' { "g'xf ppeg'v'q'cp ceew'g'f. 'k'p'nm' kpi 'h'x'q'cd'rg'g'xf ppeg'hp'qy p'v'q'v'j gtu'cv'kpi

qp'v'j g' i q'x'g't'p'o gp'v'u' d'g'j c'ht'J' qy g'x'g't. "cmj q'w'j "c" j cd'geu eq't'r w'ut' t'q'eg'g'f kpi 'b' c' { 'f' g'x'g'm'r 'c' t'g'e'q't'f 'd'g' { q'p'f 'v'j g'c'r r g'nc'v'g t'g'e'q't'f. "t'g'x'k'g'y "qp'f'k'g'ev'c'r r gcn'ku' r'ko k'g'f "v'q'v'j g'c'r r g'nc'v'g t'g'e'q't'f 0'F g'hp'f'cp'v'u't'gs w'gu'v'j cv'v'j g'eq'w'v'v'c'ng'lw'f lekcn'p'q'v'k'g qh'c'eq'w'p'v' "i t'cp'f "lw' { "t'gr q't'v'lp'uw'r r q't'v'qh'j ku'eq'p'v'p'k'p'u qp'c'r r gcn'y cu't'g'g'ev'g'f 'd'g'ec'w'g'k'v'y cu'lp'eq'p'v'c'x'g'p'v'k'p'qh'v'j g i g'p'g't'c'nt'w'g'v'j cv'cp'c'r r g'nc'v'g'eq'w'v'i g'p'g't'c'm' { 'ku'p'q'v'v'j g'ht'w'o k'p'y j k'ej "v'q'f' g'x'g'm'r 'cp'cf f'k'k'p'cn'f'c'ew'nc'nt'g'e'q't'f 0

* , c. ; d+

Etlo kpcn'Ncy "E'368//Rtgrko kpc' { "Rtqeggf kpi u//F kueqxt { // K'p'ht'o cv'kqp' "C'x'k'c'd'rg' "Q'p'nf' "v'q' Rtqegw'kqp//F kueqxt { T'g'nc'v'g'f "v'q'R'q'rd'g'c'ev'k'k'g'u0

K'c' ecr kcn' o wtf gt" r tqugew'kqp. "vj g' v'kcn' eqw'v' f'k' "pqv' gtt' k'p' t'ghw'kpi "v'q' i t'cp'v'f g'hp'f'cp'v'f kueqxt' { "t'g'nc'v'g'f "v'q' r q'rd'g' c'ev'k'k'g'u. "y j k'ej "k'p'nm' g'f "r j q'v'i t'c'r j u'q'h'r q'rd'g'q'h'ht'g'u'v'j q y g't'g'lp'x'q'k'g'f "lp'uw'x'g'k'k'p'i "j k'o "r t'k'q't'v'q'v'j g'o w'f gt' qh'c' r q'rd'g' q'h'ht'g't. "cp'f "qh'v'j g'x'g'j k'ergu'v'j g' { "w'ug'f. "o go q't'c'p'f c y t'k'w'p' d' { "v'j g' r q'rd'g' e'j k'gh' t'g'i c't'f kpi "cp' k'p'v'g't'p'cn' c'ht'c'ku k'p'x'g'uk' cv'kqp. 't'g'e'q't'f u'eq'p'eg't'p'kpi "vj g'q'r g't'c'v'k'p'q'h'f' g'hp'f'cp'v'u eq'w'p'v' { "l'cn'v' q'f w'g. "cp'f "cm'ec'ug'u'y q't'ng'f "qp'd' { "v'j g'x'k'ev'o "qh v'j g'b' w'f gt'f'w'k'p'i "v'j g'r t'g'eg'f kpi " { g'ct'0'F g'hp'f'cp'v'j cf "p'q'p'gg'f q'h'r j q'v'i t'c'r j u'q'h'v'j g'uw'x'g'k'k'p'eg'q'h'ht'g'u. "uk'peg'v'j g'q'h'ht'g'u v'j go u'g'nc'g'u'y g't'g'b' cf g'c'x'k'c'd'rg'v'q'v'j cv'y k'p'gu'gu'eq'w'f "x'k'g'y v'j go "lp't' g'tu'q'p. "j g'f'k'f "p'q'v'v'j qy "uw'h'k'eg'p'v'ec'w'g'ht'f'f kueqxt' { qh'r j q'v'i t'c'r j u'q'h'v'j g'x'g'j k'ergu. "g'xf ppeg'qh'v'j g'r j q'v'i t'c'r j u y cu'pq'v'o cv'gt'kcn'cp'f "vj g't'g'y cu'pq'v' t'g'cu'p'cd'rg'r r tq'd'cd'k'k'v' c'f k'ht'g't'p'v' t'gu'w'v' y q'w'f "j cxg' q'ee'w't'g'f "j cf "v'j g' g'xf ppeg d'ggp'f kuenug'f 0'CNuq. "p'q'v' kpi "eq'p'w'k'p'g'f "lp'v'j g'r q'rd'g' e'j k'gh'u o go q't'c'p'f c'y q'w'f "j cxg'd'ggp'o cv'gt'kcn'v'q'v'j g'f g'hp'p'0'hw'v'j g't. g'xf ppeg'qh'v'j g'q'r g't'c'v'k'p'q'h'v'j g'l'cn'v' q'f w'g'y cu't'g'nc'p'v'q'p'nf v'q'c'f g'nc' { "lp'f kueqxt' { "y j k'ej "f'k' "pq'v'r t'g'lw'f leg'f'f g'hp'f'cp'v'0 H'k'p'cm'. 'f' g'hp'f'cp'v'u't'gs w'gu'v'ht'j' k'u'x'k'ev'o "u'c'tt'g'u'v't'g'e'q't'f u'y cu v'q'q'd'w'f g'p'uo g. "uk'peg'v'j g'f'k'f "p'q'v'v'q'ew'u'q'p'g'xf ppeg'qh'v'j t'g'cu d' { "q'v' g't'c'tt'g'ung'g'u'c'i c'k'p'u'v'j g'q'h'ht'g't'0'CNj q'w'j "r'w'rd'k' r'q'rd'g' { o c' { "h'x'q't' "i t'cp'v'k'p'i "h'd'g't'c'nf kueqxt' { "v'q'et'ko k'p'cn'f g'hp'f'cp'v. eq'w'u'o c' { "t'g'hw'g'v'q'v' i t'cp'v'f kueqxt' { "k'i'v'j g'd'w'f g'p'u'r r'eg'f "q'p i q'x'g't'p'o gp'v'cp'f "qp'v'j k'f "r c't'v'gu'uw'v'c'p'v'k'cm' "q'w'y g'ki j "v'j g' f'go qp'w'cv'g'f "p'gg'f "ht'f'f kueqxt' { 0'CNuq. "v'j g't'g'ku'c' "u'ki p'h'k'ec'p'v k'p'v'g't'g'u'lp'f' t'g'u'g't'x'k'p'i "v'j g'eq'p'h'k'f g'p'v'k'cn'v' { "q'h'k'p'f k'k'f w'cn'ek'k' g'p'u c'tt'g'u'v't'g'e'q't'f u0

*32+

Etlo kpcn'Ncy "E'362//Rtgrko kpc' { "Rtqeggf kpi u//F kueqxt' { 0 C'et'ko k'p'cn'f' g'hp'f'cp'v'i g'p'g't'c'm' { "ku' g'p'v'k'ng'f "v'q'f kueqxt' { "q'h k'p'ht'o cv'kqp' v'j cv' *907 "y k'm' cu'ku'v'lp' j ku'qt' "j g't'f'f g'hp'p'g' q't' dg' "w'gh'w'f' h'qt' "ko r g'cej o gp'v' q't' "etquu'gzco k'p'cv'k'p' "qh cf x'g't'ug'v' y k'p'gu'gu'0 C" o q'v'k'p' "ht'f'f kueqxt' { "o w'v'f' g'uet'k'd'g

vj g"lphqto cvkqp"uqwi j v'y kj "uqo g"ur gekhlekyl "cpf "r tqxkf g"c r rncwldng"lwukhlecckqp"htq" f kuenuwtg0Vj g"eqwtvutwtkpi "qp" c f kueqxtg { "o qvkkp"ku"uwldgevlq"tgxkgy "htq"cdwug"qhf kuetgkqp0 Wpf gt"vj g" f wgr" r tqeguuewug"qh"vj g"hgf gtrnEqpukswkqp."vj g i qxgtpo gpv"j cu"vj g"qdrki cvkqp"vq" f kuenuqg"vq"vj g" f ghgpf cpv gxlk gpeg"lp"ku" r quuguukqp"vj cv"ku"hcxqtcdrng"vq"vj g"ceewugf cpf "o cvgtkcn"vq"vj g"kuuwgu"qh"i wkn"qt" r wpluj o gpv0Gxkf gpeg ku"o cvgtkcn"kh" c" tgcuaqpcdrng" r tqdcdkrlkyl "gzkuu"vj cv" c" f khgt gpv tguwmy qwaf "j cxg"qeewtgf "lp"vj g"t tqeggf kpi "j cf "vj g" gxlk gpeg dggp" f kuenuqf "vq"vj g" f ghgpug0C" tgcuaqpcdrng" r tqdcdkrlkyl "ku" c r tqdcdkrlkyl "lwukhlekcpv"vq" wpf gto kpg"eqphkf gpeg"lp"vj g" g'wweqo g qh"vj g" r tqeggf kpi u0

*33+

Etlo kpcnNcy "E":358//Rtgrko kpcet { "Rtqeggf kpi u//Rtgrko kpcet { J gctkpi // " Hcknw" g" vq" I tcpv" F ghgpug" Tgs wguv" hqt Eqpvkpwcepg//Rtglwf leg0 Kp" c" ecr kcn" o wtf gt" r tqugewkkqp."vj g" vtkcn" eqwtv" f kf "pqv" gtt kp" f gp { kpi " f ghgpf cpv" tgs wguv" hqt" c" eqpvkpwcepg" qh" vj g r tgrko kpcet { "j gctkpi . "y j lej "y cu'tej gf wrgf "r r tqzko cvng" hxxg o qpj u" chgt" j ku"cttguv0Vj g" hcknw" g" vq" i tcpv" c" eqpvkpwcepg qh" c" r tgrko kpcet { "j gctkpi "ku"pqv" gttqt" wrguu"vj g" f ghgpf cpv ecp" f go qpwtcvg"vj cv" hcknw" g" tguwngf "lp"vj g" f gpkcni"qh" c" hck vtkcn"qt" qj gty kug" chgevgf "vj g" wno cvg" lwf i o gpv0F ghgpf cpv hckngf "vq" f go qpwtcvg"vj cv"vj g" f gpkcni"qh" c" eqpvkpwcepg" dghqtg vj g" r tgrko kpcet { "j gctkpi "j cf " cp { " ghgev" cv" uwdugs wgpv" vtkcn r tqeggf kpi u0qj" ku'tki j w'vq" eqwpugn" vq" eqphtqp"vj g" y kpguugu ci clpu"j ko . "qt" vq" r tgugpv" c" f ghgpug. "qt" qp"vj g" lwf i o gpv0

*34c. 34d+

Etlo kpcnNcy "E": 904//Ckf "qh"Eqwpugn/Ugrh"tgr tgugpvcvkqp// VtkcnEqwtvF kuetgkqp//Vko kpi "qh"O qvkkp0 Kp" c" ecr kcn" o wtf gt" r tqugewkkqp." vj g" vtkcn" eqwtv" f kf "pqv" gtt"lp" f gp { kpi " f ghgpf cpv" o qvkkpu"vq" tgr tgugpv" j ko ugrh" cv vj g" i wkn" r j cu0Vj g" vtkcn" eqwtv" f kf "pqv" eqgteg" f ghgpf cpv kpq" y kj f tcy kpi "j ku" hktuv" o qvkkp." o cf g" y gm" kp" cf xcpag qh" vtkcn" dw"tcvj gt" r tqgtrn" cf xkugf "j ko "qh"vj g" f cpi gtu"qh ugrh"tgr tgugpvcvkqp0 Cnj qwi j " f ghgpf cpv" hktuv" o qvkkp" y cu dcugf " kp" r ctv" w qp" c" eqpgetp" vj cv" f ghgpug" eqwpugn" j cf hckngf "vq" kpxguki cvg"egt vclp" r tqg qugf "t gpcni" r j cu" gxlk gpeg. vj g" tgeqt" guncdrkj gf "vj cv" f ghgpf cpv" y cu" uc'vukhgf " vj cv" c eqpvkpwcepg" dghqtg" lwt { " ugrgevkqp" eqo o gpegf "y qwaf " r tqxkf g cf gs wcvg" vko g" hqt" kpxguki cvkqp0 Cnuq. " k' y cu" f ghgpf cpv" eqpuwncvkqp" y kj " f ghgpug" eqwpugn" tcvj gt" vj cp" vj g" eqwtv" u eqo o gpv" vj cv" r gtuwcf gf " f ghgpf cpv" vq" y kj f tcy " j ku" hktuv o qvkkp0 Y kj " tgr gev" vq" f ghgpf cpv" ugeqpf " o qvkkp" vq tgr tgugpv" j ko ugrh" vj g" o cwgt" y cu" rgh" vq" vj g" vtkcn" eqwtv" u uqwpf " f kuetgkqp." dgecvug" vj g" o qvkkp" y cu" o cf g" chgt" vj g

lwt { "j cf "dggp"ugrgevgf "cpf "vj g" r tqugewkkqp" j cf " f grkxgtgf "ku qr gplpi "ucvgo gpv0I kxgp" f ghgpf cpv" u' tghwucni"vq" r ct vclp cvg" kp r tqeggf kpi u" *908 "y j gp" f kucl r qlpvgf "y kj "vj g" vtkcn" eqwtv" u twnki u. "vj g" vtkcn" eqwtv" tgcuaqpcdrng" "eqwaf" j cxg" eqpenwgf gf "vj cv vj g" i tcpvki "qh"vj g" o qvkkp" y qwaf " f kutw v'vj g" qtf gtrn" "eqpf wev qh"vj g" vtkcn" Cnuq. "vj g" eqwtv" tgcuaqpcdrng" "eqwaf" j cxg" eqpenwgf gf vj cv" f ghgpf cpv" y cu" y gm" tgr tgugpvgf "d { " eqwpugn" cpf "vj cv" j j cf "uqo g" r tqenxkyl "vq" xcelm" v'vj kj " tgr gev" vq" tgr tgugpvcvkqp d { " eqwpugn

*35+

Etlo kpcnNcy "E": 9//Ckf "qh"Eqwpugn/Ugrh"tgr tgugpvcvkqp" Vtkcn EqwtvF gvgto kpcvkqp//Vko kpi "qh"O qvkkp0 C'etlo kpcnif ghgpf cpv" vj j q'hpqy kpi n { "cpf "kpvgnki gpw" y cxxgu vj g" tki j v' vq" eqwpugn" r quuguu" c" tki j v' wpf gt" WLU0Eqpu0 8y "Co gpv0"vq" eqpf wev" j ku"qt" j" g"t" qy p" f ghgpug0Y j gp" vj g f ghgpf cpv" o qxgu"vq" f ku" ku" eqwpugn" cpf "wpf gt" vng" j ku"qt" j" g"t" qy p" f ghgpug. "j g"qt" u'j g" u'j qwaf "dg" o cf g" cy ctg" qh"vj g" f cpi gtu cpf " f kucf xcpvc" gu" qh" ugrh" tgr tgugpvcvkqp0 Hwt vj g" . "cnj qwi j kp" c" etlo kpcn" vtkcn" c" f ghgpf cpv" j cu" cp" wpeqpf kskpcn" hgf gtrn eqpukswkpcn" tki j v' qh" ugrh" tgr tgugpvcvkqp. "kp" qtf gt" vq" kpxqng vj cv" tki j v' j" g"qt" u'j g" o wuv" o cng" cp" wpgs wlxqecni" cuugt vkkp" qh vj cv" tki j v' y kj kp" c" tgcuaqpcdrng" vko g" r tkt" vq" vj g" eqo o gpego gpv qh" vtkcn" Y j gp" c" o qvkkp" hqt" ugrh" tgr tgugpvcvkqp" ku"pqv" o cf g" kp c" vko gm" " hcu'j kqp" r tkt" vq" vtkcn" ugrh" tgr tgugpvcvkqp" pq" hqi gt" ku c" o cwgt" qh" tki j v' dw" ku" uwldgevlq" vj g" vtkcn" eqwtv" u' f kuetgkqp0 Kp" gz gteklkpi "vj ku" f kuetgkqp." vj g" vtkcn" eqwtv" u'j qwaf " eqpukf gt hcvqtu" uwe j " cu" vj g" s wcrkyl " qh" eqwpugn" tgr tgugpvcvkqp" qh vj g" f ghgpf cpv" vj g" f ghgpf cpv" u' r tkt" r tqenxkyl " vq" uwdukwng eqwpugn" vj g" tgcuaqpu" hqt" vj g" tgs wguv. vj g" tgpj vj " cpf " lvc" g" qh"vj g r tqeggf kpi u. "cpf "vj g" f kutw vkkp" qt" f gtr" vj cv" o ki j v' tgcuaqpcdrng" dg" gtr gevgf "vq" hqmqy "vj g" i tcpvki "qh" uwe j " c" o qvkkp0

*36+

Etlo kpcnNcy "E": 5: 6//Gxkf gpeg//Cf o kuukdrkyl//Cf o kuukpu cpf "F gerctcvkpu//Xqnpvct { "Ej ctcevg//Eqgteg" Vguvko qp { qh"Vj kf "Rctv//Ueqr g" qh" Gzenulqpcet { "T wrg0 Kp" c" ecr kcn" o wtf gt" r tqugewkkqp." vj g" vtkcn" eqwtv" f kf "pqv" gtt kp" f gp { kpi " f ghgpf cpv" u' r tgvtkcn" o qvkkp" vq" uwr r tguw" gxlk gpeg qdvcxkpgf " d { " vj g" r qrlcg" cu" vj g" tguwv" qh" ucvgo gpv" o cf g d { " c" eqf ghgpf cpv." y j lej " vj g" vtkcn" eqwtv" f gvgto kpgf " y gtg kpxqnpvct { "cpf "kpcf o kuukdrng" cu" vj g" r tqf wev" qh" r qrlcg" qh" hgtu qh" rpglge { "0Vj g" gxlk gpeg" cv" kuuwg" y cu" vj g" o wtf gt" y gcr qp. vj g" xgj lerg" eqppgevgf " y kj " vj g" o wtf gt." cpf " vguvko qp { " qh vj g" r gtuqpu" kp" y j qug" j quwug" vj g" eqf ghgpf cpv" j cf " uqgtf " vj g o wtf gt" y gcr qp0F ghgpf cpv" i'engf "ucpf kpi "vq" eqo r rckp" qh" cp cngi gf " r qrlcg" xkqrcvkqp" qh" j ku" eqf ghgpf cpv" u' r tklxgi g" ci clpuv ugrh" kpetko kpcvkqp" *WLU0Eqpu0" 7y "Co gpv0F ghgpf cpv" f kf

j cxg'wepf lpi "v'cuugt v'j cv'j ku'qy p'f wgr' t qegu' tki j v'v'c' h'ekt v'kcr' cu'xkqr' v'f "cu'c' eqpugs w'p'eg' qh'v'j g'cuugt v'f "xkqr' v'kqp qh'j ku'eqf gh'p'f cp'v'u' H'k'j "Co g'p'f o g'p'v' tki j w'z'j qy g'x'g'." v'j g' g'z'enu'k'p'c't' "t'w'g' ku'q'p'n' "c'r r' n'g'f "k'p' v'j ku'uk'w'c'v'k'p' y' j' g'p' v'j g' f' gh'p'f cp'v'ec'p' u'j qy "v'j cv'v'j g'v'k'c'n'v'g'u'k'o q'p'f "ku'eq'g't'eg'f." c'p'f v'j cv'ku' c'f o' ku'k'q'p' y' k'm' f' g'r' t'k'g' j' k'o "q't' j' g't' q'h' c' "h'c'k' v'k'c'n'o

*909 "V'j g'r' w'r' q'u'g' q'h' g'z'enu'k'p' q'h' g'x'k'f g'p'eg' r' w'tu'w'c'p'v' v'q' c' f' w'g' r' t'q'egu' e'nc'k'o "ku' c'f g's' w'c'v'g'n' "u'g't'x'g'f "d' {"h'q'ew'k'p'i "q'p' v'j g' g'x'k'f g'p'eg' v'q' d'g' r' t'g'u'g'p'v'f "c'v' v'k'c'n' c'p'f "c'u'k'p'i "y' j' g'v'j g't' v'j cv' g'x'k'f g'p'eg' ku' o' c'f g' w'p't'g'r'k'c'd'ng' d' {"q'p'i q'k'p'i "eq'g't'ek'q'p' O' D'g'ec'w'ug' f' gh'p'f cp'v' h'c'k'g'f "v'q' u'j qy "v'j cv' v'j g' g'x'k'f g'p'eg' j' g' u'q'w' i' v' v'q' g'z'enu'f' g' y' cu' w'p't'g'r'k'c'd'ng'." q't' v'j cv'ku' t'g'r'k'c'd'k'k'f {"y' cu' k'p' u'q'o g' y' c' {"c'h'g'ev'g'f "d' {"c'p' {"r' q'r'k'eg' eq'g't'ek'q'p' q'h'j' ku'eq'f gh'p'f cp'v' j' g' h'c'k'g'f "v'q' e'c't't' {"j' ku' d'w't'f g'p' q'h'f' go q'p'u't'c'v'k'p'i "c'p' {"h'w'p'f c'o g'p'c'n' w'p'h'c'k'p'g'u'u' c'v' v'k'c'n'o' V'j g' v'k'c'n' e'q'w't'v'f' g'v'g't'o k'p'g'f "v'j cv'v'j g'r' q'r'k'eg' f' k'f "p'q'v' eq'g't'eg' f' gh'p'f cp'v'u' eq'f gh'p'f cp'v' r' j' {"u'k'ec'm'." c'p'f "j' ku' u'c'v'g'o g'p'v' q'd'c'v'k'p'g'f "d' {"c' r' t'q'o k'ug' q'h' r' q'r'k'eg' r'g'p'k'g'e'f." p'q'v' eq'g't'ek'q'p'." y' cu' p'q'v' c'f o' k'w'g'f "c'v'c'm'o

J'U'g'g'3'Y' k'n'k'p'." E'c'r'o'G'x'k'f' g'p'eg' *5'f' g'f'03; : 8+ E'832C0_

*37c. 37d. 37e. 37f. 37g. 37h+

U'g't'ej' g'u' c'p'f " U'g'k' w't'g'u' E' 54// " E'q'p'u'k'w'k'q'p'c'n' c'p'f U'c'w'w'q't' {" R't'q'x'k'k'q'p'u' /Y' c'k'x'g't' q'h' R't'q'v'g'v'k'q'p'u' /E'q'p'ug'p'v' /Q'h' V'j k'f "R'g't'u'q'p' k'p' "E'q'p'v't'q'n' q'h' R't'g'o k'ug'u' /F' gh'p'f cp'v'u' R'g't'u'q'p'c'n' R't'q'r' g't'v'o

K'p' "c' e'c'r' k'c'n' o' w't'f' g't' r' t'q'ug'ew'k'q'p'." v'j g' v'k'c'n' e'q'w't'v'f' k'f "p'q'v' g't't' k'p' f' g'p' {"k'p'i " f' gh'p'f cp'v'u' r' t'g't'k'c'n' o' q'v'k'q'p'." r' w'tu'w'c'p'v' v'q' " R'g'p'0 E'q'f' g'." E' 375: 0." v'q' u'w'r' t'g'u'u' g'x'k'f g'p'eg' q'd'c'v'k'p'g'f "d' {"v'j g' r' q'r'k'eg' cu' v'j g' t'g'u'w'n' q'h' v'j g' u'g'k' w'g' q'h' j' ku' d't'k'g'h'ec'ug' c'p'f ku' e'q'p'v'g'p'u' h't'q'o "j' ku' u'k'ng't' u' j' q'o g'." k'p' c'm'g'i' g'f "x'k'q'r'v'k'q'p' q'h' j' ku' W'U' "E'q'p'u'0' 6'v'j " Co g'p'f' o' t'k'i' j' w'o' F' gh'p'f cp'v' e'c't't'k'g'f "j' ku' d'w't'f' g'p' q'h' u'j' q'y' k'p'i "c' r'g'i' k'k'o' c'v'g' g'z'r' g'ev'c'v'k'q'p' q'h' r' t'k'x'c'e' {"k'p' j' ku' d't'k'g'h'ec'ug' O' P' q'p'g'y' g'g'u'u'." v'j g' u'g't'ej' "q'h' v'j g' d't'k'g'h'ec'ug' y' cu' t'g'c'u'q'p'c'd'ng' d' {"x'k't'w'g' q'h' v'j g' u'k'ng't' u' x'q'n'w'p'c't' {"e'q'p'ug'p'v' v'q' v'j g' u'g't'ej' O' V'j g' g'x'k'f g'p'eg' y' cu' u'j' c't'r' n' {"k'p' e'q'p'h'k'ev' q'p' v'j g' k'u'w'g' q'h' v'j g' x'q'n'w'p'c't' k'p'g'u' q'h' v'j g' u'k'ng't' u' e'q'p'ug'p'v' O' V'j g' v'k'c'n' e'q'w't'v' t'g'u'q'n'w'k'q'p' q'h' v'j ku' f' k'ur' w'g' k'p' h'c'x'q't' q'h' v'j g'r' t'q'ug'ew'k'q'p' y' cu' u'w'r' r' q't'v'g'f "d' {"u'w'd'uc'p'v'k'n' g'x'k'f g'p'eg' c'p'f "v'j w'u'." g'p'v'k'g'f "v'q' f' gh'g't' g'p'eg' O' H'w'v'j g't'." v'j g' r' q'r'k'eg' q'h' h'g'e't'u' j' c'f "c'p' q'd'l'g'ev'k'g'n'f' t'g'c'u'q'p'c'd'ng' d'c'u'k'u' v'q' e'q'p'ev'nf' g' v'j cv' v'j g' u'eq'r' g' q'h' v'j g' u'k'ng't' u' e'q'p'ug'p'v' k'p'ev'nf' g'f "v'j g' d't'k'g'h'ec'ug'." u'k'p'eg' u'j' g'j' c'f "d'g'g'p' k'p'h'q't'o' g'f' d' {"v'j g'o "v'j cv' v'j g' {"y' g't'g' u'g'g'n'k'p'i "g'x'k'f g'p'eg' e'q'p'eg't'p'k'p'i "j' g't' d't'q'y' g't'." c'p'f "y' j' g'p' c'u'ng'f" y' j' g'v'j g't' c'p' {"q'h' j' g't' d't'q'y' g't' u' d'g'm'p'i k'p'i u' y' g't'g' k'p' j' g't' j' q'o g'." u'j' g'j' c'p'f' g'f "v'j g' q'h' h'g'e't'u' j' g't' d't'q'y' g't' u' d't'k'g'h'ec'ug' O' C'n'q'." c'n'j' q'w'i' j' "v'j g' u'g't'ej' k'p'i "q'h' h'g'e't' j' c'f' r'k'w'g' t'g'c'u'q'p' v'q' u'w'r' r' q'u'g' v'j cv' v'j g' u'k'ng't' j' g't'ug'r'h' y' cu' w'k'p'i f' gh'p'f cp'v'u' d't'k'g'h'ec'ug'." v'j g' q'h' h'g'e't' j' c'f "c' t'g'c'u'q'p'c'd'ng' d'c'u'k'u' h'q't'

d'g'r'k'g'x'k'p'i "u'j' g'j' c'f "c'w'j' q't'k'f "v'q' e'q'p'ug'p'v' v'q' v'j g' u'g't'ej' "q'h' v'j g' d't'k'g'h'ec'ug'." u'k'p'eg' v'g'u'k'o q'p' {"k'p'f' k'ec'v'g'f' v'j cv'v'j g'j' c'f "t'g'o' q'x'g'f' v'j g' d't'k'g'h'ec'ug' h't'q'o "f' gh'p'f cp'v'u' t'g'u'k'f' g'p'eg'0

*38+

E't'k'o' k'p'c'n' N'ey " E' 577//G'x'k'f' g'p'eg' /O' q'v'k'q'p' " v'q' " U'w'r' t'g'u'u' /C'r' r' g'm'v'g' T'g'x'k'g'y' 0

K'p' t'g'x'k'g'y' k'p'i "v'j g' v'k'c'n' e'q'w't'v' f' g'p'k'c'n' q'h' c' o' q'v'k'q'p' v'q' u'w'r' t'g'u'u' g'x'k'f' g'p'eg'." v'j g' c'r' r' g'm'v'g' e'q'w't'v' x'k'g'y' u' v'j g' t'g'eq't'f "k'p' v'j g' r'i' j' v' o' q'u'v' h'c'x'q't'c'd'ng' v'q' v'j g' v'k'c'n' e'q'w't'v' t'w'k'p'i "f' gh'g't't'k'p'i "v'q' v'j q'u'g' g'z'r' t'g'u'u' q't' k'o' r' n'g'f' "h'k'p'f' k'p'i u' q'h' h'c'ev' u'w'r' r' q't'v'g'f' d' {"u'w'd'uc'p'v'k'n' g'x'k'f' g'p'eg' O'V'j g' c'r' r' g'm'v'g' e'q'w't'v' k'p'f' g'r' g'p'f' g'p'v'f' t'g'x'k'g'y' u' v'j g' v'k'c'n' e'q'w't'v' c'r' r' h'c'ev'k'q'p' q'h' v'j g'r'v'v' "v'q' v'j g' h'c'ew'o' *910

*39+

U'g't'ej' g'u' c'p'f " U'g'k' w't'g'u' E' 43//E'q'p'u'k'w'k'q'p'c'n' c'p'f " U'c'w'w'q't' {" R't'q'x'k'k'q'p'u' /" Y' c'k'x'g't' q'h' R't'q'v'g'v'k'q'p'u' /E'q'p'ug'p'v'0

W'U'0' E'q'p'u'0' 6'v'j "Co g'p'f' o' r' t'q'v'g'ew' c'p' k'p'f' k'k'f' w'c'n'u' t'g'c'u'q'p'c'd'ng' g'z'r' g'ev'c'v'k'q'p' q'h' r' t'k'x'c'e' {"c'i' c'k'p'u'v' w'p't'g'c'u'q'p'c'd'ng' k'p't'w'k'q'p' q'p' v'j g' r' c't'v' q'h' v'j g' i' q'x'g't'p'o' g'p'v' O' C' y' c't't'c'p'v' k'u' t'g's' w'k't'g'f' "w'p'g'u'u' e'g't'v'k'p' "g'z'eg'r' v'k'q'p'u' c'r' r' n'f'." k'p'ev'nf' k'p'i "v'j g' g'z'eg'r' v'k'q'p' v'j cv' r' g't'o' ku' e'q'p'ug'p'w'c'n' u'g't'ej' g'u' O' V'j g' v'q'w'ej' u'v'q'p'g' q'h' v'j g' H'q'w't'v'j Co g'p'f' o' g'p'v' k'u' t'g'c'u'q'p'c'd'ng' g'p'g'u'u' O'V'j g' H'q'w't'v'j "Co g'p'f' o' g'p'v'f' q'g'u' p'q'v' r' t'q'u'et'k'd'g' c'n'f' u'c'v'g' k'p'k'c'v'g'f' "u'g't'ej' g'u' c'p'f " u'g'k' w't'g'u' k'v' o' g't'ng'f' "r' t'q'u'et'k'd'g'u' v'q' u'g' v'j cv'c't'g' w'p't'g'c'u'q'p'c'd'ng' O' C' y' c't't'c'p'v'g'u'u' u'g't'ej' "o' c' {"d'g' t'g'c'u'q'p'c'd'ng' p'q'v' q'p'n'f' "k'h' v'j g'f' gh'p'f cp'v' e'q'p'ug'p'v' v'q' v'j g' u'g't'ej'." d'w'w'c'n'q' k'h'c' t' g't'u'q'p' v'q'v' g't' v'j c'p' v'j g'f' gh'p'f cp'v'v' k'j' c'w'j' q't'k'f' "q'x'g't' v'j g'r' t'g'o' k'ug'u' x'q'n'w'p'c't'k'f' "e'q'p'ug'p'v' v'q' v'j g' u'g't'ej' 0

K'p' q't'f' g't' v'q' e'nc'k'o "v'j g' r' t'q'v'g'ew'k'q'p' q'h' v'j g' H'q'w't'v'j "Co g'p'f' o' g'p'v' c'f' gh'p'f cp'v'o' w'w'f' g'o' q'p'u't'c'v'g' v'j cv'v'j g' q't' u'j' g'r' g't'u'q'p'c'm'f' "j' cu' c'p' g'z'r' g'ev'c'v'k'q'p' q'h' r' t'k'x'c'e' {"k'p' v'j g' r' c't'v'k'ew'r't' c't'g'c' u'g't'ej' g' "q't' v'j k'p'i "u'g'k' g'f'." c'p'f "v'j cv'v'j ku' g'z'r' g'ev'c'v'k'q'p' ku' t'g'c'u'q'p'c'd'ng' k'p'g'0' q'p'g' y' j' k'ej' "j' cu' c' u'q'w't'eg' q'w'w'k'f' g' q'h' v'j g' H'q'w't'v'j "Co g'p'f' o' g'p'v' g'k'v'j g't' d' {"t'g'h'g't' g'p'eg' v'q' e'q'p'eg'r' w' q'h' t'g'n'q'f' t' g't'u'q'p'c'n'f' t'q'r' g't'v'f' h'c'y' "q't' v'q' w'p'f' g't' u'c'p'f' k'p'i u' v'j cv'c't'g' t'g'eq'i' p'k' g'f' "c'p'f' r' g't'o' k'w'g'f' d' {"u'q'ek'g'v'0 C' f' gh'p'f cp'v'j cu'v'j g' d'w't'f' g'p' c'v' v'k'c'n' q'h' g'u'c'd'k'uj' k'p'i "c' h'g'i' k'k'o' c'v'g' g'z'r' g'ev'c'v'k'q'p' q'h' r' t'k'x'c'e' {"k'p' v'j g' r' m'eg' u'g't'ej' g'f' "q't' v'j g' v'j k'p'i u'g'k' g'f' O'V'j g' u'c'v'g' o' c' {"e'c't't' {"k'u' d'w't'f' g'p' q'h'f' go q'p'u't'c'v'k'p'i "v'j g' t'g'c'u'q'p'c'd'ng' g'u'u' q'h' c' u'g't'ej' "d' {"f' go q'p'u't'c'v'k'p'i "v'j cv'v'j g' q'h' h'g'e't' e'q'p'f' w'ev'k'p'i "v'j g' u'g't'ej' "j' c'f' "c' t'g'c'u'q'p'c'd'ng' d'g'r'k'g'h' v'j cv'v'j g'r' g't'u'q'p' e'q'p'ug'p'v'k'p'i "v'q' v'j g' u'g't'ej' "j' c'f' "c'w'j' q't'k'f' "v'q' f' q' u'q' =k' ku' p'q'v' t'g's' w'k't'g'f' "v'j cv'v'j g' u'c'v'g' g'u'c'd'k'uj' "v'j cv'v'j g'r' g't'u'q'p' e'q'p'ug'p'v'k'p'i "v'q' v'j g' u'g't'ej' "j' c'f' "c'ew'c'n'c'w'j' q't'k'f' "v'q' e'q'p'ug'p'v'0

*3: +

U'g't'ej' g'u' c'p'f " U'g'k' w't'g'u' E' 54//E'q'p'u'k'w'k'q'p'c'n' c'p'f " U'c'w'w'q't' {" R't'q'x'k'k'q'p'u' /" Y' c'k'x'g't' q'h' R't'q'v'g'v'k'q'p'u' /E'q'p'ug'p'v' /U'eq'r' g'f' q'h' U'g't'ej' "D'c'ug'f' q'p' E'q'p'ug'p'v'0

Kp"uqo g"ektewo ucpegu"vj g"eqpugpv"vq" c"ugctej "i kxgp" d{ "c r gtuqpp" y kj "cwj qtkk" "vq"eqpugpv"vq" c"ugctej "qh"vj g"r tgo kugu f qgu" pqv" pgeguuctk" uwr r n{ " eqpugpv" vq" ugctej " r gtuqpcn r tqr gtv{ "hqwpf" y kj kp"vj g"r tgo kugu0C"r tkxce{ "kpvtgub"kp" c j qo g"kuhnp"ggf "pqvdg"eqgzvpuks"y kj "c"r tkxce{ "kpvtgub"kp vj g"eqpugpv"qh"gxgt { vj kpi "ukwcvf" "kpkf g"vj g"j qo g0Eapugpv vq" ugctej " c" eqpvcpgt" qt" c" r rceg" ku" ghgevkxg" qpn{ " y j gp i kxgp" d{ "qpg"y kj "eqo o qp"cwj qtkk{ "qxgt"qt"qvj gt "uwhhekgpv tgrvklpuj kr "vq"vj g"r tgo kugu"qt"ghgevu"uqwi j v"q"dg"kpur gevdf 0 Eqo o qp"cwj qtkk{ "tguu"qp"o wwn"vug"qh"vj g"r tqr gtv{ "d{ r gtuqpu"i gpgtcm{ "j cxlpi "lqkp"ceeguu"qt"eqpvtqn"ht" o quv r wtr qugu0 Vj g" ucvg" o c{ "ectt{ "ku" dwtf gp" qh" r tqxkpi " vj g tgcupcdng"p" qh"vj g"ugctej "d{ "f go qpvtcvkpi "vj cv"ks"y cu qdlgevkxgn "tgcupcdng"ht" vj g"ugctej kpi "qhhegt"vq" dgrkxg vj cv"vj g"r gtuqpp"i kxkpi "eqpugpv"j cf "cwj qtkk{ "vq" f q"uq. "cpf "vq dgrkxg"vj cv"vj g"ueqr g"qh"vj g"eqpugpv"i kxgp" gpeqo r cuugf "vj g kgo "ugctej gf 0Vj g"ueqr g"qh"eqpugpv"uucm{ "ku" f ghkpgf "d{ "vj g gzr tguugf "qdlgev"qh"vj g"ugctej 0Vj g"ucpf ctf "ht" o gcuwtkpi vj g"ueqr g"qh"eqpugpv"ku"vq" cumly j cv *911 "y qwf "vj g"v" r lecn tgcupcdng"r gtuqpp"j cxg"wpf gtuqqf "d{ "vj g" gzej cpi g"dgvy ggp vj g"qhhegt"cpf "vj g"uwr gev0Cn j qwi j "c"uwr gev"o c{ "tko k"vj g ueqr g"qh"eqpugpv"kh"eqpugpv"tgcupcdng{ "y qwf "dg"wpf gtuqqf vq"gzv"pf "vq" c"eqpvcpgt. "pq"htv"j gt "cwj qtkk{ cvkq"ku"tgs wktgf 0

*3; c. 3; d+

Ugctej gu" cpf " Ugl wtu" E" 54//Eqpukwkwqpcn" cpf " Ucvwqt { Rtqxkukqpu/Y ckg" qh" Rtqvevqpu/Eqpugpv/Qh" Rgtuqpp" kp lqkp"Eqpvtqn"qh"Rtgo kugu"qt"Rtqr gtv{0 Vj g" eqpugpv" qh" qpg" y j q" r quuguu" eqo o qp" cwj qtkk{ qxgt" r tgo kugu" qt" ghgevu" ku" xcrlf " cu" ci clpuv" vj g" cdugpv. papeqpugpvkpi "t gtuqpp"y kj "y j qo "vj cv"cwj qtkk{ "ku"lj ctgf 0Vj g eqpugpv"qh" c"vj kf "r ctv{ "o c{ "dg"xcrlf "kh"vj cv"r ctv{ "r quuguu eqo o qp"cwj qtkk{ "qxgt"qt"qvj gt "uwhhekgpv"tgrvklpuj kr "vq"vj g r tgo kugu"qt" ghgevu"uqwi j v"q"dg"kpur gevdf 0Eqo o qp"cwj qtkk{ ku"pqv"vq"dg"ko r nrgf "ht" qo "vj g"o g"r" r tqr gtv{ "kpvtgub" c"vj kf r ctv{ "j cu"kp"vj g"r tqr gtv{0Vj g"cwj qtkk{ "vj cv"l"uwhhegt"vj g"vj kf r ctv{ "eqpugpv" f qgu"pqv"tguv"wr qp"vj g"r"y "qh"r tqr gtv{ "y kj "ku cwgp" cp"vj ku"qtkecn"cpf "rgi cn"tghkpg" gpw. "dwt"guu"tcv"j gt"qp o wwn"vug"qh"vj g"r tqr gtv{ "d{ "r gtuqpu"i gpgtcm{ "j cxlpi "lqkp ceeguu"qt"eqpvtqn"ht" o quv"r wtr qugu. "uq"vj cvk"ku"tgcupcdng"vq tgeqi pk" g"vj cv"cp{ "qh"vj g"eqj cdkcpw"j cu"vj g"tki j v"q"r gto kv vj g"kpur gevklp"kp"j ku"qt"j gt"qy p"tki j v"cpf "vj cv"vj g"qvj gtu"j cxg cuuwo gf "vj g"tkm"vj cv"qpg"qh"vj gk"pwo dgt" o ki j v"r gto k"vj g eqo o qp"ctgc"vq"dg"ugctej gf 0Hw"vj gt. "qdlgevu"rgh"kp"cp"ctgc qh"eqo o qp"vug"qt"eqpvtqn" o c{ "dg"y kj kp"vj g"ueqr g"qh"vj g eqpugpv"i kxgp" d{ "c"vj kf "r ctv{ "ht" c"ugctej "qh"vj g"eqo o qp ctgc0Y j gp" vj g"r gtuqpp"y j q"eqpugpv"vq"vj g"ugctej "gplq{ u c"r quuguuq{ "kpvtgub"vj cv"vj g"uwr gev" f qgu"pqv"uj ctg"kp"vj g r tgo kugu"ugctej gf "cpf "cnq" gplq{ u"cr r ctg"pv"lqpv"qt" gzenwukg

ceeguu"vq"cpf "eqpvtqn"lxgt"vj g"r gtuqpcn"r tqr gtv{ "ugctej gf. "vj g r tkxce{ "kpvtgub"qh"vj g"qy pgt"qh"vj g"emugf "eqpvcpgt"qt"qvj gt r gtuqpcn"r tqr gtv{ "ku"ht"t"gf wegf "cpf "vj g"cwj qtkk{ "qh" c"vj kf r ctv{ "vq"eqpugpv"vq" c"ugctej "o c{ "dg"guvcdkuj gf 0

*42c. 42d+

Lwt { "E"520//Ugrgevkq"cpf "Hqto cvkq"qh"lwt { //Gzenwukq"qh Egtvclp"Rgtuqpu"cpf "Ernuugu//Guvcdkuj kpi "Rtko c" Hcekg"Ecug0 Kp" c"ecr kcn"o wtf gt "r tqugevklp. "vj g"tkcn"eqwtv" f kf "pqv"gtt"kp f gp{ kpi "f ghgpf cpv"u"o qvklp"vq" s wcu" "vj g"lwt { "xgpk" g"o cf g"qp vj g"i tqwpf "vj cv"vj g" xgpk" g" f kf "pqv"eqpukw" c"tgr tguvpcv"kg etquu"ugevklp" qh" vj g"eqo o wpk{ 0Gxgp" vj qwi j " vj g" eqwv" lwt { "eqo o ku"klp"gt"y cu"pqv"cdng. "ht" "w" q" qh"vj g"vj tgg" f c{ u qh"lwt { "ugrgevkq. "vq"eqo r n{ "y kj "vj g"tkcn"eqwtv"u" qtf gt"vq ugrgevlwtqtu"ht"qo "y kj kp" c"42/o krg"tcf ku"qh"vj g"eqwtv" qwug y j gtg"vj g"tkcn"y cu"j gf. "f ghgpf cpv" hckngf "vq" guvcdkuj "c"r tko c hcekg"ecug"qh"u{ ugo cvke"wpf gttgr tguvpcvklp"qh" c"eqi pk" cdng encuu. "dgecvug"j hckngf "vq"tghg"vq"vj g"cr r tqr tkcv"eqo o wpk{ kp" cwgo r vki "vq" r tqxg"vj g" f gpken"qh" c"tgr tguvpcv"kg" lwt { xgpk" g"0 F ghgpf cpv" f go qpvtcvf " c" f kur ctkk{ " dgvy ggp" vj g r gtegpvc"i g"qh"Chkecp/Co gtlecp"r gtuqpu"kp"vj g" xgpk" g"cpf vj g"r gtegpvc"i g"qh"Chkecp/Co gtlecp" *912 "r gtuqpu"grki kdrq ht"lwt { "ugt" xkg"y j q"rkxgf "y kj kp"42" o krgu"qh"vj g"eqwtv" qwug Vj g"cr r tqr tkcv"eqo o wpk{ "y kj "y j lej "vq" guvcdkuj "uwej "c eqo r ctluqpp"y cu"vj g"lwf lecn" f ku"lev"kp"y j lej "vj g"eqwtv" qwug y cu"ukwcvf 0Kp"cp{ "gxgp"v"vj g" g"y cu"kp"uwhhekgpv"vj qy kpi "vj cv cp{ "wpf gttgr tguvpcvklp"y cu" f w"vq" c"u{ ugo cvke" gzenwukp0

*43+

Lwt { "E"52//Ugrgevkq"cpf "Hqto cvkq"qh"lwt { //Gzenwukq"qh Egtvclp"Rgtuqpu"cpf "Ernuugu0 Vj g" hgf gtcn" eqpukwkwqpcn" tki j v" vq" c" lwt { " f tcy p" ht"qo " c tgr tguvpcv"kg"etquu"ugevklp"qh"vj g"eqo o wpk{ "WU0Eapu0 8y "Co gpf 0"i wctcpv"gu"vj cv"vj g"r qqu"ht"qo "y j lej "lwt"ku"ctg f tcy p"o wu"pqv"u{ ugo cvkecn{ "gzenm" g" f ku"pvcv" g"i tqwr u"kp vj g"eqo o wpk{ 0Kp" qtf gt "vq" guvcdkuj "c"r tko c" hcekg"xlqrcvklp qh"vj g"vj ku"tgs wktgo gpv. "c" f ghgpf cpv"o wu"uj qy "3+"vj cv"vj g i tqwr "cmgi gf "vq" dg" gzenm" gf "ku" c" f ku"pvcv" g"i tqwr "kp"vj g eqo o wpk{ "4+"vj cv"vj g"tgr tguvpcvklp"qh"vj ku"i tqwr "kp" xgpk" gu ht"qo "y j lej "lwt"ku"ctg"ugrgevf "ku"pqv" hck"cpf "tgcupcdng"kp tgrvklp"vq"vj g"pwo dgt"qh"uwej "r gtuqpu"kp"vj g"eqo o wpk{ = cpf "5+"vj cv"vj g"ku"wpf gttgr tguvpcvklp"ku" f w"vq" u{ ugo cvke gzenwukq" qh"vj g"i tqwr "kp"vj g" lwt { "ugrgevkq" r tqegu0 Vj g tgrgxcpv"eqo o wpk{ "ht"etquu"ugevklp"r wtr qugu"ku"vj g"lwf lecn f ku"lev"kp"y j lej "vj g"ecug"ku"tkgf 0

*44c. 44d+

Etlo kpcn'Ney "È"459//Vtkcn/Eqpf wev'qh'Lwt { //Cf gs wee { "qh VtkcnEqwtv'F kuetgkqp "Y j gp "Lwtqt "O kuetgkqp wev'cmgi gf 0 Kp "c"ecr kcn'no wtf gt "r tqugewkqp. "y j g"vtkcn'eqwtv'f kf "pqv'cdwug ku'f kuetgkqp "kp'f gp { kpi "f ghgpf cpv'u'b qv'kqp'htq'b kntkcn'dcugf qp'j ku'enclo 'qhlwtqt'èqpvco kpcv'kqp0C'r tqur gev'xg'lwqt'lwcv'f vq'v'j g'eqwtv'v'j cv'cpqj gt. "gzewugf. "r tqur gev'xg'lwqt'j cf "vqr'f j gt "y j cv'v'j g'lw'f i g"cpf "y kpgu'gu'y gt g"lp'hgct "qh'f ghgpf cpv'0 C"vtkcn'eqwtv'o wuv'eqpf wev'c'uw'hl'ekgp'v'kps wkt { "vq'f gvgto kpg hcew'cmgi gf "cu'lw'qt'b kuetgkqp wev'y j gpxgt "y j g'eqwtv'ku'f w'qp pqv'leg'v'j cv'f qaf "ècwug'v'f k'uej cti g'c'lw'qt'b c { "gzkn0Vj g'vtkcn eqwtv'lp'v'j ku'ècug'èqpf wev'f "cp'kps wkt { "uw'hl'ekgp'v'v'f gvgto kpg v'j cv'v'j g'lw'qt' "y j q' tclugf "y j g"ku'wg"j cf "vq' dg"gzewugf "hqt ecwug'cpf "vq'lc'ku'hl' "ku'gri'h'j cv'v'j g'tgo clpf gt 'qh'v'j g't tqur gev'xg lw'qtu'j cf "pqv'dggp "g'zr qugf "vq'r tglw'f k'ekcn'two qtu'qt'j gctf eqo o g'p'u'cdq'w'v'j tgcw'ci clpu'v'v'j g"vtkcn'eqwtv'0Kp'cf f k'kqp. v'j g"vtkcn'eqwtv'ècv'f "y kj kp'ku'f kuetgkqp "lp'f gvgto k'kpi "y cv o qtg'r qlp'v'f "s w'gu'k'p'u'tgi ctf kpi "cmgi gf "y j tgcw'ci clpu'v'v'j g eqwtv'y qwf "ugtxg'v'c'mcto "y j g'r tqur gev'xg'lw'qtu'tcv'j gt "y j cp vq'w'p'eqxgt "r tglw'f leg'qt "cm { "hgct'0Vj g'r tqur gev'xg'lw'qtu f ktg'ew'f "lo r r'k'ecv'f "lp'v'j g'two qtu'tgi ctf kpi "y j tgcw'ci clpu'v'v'j g eqwtv'f kf "pq'v'ugtxg'qp'f ghgpf cpv'u'lw' { "cpf "y j g"tgo cl'kpi lw'qtu. "y j gp "s w'gu'k'p'p'gf. "i cxg'pq'k'p'f k'ecv'kqp'v'j cv'v'j g'j cf j gctf "y j g'two qtu'qt' "y j cv'v'j g'k' "lo r ctv'k'k'v'f "y cu' "lo r ckt gf 0 Vj wu. "y j g'tgeqtf "f go q'p'utcv'f "y j g'cdugpeg'qh'cp'f { "k'p'ew'cdng r tglw'f leg'v'j cv'v'j qwf "tgs w'k'g"v'j g"i t'ep'v'pi "qh'c"o q'v'kqp' "hqt o k'utkcn'0" *913

*45+

Etlo kpcn'Ney "È"43: //Vtkcn/Eqwtug'cpf "Eqpf wev'qh'Vtkcn/ O k'utkcn'//Vtkcn'Eqwtv'F kuetgkqp0 C"o q'v'kqp'htq'o k'utkcn'ku'f ktg'ev'f "vq'v'j g'u'q'w'p'f "f kuetgkqp'qh v'j g"vtkcn'eqwtv'0C"o k'utkcn'uj qwf "dg"i t'ep'v'f "kh'v'j g"eqwtv'ku cr r t'k'ugf "qh'r tglw'f leg'v'j cv'k'lw'f i gu'k'p'ew'cdng'd { "cf o q'p'k'k'qp qt "k'p'utv'ek'qp'0 Y j g'v'j gt "c" r ctv'k'w'rt "k'p'ek'f gp'v' ku' k'p'ew'cdng r tglw'f k'ekcn' ku' d { "ku' p'cw'g" c" ur g'ew'v'xg"o c'w'gt. "cpf "y j g vtkcn'eqwtv'ku'x'gung'f "y kj "eq'p'uk'f g'tcdng'f kuetgkqp'lp'tw'k'pi "qp o k'utkcn'ò q'v'k'p'u'0

*46c. "46d+

Lwt { "È"65//Ej cmgpi gu/Hqt "Ecwug//Xqkt "F ktg//Kps wkt { "cu"vq Xlgy "qp'Ecr kcn'Rwpluj o gpv/Gxgpj cpf gf p'gu'0 Kp "c"ecr kcn'no wtf gt "r tqugewkqp. "y j g"vtkcn'eqwtv'r tqur gtn' "cpf g'xgpj cpf gf n' "cr r n'g'f "y j g'w'cp'f ctf u'htq'f gvgto k'kpi "y j g'v'j gt c'r tqur gev'xg'lw'qt' "uj qwf "dg"gzewugf "qp"v'j g'd'cuku'qh'x'kgy u qh'ecr kcn'r wpluj o gpv'v'j cv'v'j qwf "r t'g'xgp'v'qt" u'w'du'v'p'k'cm'f lo r ckt "v'j g'lw'qt'u' c'dk'k'v'f "vq" r g'htqto "j ku' qt "j gt" f w'kgu'0 Vj g"vtkcn'eqwtv'f kf "pq'v'gtt "lp' u'w'v'cl'k'p'pi "y j g"r tqugewkqp'u ej cmgpi g'v'q'c'r tqur gev'xg'lw'qt'v'j qo "y j g"vtkcn'eqwtv'd'g'k'g'x'g'f

y cu'o gp'v'cm'f "lo r ckt gf "cpf "y j q'w'cv'v'f "y j cv'v'j g'tg'y g'tg'p'q ekewo u'v'p'egu'w'p'f gt "y j k'ej "j g'y qwf "x'q'v'g'v'q'lo r q'ug'v'j g'f g'cv'j r g'p'cm'f 0C'p'q'v'j gt "r tqur gev'xg'lw'qt' "y cu'r tqur gtn' "gzewugf "hqt ecwug'dcugf "qp"v'j g"vtkcn'eqwtv'u'eq'p'ew'k'qp'j g"y cu'o gp'v'cm'f k'p'eqo r g'v'p'v'v'q" r g'htqto "c"lw'qt'u'f w'kgu. "cp"cu'gu'uo gpv'v'j cv y cu'è'f gs w'cv'gn'f "u'w' r qt'v'f "d { "y j g'tgeqtf. "cpf "dcugf "p'q'v'q'p'cp { r tglw'f leg'ci clpu'v'v'j ku'o { "v'k'ec'n't'g'ri k'q'w'u'd'g'ri'g'h'u. "dw'w'tcv'j gt "qp v'j g"vtkcn'eqwtv'u'tgc'up'cdng'eq'p'eg'tp'v'j cv'v'j ku'o { "v'k'ek'uo "y qwf lo r ckt "j ku'c'dk'k'v'f "vq'f g'k'k'g'tcv'g'tc'v'k'p'cm'f 0Vj g'tgeqtf "lw'v'j gt f go q'p'utcv'f "y j cv'v'j g'r tqur gev'xg'lw'qtu'v'j qo "y j g"vtkcn'eqwtv t'gh'wug'f "vq"gzewug'eng'ctn' "k'p'f k'ec'v'f "y j g'k' "c'dk'k'v'f "vq"eq'p'uk'f gt ekewo u'v'p'egu'lp'o k'ki cv'k'p. "vq"y kj j q'f "lw'f i o gp'v'w'qp'v'j g s w'gu'k'p'qh'r g'p'cm'f "w'p'k'i'v'j g'g'x'k'f g'peg"y cu'd'gh'g'tg'v'j go. "cpf u'g't'k'q'w'w' "vq'g'p'v'g't'cl'p'v'j g'q'r v'k'p'q'h'lo r q'ulpi "c'ug'p'v'p'eg'q'h'k'k'g y kj q'w'r q'w'k'k'v'f "qh'r ct'q'ng'0

*47+

Lwt { "È"65//Ej cmgpi gu/Hqt "Ecwug//Xqkt "F ktg//Kps wkt { "cu"vq Xlgy "qp'Ecr kcn'Rwpluj o gpv/Cr r gcn/U'cp'f ctf "qh'T'g'x'k'gy 0 Kp "c"ecr kcn'ecug. "c" r tqur gev'xg'lw'qt' "o c { "dg"gzem'f gf "kh j ku'qt' "j gt "x'kgy u'qp"ecr kcn'r wpluj o gpv'v'j qwf "r t'g'xgp'v'qt u'w'du'v'p'k'cm'f "lo r ckt "y j g'r g'htqto c'p'eg'qh'v'j g'lw'qt'u'f w'kgu'0C r tqur gev'xg'lw'qt'ku'r tqur gtn' "gzem'f gf "kh'j g'qt' "uj g'ku'w'p'cdng v'q'eq'p'ue'k'p'v'k'w'w'w' "eq'p'uk'f gt "cm'q'h'v'j g'ug'p'v'p'ek'pi "c'ng't'p'c'v'k'g'u. k'p'em'f k'pi "y j g'f g'cv'j "r g'p'cm'f "y j gp'er r tqur t'k'v'g'0Q'p'er r gcn'v'j g t'g'x'k'gy k'pi "eqwtv'y kn'w'r j q'f "y j g"vtkcn'eqwtv'u'tw'k'pi "k'h'k'ku h'c'k'n'f "u'w' r qt'v'f "d { "y j g'tgeqtf. "ceeg'v'k'pi "cu'd'k'p'f k'pi "y j g"vtkcn eqwtv'u'f gvgto k'p'cv'k'p'cu'v'q'v'j g'r tqur gev'xg'lw'qt'u'f w'v'g'w'v'g'v'q'h o k'p'f "y j gp'v'j g'r tqur gev'xg'lw'qt'j cu'ò cf g'w'cv'go gp'v'v'j cv'è'tg eq'p'h'v'k'pi "qt'co d'k' w'q'w'0

*48+

Lwt { "È"65//Ej cmgpi gu/Hqt "Ecwug//Xqkt "F ktg//Kps wkt { "cu"vq Xlgy "qp'Ecr kcn'Rwpluj o gpv/Vtkcn'Eqwtv'F kuetgkqp0 Kp "c"ecr kcn' " *914 "o wtf gt "r tqugewkqp. "y j g"vtkcn'eqwtv'f kf pq'v'gtt "lp't'g'w't'v'k'pi "f ghgpf cpv'u'f g'cv'j /s w'k'h'k'ec'v'k'p'x'qkt "f ktg qh'v'j g" r tqur gev'xg'lw'qtu'0C" vtkcn'eqwtv'v'j cu' eq'p'uk'f g'tcdng f kuetgkqp'v'q'eq'p'v'cl'p'x'qkt "f ktg"y kj kp'tgc'up'cdng'it'ko ku. "cpf v'j ku'f kuetgkqp'gz'v'p'f u'v'q'v'j g'r t'q'eg'uu'qh'f g'cv'j /s w'k'h'k'ec'v'k'p' x'qkt "f ktg'0N'ko k'c'v'k'p'u'qp"x'qkt "f ktg'ctg' "u'w'd'g'v'v'q"t'g'x'k'gy "hqt cdwug'qh'f kuetgkqp'0Kp'v'j ku'ecug. "y j g"vtkcn'eqwtv'f kf "pq'v'cdwug ku'f kuetgkqp. "u'k'peg"v'j g'tg'y cu'p'q' "k'p'f k'ec'v'k'p'qp"v'j g'tgeqtf v'j cv'f gh'g'p'ug'eq'w'p'ug'ri'y cu'r t'g'x'g'p'v'f "ht'qo "o c'n'k'pi "tgc'up'cdng k'ps wkt { "k'p'v'v'j g'h'k'p'g'u'qh'cp'f { "x'g'p'k'g'r g'tu'qp'v'q'ug't'x'g'qp"v'j g lw' {0G'cej "lw'qt'v' cu'è'ung'f. "k'p'x'ct'k'q'w'u'v' c { u'v'j g'v'j g't'j g'q't' "h'j g d'g'ri'g'x'g'f "y j g'f g'cv'j "r g'p'cm'f "uj qwf "dg"lo r q'ug'f "c'w'qo c'v'k'ec'm'f w'qp'eq'p'x'k'v'k'p'qh'c"ecr kcn'q'h'g'p'ug'0Vj g'tg'y cu'p'q'gtt'qt' "k'p tw'k'pi "y j cv'v'j w'gu'k'p'u't'g'r'v'f "vq"v'j g'lw'qtu'v'v'k'w'f gu'v'qy ctf

gxf ppeg'vj cv'y cu'vq'dg'kptqf wegf "lp'vj ku'vkn'eqwrf "pqv'dg cunf =pqt "y cu'k'gttq "vq'r tgenmf g'eqwpugn'ltqo "uggnkpi "vq eqo r gnc'r tcur gevkg'lwqt "vq'r tqo kug'vq'xqg'lp'c'r ctvewrt y c'."qt'vq'r tgenmf g'eqwpugn'ltqo "kpf qestkpcvki "vj g'lw { "cu'vq c'r ctvewrt "xkgy "qh'vj g'hcew0Hwt vj gt. "dgecwug'cp { "s wgunkqp eqpegtplki "c'r tcur gevkg'lwqt u'cwkwf g'vqy ctf "vj g'eqpegr v qh'ltgg'y kn'y cu'j ki j n' "rj knuqr j lecn "k'y cu'y kj kp'vj g'vkn eqwt v' f kuet gwq" vq "eqpenmf g' uwej " c "s wgunkqp " y qwrf " pqv dg "ht wkhwl'ht " vj g'r wtr qug "qh'f gc vj /s wvkhlecwq" xqk "f k g0 Cnuq. "vj g'vkn'eqwt v'r gto kwgf "vj g's wgunkqp " y j gvj gt "lwqtu y qwrf "j qrf "k'ci ckpuv'f ghgpf cpv'vuj qwrf "j g'hcn'vq'vgnh. "cpf f ghgpgug "eqwpugn' y cu'r gto kwgf "vq "cun' s wgunkqp "tgi ctf kpi vj g'r tcur gevkg'lwqtu) "cwkwf g'vqy ctf "vj g'gzgekug" qh' vj g r tkxkgi g'ci ckpuv'ugr/hpetko kpcvqp0

*49c. '49d+

Lwt { " E' 690 //Ej cmgpi gu/ Rgtgo r vqt { //I tqwr " Dku/ Rtko c Hcekg' Ecug0 Kp "c' ecr kcn' b wtf gt "r tqugewkqp. "vj g'vkn'eqwt v'f k "pqv'gtt "lp ku'f gvgt o kpcvqp "vj cv'f ghgpf cpv'hc'kfg "vq "gucdrkuj "c" r tko c hcekg'ecug'vj cv'vj g'r tqugewqt "gzewugf "cp "Chlecp/Co gtecp r tcur gevkg' lwqt "dgecwug" qh' tcekn' dku' Vj ku' r tcur gevkg lwqt "cpv'ek cvgf "uqo g' f k hewm "lp" vj g' eqwtug" qh' vkn' kp uj krf kpi "j ko ugr'htqo "qwkf g'kphqto cvkqp "eqpegtplki "vj g ecug' dgecwug" qh' j ku' go r m { o gpv'cu "c" tgr qtvt "y kj "c" nqecn pgy ur cr gto Kp "cf f k kqp. "j g'pqvqf "vj cv'j g'j cf "tgegkxg "c" r qqt r gthqto cpeg "tgxky "cv'y qn' dgecwug" qh' j ku' r ctv'ek cvkqp "lp xqk "f k g" r tqeggf kpi u. "cpf " vj cv' lw { " ugxkleg "y qwrf " ecwug cp "go qv'kpcn' j ctf uj kr "dgecwug" qh' vj g' utguu "kpxqkxg "y kj j ku' lqd'0K' cr r gctgf "vj g'r tcur gevkg'lwqt "tkungf "nukpi "j ku go r m { o gpv'qt "uwhgtkpi "f gtko gpv'vq' j ku' ectggt "k'j" g' y gtg tgs wktgf "vq "ugtxg" qp "c" npi vj { "vkn'0Vj g'r tqugewqt "tghgtgf vq' vj g'ug'ekewo uncpegu'lp'lwukh' kpi "j ku' r gto r vqt { "ej cmgpi g cpf "gzi r kpgf "vj cv' j g' hctgf "vj g' lwqt "y qwrf "dg "vq" vqtp d { "eqph'ekvki "m { c nku'vq' j ku' go r m { o gpv'cpf "vq" vj g' eqwt v' vq "hw' hkn' j ku' hw' p'v'k'p'0Hwt vj gt. "vj g'r tqugewqt u'ej cmgpi g'vq cpqy gt "r tcur gevkg'lwqt "f k "pqv' uwr r qt v' cp "kphgt pge" vj cv vj g'r tqugewqt "y cu' o qv'xv'gf "d { "i tqwr "dku. "ukpeg" vj cv'lwqt dctgn' "uwxkxg "c" ej cmgpi g' hqt "ecwug" dgecwug "qh' j ku' ungr v'ecn xkgy u'tgi ctf kpi "vj g'f gc vj "r gpcn'f. "cpf "j" g'j cf "dggp "unggr kpi kp'vj g'lw { "dqz "f wtkpi "i gpgt'cn'xqk "f k g0 *915

*4: +

Lwt { " E' 690 //Ej cmgpi gu/ Rgtgo r vqt { //I tqwr " Dku0 Rgtgo r vqt { " ej cmgpi gu" o c { " pqv" dg" wugf " vq" tgo qxg r tcur gevkg'lwqtu' uq'gn' { "qp'vj g'dcuku'qh'r tguwo gf "i tqwr "dku0 I tqwr "dku" ku" c" r tguwo r v'kqp "vj cv'egt'v'k'p'lwqtu" ctg' dkcugf o gtn' "dgecwug" vj g { "ctg" o go dgtu "qh' cp "k'f gp'v'k'cdig" i tqwr

f kwpki wkuj gf "qp" tcekn' t'gri kqwu. "gvj ple. "qt" uko krc' i tqwpf u0 C' r ctv' "y j q' uwr geu'ko r tqr gt "wug'qh'r gtgo r vqt { "ej cmgpi gu o wv'ctkg'c' vko gn' { "qdlgev'k'p'cpf "o cng'c' r tko c' hcekg'uj qy kpi vj cv'ppg"qt "o qtg'lwqtu" j cu' dggp "gzewmf gf "qp" vj g' dcuku'qh i tqwr "qt" tcekn' k'f gp'v'k'0' Qpeg" c" r tko c' hcekg'uj qy kpi "j cu dggp" o cf g. "vj g'r tqugewqt "o wv'ectt { "vj g'dwtf gp'qh'uj qy kpi vj cv'j g'qt'uj g'j cf "i gp'v'k'p'p'p'f kuetko kpcvqt { "tgecupu'ht "vj g ej cmgpi gu" cv' kuw'0' Vj g' vkn' eqwt v' u' f gvto kpcvqp "vj cv' pq r tko c' hcekg'uj qy kpi "qh' i tqwr "dku' j cu' dggp" o cf g' ku' uwdlgev vq' t'gxkgy "vq" f gvto kpg' y j gvj gt "k'ku' uwr r qt v'gf "d { "uwd'uc'v'kn gxf ppeg'0Qp' cr r gcn' vj g' t'gxkgy kpi "eqwt v'gzco kpgu' vj g' t'geqtf qh' vj g' xqk "f k g" cpf "cee'q'f u' r ctvewrt "f ghgt ppeg" vq" vj g' vkn eqwt v' cu' hce'v'k'p'f gt. "dgecwug" qh' ku' qr r qt w'p'k' { "vq" qdu'gt'xg' vj g r ctv'ek cpw' cv' h' u' vj cpf 0

*4; c. '4; d+

Etlo kpcn' Ncy "E' 66 //Tki j u' qh' Ceewugf //Hck "Vt'kn/ Ugewtk' O gcuwtgu/ O gcn' F gvgevqt" cv' Gp'v'cpeg" vq" Eqwtv'qgo // Cf f k'k'p'cn' Cto gf "Dck'k'hu0 Kp "c' ecr kcn' b wtf gt "r tqugewkqp. f ghgpf cpv'v'f wgr t'qeguu' tki j v vq' c' hck "vkn' y cu' pqv'ko r cktgf "d { "gkj gt "vj g' kpu'c'v'k'p'qh'c o gcn' f gvgevqt "ht "vj g'r wdrk "eqo kpi "kp'v' vj g' eqwtv'qgo "qt vj g'r t'gugpeg' qh' c' f k'k'p'cn' cto gf "dck'k'hu" f wtkpi "qpg' y kpguu' v'gnko qp { 0Vj g' wug'qh'c' o gcn' f gvgevqt "qwkf g' vj g' eqwtv'qgo . rkn' vj g' wug'qh' c' f k'k'p'cn' ugewtk' { "ht egu' y kj kp' vj g' eqwtv'qgo . ku' pqv'c' o gcuwt g' vj cv' ku' k'p'j gt g'p'v' "r tglw'f lekn' cpf "uq' k'v' p'ggf pqv' dg' lwukh'gf "d { "eqo r gnkpi "gxf ppeg' qh' ko o kpg'v' vj tgcw'vq vj g' ugewtk' { "qh' vj g' eqwt v' 0W'p'rkng' u'j cemkpi "cpf "vj g' f kur r { "qh vj g' f ghgpf cpv'lp' lckn' ctd. "vj g' wug'qh'c' o gcn' f gvgevqt "f qgu' p'qv k'f gp'v'k' "vj g' f ghgpf cpv'cu' c' r gtu'p' cr ctv'qt "cu' y qt v' { "qh' h' gct cpf "uwr k'k'p'0K' "cf f k'k'p. "vj g'lw { "lp' vj ku' ecug' f k' "pqv' r cuu vj tqw j "vj g' b gcn' f gvgevqt "cpf "o c { "pqv'j cxg' dggp "cy ctg' qh' k'0 Gxgp' k' h' vj g' lw { "y cu' cy ctg' qh' vj g' b gcn' f gvgevqt. "vj g'lw { "o c { y gml'j cxg' eqpu'k' gf g' "k'c' t'qwk'p'g' ugewtk' { "f g' xk'g'0Vj g' r wdrk ku' k'p'v'gf "vq" vj g' wug'qh' o gcn' f gvgevqt u' k'p' r wdrk "r r' egu' uwej cu' eqwt v' qwugu. "cpf "pq' t'gh'gev'k'p' "w' qp "c" f ghgpf cpv'v' i wkn' qt k'p'p'egpeg' p'ggf "dg' k'p' h' t'gf "htqo "vj g' k' wug'0Hwt vj gt. "vj g' g' y cu pq' k'p'f lecv'k'p' vj cv' f ghgpf cpv'v' cu' r tglw'f k'gf "d { "vj g' q'ecuc'k'p'cn r t'gugpeg' qh' "ppg" qt "y q' w'p'k' h' to gf "dck'k'hu" dg { "pf "vj g' vj t'gg qh' h' gtu' eqpu'k'w'k'p' "vj g' d'ctg' o k'pko wo "p'gegu'ct { "vq" r tqxk' g ugewtk'0

*52+

Etlo kpcn' Ncy "E' 66 //Tki j u' qh' Ceewugf //Hck "Vt'kn/ Ugewtk' O gcuwtgu0 E' g'v'k'p' ugewtk' { "o gcuwtgu" o c { "dwtf gp' vj g' tki j v' vq' c' hck "vkn'0 Kp "r ctvewrt. "vq' t'gs wktg' c' "etko kpcn' f ghgpf cpv'v' q' cr r gct "d'gh'gtg vj g' " *916 "lw { "w'p'f gt "r j { u'lecn' t'g'ut'ck'p'v' o c { "ko r ckt "vj cv' tki j v

*57+

Etlo kpcn' Ncy " È' 654//Gxkf gpeg//Ceeqo r rleg" Vguko qp{// Kó o wplv " Ci tggo gpw" cpf " Rtqo kugu" qh" Ngplgep{//F wg Rtqegu0

Kp" c" ecr kcn' o wtf gt" r tqugewkqp." yj g" vlcni' eqwtv" f gplcn qh' f ghgpf cpv" o qvqp" vq" gzenw' g" yj g" vlcni' qp{ " qh' hqwt ceeqo r rlegu' y j q" vlcni' hq' yj g' r tqugewkqp" f kf "pqv'xkqrcv' f ghgpf cpv" tki j v' vq" f wg" r tqugewkqp" qh' r' y O' Gxgp" yj qwi j " yj g y kpguugu" j cf " dggp" ceeqtf gf " lo o wplv " ci tggo gpw" cpf r tqo kugu"qh' hcxqtdcng' vtgevo gpv'lp' wptgrcv' r gpf lpi "ecugu. cpf " r tqdcvqp" xkqrcvqp" o cwgtu." yj qug" ekewo ucpegu" f kf pqv' tgp' gt" yj g" vlcni' qp{ " kpj gtgpv" wptgrcv' Cnj qwi j yj gtg" ku" uqo g" eqo r wukqp" *918 " kpj gtgpv' lp" cp{ " r rnc ci tggo gpv'qt' i tcv'q' h' lo o wplv. 'k'ku'engct' yj cv'cp' ci tggo gpv tgs wtkpi "qpn' " yj cv' yj g' y kpguu' vlcni' h' h' h' "cpf " v' wj h' h' "ku xcnk' O' Wf qp" kpf gr gpf gpv' t' g' l' g' "qh' yj g' tgeqtf. "k' y' cu' engct yj cv' yj g' g' ci tggo gpw" yj g' g' p' q' dcugf " w' qp" yj g' eqpf k' k' qp yj cv' yj g' y kpguugu" vlcni' h' " lp" c" r ct' k' w' r' c' o' c' p' p' g' t' cv' vlcni' qt" yj cv' yj g' " vlcni' h' " eqpuk' r' p' v' " y' k' j' " r' t' k' t' " u' v' g' o' gpw" vq yj g' r' r' leg. " u' w' j' " yj cv' yj g' k' p' t' q' f' v' e' v' qp" qh' yj g' k' t' " vlcni' qp{ eqpuk' w' g' f' c' " x' k' r' c' v' qp" qh' f' ghgpf cpv" tki j v' vq" c' " h' c' k' " vlcni' Kp" cf f' k' k' qp." yj g' ceeqo r rlegu" vlcni' qp{ " y' cu' eqttq' d' q' t' v' g' f' d{ " yj g' vlcni' qp{ " qh' q' yj g' t' y' k' p' g' u' u' g' " cpf " d{ " q' v' g' t' g' x' k' f' g' p' e' g' u' w' e' j' " cu' v' g' r' j' p' p' g' " cpf " o' q' v' g' n' d' w' u' k' p' g' u' " t' g' e' q' t' f' u' " f' ghgpf cpv" r' c' r' g' t' u' " f' k' u' r' c' { l' p' i " yj g' ceeqo r rlegu" p' c' o' g' u' " cpf " v' g' r' j' p' p' g' p' w' o' d' g' u' " cpf " yj g' vlcni' qp{ " qh' c' " d' c' m' k' u' l' e' u' " g' z' r' g' t' v' O' H' w' t' yj g' t. yj g' vlcni' eqwtv' f' g' v' g' t' o' k' p' g' f' " yj cv' yj g' " v' q' v' c' i' u' w' o' u' " g' z' r' g' p' f' g' f' " q' p' yj g' y' k' p' g' u' u' " r' t' q' v' e' v' qp" r' t' q' i' t' c' o' " y' q' w' f' " d' g' " f' k' u' e' r' q' u' g' f' " v' q' " yj g' f' ghgpf. " cpf " f' ghgpf " e' q' w' p' u' g' n' i' t' g' i' t' c' k' p' g' f' " i' t' q' o' " e' t' q' u' u' / g' z' c' o' k' p' l' p' i " yj g' y' k' p' g' u' u' " q' p' " yj k' u' r' q' l' p' v' " v' q' " c' x' q' k' f' " r' t' q' u' e' w' k' q' p' " g' x' k' f' g' p' e' g' g' z' r' r' c' l' p' l' p' i " yj cv' yj g' f' " y' g' t' g' l' p' " yj g' t' q' i' t' c' o' " v' q' t' t' q' v' e' v' j' g' o' " i' t' q' o' f' ghgpf cpv" u' t' g' w' k' d' w' k' g' " x' k' q' r' e' p' e' g' O' H' k' p' c' m' f' . " yj g' t' g' y' cu' p' q' " c' d' w' u' g' qh' f' k' u' e' t' g' v' k' p' " l' p' " c' f' o' k' w' k' p' i " yj g' vlcni' qp{ " w' p' f' g' t' " Gxkf O' E' q' f' g. È' 574. " u' k' p' e' g' " yj g' vlcni' qp{ " y' cu' r' t' q' d' e' v' k' g' " c' p' f' " yj g' t' g' y' cu' p' q' f' c' p' i' g' t' " qh' w' p' f' w' g' " e' q' p' u' o' r' v' k' p' " qh' v' o' g' " q' t' " qh' e' q' p' h' w' u' k' q' p' " qh' yj g' k' u' u' g' u' 0

*58+

Etlo kpcn' Ncy " È' 4: 8//Gxkf gpeg//Cf o kuukl' k' v' //T g' r' x' c' p' e' g' // R' q' r' e' g' " k' p' v' g' t' p' c' n' i' c' h' c' k' u' " k' p' x' g' u' k' i' c' v' k' q' p' // V' j' t' g' c' u' i' C' i' c' k' p' u' v' R' q' r' e' g' Q' h' l' e' g' t' " Etlo g' X' l' e' v' o' 0

Kp" c' ecr kcn' o wtf gt' r tqugewkqp." yj g' vlcni' eqwtv' f' k' "pqv'cdwug'ku f kuetgkqp"lp"r t' g' x' g' p' v' p' i " f' ghgpf cpv' h' t' q' o' " r' t' g' u' g' p' v' p' i " g' x' k' f' g' p' e' g' t' g' r' v' p' i " v' q' c' t' r' q' r' e' g' " k' p' v' g' t' p' c' n' i' c' h' c' k' u' " k' p' x' g' u' k' i' c' v' k' q' p' " t' g' r' v' p' i " v' q' " yj g' e' k' t' e' w' o' u' c' p' e' g' u' " i' w' t' t' q' w' p' f' l' p' i " r' q' r' e' g' t' g' e' g' r' v' c' p' f' " e' q' o' o' w' p' l' e' c' v' k' q' p' qh' c' " yj g' t' g' e' v' " c' i' c' k' p' u' v' " yj g' " o' w' t' f' g' t' " x' l' e' v' o' . " c' " yj g' t' g' e' v' " yj cv' y' cu' c' w' t' k' d' w' g' f' " v' q' f' ghgpf cpv' d{ " c' l' c' k' j' q' w' u' g' " l' p' h' q' t' o' c' p' v' O' G' x' k' f' g' p' e' g' " q' h' yj g' yj g' t' g' e' v' y' cu' p' q' v' r' t' g' u' g' p' v' g' f' " c' i' c' k' p' u' v' f' ghgpf cpv' l' p' " c' p' { " h' q' t' o' " c' v

yj k' u' t' k' n' i' 0 J' g' p' e' g' " p' a' p' p' g' " q' h' yj g' g' x' k' f' g' p' e' g' " yj c' v' h' q' t' o' g' f' " yj g' d' c' u' k' u' " q' h' yj g' " k' p' v' g' t' p' c' n' i' c' h' c' k' u' " k' p' x' g' u' k' i' c' v' k' q' p' " y' c' u' t' g' r' x' c' p' v' " v' q' f' g' h' g' p' f' c' p' v' u' v' l' c' n' " u' k' p' e' g' " yj g' r' q' l' p' v' q' h' yj g' " k' p' x' g' u' k' i' c' v' k' q' p' " y' c' u' p' q' v' " v' q' f' k' u' e' q' x' g' t' c' p' " c' w' g' o' r' v' " v' q' " o' c' p' w' h' c' e' w' t' g' " g' x' k' f' g' p' e' g' " c' i' c' k' p' u' v' f' g' h' g' p' f' c' p' v' . " d' w' t' c' v' j' g' t' " v' q' " f' k' u' e' q' x' g' t' " y' j' g' yj g' t' " yj g' r' q' r' e' g' " j' c' f' " h' c' k' r' g' f' " v' q' " y' c' t' p' " yj g' x' l' e' v' o' . " y' j' q' y' c' u' c' n' u' q' " e' t' r' q' r' e' g' " q' h' l' e' g' t' . " q' h' yj g' t' r' e' p' p' g' f' " u' j' q' q' v' k' p' i' q' t' " v' q' " r' t' q' v' e' v' j' k' o' " c' i' c' k' p' u' v' k' s' O' H' w' t' yj g' t' . " yj g' v' l' c' n' i' e' q' w' t' v' y' c' u' y' k' j' k' p' k' u' " d' t' q' c' f' " f' k' u' e' t' g' v' k' p' " l' p' " f' g' v' g' t' o' k' p' l' p' i " yj cv' yj g' g' x' k' f' g' p' e' g' " y' q' w' f' e' q' p' u' o' g' " c' p' " w' p' f' w' g' " c' o' q' w' p' v' q' h' v' o' g' " l' p' " t' g' r' v' k' q' p' " v' q' " k' u' r' t' q' d' c' v' k' g' x' c' n' w' g' " c' p' f' " yj cv' k' v' yj g' t' g' h' q' t' g' " u' j' q' w' f' " d' g' " g' z' e' n' w' f' g' f' 0

*59+

Etlo kpcn' Ncy " È' 884//C' r' r' g' n' e' v' g' " T' g' x' l' g' y' // J' c' t' o' n' g' u' i' " c' p' f' T' g' x' g' t' u' k' d' n' g' " G' t' t' q' t' // " G' x' k' f' g' p' e' g' // J' g' t' u' c' { 0

Kp" c' ecr kcn' o wtf gt" r tqugewkqp." cp{ " g' t' t' q' t' " l' p' " yj g' vlcni' eqwtv' f' g' p' l' c' n' i' q' h' f' g' h' g' p' f' c' p' v' u' j' g' t' u' c' { " q' d' l' g' e' v' k' p' " c' p' f' " q' d' l' g' e' v' k' p' d' c' u' g' f' " q' p' " yj g' e' q' p' h' t' q' p' v' c' v' k' q' p' " e' r' w' u' g' " * W' L' O' E' q' p' u' 0 " 8' y' " C' o' g' p' f' 0- v' q' " vlcni' qp{ " qh' c' " r' t' q' u' e' w' k' q' p' " y' k' p' g' u' u' " f' w' t' k' p' i " t' g' f' k' t' e' v' g' z' c' o' k' p' c' v' k' q' p' " * 919 " e' q' e' p' g' t' p' l' p' i " u' v' c' v' g' o' g' p' u' d' { " c' " e' q' f' g' h' g' p' f' c' p' v' y' j' q' " y' c' u' e' j' c' t' i' g' f' " c' p' f' " v' l' g' f' " u' g' r' c' t' c' v' g' n' f' " yj cv' yj g' vlcni' eqwtv' c' f' o' k' w' g' f' " c' u' " u' v' c' v' g' o' g' p' u' " c' i' c' k' p' u' v' r' g' p' c' n' i' k' p' v' g' t' g' u' v' " * G' x' k' f' O' E' q' f' g. È' 3452+ " y' c' u' j' c' t' o' n' g' u' i' " d' g' { " q' p' f' " c' " t' g' c' u' q' p' c' d' n' g' " f' q' w' d' 0 " V' j' g' vlcni' qp{ " e' q' e' p' g' t' p' g' f' " c' p' " g' c' t' r' i' g' t' " c' d' q' t' v' k' g' " c' w' g' o' r' v' " q' p' " yj g' k' t' r' c' t' v' c' p' f' " yj cv' qh' q' yj g' t' u' " t' g' e' t' v' k' g' f' " d' { " f' ghgpf cpv. " v' q' " n' k' n' i' " yj g' x' l' e' v' o' " q' h' yj g' e' j' c' t' i' g' f' " b' o' w' t' f' g' t' O' V' j' g' vlcni' qp{ " c' f' o' k' w' g' f' " f' w' t' k' p' i' t' g' f' k' t' e' v' g' z' c' o' k' p' c' v' k' q' p' " q' h' yj k' u' y' k' p' g' u' u' " e' q' e' p' g' t' p' g' f' " j' k' u' e' g' t' v' c' k' p' v' yj cv' yj g' e' q' f' ghgpf cpv' j' c' f' " d' g' g' p' " k' p' x' q' i' k' g' f' " l' p' " yj g' g' c' t' r' i' g' t' " o' w' t' f' g' t' c' w' g' o' r' v' " d' g' e' c' w' u' g' " q' h' " u' v' c' v' g' o' g' p' u' " yj cv' yj g' " r' e' w' g' t' " o' c' f' g' " v' q' " yj g' y' k' p' g' u' u' " y' j' g' p' " yj g' { " y' g' t' g' " d' q' y' " k' p' e' c' t' e' g' t' c' v' g' f' . " c' p' f' " y' c' u' f' g' u' k' i' p' g' f' v' q' " t' g' j' c' d' k' i' k' c' v' g' " yj g' y' k' p' g' u' u' " e' t' g' f' k' d' k' i' k' s' . " u' k' p' e' g' " j' g' " j' c' f' " d' g' g' p' w' p' e' g' t' v' c' l' p' " q' p' " yj k' u' r' q' l' p' v' f' w' t' k' p' i " f' k' t' e' v' g' z' c' o' k' p' c' v' k' q' p' O' J' g' p' e' g' . " yj g' u' v' c' v' g' o' g' p' u' y' g' t' g' c' f' o' k' w' g' f' " o' g' t' g' n' f' " v' q' " t' g' j' c' d' k' i' k' c' v' g' " yj g' e' t' g' f' k' d' k' i' k' s' { q' h' c' y' k' p' g' u' u' " q' p' " c' " c' p' i' g' p' v' c' n' i' f' q' l' p' v' c' p' f' " p' q' yj k' p' i " l' p' " yj g' u' v' c' v' g' o' g' p' u' f' k' t' e' v' n' f' " k' p' e' w' r' c' v' g' f' " f' ghgpf cpv' q' t' " g' x' g' p' " o' g' p' v' k' p' g' f' " j' k' o' O' C' n' u' q' . yj g' " e' j' c' n' g' p' i' g' f' " g' x' k' f' g' p' e' g' " y' c' u' " e' w' o' w' r' e' v' k' g' " v' q' " q' yj g' t' " vlcni' qp{ yj cv' e' c' o' g' d' g' h' q' t' g' yj g' l' w' t' { " l' p' " h' c' t' " i' t' g' e' v' g' t' " f' g' v' c' k' n' " c' p' f' " c' p' { " g' t' t' q' t' " l' p' k' u' " c' f' o' k' u' k' q' p' " y' c' u' j' c' t' o' n' g' u' i' " d' g' { " q' p' f' " c' " t' g' c' u' q' p' c' d' n' g' " f' q' w' d' 0

*5: +

Etlo kpcn' Ncy " È' 788//C' r' r' g' n' e' v' g' " T' g' x' l' g' y' // R' t' g' u' g' p' v' k' p' i " c' p' f' R' t' g' u' g' t' x' l' p' i " Q' d' l' g' e' v' k' p' u' // G' x' k' f' g' p' e' g' " c' v' v' l' c' n' i' / Y' k' p' g' u' u' g' u' 0

Kp" c' ecr kcn' o wtf gt' r tqugewkqp." f' ghgpf cpv' y' c' k' x' g' f' " c' " e' r' k' o' " q' h' g' t' t' q' t' " l' p' " yj g' c' f' o' k' u' k' q' p' " q' h' yj g' vlcni' qp{ " q' h' c' " e' j' k' f' " y' k' p' g' u' u' " yj cv' yj g' o' w' t' f' g' t' " x' l' e' v' o' " u' e' j' k' f' . " y' j' q' y' c' u' y' k' j' " yj g' x' l' e' v' o' " y' j' g' p' j' " g' y' c' u' u' j' q' v' " j' c' f' " c' n' u' q' " d' g' g' p' " l' p' l' w' t' g' f' . " d' { " h' c' k' i' k' p' i " v' q' " q' d' l' g' e' v' c' v' v' l' c' n' i' y' j' g' p' " yj g' e' j' k' f' " h' k' u' v' v' l' c' n' i' h' g' f' " v' q' " yj cv' g' h' t' g' e' v' O' K' p' " c' p' { " g' x' g' p' v' " g' x' g' p' k' i' f' ghgpf cpv' u' " q' d' l' g' e' v' k' p' " c' p' f' " r' e' w' g' t' " o' q' v' k' q' p' " h' q' t' " o' k' u' t' k' n' i' d' c' u' g' f' q' p' " c' f' o' k' u' k' q' p' " q' h' yj k' u' " g' x' k' f' g' p' e' g' " r' t' g' u' g' t' x' g' f' " yj g' k' u' u' w' g' . " c' p' { " g' t' t' q' t

*65+

J qo kek g" È" : 9//Vtkcn/Kpustwekqpu//K gpvkw" cpf Rctvlek cvkqp kp"Qthgpug//P ggf "hqt" Wpcplo kx "Kpustwekqpu0 Kp" c" ecr kcn' o wtf gt" r tqugewkqp" kp" y j lej " y j g" lwt { " y cu kpustwekqpu" qp" ceeqo r neg' hcdkxkx' cu' y gni' cu' qp' r tgo gf kcvgf o wtf gt. " y j g' v' tken' eqwtv' y cu' pqv' tgs wktgf " d { " ucwv" cpf " hgf gtcn eqpukwkwkpcn' r tpekr ngu' qh' f w' r t qegu' qh' r' y " v' q' kpustwekqpu" y j lwt { " qp" y j g" pggf " hqt" wpcplo kx " cu" v' y j g" fcevu' w' r qp" y j lej cp { " eqpxlewqp" hqt" y j g' etko g' qh' o wtf gt " ku' dcugf 0Vj g' g' ku' pq tgs wktgo gpv' y cv' lwt { " wpcplo qwun' " ci tgg' w' r qp" y j g' y j g' q' { " qh' y j g' f' ghgpf cpv' u' ewr cdkkxkx' . cpf " y j ku' t' w' g' r r r' ku' v' q' y j g' q' t' ku' q' h' i wkn' r tgo kugf " w' r qp" c' k' k' p' i " cpf " cdgwkpi " qt" f' k' ge' v' ewr cdkkxkx' 0 Cu' h' q' p' i " cu' g' cej " lwt q' t' ku' eqpxkpegf " dg { qp' f' c' t' gcupcdng' f' q' w' d' v' y j cv' y j g' f' ghgpf cpv' ku' i wkn' { qh' b' w' f' gt " cu' y j cv' q' h' t' gpug' ku' f' ghgpf d { " ucwv" . " y j g' lwt { " pggf " pqv' f' gekf g' wpcplo qwun' " d { " y j lej y j g' q' t' { " j g' q' t' " u' j g' ku' i wkn' 0' O' q' t' g' ur gekk' ecm' . " y j g' lwt { " pggf pqv' f' gekf g' wpcplo qwun' " y j g' y j g' y j g' f' ghgpf cpv' y cu' i wkn' " cu y j g' c' k' f' g' t' " cpf " cdgwq' t' " q' t' " cu" y j g' f' k' ge' v' r' g' r' g' t' cv' q' t' 0' P' q' v' q' p' n' k' u' y j g' t' g' p' q' wpcplo kx " tgs wktgo gpv' cu' v' q' y j g' y j g' q' t' { " qh' i wkn' y j g' k' p' f' k' k' f' w' c' d' l' w' t' q' t' u' y j g' o u' g' r' ku' p' g' g' f' " pqv' e' j' q' q' u' g' " co q' p' i " y j g' y j g' q' t' k' u' . " u' q' h' q' p' i " cu' g' cej " ku' eqpxkpegf " qh' i wkn' 0' H' w' t' y j g' t' . " l' w' q' t' u' p' g' g' f' " pqv' wpcplo qwun' " ci tgg' qp" y j g' y j g' y j g' f' ghgpf cpv' ku' cp c' k' f' g' t' " cpf " cdgwq' t' " q' t' " c' r' t' l' p' e' k' r' c' n' g' x' g' p' y j g' p' f' k' h' t' g' p' v' g' x' k' f' g' p' e' g' p' f' h' cevu' u' w' r r' q' t' v' g' cej " eqpenwukqp0

*66+

Etlo kpcn' Ncy " È" 45; // Vtkcn/ Eqwtug" cpf " Eqpf wev' qh' Vtkcn/ Eqpf wev' cpf " F grkdg' t' cvkpu' qh' l' w' t' { // T g' c' f' k' p' i " Vgunko qp { " Chgt U' w' d' o k' u' k' q' p' // N' c' e' n' i' q' h' P' q' w' k' e' c' v' k' p' " v' q' F' ghg' p' u' g' // R' t' g' l' w' f' l' e' g' 0 Kp" c' e' c' r' k' c' n' o' w' t' f' g' t' r' t' q' u' e' w' k' q' p' . " c' n' j' q' w' i' j' " y j g' v' t' k' e' n' e' q' w' t' v' g' t' t' g' f' k' p' r' g' t' o' k' v' k' p' i " e' g' t' v' c' l' p' " v' g' u' n' k' o' q' p' { " v' q' " d' g' " t' g' c' f' " v' q' " y j g' l' w' t' { " f' w' t' k' p' i k' u' f' g' r' k' d' g' t' c' v' k' p' u' y' k' j' q' w' p' q' w' h' l' k' p' i " f' g' h' e' p' u' g' e' q' w' p' u' g' n' " y j g' g' t' t' q' t' y' c' u' j' c' t' o' r' g' u' u' 0' V' t' k' e' n' e' q' w' p' u' g' n' j' c' f' " p' q' v' y' c' k' x' g' f' " y j g' u' c' w' w' q' t' { t' k' i' j' v' q' " d' g' " p' q' v' h' e' g' f' " q' h' l' w' t' { " t' g' s' w' g' u' u' h' q' t' " y j g' t' g' c' f' k' p' i " * 922 " q' h' v' g' u' n' k' o' q' p' { " * R' e' p' 0' E' q' f' g' . " È" 335: +0J q' y' g' x' g' t' . " c' " e' q' p' x' l' e' v' k' p' " y' k' m' p' q' v' d' g' " t' g' x' g' t' u' g' f' " h' q' t' " c' " x' k' l' q' r' v' k' p' " q' h' È" 335: " w' p' r' i' g' u' u' r' t' g' l' w' f' l' e' g' " k' u' u' j' q' y' p' 0' E' q' w' p' u' g' n' u' j' q' w' f' " d' g' " p' q' v' h' e' g' f' " k' p' " q' t' f' g' t' " v' q' " g' p' u' w' t' g' " y' c' v' j' g' q' t' " u' j' g' j' c' u' " c' p' " q' r' r' q' t' w' p' k' x' " v' q' " q' d' l' g' e' v' " v' q' " y j g' " e' q' w' u' g' " q' h' " c' e' v' k' p' w' p' f' g' t' c' n' g' p' d' { " y j g' e' q' w' t' v' q' t' " u' w' i' i' g' u' v' c' p' " c' n' g' t' p' c' v' x' g' " e' q' w' u' g' . " d' w' y j g' r' t' k' o' c' t' { " i' q' c' n' i' u' g' t' x' g' f' " d' { " È" 335: " k' u' " v' q' " r' t' q' x' k' f' g' " y j g' l' w' t' { y' k' j' " y j g' " g' x' k' f' g' p' e' g' " k' " p' g' g' f' u' h' q' t' " k' u' f' g' r' k' d' g' t' c' v' k' p' u' 0' Kp" r' k' i' j' v' q' h' y j g' v' t' k' e' n' e' q' w' t' v' u' r' g' e' k' h' e' " l' p' s' w' k' t' { " y j g' y j g' t' " y j g' l' w' t' { " y j k' u' j' g' f' " v' q' j' g' c' t' " c' f' f' k' k' q' p' c' n' i' r' q' t' v' k' p' u' " q' h' " y j g' t' g' s' w' g' u' v' f' " v' g' u' n' k' o' q' p' { " c' p' f' " y j g' l' w' t' { " u' t' g' u' r' q' p' u' g' . " c' p' f' " y j g' e' k' t' e' w' o' u' c' p' e' g' " y j c' v' y j g' " v' g' u' n' k' o' q' p' { " y j c' v' y' c' u' t' g' c' f' " v' q' " y j g' l' w' t' { " e' r' g' e' c' t' n' " y' c' u' " c' f' o' k' u' l' d' r' g' " c' p' f' " o' g' v' y' j' g' l' w' t' { " u' r' t' e' k' u' g' t' g' s' w' g' u' v' y j g' v' c' t' f' { " p' q' w' k' e' c' v' k' p' " q' h' e' q' w' p' u' g' n' i' c' p' f' " e' q' w' p' u' g' n' u

cdugpeg' h' t' q' o " y j g' t' g' c' f' k' p' i " q' h' " y j g' " v' g' u' n' k' o' q' p' { " e' c' p' p' q' v' j' c' x' g' j' c' f' c' p' { " g' h' g' e' v' w' r' q' p' " y j g' " x' g' t' f' l' e' v' 0

*67+

Etlo kpcn' Ncy " È" 74306//Rwpkuj o gpv/RgpcnM " Vtkcn' qh Ecr kcn' Rtqugewkqp//Gxkf gpeg" kp" Ci i txcxvkap//P qvleg" vq F ghgpf cpv/Cf gs wce { 0 Kp" c' e' c' r' k' c' n' o' w' t' f' g' t' r' t' q' u' e' w' k' q' p' . " f' g' h' g' p' f' c' p' v' t' g' e' g' k' x' g' f' " c' f' g' s' w' e' v' p' q' v' l' e' g' " q' h' " g' x' k' f' g' p' e' g' " q' h' " c' p' " c' u' u' c' w' n' " l' p' v' t' q' f' w' e' g' f' " c' u' " c' i' i' t' c' x' c' v' k' p' i g' x' k' f' g' p' e' g' " f' w' t' k' p' i " y j g' " r' g' p' c' n' M " r' j' c' u' g' " * R' g' p' 0' E' q' f' g' . " È" 3; 206+ . c' p' f' " y j g' v' t' k' e' n' e' q' w' t' v' f' k' f' " p' q' v' g' t' t' " l' p' " h' c' k' k' p' i " v' q' " i' t' c' p' v' f' g' h' g' p' f' c' p' v' c' " e' q' p' v' k' p' w' c' p' e' g' " v' q' " o' g' g' v' " y j k' u' " g' x' k' f' g' p' e' g' 0' D' g' h' q' t' g' " v' t' k' e' n' " y j g' r' t' q' u' e' w' k' q' p' " i' c' x' g' " p' q' v' l' e' g' " v' q' " f' g' h' g' p' f' c' p' v' " y j c' v' " k' " k' p' v' g' p' f' g' f' v' q' " r' t' g' u' g' p' v' " g' x' k' f' g' p' e' g' " l' p' " c' i' i' t' c' x' c' v' k' a' p' " q' h' " f' g' h' g' p' f' c' p' v' u' " r' t' k' q' t' e' q' p' x' l' e' v' k' p' h' q' t' " c' u' u' c' w' n' y' k' j' " c' f' " g' c' f' n' l' " y' g' r' c' p' 0' C' h' g' t' " g' p' v' { " q' h' i' j' g' i' w' k' n' i' j' c' u' g' " x' g' t' f' l' e' v' . " y j g' t' t' q' u' e' w' k' q' p' r' t' q' r' q' u' g' f' " v' q' " e' c' n' i' y' k' p' g' u' u' g' u' y' j' q' y' q' w' f' " v' g' u' n' k' h' l' " p' q' v' q' p' n' l' " v' q' " y j g' e' k' t' e' w' o' u' c' p' e' g' u' " q' h' " y j g' r' t' k' q' t' e' j' c' t' i' g' f' " c' u' u' c' w' n' " v' q' " y j j' l' e' j' " f' g' h' g' p' f' c' p' v' r' r' g' c' f' g' f' " i' w' k' n' i' . " d' w' " c' n' u' q' v' q' " y j g' e' k' t' e' w' o' u' c' p' e' g' u' " q' h' " y j g' t' g' r' c' v' g' f' " c' u' u' c' w' n' " q' p' " y j c' v' " x' l' e' v' k' o' " u' h' c' v' g' t' " y j g' h' q' m' y' k' p' i " f' c' { . " y j j' l' e' j' " t' g' r' c' v' g' f' " e' j' c' t' i' g' y' c' u' f' t' q' r' r' g' f' r' w' t' u' w' c' p' v' v' q' " c' r' r' g' e' c' i' t' g' g' o' g' p' 0' P' q' v' l' e' g' r' w' t' u' w' c' p' v' v' q' È" 3; 206 " y j c' v' y j g' t' t' q' u' e' w' k' q' p' y' k' n' i' r' t' g' u' g' p' v' g' x' k' f' g' p' e' g' t' g' r' c' v' k' p' i " v' q' " c' r' t' k' q' t' e' t' k' o' g' q' t' " e' q' p' x' l' e' v' k' p' " k' u' " u' w' h' l' e' k' p' v' " v' q' " c' r' g' t' v' v' y j g' f' g' h' g' p' u' g' " y j c' v' " g' x' k' f' g' p' e' g' t' g' i' c' t' f' k' p' i " w' p' e' j' c' t' i' g' f' " e' t' k' o' g' u' " q' t' " q' y j g' t' " o' k' u' e' q' p' f' w' e' v' e' q' o' o' k' w' g' f' c' u' r' c' t' v' q' h' y j g' u' c' o' g' l' p' e' k' f' g' p' v' q' t' " e' q' w' t' u' g' " q' h' e' q' p' f' w' e' v' c' u' " y j g' r' t' k' q' t' e' t' k' o' g' q' t' " e' q' p' x' l' e' v' k' p' " o' c' { " d' g' " q' h' h' g' t' g' f' 0' Kp" c' f' f' k' k' q' p' . " c' e' w' e' n' i' p' q' v' l' e' g' o' c' { " d' g' " r' t' q' x' k' f' g' f' " p' q' v' q' p' n' l' " d' { " y j g' u' c' w' w' q' t' { " p' q' v' l' e' g' . " d' w' " d' { u' w' r' r' g' o' g' p' v' c' n' i' k' p' h' q' t' o' c' v' k' p' u' w' e' j' " c' u' r' q' r' i' e' g' t' g' r' q' t' w' 0' Kp" y j k' u' e' c' u' g' . y j g' y' q' " c' u' u' c' w' n' u' y' g' t' g' l' p' v' t' t' g' r' c' v' g' f' . " c' p' f' " f' g' h' g' p' f' c' p' v' t' g' e' g' k' x' g' f' " y j g' r' q' r' i' e' g' t' g' r' q' t' v' t' g' r' c' v' k' p' i " v' q' " y j g' u' g' e' q' p' f' " c' u' u' c' w' n' " u' j' p' i " d' g' h' q' t' g' " v' t' k' e' n' 0' Kp" c' p' { " g' x' g' p' v' " y j g' t' g' y' c' u' " p' q' r' t' g' l' w' f' l' e' g' 0

*68+

Etlo kpcn' Ncy È" 436//Vtkcn/ Eqpvkpcpeg//F kuetgwqp' qh' Vtkcn Eqwtv//C' r' r' g' m' c' v' g' T' g' x' l' g' y' 0 Kp" c' " e' t' k' o' k' p' c' n' i' e' c' u' g' . " y j g' " v' t' k' e' n' e' q' w' t' v' j' c' u' " d' t' q' c' f' " f' k' u' e' t' g' w' k' p' " v' q' f' g' v' g' t' o' k' p' g' y' j' g' y j g' t' i' q' q' f' " e' c' w' u' g' " g' z' k' u' u' " v' i' t' c' p' v' c' " e' q' p' v' k' p' w' c' p' e' g' q' h' " y j g' " v' t' k' e' n' " * R' g' p' 0' E' q' f' g' . " È" 3272 . " u' w' d' f' 0' * g' +0' C' " u' j' q' y' k' p' i " q' h' i' q' q' f' " e' c' w' u' g' " t' g' s' w' k' t' g' u' " c' " f' g' o' q' p' u' t' c' v' k' p' " y j c' v' " e' q' w' p' u' g' n' i' c' p' f' " y j g' f' g' h' g' p' f' c' p' v' j' c' x' g' r' t' g' r' c' t' g' f' " h' q' t' " v' t' k' e' n' i' y' k' j' " f' w' g' f' k' k' i' g' p' e' g' 0' Y' j' g' p' c' " e' q' p' v' k' p' w' c' p' e' g' " k' u' " * 923 " u' q' w' i' j' v' v' q' " u' g' e' w' t' g' " y j g' " c' w' g' p' f' c' p' e' g' " q' h' c' y' k' p' g' u' u' . " y j g' f' g' h' g' p' f' c' p' v' o' w' u' v' g' u' e' d' r' i' k' u' j' " y j c' v' j' g' " q' t' " u' j' g' j' c' f' g' z' g' t' e' k' u' g' f' " f' w' g' f' k' k' i' g' p' e' g' " v' q' " u' g' e' w' t' g' " y j g' y' k' p' g' u' u' " c' w' g' p' f' c' p' e' g' . y j c' v' y j g' y' k' p' g' u' u' " g' z' r' g' e' w' f' " v' g' u' n' k' o' q' p' { " y' c' u' " o' c' v' g' t' k' e' n' i' c' p' f' " p' q' v' e' w' o' w' r' c' v' x' g' . " y j c' v' y j g' " v' g' u' n' k' o' q' p' { " e' q' w' f' " d' g' " q' d' v' c' l' p' g' f' " y' k' j' k' p' " c' t' g' c' u' p' c' d' r' g' " v' k' o' g' . " c' p' f' " y j c' v' y j g' h' c' e' v' u' " v' q' y' j' l' e' j' " y j g' y' k' p' g' u' u' y' q' w' f' v' g' u' n' k' h' l' " e' q' w' f' " p' q' v' q' v' j' g' t' y' k' u' g' " d' g' " r' t' q' x' g' p' 0' V' j' g' e' q' w' t' v' e' q' p' u' k' g' t' u' p' q' v' q' p' n' l' " y j g' d' g' p' g' h' k' " y j c' v' y j g' " o' q' x' l' p' i " r' c' t' v' l' " c' p' v' l' e' k' r' c' v' g' u' " d' w'

f levcv'j g'tguqwtegu'j cv'o wu'dg"cxckrdng"vq"f ghgpf cpvu0
Kpukwkwqpcn' cpf " ugewtkf" eqpegtpu' qh' r tgvtkcn' f gvgpvkqp
hcekrkkgu'o c { " *925 " dg" eqpukf gtgf " kp" f gvgto klpki " y j cv
o gcpu'y kn'dg'ceeqtf gf 'vq'j g'f ghgpf cpv'vq'r tgr ctg'j' ku'qt'j' gt
f ghgpug0Y j gp'v'j g'f ghgpf cpv'j cu'c'rcy { gt'cevki "cu'cf xkuqt {
eqwpugn'j ku'qt'j' gt'tki j w'ctg'cf gs wcvgn' r tqvgevfg 0

*73+

Etlo kpcn'Ncy "È": 904//Tki j w'qh'Ceewugf //Ckf "qh'Eqwpugn/
Ugrh'tgr tguvpcv'kqp//Rgpcn' "Rj" cug"qh'Ecr kcn'Rtqugewkqp//
Mpqy kpi 'cpf "kpvgnki gpv'Y ckgx'qh'Tki j v'vq'Eqwpugn0
F wtkpi "j g'r gpcn' "r j cug"qh'c"ecr kcn'o wtf gt'r tqugewkqp."kp
y j lej "f ghgpf cpv'grgevgf "vq'tgr tguv'v'j ko ugrh'y kj "cf xkuqt {
eqwpugn'f ghgpf cpv'npqy kpi n' "cpf "kpvgnki gpv' "y ckgx' "j ku
tki j v' "vq" eqwpugn0' Chgt' cp' "gzv'p'gf " r gtlqf " qh' r tgvtkcn
kpectegtckv'kp"kp"y j lej "j g"y cu'ceeqtf gf "cf xkuqt { "eqwpugn
ucwuu."f ghgpf cpv'y qwf "j ckg'npqy p"y j gp"j g'ugev'gf "hwm
ugrh'tgr tguvpcv'kqp"y j cv'uqtv'qh'ceegu"vq"j g'vgrg' j ppg"j g
eqwf "gZR gev'v'j cv'j g'qh'g'p'tgwtpgf "vq'v'j g'eqwpv' "lckh'v'cv
pki j v'qp'eqwv'f c { u'cpf "v'j cv'p'qto cm' "v'j g'cv'qtpg { "kpv'g'kgy
tqgo "kp"j g'eqwpv' "lckh'y cu'pqv'qr gp"qp"y gng'p' u'0' Vj g
eqwv'f kf "cf xkg'j ko "v'j cv'j g'y qwf "pqv't'gegkx'cp { "cf f k'kqpcn
r tkl'k'gi gu'0' Cu' m'pi "cu"j g' "tgeqtf "cu" c"y j qrg'uj qy u'v'j cv
v'j g'f ghgpf cpv'wpf gtuqqf "v'j g'f cpi gtu'qh'ugrh'tgr tguvpcv'kqp.
pq" r ctv'ew'et "h'qto "qh"y ctpkpi "ku" tgs w'kg'f 0' H'kpcn'."y j gp
f ghgpf cpv' uqwi j v' ugrh'tgr tguvpcv'kqp."j g" cuugt'v'f "v'j cv'j g
ctg'cf { "j cf "eqp'cev'f "j ku'y kpguugu."mpgy "y j cv'v'j g { "y qwf
uc { "cpf "y cu'r tgr ctg' "vq'r tguv'v'j ku'ecug0

*74+

Etlo kpcn'Ncy "È": 904//Tki j w'qh'Ceewugf //Ckf "qh'Eqwpugn/
Ugrh'tgr tguvpcv'kqp//Rgpcn' "Rj" cug"qh'Ecr kcn'Rtqugewkqp//
Ugewtkf "O gcuwt'gu'kp'Eqwt'v'qgo 0
F wtkpi "j g'r gpcn' "r j cug"qh'c"ecr kcn'o wtf gt'r tqugewkqp."kp
y j lej "f ghgpf cpv'grgevgf "vq'tgr tguv'v'j ko ugrh'y kj "cf xkuqt {
eqwpugn'v'j g'v'tkcn'eqwv'f kf "pqv'cdwug'ku'f kuet'g'v'kp'kp'cm'py kpi
v'j g'dckh'k'h'v'q'ko r qug'eqwv'v'qgo "ugev'wkf "o gcuwt'gu'0'Vj g'eqwv
y cu'y kj kp'ku'f kuet'g'v'kp'kp'ceegr v'kpi "v'j g'dckh'k'h'u'ucvgo gpv
v'j cv' "v'j g'eqwv'v' qwug" f kf "pqv'j ckg' ugewt'g' hcekrkkgu."y j lej
y qwf "dg'p'gegu'ct { "h'q'cp'kp'ewu'v'f { "f ghgpf cpv'eqpx'ev'f "qh
ur gekn'ekt'ewo ucpeg'o wtf gt."h'q'kp'v'g'kgy u'f ghgpf cpv'y kuj gf
vq"wpf g'v'cng"y kj "j ku"lp'x'g'v'ki cv'qt" cpf "r gpcn' "eqpuw'ncp'0
H'w'v'j gt."v'j g'v'tkcn'eqwv'v'ctt'cpi gf "h'q'v'j g'cv'qtpg { "xkuk'kpi "tqgo
cv' "v'j g'eqwpv' "lckh'v'q" dg"o cf g"cxckrdng"vq" f ghgpf cpv' h'q't
gzv'p'gf "j qwtu'0' h'q't'v'j g'uc'o g'ugev'wkf "t'gcu'p'u."v'j g'eqwv'v' cu
y kj kp'ku'f kuet'g'v'kp'kp'ci tgg'kpi "y kj "v'j g'dckh'k'h'u't'gcu'p'cd'rg
cf o qpk'k'qp"v'j cv'f ghgpf cpv'uj qwf "pqv'dg'r gto kwgf "vq"o qxg
cdq'w'v'j g'eqwv'v'qgo "f wtkpi "v'j g'r gpcn' "r j cug"qh'v'j g'v'tkcn'0Cu

h'q't "f ghgpf cpv'u'wug"qh'gzj kdku'qp"v'j g'd'ncend'qctf ."v'j g'eqwv
qdugt'x'gf "v'j cv'cf xkuqt { "eqwpugn'eqw'f "r n'ceg'v'j g'gzj kdku'qp"v'j g
d'ncend'qctf "h'f ghgpf cpv'y kuj gf 0

*75+

Etlo kpcn'Ncy "È": 904//Tki j w'qh'Ceewugf //Ckf "qh'Eqwpugn/
Ugrh'tgr tguvpcv'kqp//Rgpcn' "Rj" cug"qh'Ecr kcn'Rtqugewkqp//
F ghgpf cpv'u'k'p'guu0
F wtkpi "v'j g'r gpcn' "r j cug"qh'c"ecr kcn'o wtf gt'r tqugewkqp."kp
y j lej "f ghgpf cpv'grgevgf "vq'tgr tguv'v'j ko ugrh'y kj "cf xkuqt {
*926 "eqwpugn"v'j g'tgeqtf "uj qy gf "v'j cv'f ghgpf cpv'y cu'pqv
h'q'tegf "vq'r tqeggf "cv'v'j g'r gpcn' "r j cug"y kj "c'ug'k'q'w'u'k'p'guu0
Qp"v'j g'eqwv'ct { "v'j g'tgeqtf "uj qy gf "v'j cv'v'j g'v'tkcn'eqwv'v'p'k'egf
v'j cv'f ghgpf cpv'j cf "rct { pi kku' "cpf "qtf gtgf "v'j cv'j g"t'gegk'g
o gf k'ec'n'c'w'g'p'k'p'."cpf "v'j cv'j g'cr r gctgf "v'j g'h'q'ny kpi "f c { "cpf
eqp'v'k'p'w'f "vq'tgr tguv'v'j ko ugrh'y kj qw'cp { "k'p'f k'ec'v'k'p'v'j cv'j g
y cu'v'q'k'k'v'q'r tqeggf 0

*76+

Etlo kpcn' Ncy " È" 74408//Rw'k'uj o gpv'/Rgpcn' " Rj" cug" qh
Ecr kcn' Rtqugewkqp//Cti wo gpv'/Ci i t'cx'cv'kpi " Gxkf gpeg//
N'cem'q'h'Tgo qtug0
F wtkpi "v'j g'r gpcn' "r j cug"qh'c"ecr kcn'o wtf gt'r tqugewkqp.
f ghgpf cpv'y ckg'f "c'ec'ko "qh'r tqugew'q'tkcn'o k'ueq'p'f w'v'f wtkpi
em'uk'pi "cti wo gpv'd { "h'ck'k'pi "vq"q'dl'gev'cv'v'j g' "ko g'0' k'p' "cp {
gx'gp'v'v'j g'tg'y cu'pq"o k'ueq'p'f w'v'0'Vj g'r tqugew'q't"uwi i g'ug'f
v'j cv'f ghgpf cpv'j cf "f g'v'v'q { gf "u'g'g't'c'r'h'k'g'u."k'p'ev'f kpi "v'j qug'q'h
v'j g'eq'f ghgpf cpv'u."v'j cv'j g'p'qy "y cv'p'f "h'q'ti k'x'g'p'guu."d'w'v'j cv'j g
p'g'x't'j cf "cf o kwgf "j g'j cf "f q'p'g'cp { v'j kpi "v'g't'k'd'ng."cpf "v'j cv'j g
j cf "pq'eqo r cu'k'q'p'cpf "pq'u'q'w'0'N'cem'q'h'g'x'kf gpeg'q'h't'go qtug
ku'c'r tqr gt'lw'dl'gev'h'q't'eq'p'uk'f g't'c'v'k'p'cv'v'j g'r gpcn' "r j cug'0'Vj g
r tqugew'q't'u'eqo o gpv'v'j cv'f ghgpf cpv'j cf "ej kf t'g'p'd { "f k'h'gt'gpv
y qo gp."p'q'p'g'q'h'y j qo "j g'j cf "o c'tt'k'f."y cu'd'cu'gf "w'qp"v'j g
g'x'kf gpeg'cpf "y cu'c'r tqr gt't'g'ur q'p'ug'v'q'f ghgpf cpv'u'g'x'kf gpeg
kp"o k'ki cv'k'p'v'j cv'j g'y cu'c'i q'q'f "h'co k'k' "o cp'cpf "g'zeg'ng'p'v
h'cv' g't'0' H'kpcn'."v'j g'r tqugew'q't'u'eqo o gpv'v'j cv'j g'j cf "j g'ctf
u'qo g'p'g'v'v'cm'k'pi "cd'q'w'v'j g'ec'ug'cpf "uc { kpi "v'j cv'v'j g { "wug'f "c
o cej k'p'g'i w'p'k'p'v'j g'uj cf qy "q'h'c'et'quu.0'y j k'g'r g'tj cr u'w'p'f w'v'
o g'v'f t'co cv'k'."r tqr g'tn' "t'g'h'g't'g'f "vq" g'x'kf gpeg'g'u'v'cd'k'uj kpi "v'j cv
v'j g'o wtf gt'q'ee'w't'gf "k'p'it'q'p'v'q'h'c'ej w'ej "f c { ect'g'eg'p'v'gt'0

*77+

Etlo kpcn'Ncy "È"74404//Rw'k'uj o gpv'/Rgpcn' "Rj" cug'qh'Ecr kcn
Rtqugewkqp//Cti wo gpv'/Eqo o gpv'qp"Y k'p'guugu0
F wtkpi "v'j g'r gpcn' "r j cug"qh'c"ecr kcn'o wtf gt'r tqugewkqp.
v'j g'v'tkcn'eqwv'f kf "pqv'ko r tqr g'tn' "rko k'v'f ghgpf cpv'u'em'uk'pi
cti wo gpv'v'j "v'j g' lwt { "y j gp" k'v' u'w'x'k'p'gf "v'j g'r tqugew'q't'u
q'dl'gev'k'p'v'q" f ghgpf cpv'u'ucvgo gpv'v'j cv'v'j g'r q'r'k'eg'cpf "v'j g

f kntlev'cwqtppg{ 'j cf 'eqphgttgf "cpf 'f gvgto kpgf 'vj cv'j g{ 'y gtg pqv'r tgcugf 'y kj "c'egt vclp'y kpguu'u'ucvgo gpw'vq'j g'r rtkleg0 k'lwuclp'kpi 'vj g'qdlgev'kq. 'vj g'tkcn'eqw v'cungf 'f ghgpf cpv'pqv vq'ej ctcev'gtk'g. "dw'k'pungcf "vq'l'wuv'wuo o ctk'g'vj g'g'xkf gpeg0 K' y cu" r tqr gt "vq" uwuclp' 'vj g" r tqugewqt'u' qdlgev'kq" y j gp f ghgpf cpv' dgi cp" eqo o gpv'kpi " qp" o cwgtu" pqv' y kj kp" 'vj g' g'xkf gpeg. " uwej " cu" 'vj g" o q'kxcv'kq" qh" 'vj g" r tqugewqt" cpf 'vj g" r rtkleg" f wtkpi " k'pvt'xkgy u" y kj " 'vj g" y kpguu' C'nj qwi j f ghgpf cpv' y cu" gpv'kngf " vq" wti g" j ku" k'pvt' r tgcv'kq" qh" 'vj g' g'xkf gpeg. 'j g'y cu' p'q'v'gpv'kngf "vq"cuugt'v'cu'f'cev'o cwgtu'cu'vq y j lej "pq" g'xkf gpeg"j cf "dggp" r t'gugp'v'f'0'k'p' 'vj g' eqpv'z'v' qh f ghgpf cpv'u'cti wo gpv' 'vj g'tkcn'eqw v'u'cf o q'pk'kq'cf gs wcv'ng' eqpx'g' gf "vj ku' r q'lpv." cpf "k'f'k' "p'qv' r t'g'x'gp'v'f' ghgpf cpv'f'it'qo eqpv'k'p'kpi "vq"wti g'j ku'k'pvt' r tgcv'kq'qh'g'x'gp'u'w' r qp' 'vj g' lwt {0 *927

*78+

Etlo kpcn'Ncy "E"742//Rwpluj o gpv/Rgpcn' "Rj cug"qh'Ecr kcn Rtqugewkq// "Hck"cpf "T grkcdng" F gvgto kpcv'kq "Wpf gt "Gki j vj Co gpf o gpv0 k'p" c" ecr kcn' o wtf gt" r tqugewkq. " f ghgpf cpv' hck'ngf " vq f go qpwt'cv'j cv'vj g'ektewo ucpegu'w'pf gt'y j lej "vj g'r gpcn' r j cug"y cu'eqpf wevgf "xk'q'v'g'f' j ku'tki j v'w'pf gt "WUO'E'q'p'u0 : vj "Co gpf 0" vq" c" hck" cpf "t'grkcdng" r gpcn' "f gvgto kpcv'kq 0 Vj g'tgs wkt'gf "t'grkcdng" ku'cwclp'gf "y j gp'vj g'r tqugewkq" j cu f k'uej cti gf "ku'dwt'f'gp'q'hr' t'q'q'h'cv'j g'i wkn'c'p'f' r gpcn' 'r j cugu r wtuwcp'v'v'q' 'vj g't'w'gu'q'h' g'xkf gpeg" cpf "y kj kp" 'vj g" i w'k' g'rk'p'gu qh'c' eqpuk'w'k'q'p'c'n'f' gcv' 'r gpcn' 'u'c'w'wg. 'vj g'f' gcv' 'x'gt'f' lev'j cu dggp't'g'w't'p'gf "w'pf gt" r tqr gt "k'p'ut'w'v'k'p'u'c'p'f' r t'q'egf' w'gu. "cpf 'vj g't'k'gt'q'hr' gpcn' 'j cu'f' w'k' 'eq'p'k'f' g'f' g't'g'x'c'p'v'b' k'ki cv'kpi g'xkf gpeg. 'k'h'c'p'f' . "vj cv'vj g'f' ghgpf cpv'j cu'ej qugp'v'q" r t'gugp'0C l'w'f' i o gpv'q'h'f' gcv' "gp'v'gt'f' k'p'eq'p'ht'o k'f' "y kj "vj g'ug' t'ki q't'q'w u'c'p'f' c't'f' u'f' q'gu'p'q'v'x'k'q'v'g' 'vj g'Gki j vj "Co gpf o gpv't'grkcdng'k'k'f' t'gs wkt'go gpv0

*79+

Etlo kpcn'Ncy "E"742//Rwpluj o gpv/Rgpcn' "Rj cug"qh'Ecr kcn Rtqugewkq// "Lwt { 'O k'ue'q'p'f' w'ev' /T'c'k'ul'p'i 'K'o r t'qr t'k'g'v' 'q'h'I w'kn X'g't'f' l'ev'0 F wtkpi "vj g" r gpcn' "r j cug" qh'c" ecr kcn' o wtf gt" r tqugewkq. 'vj g'tkcn'eqw v'f'k'f' "p'q'v'gtt" y kj "t'gur gev'v'q' 'vj g" i w'kn'x'gt'f' lev'k'p hck'kpi "vq"gzco kpg'vj g'ht'gr gtuqp't'gi c'tf'k'pi "j ku'qr k'p'kq" 'vj cv q'p'g'lw't'q't' cf "hck'ngf "vq" f'grk'dgt'cv'g'f' wtkpi "vj g'i w'kn' r j cug. 'l'up'eg 'vj g'tkcn'eqw v'f' gvgto kpgf 'c'p'f' 'eq'w'p'ug'n'eq'peg'f' g'f' 'vj cv'c'p'f' "gh'ht'v vq'k'o r g'cej 'vj g'i w'kn'x'gt'f' lev'v' cu'v'q"dg'eq'p'f' w'ev'g'f' d{ 'y c{ 'q'h'c' o q'v'k'p' h'q't'p'gy "tkcn0

*7: +

Etlo kpcn'Ncy "E"742//Rwpluj o gpv/Rgpcn' "Rj cug"qh'Ecr kcn Rtqugewkq// "Lwt { 'O k'ue'q'p'f' w'ev' /C'r r g'nc'v'g' T'g'x'k'gy // Y c'k'g't'0 F wtkpi "vj g" r gpcn' "r j cug" qh'c" ecr kcn' o wtf gt" r tqugewkq. f ghgpf cpv' y c'k'g'f' " cp{ " erck " qp" cr r gcn' 'vj cv' 'vj g" lwt {u f'grk'dgt'cv'k'p'u' y g't'c'k'p'v'g'f' d{ 'l'p'g'lw't'q't'u'k'p'c'd'k'k'v' "vq" f'grk'dgt'cv'g d{ 'hck'kpi "vq"q'dl'gev'v'q' 'vj cv'i t'q'w'p'f' 'cv'vj g'v'ko g'0k'p'f'cev' 'ch'ng' 'vj g' tkcn'eqw v'gzco kpgf "vj g'lw't { 'h'q't'gr gtuqp'w'pf' gt'q'cv'j . 'f' ghg'p'ug eq'w'p'ug'n'eq'pen'w'f' g'f' h'q'o "u'q'o g'q'h'v'j g'ht'gr gtuqp'u'ucv'go gpv' vj cv'vj g'lw't'q't' y j q'f' ghg'p'f' cpv'v'erc'ko g'f' 'y cu'w'p'cdng'v'q' f'grk'dgt'cv' k'p'f'cev'v' y cu'c'j q'f'q'w'lw't'q't' y j q'v' cu'v'j g' u'q'ng' u'w' r q't'v'g't' qh c"ug'p'v'peg" r'guu' vj cp'f' gcv' 0'Vj g' r tqugewqt" u'q'w' i v' h'w'v'j g't g'zco kpcv'kq" cpf "cuugt'v'g'f' 'vj g'lw't'q't' 'uj q'w'f' "dg" g'zew'ugf. "dw f ghg'p'ug'eq'w'p'ug'n'x'ki q't'q'w'w'f' "qr r qugf' 'vj g'r tqugewqt'u' t'gs w'g'uv qp' 'vj g' i t'q'w'p'f' 'vj cv'v'j g't'g'f' y cu'p'q' k'p'f' k'ev'k'q'p' 'vj g'lw't'q't' y cu w'p'cdng'v'q' h'q'm'q' 'vj g'rc'y . "cpf "vj cv' h'w'v'j g't'g'zco kpcv'kq" eq'w'f' eq'g'teg'v'j g'j q'f'q'w'lw't'q't' 'vq' i q'c'm'p'i 'y kj 'vj g'b' cl'q't'k'f' 'c'p'f' 'x'q'g h'q't'c' u'g'p'v'peg'q'h'f' gcv' 0

*7: +

Etlo kpcn'Ncy "E"742//Rwpluj o gpv/Rgpcn' "Rj cug"qh'Ecr kcn Rtqugewkq// " Lwt { " O k'ue'q'p'f' w'ev' /G'z'r quw'g" vq" R'w'd'k'ek'f' // C'f' g's w'ce { 'q'h'v'tkcn'Eqw v'k'p's w'k' { 'c'p'f' T'g'ur q'p'ug'0 F wtkpi "vj g" r gpcn' "r j cug" qh'c" *928 " ecr kcn' o wtf gt r tqugewkq. " y j gp" 'vj g" tkcn' eqw'v' y cu' k'p'ht'o g'f' " qh pgy u'cee'q'w'p'u" t'gi c'tf'k'pi "c'ng'i cv'k'p'u" 'vj cv'f' ghg'p'f' cpv'u' y k'ng r qu'gu'ug'f' "c'rk'u'q'h'r gtuqp'u' y j q'o "f' ghg'p'f' cpv'y cp'v'g'f' "n'k'ng'f' k'p t'g'c'rk'v'k'q'p' h'q't' 'vj g'k' r c't'v'k'k' cv'k'q'p' "k'p'j ku' r tqugewkq. "vj g'tkcn eqw'v'f'k'f' "p'q'v'gtt" k'p'f' k'uej cti kpi "y q'lw't'q't'u'd'w'p'q'v'c'v'j k'f' 'y j q j cf "dggp" g'z'r qugf' "vq'v'j ku'f' w'd'k'ek'f' 0H'w'v'j g't. 'vj g'r t'gu'wo r v'k'p'q'h' r t'gl'w' leg'c't'k'ul'p'i "h'q'o "vj g'lw't'q't'u'k'p'c'f' x'g't'v'p'v'g'z'r quw'g'v'q' 'vj ku r w'd'k'ek'f' "y cu't'gd'w'w'g'f' 0'k'p'c'f' f'k'k'q'p. "vj g'tkcn'eqw'v'v' cu'w'p'f' gt p'q'q'd'rk'i cv'k'p'v'q' k'p'ht'o "vj g't'go c'k'p'f' g't'q'h'v'j g'lw't'q't'u. 'y j q'v' g't'g' w'p'cy c't'g'q'h'v'j g'eq'p'v'p'q'h'v'j g'p'gy u't'gr q't'w. "vj cv'vj g't'gr q't'w y g't'g'f' h'c'ng. "p'q't" y q'w'f' "u'wej " cp" k'p'ut'w'v'k'p'u" j c'x'g'f' d'ep'g'h'k'g'f' f' ghg'p'f' cpv'k'p'x'k'gy "q'h'v'j g'lw't'q't'u'k'i p'q't'c'p'eg'0'k'k'w' o k'ue'q'p'f' w'ev h'q't'c"lw't'q't' "vq"t'g'c'f' "q't' r'k'ung'p'v'q'p'gy u'cee'q'w'p'u't'g'nc'v'k'p'i "vq" 'vj g' ecug'k'p' y j lej 'j g'q't' 'uj g'ku'bg't'x'k'p'i 0J q'y g'x'g't. "q'p'c'r r gcn'c'v'tkcn eqw'v'u'et'g'f' k'k'k'v'f' "f' gvgto kpcv'k'p'u'c'p'f' "h'k'p'f' k'pi u'q'p"s w'g'uk'p'p'u qh'j k'w'q't'k'c'n' h'cev'c't'g' c'ee'g'r v'g'f' "k'i" u'w' r q't'v'g'f' "d{ "u'w'w'p'v'k'cn g'xkf gpeg'0'k'p'v'j ku'ecug. 'vj g'tkcn'eqw'v'f' k'uej cti gf "r gtuqp'u' y kj f'g'c'k'ng'f' "n'p'q'y ng'f' i g'q'h'v'j g'eq'p'v'p'u'q'h'v'j g'p'gy u't'gr q't'w="vj g' t'go c'k'p'k'pi "lw't'q't' n'p'gy "x'g't' { "r'k'w'ng. "cuugt'v'g'f' "vj cv'j g'eq'w'f' "dg hck'v'q" f' ghg'p'f' cpv'c'p'f' "vj cv'vj g'r w'd'k'ek'f' "y q'w'f' "p'q'v'c'h'g'ev'j k'o . u'g'go g'f' "t'g'rk'x'g'f' "y j gp" k'p'ht'o g'f' "vj cv'vj g'eq'p'v'p'q'h'v'j g'p'gy u' t'gr q't'w'v' y cu' h'c'ng. "c'p'f' "c'r r g'c't'g'f' "vq'v'j g'eq'w'v'q' dg'r c't'v'k'w'w'c't'nf' eq'p'ue'k'p'v'k'w'0H'w'v'j g't. 'vj g'tkcn'eqw'v'v' cu'l'w'w'k'ng'f' k'p' hck'k'p'i "vq' eq'p'f' w'ev' h'w'v'j g't' k'p's w'k'f' { "q'h'v'j g'lw't'q't'u'c'd'q'w'c'p'c'f' f' k'k'q'p'c'n'p'gy u' t'gr q't'v' t'gi c'tf'k'pi "vj g"cuugt'v'g'f' n'f' "uj c'f' { "r c' { o gpv'q'h' &87.222 vq" f' ghg'p'f' cpv'u' eq'w'p'ug'n'0' C'p' cu'w'o r v'k'p'v'j cv'vj g'lw't'q't'u' r c'k'f

r ctvewrt "cwgpvkqp" vj "g" tlcni'eqwt v' cf o qpkkqp "v" cxqkf
gxr qwtg "v" r wdrekf "y cu'y cttcpvgf . "dgecwug" vj q' lwtqtu' j cf
dggp "f kiej cti gf "hqt' hckkpi "v" qdgd{ "vj cv'cf o qpkkqp0

*82+

Etlo kpcni'Ncy "E"742//Rwpluj o gpv/Rgpcn{ "Rj cug"qh'Ecr kcn
Rtqugewkqp// "Vtlni'Eqwtv'Dku0
F wtkpi "vj g" r gpcn{ "r j cug"qh'c" ecr kcn' o wtf gt" r tqugewkqp.
f ghgpf cpv' y cu'p'v'f gr tkxgf "qhf wgt' tqegu'd{ "cp{ 'lo r ctvcrk{
qt" dku'qp" vj g" r ctv'qh' vj g" tlcni'eqwt v' Gxgp" vj qwi j "vj g" tlcni
eqwt v' gxr gtkgpegf "uqo g' h'wutcvkqp" cv' y j cv' k' dgrkxgf "v" dg
f ghgpf cpv' u' cwgo r w' v' q' o cpl' w' v' g' vj g' eqwt v' cpf "v" ecwug" c
tkni'qh' o kwtkn' pqv' kpi "lp" vj g' tgeqtf "f go qpwtcvgf "vj cv' vj g
eqwt v' iqu'v' ku' lo r ctvcrk{0

*83+

J qo kelf g' E'3230//Rwpluj o gpv/F gcvj "Rgpcn{ //Xcrkf k{ 'cpf
Eqpukwkwqpcrk{0
Vj g' ur gekni'ekewo ucpegu' ugv' hqt vj "lp" Rgp0Eqf g. "E'3; 20f.
ctg' pqv' qxgt kpenwukxg' d{ "vj gkt" pwo dgt "qt" d{ "vj gkt" v' gto u. "cpf
vj g{ 'j cxg' pqv' dggp' eqpwt v' gf "lp" cp' w' pf w' k' "gxr cpukxg' o cpggt0
J gpeg. "vj ku" r qt v' kqp" qh' vj g' f gcvj "r gpcn{ " ucwug" f qgu' pqv
xkqr v' g' WLU0Equn07 vj . '8 y . : vj . 'qt' 36 vj "Co gpf u0

*84+

J qo kelf g' E'3230//Rwpluj o gpv/F gcvj "Rgpcn{ //Ci i txcv'kpi
Hcevqtu// " Ektewo ucpegu" qh' Etlo g//Xcrkf k{ " cpf
Eqpukwkwqpcrk{0
Rgp0 Eqf g. "E' 3; 20f. " hcevqt " *c+ " y j lej " r gto ku" vj g' lwt {
f wtkpi "vj g" *929 "r gpcn{ "r j cug"qh'c" ecr kcn' r tqugewkqp" vj
eqpukf gt" vj g' ekewo ucpegu' qh' vj g' etlo g' "lp" ci i txcv'kqp. "ku
pqv' xkqr v' kxg' qh' WLU0Equn0": vj "Co gpf 0" qp" vj g' dcuku' qh
xci wgp' gu' qt" vj g' i tqw' pf u0 Vj g' lwt ku' twf gpeg" qp" ecr kcn
r wpluj o gpv' j cu' gu' d' r k' j gf "vj cv' vj g' ugv' p' g' e' j q' w' f' eqpukf gt
vj g' ekewo ucpegu' qh' vj g' etlo g' "lp" f' gekf kpi "y j g' vj g' v' q' lo r qug
vj g' f' gcvj "r gpcn{ . 'cpf "vj ku' hcevqt' k' p' ut w' v' vj g' lwt { "v' eqpukf gt
c' t' g' r' x' cp' v' i' w' d' l' g' e' v' o' c' w' g' t' c' p' f' f' q' g' u' l' q' k' p' w' p' f' g' t' u' c' p' f' c' d' r' g' v' g' t' o' u' 0
Hwt vj gt. "k' l' u' p' q' v' l' p' c' r' t' q' r' t' k' v' g' vj cv' c' r' ctvewrt' ekewo ucpeg
qh' c' ecr kcn' etlo g' o c { "dg" eqpukf gtgf "ci i txcv'kpi "lp" qpg
ecug. "y j kg" c' eqp' t' c' u' k' pi "ektewo ucpeg" o c { "dg" eqpukf gtgf
ci i txcv'kpi "lp" cp' q' j' g' t' ecug0 Vj g' ugv' p' g' e' t' "ku' v' q' eqpukf gt" vj g
f ghgpf cpv' u' k' p' f' k' k' f' w' e' w' r' c' d' k' k' v' { "v' g' t' g' "ku' p' q' " eqpukwkwqpcn
tgs w' k' g' o' gpv' vj cv' vj g' ugv' p' g' e' t' " eqo r ctg" vj g' f ghgpf cpv' u'
ewr cdkk{ "y k' j' "vj g' ewr cdkk{ "qh' vj g' t' f ghgpf cpv' u' C' lwt {
uj q' w' f' eqpukf gt" vj g' ekewo ucpegu' qh' vj g' etlo g' "lp" f' g' v' g' t' o' k' l' p' i
r gpcn{ . "dw" vj ku' ku' cp' k' p' f' k' k' f' w' e' r' k' f' g' f . "pqv' c" eqo r ctv' kxg

hwpevkqp0Vj g' hqewa' ku' w' r' q' p' vj g' k' p' f' k' k' f' w' e' r' e' c' u' g' . 'c' p' f' ' vj g' l' w' t { ' u
f k' u' e' t' g' v' k' p' ' k' u' ' d' t' q' c' f' 0

*85+

J qo kelf g' E' 3230//Rwpluj o gpv/F gcvj " Rgpcn{ //Gs wcn
Rtqugewkqp0
F k' u' k' p' e' v' k' p' ' k' p' ' t' g' c' w' o' g' p' v' d' g' y' g' p' ' e' c' r' k' c' n' i' f' g' h' g' p' f' c' p' w' ' c' p' f' ' q' v' j' g' t'
r g' t' u' q' u' p' u' e' q' p' x' k' e' v' g' f' ' q' h' h' g' r' p' l' e' g' u' ' k' u' ' p' q' v' c' t' d' k' t' c' t { 0

*86+

J qo kelf g' E' 3230//Rwpluj o gpv/F gcvj " Rgpcn{ //
Eqpukwkwqpcrk{ //Lwt { u' Dwt f gp' qh' Rtqqh0
Vj g' f' gcvj " r gpcn{ " rcy " f qgu" pqv' xkqr v' g' WLU0Equn0": vj
cpf "36 vj "Co gpf u0" lp" ku' hckkwt g' v' k' p' ut w' v' vj g' lwt { "cu' v' q' c
dwt f gp' qh' r' tqh' k' p' u' g' r' e' v' k' p' i " vj g' r' gpcn{ "v' dg' ko r qugf 0Wp' r' k' g'
vj g' i' w' k' v' f' g' v' g' t' o' k' p' c' v' k' p' . "vj g' u' g' p' v' g' e' k' p' i " h' w' p' e' v' k' p' ' k' u' ' k' p' j' g' t' g' p' w' f'
o q' t' c' n' i' c' p' f' ' p' q' t' o' c' v' k' x' g' . ' p' q' v' h' e' w' e' r' c' n' i' c' p' f' ' j' g' p' e' g' . ' p' q' v' u' w' e' g' r' v' d' r' g' v' q'
c' d' w' t' f' g' p' q' h' r' t' q' q' h' s' w' c' p' v' h' e' c' v' k' p' 0 Vj g' k' p' ut w' e' v' k' p' u' c' u' c' y' j' q' r' g'
c' f' g' s' w' c' v' g' n' " i' w' k' f' g' vj g' lwt { "lp" e' c' t' t' { k' p' i " q' w' vj g' k' t' o' q' t' c' n' i' c' p' f'
p' q' t' o' c' v' k' x' g' h' w' p' e' v' k' p' 0

*87+

J qo kelf g' E'3230//Rwpluj o gpv/F gcvj "Rgpcn{ //Ci i txcv'kpi
Hcevqtu// " Rtkt" Ej cti g' F luo ku' g' f' Rwtu' w' p' v' v' q' " Rrgc
Ci t' g' g' o' g' p' v' / X' c' r' k' f' k' { ' c' p' f' ' E' q' p' u' k' w' k' w' q' p' c' r' k' { 0
F wtkpi "vj g" r gpcn{ "r j cug"qh'c" ecr kcn' o wtf gt" r tqugewkqp.
vj g' wug. "lp" ci i txcv'kqp. "qh' g' x' k' f' g' p' e' g' qh' c' r' t' k' t' " cu' c' w' n' . " c
ej cti g' vj cv' j' cf "dggp" f' t' q' r' g' f' " r' w' t' u' w' e' p' v' v' q' " f' g' h' g' p' f' c' p' v' u' r' r' g' c'
ci t' g' g' o' g' p' v' . f' k' f' ' p' q' v' e' q' p' u' k' w' w' g' c' d' t' g' e' j' ' q' h' v' j' g' r' r' g' c' c' i' t' g' g' o' g' p' v' 0
Vj g' k' p' ut q' f' w' e' v' k' p' ' q' h' g' x' k' f' g' p' e' g' . r' w' t' u' w' e' p' v' v' q' Rgp0Eqf g. "E'3; 20f.
hcevqt "d+ "qh' vj g' h' c' e' u' v' p' f' g' t' n' k' p' i ' e' j' c' t' i' g' u' f' k' u' o' k' u' g' f' ' c' u' t' c' t' v' q' h'
c' r' r' g' c' c' i' t' g' g' o' g' p' v' f' q' g' u' p' q' v' x' k' q' r' v' c' f' g' h' g' p' f' c' p' v' u' e' q' p' u' k' w' k' w' q' p' c' n'
t' k' i' j' w' 0 Hwt vj gt. "f ghgpf cpv' f' k' f' "pqv' f' go qpwtcv' g' vj cv' j' g' y' cu
r' t' q' o' k' u' g' f' " vj cv' g' x' k' f' g' p' e' g' qh' vj g' c' u' c' w' n' y' q' w' f' " p' q' v' d' g' w' u' g' f'
c' i' c' l' p' u' v' j' k' o' " k' p' h' w' t' vj g' t' r' t' q' e' g' g' f' k' p' i' u' 0

*88+

Etlo kpcni' Ncy " E' 7430//Rwpluj o gpv/Rgpcn{ " Vtlni' qh
Ecr kcn' Rtqugewkqp- J qo kelf g' E'3230//O kki cv'kpi " Hcevqtu//
F ghgpf cpv' u' " *930 " Wptgcu' q' p' c' d' r' g' " Dgrkgh' lp" O q' t' c' n'
Lw' u' h' e' c' v' k' p' 0
F wtkpi "vj g" r gpcn{ "r j cug"qh'c" ecr kcn' o wtf gt" r tqugewkqp.
Rgp0Eqf g. "E'3; 20f. " hcevqt " h+ " y j g' vj g' t' q' h' h' g' p' u' g' y' cu' e' q' o' o' k' w' g' f'
w' p' f' g' t' " e' k' e' w' o' u' c' p' e' g' u' y' j' l' e' j' " f' g' h' g' p' f' c' p' v' t' g' c' u' q' p' c' d' n' " d' g' r' k' x' g' f'
v' q' " d' g' " o' q' t' c' n' i' Lw' u' h' e' c' v' k' p' " q' t' " g' z' v' p' w' c' v' k' p' " h' q' t' " f' g' h' g' p' f' c' p' v' u'
e' q' p' f' w' e' v' : f' k' f' ' p' q' v' k' o' r' t' q' r' g' t' n' " h' o' k' e' q' p' u' k' f' g' t' c' v' k' p' ' q' h' b' k' k' i' c' v' k' p' i'
g' x' k' f' g' p' e' g' qh' f' g' h' g' p' f' c' p' v' u' w' p' t' g' c' u' q' p' c' d' r' g' " d' g' r' k' g' h' vj cv' j' ku' x' l' e' v' o' .

c'r qrlæg'f gvevæg; j cf 'ugv'j ko "w' hqt'cp'gctrlg't r tqugevklp0 P q" ko r tqr gt" rko kvkqp" qp" vj g" lwt {u' eqpukf gtcvqp" qh o kki cvkpi " gxf gpeg" qeevu" d { " xkwg" qh' vj g" y qtf kpi " qh Rgp0Eqf g. 'E'3; 205. 'hcevt' "h0 Vj g" o kki cvkpi " xcvwg" qh' c f ghgpf cpv'u' vptgcuqpcdrng' dgrgh'lp" o qtcn'lwukh'ecvqp' hqt. "qt kp"gz'vpcvqp"qh" vj g'etko g" o c { "dg'eqpukf gtgf "r wtuwcpv'vq Rgp0Eqf g. 'E'3; 205. 'hcevt' "m: "cpf "wv'gt'v'j g'lwt { 'kpuv'wv'kqp. cu'i kxgp'lp" f ghgpf cpv'u' ecug. "vj cv'v'j g'lwt { "o c { "eqpukf gt'cp { qv'j gt'ektewo ucpeg'y j lej "gz'vpcv'v'j g'i tcvk' { "qh'v'j g'etko g xgp'v'j qv'j j 'k'ku'p'q'v'c'rgi c'n'gzewug'hqt' vj g'etko g0

EQWP UGN

O lej cgn' T0Upf gngt' cpf "Lco gu' H0Uo kj . 'wv'gt' 'cr r qkpo gpvu d { 'v'j g'Uw' tgo g'Eqv'w' hqt' F ghgpf cpv'cpf "C'r r gncpv0 F cplgn' G0 Nwpi tgp" cpf "Dkn' Nqem' gt. " Cwqtpg { u' I gpgtcn I gqti g'Y knko uqp. 'Ej lgh'Cuukwcpv' Cwqtpg { 'I gpgtcn' Ectqn Y gpf gk'p' Rqmcem' Cuukwcpv' Cwqtpg { " I gpgtcn' Iqj p" T0 I qtg { . " Tqdg'tv' U' J gpt { " cpf " Tq { " E0' Rtgo kpi gt. " F gr wv' Cwqtpg { u' I gpgtcn' hqt' R'rc'lp'k'h' { cpf " Tgur qpf gpv0

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Hqmqy kpi " vj g" i wkn' r j cug" qh' c" ecr kcn' v'kcn" kp" y j lej f ghgpf cpv' y cu' tgr tguqvgf " d { " v'j q' f ghgug' eqwvugn" c" lwt { hqwpf " f ghgpf cpv' F cplgn' Uvgxp' I gpnkpu' i wkn' . " co qpi " qv'j gt ej cti gu. " qh' vj g' h'ku' f gi tgg" o wtf gt" qh' cpf " eqpur kce { " v'j o wtf gt" Vj qo cu' Y knko u' " Rgp0Eqf g. 'E'3: 4. " 3: 9. " 3 " cpf qh'v'j g'cwgo r v'g'f " o wtf gt" qh' l' gqti g' Ectr gpvgt " E'3: 9. " 886-0 Vj g' lwt { " hqwpf " v'w'v'j g' ur gekn' ektewo ucpeg' cmgi cvkqp " vj cv Y knko u' y cu' c" r gceg' qh' h'egt " y j q' y cu' nkn' g' " kp'v'v'k'p'cm' kp" tgv'k'cvkqp" hqt' vj g' r gthqto cpeg' qh' j ku' qh' h'ekn' f wkgu' " E'3: 204. " u'wdf 0'c-#9-0' C'v'v'j g' r gpcn' { 'r j cug. 'kp' y j lej 'f ghgpf cpv r tko ctkn' tgr tguqvgf " j ko ugrh' vj g' lwt { " h'z'gf " vj g' r gpcn' { " cv f gc'v' 0' Vj g' v'kcn' eqw'v'f gp'k'f " f ghgpf cpv'u' o q'v'k'p' hqt' pgy " v'kcn cpf " hqt" o qf k'k'ecvqp" qh' vj g' x'gtf kev. " cpf " ko r qugf " c " u'g'v'v'peg qh' f gc'v'j 0' *931

3 Cml' hwt vj gt " ucwvwt { " tghgt' p'egu" ctg" v'j g' Rgpcn Eqf g' w'p'rguu' v'j gty kug' l'p'f k'ecv'g'f 0

Vj ku' cr r gcn' ku' cwqo cv'k'0 " Ectr0' Eqpu0 " ct'v'0' X'K' E'33 " Rgp0 Eqf g. " E'345; . " u'wdf 0' *d-0' Y' g' eqpenw' g" vj cv' v'j g' lwt i o gpv uj qwf " dg' c' h'kto gf " kp' ku' p'v'k' g'v'f 0

I. Facts

A. Guilt Phase Evidence

1. Prosecution case

Vj g' r tqugevklp'u' gxf gpeg" f go qpvt'cv'g'f " vj cv' f ghgpf cpv r r'ppgf 'cpf 'eqo o kwgf 'v'j g'etko gu'cv'kuuw'lp'v'j ku' t'q'eg'g'f kpi . kpxq'k'k'pi " vj g' cwgo r v'g'f " o wtf gt" qh' l' gqti g' Ectr gpvgt " cpf vj g' eqpur kce { " v'j o wtf gt" cpf " cewcn' o wtf gt" qh' Nqu' C'pi g'rgu Rqrlæg' F gr ctvo gpv'F gvevæg' Vj qo cu' Y knko u. " d'gecvwg'lp'c v'kcn' hqt" tqddgt { " Ectr gpvgt " *cu' v'j g' tqddgt { " x'k'ek'o -'y cu' v'j g r t'k'p'ek' c'n' t'qugevklp' y k'p'guu' c'i c'k'p'v'f ghgpf cpv'cpf " Y knko u y cu' v'j g' k'p'x'g'v'ki cvkpi " q'h' h'egt0

Vj g' tqddgt { " qh' Ectr gpvgt " qeewt'g'f " kp" P qt'v'j " J qm' y q'qf kp" Qev'q'g't " 3; : 6. " y j k'g' Ectr gpvgt " cpf " cp'q'v'j gt" o cp' y gtg gp" tqw'g' v'j g' f gr quk' v'j g' f c { u' dw'k'p'guu' t'ge'g'k' w'0' Ectr gpvgt uwr r r'g'f " vj g' r qrlæg' y k'j " c' r'eg'p'ug' p'wo dgt' qh' v'j g' cwqo qd'k'g' kp" y j lej " vj g' v'j q" o gp" y j q' j cf " tqddgt " j ko " y gtg' f t'k'k'pi . cpf " vj cv'x'g'j k'eng' y cu' t'ce'g'f " v'j f ghgpf cpv'0' F ghgpf cpv'cf o kwgf j ku' k'p'x'q'k'g' g'p'v'v'q' q'p'g' qh' j ku' etko k'p'c'n' eqj q'tw' d'w'f g'ec't'g'f j ku' k'p'p'q'eg'peg' v'j g' f gvevæg' Y knko u'0' Ectr gpvgt " r qu'k'k'g'ng' k'f g'p'v'k'g'f " f ghgpf cpv' " dq'v'j " v'j g' Y knko u' cpf " ci c'k'p' cv' vj g r t'g'ko k'p'ct { " j g'ct'k'pi . " cu' q'p'g' qh' v'j g' y q' cu' c'k'c'p'v'0

a. Attempted murder of George Carpenter

F ghgpf cpv'o cf g'v'j q'cwgo r w'v'q'j c'x'g' Ectr gpvgt 'h'kn'g'f 0' h'k'uv. j g' j k'g'f " Lgh't'g' { " Dt { cpv' cpf " Vq'f f " Uj cy " v'j n'kn' Ectr gpvgt. dw' ecn'g'f " qh' v'j g' cwgo r v'j y j gp" Uj cy " h'c'k'g'f " v'j h'qmqy j ku' r t'g'ek'ug' k'p'ut'w'v'k'p'u'0' Lgh't'g' { " Dt { cpv' " v'g'v'k'h' { k'pi " w'p'f gt" c i t'cpv' qh' ko o w'k'v'f . " t'ge'q'w'v'g'f " vj cv' f ghgpf cpv' eqo o g'p'v'g'f . öpq" y k'p'guu. " p'q' ecug'0' ö" Qp' Lw'v'f " 6. " 3; : 7. " cv' f ghgpf cpv'u d'g' guv. " Cp'v'j qp { " Dt { cpv' u'j qv' Ectr gpvgt. " y j k'g' f ghgpf cpv cpf " Lgh't'g' { " Dt { cpv' g'w'cd'k'uj gf " cp' c'k'k'k' h'qt' f ghgpf cpv'0' Vj g r tqugevklp'u' gxf gpeg' g'w'cd'k'uj gf " vj cv' Ectr gpvgt " y cu' f k'p'k'pi kp" c" t'g'uc'w'cpv' y j gp" c" o cp' u'j qv' j ko " kp" vj g' j g'cf . " v'qtuq. cpf " ngi u'0' C'v'g't " o w'k'k' r'g' u'w'ti g't'k'g'u. " Ectr gpvgt " y cu' t'g'rc'ug'f h'qo " vj g' j qur k'cn' cpf " h'ng'f " vj g' ct'g'c'0' Lgh't'g' { " v'g'v'k'h'g'f " vj cv j g' j cf " j g'ctf " Cp'v'j qp { " cf o k'v' u'j q'v'k'pi " Ectr gpvgt'0' Lgh't'g' { c'n'q' v'g'v'k'h'g'f " vj cv' j g' q'd'ug't'x'g'f " f ghgpf cpv' r c { " Cp'v'j qp { " h'qt vj g' u'j q'v'k'pi . " vj cv' j g' " Lgh't'g' { . " j cf " f k'ur qu'g'f " qh' vj g' " u'q'rg'p cwqo qd'k'g' w'ug'f " kp" vj g' u'j q'v'k'pi . " cpf " vj cv' f ghgpf cpv' j cf f k'ur qu'g'f " qh' vj g' y g'c' r qp" i k'x'gp' d { " f ghgpf cpv' v'j g' Cp'v'j qp { " v'j r g' thqto " vj g' u'j q'v'k'pi 0' Cp'v'j gt' y k'p'guu. " cp' " ces'w'k'p'c'peg' qh f ghgpf cpv'u' p'co gf " G'k'j w'g' D't'q'qo h'ng'f . " v'g'v'k'h'g'f " vj cv' f ghgpf cpv v'q'f " j ko " j g' " *932 " j cf " j k'g'f " o gp' v'j u'j q'v'k'pi Ectr gpvgt " kp" c J qm' y q'qf " d'ct. " dw' v'j cv' f g'ur k'g' o w'k'k' r'g' i w'p'uj q'v' y q'w'p'f u. Ectr gpvgt " j cf " u'w'x'k'g'f 0' Vj g' r tqugevklp'u' c'n'q' k'p'v'q'f w'eg'f v'g'r j q'p'g' eqo r cp { " t'ge'q't'f u' g'w'cd'k'uj k'pi " eq'p'v'c'v' d'g'y g'gp f ghgpf cpv' Uj cy . " cpf " Cp'v'j qp { " cpf " Lgh't'g' { " Dt { cpv' t'k'q' v'j g' u'j q'v'k'pi 0

b. Murder of Detective Williams

F gvevkg'Y knkco u'y cu'nknkf "lp" c'ur tc{ "qh'i wphktg"lp"ltqpvc
qh'j ku'uqpu'f c{ectg'egpvtg"lp"vj g'gctn{ "gxgpkpi "qh'Qevdgt
53.'3; : 70F ghgpf cpv'cnpqi 'y kj 'eqf ghgpf cpw'F wcp'g'O qqf {.
Twdgp"O quu."Xqncktg"Y knkco u."F cxf "Dgpvrg{."cpf "Tgge{
Eqqr gt+y cu'ej cti gf "y kj 'y g'o wtf gt"qh'F gvevkg'Y knkco u
cpf 'y kj 'eqpur kce{ "v'o wtf gt"Y knkco u⁴

4 Cv' yj g' i wkn' r j cug' qh' yj g' vkn' f ghgpf cpv' y cu
vkgf 'lqkpn{ 'y kj 'eqf ghgpf cpv'O quu'dghqtg'ugr ctcvg
lvtkgu."dw' cv' yj g' r gpcn{ " r j cug." f ghgpf cpv' y cu
vkgf 'ugr ctcvgn{OEqf ghgpf cpw'O qqf {."Eqqr gt."cpf
Y knkco u'y gtg'vkgf 'ugr ctcvgn{ 'htqo "f ghgpf cpv'O

Vj g' gxf gpeg" tgi ctf kpi " f ghgpf cpv'u" lpxqkgo gpv' kp" yj g
eqpur kce{" cpf " yj g' o wtf gt" qh' F gvevkg' Y knkco u" eco g
r tko ctkn{ 'htqo " yj g'vkuo qp{ "qh'ko o wpk gf "y kpguug/F cxf
Dgpvrg{."Lghgtg{ "Dt{cpv."Crcf tqp"J wpgt."cpf "V{tqpg"J lemu
Vj gk' vkuo qp{." kp" cf f kkp" vj " vkuo qp{" htqo " r gtuqpu
y j q"y kpguugf "yj g'uj qqvpi ."qt"v" y j qo "f ghgpf cpv'o cf g
kpetko kcvpi " ucvgo gpw." qt" y j q" y gtg" lpxqkxf " kp" yj g
f kur qucn'qh'v' g'o wtf gt'y gcr qp."cu'y gni'cu'dcn'ku'g'xkf gpeg
cpf "vgrj qpg"tgeqt u." gucdkuj gf " yj cv'f ghgpf cpv' f kgevgf
xctkqu'r rpu'ht"qj gtu'v'kn'Y knkco u."cpf "wko cvgn{ 'yj cv
f ghgpf cpv'j ko ugh'nknkf "Y knkco uO

F ghgpf cpv'vknkkgf Lghgtg{ "Dt{ cpv'v'o wtf gt"Y knkco u."vknpi
j ko " yj cv'j g'y kuj gf "v" r tggp'Y knkco u'u"vkuo qp{ "cv' yj g
Ectr gpvt' lqddgt{ "vkn'F ghgpf cpv'gpi ci gf 'kp'uo g'r rppkpi
cevknk{ "y kj "Dt{cpv."dw'y j gp"Dt{cpv'hw'p'q"Y knkco u
y cu'pq'c" ugewk{ "i wctf." cu'f ghgpf cpv'j cf " f gcrtgf." dw
kpv'gf "y cu'c'r knkkg'qhtegt."Dt{cpv'cppqpegf "j g'y qwf "pqv
r ctvkr cvgO

Qp'Qevdgt'46.'3; : 7."eqf ghgpf cpv'Xqncktg"Y knkco u'vknkkgf
Crcf tqp"J wpgt"v" r gthqto " yj g'o wtf gt."ht" yj g'cppqpegf
r wtr qug'qh'r tggp'vpi " yj g'f gvevkg'u'vkuo qp{ "kp'eqw'Qp
Qevdgt'47.'3; : 7."Xqncktg"ftq'g'y kj "J wpgt"v" f ghgpf cpv'u
j qo g'O Xqncktg" gpvtgf " yj g' tgu'f gpeg" cpf "tgwtpgf "y kj "c
y gcr qp'O Xqncktg" i qv' kvq" cp" cwqo qdkrg' kf gpv'kfg" d{ "c
y kpguu" vj " yj g'uj qqvpi "qh' yj g' f gvevkg' cu' dglpi "uko kct
v" yj g' xgj kerg" htqo " y j lej " yj g'uj qw" y gtg" hktgf O' J wpgt
hmqy gf "Xqncktg"v" c"mccv'q" c" hgy "dnem' r cu'c" uej qqn
cpf "y cu' kputvevgf "d{ "Xqncktg"v" y ck'ht" cp" qtcpi g/cpf /
y j kg"Vq{ qvc" r kmw "tvenly kj "c"eco r gt"uj gni'q" yj g'dcenO
Xqncktg" kputvevgf "J wpgt"v" f tkxg" d{ " yj g' r kmw "tvenl'cpf
uj qqv' yj g' kpv'gf gf "xlevo "kp" yj g' gcf "chgt" yj g'ncwtg." y j qo
j g' f guetkdgf ." j cf " r lengf " w " j ku' ej kf " htqo " yj g' uej qqnO
Xqncktg" *933 " ucv'gf " j g' pggf gf "v" i gv' kputvev'qpu' htqo
f ghgpf cpv'tgi ctf kpi "y j gp" yj g'xlevo "y qwf "cttkxg'O Xqncktg

yj gp'tgtkxgf "yj g'y gcr qp'htqo 'j ku'cwqo qdkrg'cpf 'i cxf'kv'q
J wpgtO

J wpgt"hw'p' "j ko ugh'n'wpcdr'v"uj qqv' yj g'xlevo "y j gp" j g
cttkxgf O'J wpgt"o gv'Xqncktg"ncvtg"lp" yj g'gxgpkpi ."lphqto kpi
j ko " yj cv'j g"j cf "pq'ecttkgf "qw" yj g'uj qqvpi "cpf "qdugtxkpi
yj cv'j g" yj qw' j v' yj g'kpv'gf gf "xlevo "y cu'c'r knkkg'qhtegt"cpf
pq'c'ugewk{ 'i wctf O

Vy q'r gtuqpu'y j q' hkgf "pgct" yj g' Hckj "Dcr kuv'Ej wej "Uej qqn
kp" Ecpqi c" Rctm" y j gtg" yj g'uj qqvpi "qh'F gvevkg'Y knkco u
qewt'gf."vknkkgf "yj cv'qp"Qevdgt'47.'3; : 7." yj g' "qdugtxgf
eqf ghgpf cpw'O qqf { "cpf 'O quu'kp"cp'cwqo qdkrg' r ctn'f "pgct
yj g'uej qqn'O' yj kf "o cp'ugcv'f "kp" yj g'tgct"qh'v' g'xgj kerg" o c {
j cxf'dggp'f ghgpf cpv'O

F ghgpf cpv'cnuq'br r tqcej gf "F cxf "Dgpvrg{ "y q'qt" yj tgg'y gmu
dghqtg"J cmqy ggp'kp'3; : 7."ht'cuukcpeg'kp'kpf kpi "c'eqp'tcev
nkngt'O'Dgpvrg{ "u'vknkkgf "V{tqpg"J lemu."y j q"eqp'htg"gf "y kj
O quu."Dgpvrg{."cpf "f ghgpf cpv'tgi ctf kpi "vto u'O'F ghgpf cpv
f kgevgf "J lemu"v'eqo g'v'j ku'j qo gO

Vy q'qt" yj tgg'f c{ u'dghqtg"J cmqy ggp'kp'3; : 7."O quu."Eqqr gt.
cpf " Dgpvrg{ " r lengf " w " J lemu." lphqto kpi " j ko " yj g{ " y gtg
i qkpi "v"uj qy "j ko "y j cv'j g'y cu'uw' r qugf "v" f qO'Y j gp" yj g
o gp"cttkxgf "cv'f ghgpf cpv'u"j qo g."J lemu"y cu'kputvevgf "v'
f ghgpf cpv'cu'v'j g'f tkxgtO

F ghgpf cpv'y gpv'y kj "Dgpvrg{ "v'c'htq'q'w'v' qkpv'cpf 'kputvevgf
j ko "v"m'q'ht" c"uo cni'qtcpi g"Vq{ qvc"qt" F cvw'p'tvenly kj
c"eco r gt"uj gni'q"kv" ucv'pi " yj cv'v' g'o cp'kp" yj g'tvenly cu
yj g'r gtuq'p"j g'y cv'v'f "v"j cxf'nknkf."cpf "yj cv'Dgpvrg{ "y cu'v'
eqp'cev'O quu'y j gp"Dgpvrg{ "ucy " yj g'tvenl'cpf 'lphqto "j ko "qh
yj g'f kgev'q" yj g'tvenly cu'j gcf gf O

Dgpvrg{ "y ckgf "42'b kpv'gu." f kf "pq'v'gg' yj g'tven'cpf 'tge'kxgf
pq'tgur qpug'y j gp"j g'cev'cv'gf "O quu'r'ci gtO

Kp' yj g'o gcv'ko g."O quu"j cf "f tkxgp"J lemu'cpf "Eqqr gt"v" yj g
ej wej "uej qqn" y j gtg"j g' i cxf' yj g'o "kputvev'qpu'tgi ctf kpi
yj g'o wtf gt'O'Y j krg' yj g{ "y ckgf."O quu' ucv'gf " yj cv' r tgg'kqu
cwgo r w'qp" yj g'xlevo u'vknkkgf "j cf "hknkf."kp" qpg'ecug'dgecvw
yj g' i wpo cp'j cf "muv'j ku'p'gtxgO

J lemu" qdugtxgf " yj g' qtcpi g/cpf /y j kg" tvenl' ctkxg" cv' yj g
uej qqn" dw'k'f gr ctvgf "dghqtg" yj g' r rcp'eqw'f "dg"gzgewgf O
F ghgpf cpv'ncvtg'dgtcv'gf "O quu."cpf "eqo r rcp'gf "yj cv'pqy "yj g
xlevo "y qwf "dg'cdrg'v'v'ku'k{ "ci ckpu'v'j ko " yj g'hmqy kpi "f c{O

i wphkg"cpf "ucy "vj g"uco g"xgj kerg"eqo g"wr "vj g"utggv"cpf tcr kf n"ceegrctcv"q"82"qt"87"o kgu"r gt"j qwt0Vj g"dtqvj gt qh"vj ku"y kpguu"cr r tqcej gf "vj g"xgj kerg"q"cf xkug"vj g"ftkxgt vj cv"j ku"j gcf rki j w"y gtg"pqv"qp0Vj g"y kpguu"y cu"pqv"egtvc"p y j gjv gt"vj g"ftkxgt/cr r ctgpnv"vj g"uqrg"qeewr cpv"y cu"Chkcep/Co gtlecp."J kur cple."qt"Y j kg."vj qwi j "j g"tgr qtvgf "q"vj g r qrlkg"vj cv"vj g"ftkxgt"y cu"Y j kg0

C" r gtuqp" qp" vj g" i tqwpf u" qh" vj g" Hckj " Dcr vku" Uej qqn qp" vj g" gxgplki " qh" vj g" o wfgt" j gctf" y j cv" j g" vj qwi j v y gtg"htgetcengtu"gzr mlf kpi "cpf "ucy "cp" *936 "Qrf uo qdkg. r quukdn" y j kg." ur ggf kpi " f qy p" vj g" utggv" kp" htqp" qh" vj g r tqr gtv" y kj "ku"rki j w"qht0C"j wudcpf"cpf "y klg"ftkxkpi "pgct vj g"uej qqn"chgt"7-52"r 0"0qp"Qevqdtg"53"ucy "c"rki j v"eqmtgf hwm"uk g" cwqo qdkg." r quukdn" c" E j gxtqrgv"qt" Qrf uo qdkg. ur ggf kpi "cy c{"cv"dgvy ggp"67"cpf"82"o kgu"r gt"j qwt0Y j gp vj g{"cttkxgf"cv"vj g"uej qqn"vj g{"qdugtxgf"F gvevkg"Y knko u unwo r gf "ci ckpu"j ku"vtvem" f gcf 0"Vj g"y qo cp" vj qwi j v"vj g xgj kerg"uj g"j cf "uggp"ur ggf kpi "cy c{"tugoo drgf" c"r j qwi tcr j qh"vj g"cwqo qdkg"kf gpvhtkf"cu"vj g"qpg" f ghgpf cpv"j cf "dggp wulpi "y kj "Dtqoo hgrf"vj cv"uco g"fc{0Vj ku"cwqo qdkg"y cu c"y q/f qqt"dmv/cpf/y j kg"Qrf uo qdkg"vj cv"j cf "dggp"uqrgp kp"Ugr wkgf c"qp"Qevqdtg"44."3; : 70Vj g"cwqo qdkg"j cf "dggp r ctngf"ht"cp"gzvpgf gf "r gtkqf"dghtg"Qevqdtg"53."3; : 7."kp" c tgukf gpvckpki j dqtj qaf "kp"Ecpi c"Retn0C"tgukf gpv"pqv"vj g rkegpug"pwo dgt"cpf "vguhtkf"vj cv"vj g"cwqo qdkg"y cu"r ctngf qp"vj g"utggv"qp"vj g"o qtpki "qh"vj g"o wfgt."dw"vj cv"y j gp uj g"tgwtpgf"htqo "y qtmctqwpf"7-22"r 0"0"ku"y cu"i qpg0Y j gp vj g"cwqo qdkg"y cu"tgeqxtgf"chgt" c"kr "htqo "eqf ghgpf cpv O qaf {"q"p"qxgo dgt"9."3; : 7."vj g"hgfi g"qh"vj g"ftkxgt"u"ft qqt y cu"eqxgtgf"kp"i wpuj qv"tgukf w"qh"vj g"v"r g"vj cv"vj g"o wfgt y gcr qp"go kwgf "r tqhwgn(0Vj g"htqp"r ctv"qh"vj g"cwqo qdkg cuq"eqpvcpgf "p"kg"gzr gpf gf "uj gmlecukpi u0

Hw"vj gt"gxkf gpeg"tgeqxtgf "kp"vj g"r gtkqf"hmny kpi "vj g"etko g y cu"qhtgtf"q"r tqxgf ghgpf cpv"u"ewr cdkk{"ht"vj g"uj qqvki 0 F ghgpf cpv"ppqwpgef "q" F cxf "Dgpv" {"qp"vj g" gxgplki "qh Qevqdtg"53."3; : 7."vj cv"j g"oi qv"fy p"j kuqri"cpf "u"vqniectg qh"vj cv"cu"j kuqri"sic_6"Y j gp"Dgpv" {"cungf"y j cv"j g"o gcpv. f ghgpf cpv"uckf "Dgpv" {"y qwf "ugg"kv"qp"vj g"pgy u"vj cv"gxgplki 0

Cv" f ghgpf cpv"u" tgs wgu." Dgpv" {"y gpv"q" f ghgpf cpv"u"j qo g cdqw! -22"r 0" 0F ghgpf cpv"r r gctgf "gzekgf"cpf "tgr gcvf"vj cv j g"j cf "ovcngp"ectg"qh"vj cv"cu"0"o"Y j kg"Dgpv" {"y qtngf"v"q tgr ckt"O qaf {"u"cwqo qdkg."j g"j gctf "f ghgpf cpv"vni0 qaf {"j g y cu"uwr tkugf"cv"j qy "o ep {"uj qw"vj g" W k"j cf "htgf"y kj "qpg rki j vt wriqhv"j g"tki i g0F ghgpf cpv"ucv"vj g"j cf "vgu"htgf"vj g W k"kp"j ku"dcen"ctf "gctrkt"vj cv"fc{0F ghgpf cpv"tgr gcvf"vj cv j g"oi qv"vj cv"cu"o {"ugr0Kj cf "q" f q" k0Ko gcp0Kj cf "q" f q"kv

o {"ugr0I w{"u"y qp)"v"eng"ectg"qh"dwulpguu0Kj cf "q"v"eng"ectg qh"vj ku"00o {"ugr0b

Crk"Y qaf uqp"tgegkxgf "c"vgrj r qpg"ecmhtqo "j ku"htkpf "O qaf { dgvy ggp"8-22"r 0"0"cpf " : -22"r 0"0"qp"Qevqdtg"53."3; : 70C eqwr ng"qh"j qwtu"rvgf."O qaf {"cttkxgf"cv"Y qaf uqp"u"cr ctvo gpv0 J "uggo gf "f kwdtgf"cpf "uckf"j g"y cpvgf "q"ftqr "qht"uqo g unevu0J "g"y cu"ectt {"kpi "c" rcti g"i tggp" f wthgn" dci ."y j lej Y qaf uqp"ftkxgfv"j ko "q"r rneg"kp"vj g"enugv0Vj ku"vguko qp{ y cu"eqphtko gf "d {"O tu0Y qaf uqp0C" hgy "f c {"u"rvgf."O qaf {"u i krtkpf" vgrj r qpgf "Crk" Y qaf uqp" cpf "vrf"j ko "q"veng gxgt {"vj kpi "qww"qh"vj g"ftkxgt" dci "gzegr v"vj g" W k"cpf "vj cv"j g r qrlkg"y gtg"qp"vj g"y c{0Y qaf uqp"gzco kpgf "vj g"ftkxgt" dci . y j lej "eqpvcpgf"ugxgtcnly gcr qpu "kpenf kpi "c"o qf hkgf "O ce *937 "O/32"cuucwv"r kuqri"cpf "c"enr "ht"vj g"r kuqri0J "g"wtpgf vj g"ftkxgt" dci "cpf "i w"qxgt"q"vj g"r qrlkg0Dcnkueu"gxkf gpeg kp"lecvgf "vj cv"vj g"r kuqri"y cu"vj g"o wfgt"y gcr qp0

Ctklg" Ecttqm" y j q"j cf "dggp" eqpxlevf" qh" dwi rct {" cpf gucr g."dgeco g"ces wclpvgf "y kj "f ghgpf cpv"y j kg"dq"vj "o gp y gtg"lpectegtcv"kp"vj g"Nqu" Cpi grgu"Eqwv" lck0F ghgpf cpv vrf"j ko "vj cv"j g"j cf "uj qvF gvevkg"Y knko u"ugxgtcnlko gu"cpf vj gp"ur gf "cy c {"q" c"Mo ctv"uqgt"cpf "cmgf "q" c"lcngur gtuqp"kp qtf gt"q"guvckrki "cp"crkd0F ghgpf cpv"vrf" Ecttqm"vj cv"j g"vj gp tgwtpgf"j qo g."y j gtg"j g"i cxg"O qaf {" "vj g"o wfgt"y gcr qp0 F ghgpf cpv"ppqwpgef "vj cv"j g"y cu"i qkpi "q"r rneg"vj g"drco g ht"vj g"uj qqvki "qp"O qaf {0F ghgpf cpv"gzr rclp"vj cv"j g"j cf uj qvF gvevkg"Y knko u"dgecvug"Y knko u"j cf "cttguv"j ko 0 J g"ftkxgt"vj g"ftkxgt"qh"vj g"uj qqvki . "pqvki "j qy "vj g"dqf { j cf "lgtngf"y j kg"j g"htgf . "cpf "ucvki "vj cv"j ku"ect"ucvngf"y j kg j g"y cu"t {"kpi "q"i gv"cy c {"uq"j g"or wo r gf "uqo g"o qtg"dwngv kp"vj ku"j j kg"cu.0"hpqy kpi "vj cv"j g"qhtkgt"ctgcf {"y cu"f gcf 0 J g"cuq"ucv"j g"y qwf "j cxg"htkngf"vj g"qhtkgt"u"uq"ht"j g"j cf eqo g"kp"q"vj g"rkg"qh"htg."dgecvug"vj g"ej kf "r tqdcdn"y qwf i tqy "wr "q"dg" c"r qrlkg"qh"htg"rkn"j ku"ht"v gt0Ecttqm"ucv"vj cv"v ghgpf cpv"uo kgf "cpf "rwi j gf "cu"j g"tgrcv"j ku"uqt {0

F cxf "Dgpv" {"vguhtkf"vj cv"j g"ur qng"y kj "Tgge {"Eqqr gt cdqw"vj g"etko g"y j kg"vj g {"y gtg"lpectegtcv"vqi gjv gt."cpf vj cv"Eqqr gt"uckf"vj cv"j g"y cu"kp"vj g"ect"cpf "cv"vj g"j qwv. dgecvug"j g"y cu"uwr r qugf "q"dg"vj g"uj qqvgt."dw"vj cv"j g"dgeco g ht ki j vpgf "cpf "f kf "pqv"y cpv"q" f q"vj g"uj qqvki 0

Kp" cpv"ekr cv"qp" qh" c" r quukng" crkd" f ghgpg" o gpv"qpgf" d { ugxgtcnly kpguugu."kp"qxkpi "f ghgpf cpv"u"r tgupeg"cv" c"Mo ctv uqgt"uqpp"chgt"vj g"uj qqvki ."c"r qrlkg"qh"htg"vguhtkf"vj cv j g"j cf "ftkxgp"vj g"tqwg"htqo "vj g"Ucp" Hgtcpf"q"eqw"vj qwv. vq" f ghgpf cpv"u"j qo g"qp"Ecpxctc"utggv"q"vj g" Hckj "Dcr vku Ej wtej "Uej qqn"kp"Ecpi c" Rctm"cpf "hwpf"vj cv" f ghgpf cpv

eqwf "j cxg" eqo o kwgf "vj g" o wfgt "cpf" ukm'cttkxgf "cv'vj g Mo ctv'cv'vj g'ko g'lpf kcvgf "d{ 'r qvqpv'cn'ckdk'y kpguugu0

Vgrgr j ppg'tgeqtf u'eqphko gf 'vj cv'vj gty' cu'vgrgr j ppg'eqpvcv dgw ggp'vj g'vgrgr j ppg'pwo dgtu'qhf' ghgpf cpv' O quu. 'Eqqr gt. Dgpvq{. 'J lenu. 'cpf' O qqf { 'f wtkpi 'vj g'chgtppqpp'cpf 'gxpplpi qh'Qevdgt"53."3; : 70'Vj g'dt'ghecug'ugk' gf "htqo "f ghgpf cpv'u ukvgt'u" j go q' eqp'kpgf "c" r'keg' qh' r'cr gt" dgctkpi " Gnj wg Dtqqo hgrf 'u'vgrgr j ppg'pwo dgt0

2. Defense case

F ghgpf cpv' r tguqpvf " gxf gpeg" vj" uwr r qtv' j ku" erko " vj cv eqf ghgpf cpv' O qqf { "j cf " nkrng "F gvev'xg" Y knko u' O qqf { y cu' ko r'kecvf " kp" vj g" Ectr gpvgt" tqddgt { " cpf" cnuq" j cf dggp" wpf gt " kpxguki cvkq" d { " F gvev'xg" Y knko u" kp" *938 eqppgevkp" y kj " cpqj gt" etko g' O Rtqugewkq" gxf gpeg" vgf O qqf { " vj" vj g" o wfgt" y gcr qp." cpf" f ghgug" gxf gpeg uwi i guvf "vj cv'r qreg' kpxguki cvkq" j cf 'hewugf' qp' O qqf { OC r'gtuq" y j q' o gv' O qqf { "kp' Qevdgt"3; : 7' ucvgf "vj cv' O qqf { j cf " uck' cv'vj g'ko g'vj cv'j g'y cu' cp' c' rdkk'y kpguu' kp' c' h' l' gpf 'u tqddgt { " v' l' cn" vj cv' cp' q' h' l' egt" y cu' c' ng { " y kpguu' kp' vj g' ecug. cpf " vj cv' O qqf { " j cf " g' zr' tguugf " j ku" qy p' tguq' xg" vj " oi gv' o vj g' q' h' l' egt' O cpqj gt " y kpguu' v' g' u' h' l' g' f " vj cv' O qqf { " j cf " ucvgf j g' j cf " eqo o kwgf " vj g' Ectr gpvgt" tqddgt { . " cpf " vj cv' f ghgpf cpv j cf " pq' dggp' kpxq' r' g' f' ghgug' cnuq" r' tguqpvf " gxf gpeg kp' kcvkpi " vj cv' O qqf { " y qwf " j cxg" dggp' cdrg" vj " i gv' vj " vj g o wfgt " uepgp" qp " Qevdgt " 53."3; : 7. " kp' ko g" vj " eqo o k' vj g o wfgt0

F ghgpf cpv' cnuq" r tguqpvf " gxf gpeg" uwi i gukpi " vj cv' dgecvug j g'y cu' cy ctg' qh' r' qreg' uwxgk' r' p' eg' f' wtkpi " vj g' r' g' t' k' q' f' h' g' c' f' k' p' i w' " vj " vj g' j' qo k' e' l' f' g. " cpf " dgecvug" j' g'y cu' t' guk' i' p' g' f' " vj " i' q' l' p' i " vj r' t' k' u' p' h' q' t' vj g' Ectr gpvgt' tqddgt { " cpf " y cu' cy ctg' vj cv' F gvev'xg Y knko u" y cu' p' q' v' c' u' k' i' p' h' l' e' c' p' v' y kpguu' kp" vj g" Ectr gpvgt tqddgt { " v' l' cn" j g" y qwf " pq' j cxg" wpf gt' c' n' g' p' " vj " o wfgt F gvev'xg" Y knko u' O R' q' r' e' g' t' g' e' q' t' f' u' k' p' f' k' e' v' g' f' f' ghgpf cpv' y cu wpf gt " uwxgk' r' p' e' g' h' t' q' o " r' e' v' " C' w' i' w' u' v' 3; : 7 " w' p' k' i' U' g' r' v' g' o' d' g' t' 3; : " 3; : 7. " cpf " vj cv' uwxgk' r' p' e' g' t' g' u' w' o' g' f' " q' p' " Qevdgt " 53. 3; : 7. " chgt " vj g' j' qo k' e' l' f' g' O' F' ghgpf cpv' r' t' g' u' q' p' v' f' " g' x' f' g' p' e' g' " vj cv r' q' r' e' g' t' g' e' q' t' f' u' y' g' t' g' h' e' w' m' f' " c' p' f' " vj cv' vj g' u' w' x' g' k' r' p' e' g' o' c' { " j' cxg eqp' k' p' w' g' f' " d' g' y' g' g' p' " U' g' r' v' g' o' d' g' t' 3; : " 3; : 7. " cpf " vj g' ko g' qh' vj g j qo k' e' l' f' g' O' k' p' c' f' f' k' k' q' p. " o' c' p' { " h' t' l' e' p' f' u' " p' g' k' i' j' d' q' t' u. " c' p' f' " t' g' r' e' v' x' g' u' qh' f' ghgpf cpv' u' t' g' r' e' v' g' f' " g' k' j' g' t' " vj cv' vj g' { " q' d' u' g' t' x' g' f' " c' r' r' c' t' g' p' v' u' w' x' g' k' r' p' e' g' qh' f' ghgpf cpv' q' t' " vj cv' f' ghgpf cpv' j cf " g' z' r' t' g' u' u' g' f' c' y' c' t' g' p' g' u' u' qh' c' p' f' " i' t' g' c' v' e' a' p' e' g' t' p' t' g' i' c' t' f' k' p' i' " r' q' r' e' g' u' w' x' g' k' r' p' e' g' vj cv' eqp' k' p' w' g' f' " w' p' k' i' v' j' g' ko g' qh' vj g' j' qo k' e' l' f' g'0

Vj g' r' e' y { g' t' " y j q' t' g' r' t' g' u' q' p' v' f' " f' ghgpf cpv' kp" vj g" Ectr gpvgt tqddgt { " v' l' cn' v' g' u' h' l' g' f' " vj cv' j' g' t' k' f' " p' q' v' c' p' v' e' k' r' c' v' g' vj cv' F gvev'xg

Y knko u" y qwf " v' g' u' k' h' { " c' i' c' l' p' u' v' " j' k' u' e' r' l' g' p' v' " vj cv' c' n' j' q' w' i' j' f' ghgpf cpv' f' g' p' k' e' f' " t' g' u' r' q' u' p' u' k' k' r' k' { " h' q' t' " vj g' t' q' d' d' g' t' { . " j' g' u' g' g' o' g' f' t' g' u' k' i' p' g' f' " vj " d' g' k' p' i' " e' q' p' x' l' e' v' g' f' " c' p' f' " i' q' l' p' i' " vj " r' t' k' u' q' p' " h' q' t' " k' v' " c' p' f' vj cv' f' ghgpf cpv' r' r' g' c' t' g' f' " u' w' r' t' k' u' g' f' " y j g' p' " e' q' w' p' u' g' n' i' k' o' p' h' q' t' o' g' f' f' ghgpf cpv' vj cv' F gvev'xg" Y knko u' j' cf " dggp' h' k' r' g' f' 0

F ghgpf cpv' cnuq" r tguqpvf " c' r' k' d' k' g' x' k' f' g' p' e' g' O' C' n' j' q' w' i' j' " F c' x' k' f' Dgpvq{ " y cu' ecngf " cu" c" r' t' q' u' g' e' w' k' q' p' y kpguu. " j ku' v' g' u' k' o' q' p' { k' p' e' n' f' g' f' " c' " t' g' e' a' n' g' e' v' k' p' " vj cv' j' g' c' p' f' " f' ghgpf cpv' j' c' f' " i' q' p' g' " vj c' i' cu' u' c' v' k' p' " q' p' " vj g' g' x' g' p' k' p' i' " qh' Qevdgt " 53."3; : 7. " vj " y' q' t' m' q' p' " O qqf { " u' c' w' a' q' o' q' d' k' g' O' J' g' t' g' e' c' n' g' f' " vj cv' j' g' c' p' f' " i' cu' u' c' v' k' p' go r' m' q' { g' g' u' c' o' w' u' g' f' " vj go u' g' r' x' g' u' d' { " o' d' w' t' p' l' p' i' " t' w' d' d' g' t' o' y' k' j' " vj g' k' t' c' w' a' q' o' q' d' k' g' u' c' v' v' j' g' t' g' c' t' " qh' vj g' u' c' v' k' p' O' F' ghgpf cpv' ecngf " vj g' t' y kpguugu' v' l' e' q' p' h' k' o' " vj g' l' x' g' p' v' c' n' j' q' w' i' j' " vj g' { " y' g' t' g' p' q' v' t' t' e' k' u' g' c' d' q' w' vj g' f' c' v' g' k' j' cf " q' e' e' w' t' g' f' 0

F ghgpf cpv' cnuq" r tguqpvf " gxf gpeg" kp" uwr r qtv' qh' vj g' vj g' g' q' t' { vj cv' vj g' r' q' r' e' g' " j' c' f' " c' e' v' g' f' " f' k' u' j' a' p' p' u' n' { " kp" r' t' g' r' c' t' k' p' i' " vj g' " e' c' u' g' c' i' c' l' p' u' v' " j' k' o' O' Vj g' t' g' " y g' t' g' f' k' u' e' t' g' r' c' p' e' k' u' " kp" r' q' r' e' g' t' g' e' q' t' f' u' t' g' i' c' t' f' k' p' i' " y j g' p' c' p' f' " y j g' t' g' vj g' r' q' r' e' g' u' w' x' g' k' r' p' e' g' qh' " *939 f ghgpf cpv' j' c' f' " v' c' n' g' p' r' e' g' O' F' ghgpf cpv' p' q' w' g' f' " vj cv' u' c' v' g' o' g' p' u' c' p' f' " f' g' u' e' t' k' v' k' p' u' q' h' h' g' t' g' f' " d { " y kpguugu" e' j' c' p' i' g' f' " kp" u' q' o' g' t' g' u' r' g' e' u' " c' h' g' t' " e' a' p' v' e' v' " y k' j' " r' q' r' e' g' " k' p' v' g' t' x' l' g' y' g' t' u' O' E' c' p' c' r' g' " c' y kpguu' t' r' i' g' e' f' " w' r' q' p' " d { " vj g' r' t' q' u' g' e' w' k' q' p' " g' c' t' n' { " kp" vj g' " e' c' u' g' / d' w' " p' q' v' c' v' v' l' c' n' c' f' f' g' f' " l' p' e' t' k' o' l' p' c' v' k' p' i' " f' g' v' c' k' u' " vj " j' k' u' " c' e' e' q' w' p' v' qh' k' p' e' w' r' c' v' q' t' { " u' c' v' g' o' g' p' u' " o' c' f' g' " d { " O qqf { " c' h' g' t' " x' c' t' k' q' u' e' a' p' v' e' u' " y k' j' " r' e' y " g' p' h' q' t' e' g' o' g' p' v' q' h' l' e' g' t' u' O' E' c' p' c' r' g' " c' n' u' q' " o' c' f' g' k' p' e' a' p' u' k' u' g' p' v' u' c' v' g' o' g' p' u' " c' d' q' w' " y j g' y' g' t' " j' g' j' c' f' " y c' t' p' g' f' " vj g' r' q' r' e' g' " c' d' q' w' O' q' q' f' { " u' u' c' v' g' o' g' p' u' t' g' i' c' t' f' k' p' i' " vj g' " h' q' t' vj e' q' o' k' p' i' e' t' k' o' g' d' g' h' q' t' g' vj g' e' t' k' o' g' q' e' e' w' t' g' f' O' V' g' r' j' p' p' g' t' g' e' q' t' f' u' k' p' f' k' e' v' g' f' E' c' p' c' r' g' " j' c' f' " v' g' r' g' r' j' p' p' g' f' " vj g' " P' q' t' y' c' m' i' u' j' g' t' k' h' u' " u' c' v' k' p' " y' l' e' g' q' p' " Qevdgt " 46. " t' g' o' c' k' p' k' p' i' " q' p' " vj g' " v' g' r' g' r' j' p' p' g' " h' q' t' " 34 " c' p' f' 43 " o' k' p' w' g' u. " t' g' u' r' g' e' v' x' g' n' { O' Vj g' " q' h' l' e' g' t' u' " p' c' o' g' f' " d { " E' c' p' c' r' g' f' g' p' k' e' f' " d' g' k' p' i' " k' o' p' h' q' t' o' g' f' " d { " E' c' p' c' r' g' " c' d' q' w' j' k' u' e' a' p' x' g' t' u' c' v' k' p' y' k' j' O qqf { O' E' c' p' c' r' g' " y' c' u' c' " t' g' i' w' r' t' " k' o' p' h' q' t' o' c' p' v' y' j' q' y' c' u' " k' p' v' g' t' g' u' g' f' k' p' " t' g' e' g' k' x' k' p' i' " c' " t' g' y' c' t' f' " q' t' " q' j' g' t' " d' g' p' g' h' k' " k' p' " t' g' w' t' p' " h' q' t' " j' k' u' k' o' p' h' q' t' o' c' v' k' p' 0

Kp' c' f' f' k' k' q' p. " vj t' g' g' qh' vj g' y' k' p' g' u' u' y' j' q' v' g' u' h' l' g' f' " vj cv' vj g' { " j' c' f' u' g' g' p' " c' p' " c' w' a' q' o' q' d' k' g' . " u' e' j' " c' u' " vj g' " q' p' g' " w' u' g' f' " d { " vj g' " u' j' q' q' v' g' t' . p' g' c' t' " vj g' " u' e' p' g' g' qh' vj g' e' t' k' o' g' k' o' o' g' f' k' e' v' n' { " d' g' h' t' g' " c' p' f' " c' h' g' t' " vj g' u' j' q' q' v' k' p' i' . " q' t' k' i' k' o' c' m' i' " v' a' r' f' " vj g' r' q' r' e' g' vj cv' vj g' f' t' k' x' g' t' k' p' x' q' r' g' f' " k' p' vj g' u' j' q' q' v' k' p' i' " y' c' u' " Y j' k' g' " q' t' " J' k' u' r' c' p' l' e' O' F' ghgpf cpv' k' u' " C' h' l' e' c' p' / C' o' g' t' l' e' c' p' O' C' " f' t' o' c' v' a' r' q' i' k' u' v' g' u' h' l' g' f' " vj cv' j' g' y' c' u' " w' p' c' y' c' t' g' " qh' c' p' { " k' p' k' o' g' p' v' q' t' " u' q' n' w' k' p' " vj cv' e' q' w' f' " d' g' " c' r' r' i' k' e' f' " vj " c' p' " C' h' l' e' c' p' / C' o' g' t' l' e' c' p' " r' g' t' u' q' p' u' h' e' g' " vj " o' c' n' g' " k' / c' r' r' g' c' t' " h' i' j' v' q' t' " y' j' k' g' t' 0

Hwt vj g' g' x' k' f' g' p' e' g' e' c' n' g' f' " k' p' v' s' v' g' u' k' p' vj g' t' g' r' i' c' d' k' k' v' { " qh' l' e' g' t' v' k' p' r' t' q' u' e' w' e' w' k' p' " y' k' p' g' u' u' O' U' k' p' g' f' { " Y q' q' f' u' q' p' " v' g' u' h' l' g' f' " j' g' " j' c' f'

r lenkpi 'wr 'j ku'ej kf 'htqo 'uej qqr0Uj g'f kf 'pqvtgecmcp{ 'qvj gt hcevu'cpf 'ucv'gf 'vj cv'j g'r wdrlek'f 'y qwf 'j cxg'p'q'lo r cev'wr qp j gt 'f grkdg'cv'kpu0'Ceegt'f kpi 'v'q'f ghgpf cpv.'pq'qv'j gt 'ugc'v'f lwtqt'y cu's wguv'kpp'f 'qp'x'q'k'f k'g't'gi c'tf kpi 'r wdrlek'f0

Y g'tgecm'v'j cv'j gt'g'ku'öp'q'r tguwo r v'k'p'q'h'c'f gr tk'cv'k'p'q'h f w'g'r t'qegu'q'h'ry 'ctk'k'p'i 'l'w'qo 'lwtqt'g'zr quwt'g'v'q'r wdrlek'f eqpeg't'p'k'i 'v'j g'ecug'6**People v. Proctor, supra*.6'Ecrf6j "cv r 07490'F ghgpf cpv'k'ku'v'q'r k'p'v'v'q'cp{ 'g'x'k'f g'peg'g'u'cd'k'uj k'p'i v'j cv'j 'g'v'j t'gg'v'w'q'p'q'v'f "cd'x'g'y j q'ugt'x'g'f "qp'j ku'ecug y gt'g'zr qu'gf "v'q'q't'g'ecm'f'cp{ "prejudicial"grgo gpv'q'h'v'j g r t'g'v'k'n'r wdrlek'f0'V'j g'k'zr quwt'g'v'q'r wdrlek'f "y cu'o k'p'ko cn cpf "j cto r'guu'0'Cu'y g'j cxg'q'dug'x'g'f <ö'Xci w'g't'geq'm'ge'v'k'pu q'h'p'gy u't'gr q't'u'd{ "c'hgy "lwtqt'u'f q'p'q'v'eqo r gn'c'ej cpi g'q'h x'g'p'w'0'ö**People v. Howard*"3; ; 4+3"Ecrf6j "3354."338; "J7 EcrfTr v04f "48: .": 46"R0f "3537_0"O k'p'ko cn'zr quwt'g'y gm d'gh'q't'g'y g'eqo o g'p'ego gpv'q'h'v'k'n'd{ 'c'lo cn'p'wo d'g't'q'h'lwtqtu y j q't'g'k'c'd'f "t'gr q't'v'v'j cv'j g'k'zr quwt'g'y kn'p'q'v'eq'q't'v'j g'k'x'g'y q'h'v'j g'ecug'6'ugg"*People v. Proctor, supra*.6'Ecrf6j "cv'r 0 749+. F q'gu'p'q'v'g'u'cd'k'uj 'c't'g'cu'p'cd'ng'f'k'ng'k'j q'q'f 'v'j cv'f ghgpf cpv f kf 'p'q'v'k'p' h'ce'v't'g'eg'k'g'c' h'c'k'v'k'n'f0

F ghgpf cpv' cnu'q' eqp'v'p'f u'k'y cu' g'tt'q't'v'q' v'c'p'uh'g't'v'j g'ecug h'qo 'f q'y p'q'y p'N'qu'0'c'p'i g'ru'v'v'j g'U'c'p'H'g't'p'c'p'f q'X'cm'g{ 'c'p'f v'q't'g'v'k'p'k'v'q' h'q't'v'k'n'v'j g't'g'0'V'j g'ecug'k'p'k'c'm'f "y cu'cu'k'i p'g'f v'q'c'f q'y p'q'y p'eq'w'v.'c'p'f "q'x'g't'f ghgpf cpv'u'q'd'l'g'ev'k'p'v'j cu v'c'p'uh'g't'g'f "h'q't'v'k'n'v'q' X'c'p' P w'f'u." y j g't'g'v'j g'et'ko g'j c'f q'ee'w't'g'f 0'Y j g'p'j g'o q'x'g'f "h'q't'ej cpi g'q'h'x'g'p'w'g."f ghgpf cpv cnu'q'o c'f g'c'p'c'ng't'p'c'v'x'g't'g's w'g'u'v'j cv'v'j g'o c'w'g't'd'g't'g'w'p'g'f h'q't'v'k'n'v'q'c'f q'y p'q'y p'eq'w'v'0

F ghgpf cpv' eqp'v'p'f u'q'p' cr r g'cn'v'j cv'j g'y cu' r'guu' r'k'ng'f "v'q t'g'eg'k'g'c'c'h'c'k'v'k'n'k'p'v'j g'U'c'p'H'g't'p'c'p'f q'X'cm'g{ . "y j g't'g'v'j g'et'ko g'q'ee'w't'g'f. "v'j g'r q'r w'v'k'p'f'f'g'p'u'k'f "y cu'r'guu'v'j c'p'k'y cu f q'y p'q'y p.'c'p'f "h'gy g't'o go d'g'tu'q'h'v'j g'eqo o w'p'k'f "uj c't'g'f j ku'g'y p'k'd'c'emi t'q'w'p'f 0'V'j g'uc'o g'eq'p'k'f g't'c'v'k'p'u'cr r n' "v'q'c'p' k'p'v'c'eq'w'p'f "v'c'p'uh'g't'c'u'cr r n' "v'q'c'p' o q'v'k'p' h'q't'ej cpi g'q'h'x'g'p'w'g v'q'c'p'q'v'j g't'eq'w'p'f. "c'p'f "d'g'ec'w'g'y g'j cxg'h'q'w'p'f "p'q'g'tt'q't'v'k'p'v'j g'v'k'n'le'q'w't'v'u'f g'p'k'n'q'h'v'j g'o q'v'k'p' h'q't'ej cpi g'q'h'x'g'p'w'g.'y g'h'k'p'f p'q'g'tt'q't'v'k'p'v'j g'cu'k'i p'o gpv'q'h'v'j g'ecug' *946 "h'q't'v'k'n'k'p'X'c'p P w'f'u0**People v. Cummings, supra*.6'Ecrf6j "cv'r 03498."1p0 390-5

5 k'p'j ku' t'gr n' "d't'k'g'h' f ghgpf cpv' eqp'v'p'f u' h'q't'v'j g' h'k'u'v'k'o "v'j cv'k'y cu' g'tt'q't'v'q' v'c'p'uh'g't'v'j g'ecug. d'g'ec'w'g'y g'X'c'p'P w'f'u'eq'w'v'j q'w'g'h'c'ek'k'k'g'u'y g't'g k'p'c'f g's w'c'v'0J g'eq'p'v'p'f u'j g'y cu'v'p'c'd'ng'v'q'k'p'v'g't'x'g'y y k'p'g'u'g'u'd'g'ec'w'g'q'h'v'j g'ug'k'p'c'f g's w'c'k'g'u'0'c' b' q'v'k'p' h'q't'ej cpi g'q'h'x'g'p'w'g'q't' "h'q't'v'c'p'uh'g't'v'j q'gu'v'q'v'j g'

s w'g'u'v'k'p'q'h'v'j g'c'd'k'k'k'f "q'h'v'j g'l'w't{ "k'p'v'j g'eq'w'p'f "k'p y j k'ej 'v'j g'ecug'k'u'v'k'g'f "v'q'd'g'h'c'k'c'p'f 'k'o r c't'v'k'n'c'p'f p'q'v'v'q'v'j g'c'f g's w'c'e{ 'q'h'v'j g'eq'w'v'j q'w'g'h'c'ek'k'k'g'u=y'j g r'w'g't'k'u'w'g'k'u'eq'p'k'f g't'g'f "u'g'r c't'c'v'g'n'0

F ghgpf cpv'cr r g'c't'u'v'q'eq'p'v'p'f 'v'j cv'v'j g'v'k'n'le'q'w't'v'v'j q'w'f 'j cxg i t'c'p'v'f "j ku'o q'v'k'p' h'q't'ej cpi g'q'h'x'g'p'w'g'd'g'ec'w'g'q'h'eg't'v'k'p f g'x'g'p' o g'p'u'f'v'k'p'i "x'q'k'f'k'g'0'J g'c'ng'i g'u'v'j cv'f'v'k'p'i "x'q'k'f k'f'g'ö'y g't'g'y cu'o w'ej "f'k'u'ew'k'k'p' q'h'c'r r g'm'c'p'v'u'ecug."c'p'f f'k'u'g'o k'p'c'v'k'p' q'h'h'c'ng'c'p'f "f'c'o c'i k'p'i "t'w'o q't'u'0'V'j g'ur't'g'c'f c'p'f "k'o r cev'q'h'u'w'ej "t'w'o q't'u."c'p'f "v'j g'v'k'n'le'q'w't'v'u't'g'h'w'c'u'v'q c'f g's w'c'v'g'n'f "x'q'k'f'k'g'g'eq'p'eg't'p'k'i "v'j q'ug't'w'o q't'u'000' r t'q'x'k'f'g'u h'w't'v'j g't'g'x'k'f'g'peg'v'j cv'v'j g'eqo o w'p'k'f "q'h'X'c'p'P w'f'u'y cu'k'u'g'h v'k'p'v'f "d{ "d'q'y "r t'g'v'k'n'v'k'n'le'q'w't'v'u'c'p'f "b' q't'g'k'p'h'q't'o c'n'u'q'w'g'eu q'h'r t'g'l'w'f'k'c'n'v'k'p'k'p'h'q't'o c'v'k'p'v'j c'p'f "v'j cv'c'ej cpi g'q'h'x'g'p'w'g'y cu t'g's w'k'g'f 0

C'p'f 'e'k'c'k'o 'v'j c'v'u'w'ej 'c'b' q'v'k'p'v'j q'w'f 'j cxg'd'g'g'p'i t'c'p'v'f "d'c'ug'f w'r q'p'f'g'x'g'p' o g'p'u'c'v'x'q'k'f'k'g'y cu'y c'k'x'g'f "d{ "f ghgpf cpv'0 V'j g'v'k'n'le'q'w't'v'f g'p'g'f'v'j g'o q'v'k'p' h'q't'ej cpi g'q'h'x'g'p'w'g'd'g'h'q't'g v'j g'eqo o g'p'ego gpv'q'h'v'k'n'le'q'w't'v'u' "u'g'r'g'ev'k'p' d'c'ug'f "w'r q'p' r t'q'h'g't'g'f g'x'k'f'g'peg' q'h'r t'g'v'k'n'v'k'n'le'q'w't'v'u' "u'w'd'l'g'ev'v'q' t'g'p'g'y c'n' q'h'v'j g o q'v'k'p'k'p'v'j g'g'x'g'p'v'x'q'k'f'k'g'g'u'cd'k'uj g'f "c'p'f "h'w't'v'j g't'd'c'u'k'u' h'q't s w'g'u'v'k'p'k'p'i 'y j g'y g't'f ghgpf cpv'v'j q'w'f 't'g'eg'k'g'c'h'c'k'v'k'n'k'p'v'j g' eq'w'p'f'0'v'k'n'le'q'w'p'g'n'f'k'f "p'q'v't'g'p'gy 'v'j g'o q'v'k'p'0'D'g'ec'w'g'v'k'n' eq'w'p'g'n'f'k'k'g'f "v'q'k'g'w'q'ee'w't'g'p'eg'u'c'v'x'q'k'f'k'g'c'u'v'j g'd'c'u'k'u' h'q't c't'g'p'g'y g'f "o q'v'k'p' h'q't'ej cpi g'q'h'x'g'p'w'g.'j g'c'h'q't'f'g'f "v'j g'v'k'n' eq'w't'v'p'q'q'r r q't'w'p'k'f "v'q'i t'c'p'v'j g't'g'k'g'h'v'j cv'f ghgpf cpv'p'q'y eq'p'v'p'f u'v'j q'w'f 'j cxg'd'g'g'p'c'ee'q't'f'g'f "j k'o 0'V'j w'u'y g'eq'p'en'f'g v'j cv'f ghgpf cpv'u'v'k'n'le'q'w't'v'u'c'p'f "v'j cu'd'g'g'p'y c'k'x'g'f "v'q'v'j g'g'z'v'g'p'v'k'u'd'c'ug'f w'r q'p'q'ee'w't'g'p'eg'u'c'v'x'q'k'f'k'g'0*U'gg"*People v. Bolin*"3; : : +3: Ecrf6j "4; 9.'534"J97'EcrfTr v04f "634.; 78"R0f "596_0-6

6 C" o q'v'k'p' h'q't' o k'u'v'k'n' f'q'gu' p'q'v." eq'p'v'c't{ "v'q f ghgpf cpv'u'v'k'n'le'q'w't'v'u'c'p'f "t'g'ug't'x'g'f'g'k'u'w'g'h'q't'g'x'k'g'y . h'q't v'j g'q'd'x'k'q'w'u't'g'c'u'p'v'j c'v'u'w'ej 'c'b' q'v'k'p'f'q'gu'p'q'v'g'g'm v'j g't'g'k'g'h'v'q'w'i j v'd{ 'v'j g'o q'v'k'p' h'q't'ej cpi g'q'h'x'g'p'w'g'0

2. Severance of trials

*6- F ghgpf cpv' eqp'v'p'f u'v'j cv'v'j g'r t'q'ug'ew'q't' q'd'v'k'p'g'f "c u'g'x'g't'c'p'eg'q'h'f ghgpf cpv'u'c'p'f "eq'f ghgpf cpv'0 q'u'u'u'v'k'n'le'q'w't'v'u' v'j cv'q'h'eq'f ghgpf cpw'F w'ep'g'0 q'q'f { "X'q'n'c'k'g'Y k'n'k'o u."c'p'f T'g'g'e{ "E'q'q'r g't' h'q't'v'j g'k'o r g't'o k'u'k'd'ng'r w'r q'ug'q'h'q'd'v'k'p'k'p'i c" l'w't{ "eqo r q'ug'f "q'h' Y j k'g' r g'tu'q'p'u'0' F ghgpf cpv' eqp'v'p'f u' v'j g'r t'q'ug'ew'q't'u"l'o r t'q'r g't'r w'r q'ug'k'u'f go q'p'u't'c'v'g'f "d{ "v'j g r t'q'ug'ew'q't'u'v'c'v'g'o g'p'v'v'j c'v'j g'y c'p'v'g'f 'v'j g'v'k'n'le'q'w't'v'u'f w'ev'g'f k'p'X'c'p'P w'f'u."c'p'f "p'q'v'k'p' E'g'p't'c'n'N'qu" *947 "C'p'i g'ru."k'p v'j g'eq'p'v'z'v'q'h'v'j g'eq'w't'v'u'k'p'f k'ec'v'k'p'v'j cv'c'v'c'p'uh'g't'v'q'X'c'p P w'f'u'y cu'r q'u'k'd'ng'q'p'n'f "k'h'v'j g'ecug'y cu'd't'q'ng'p'k'p'v'öo q't'g

o cpci gcdng'wpku'F ghgpf cpv'eqpegf gu'j g'f kf "pqv'qr r qug
vj g'r tqugewqt'u'ugxgtcpeg"o qv'kp"qp"vj g'i tqw'f "cuugt'vf
qp" cr r gcr'f k'p' hcev" f ghg'pug" eqwpugn' ci tggf " r tkqt" vq" v'kcn
vj cv'ugxgtcpeg'y cu'cr r tqr tkvg."cnj qwi j "eqwpugn'ucv'gf "j g
y qwf "qr r qug" cp{"v'cpuhgt" qh'v'j g"ecug"v"Xcp"P w'f u'Vj g
eqw'v'ci tggf "y kj "f ghg'pug"eqwpugn'v'j cv'v'j g's w'guk'qp"qh'v'j g
v'cpuhgt"v"v'j g"Xcp"P w'f u'eqw'v'y cu'c"ugr ctcvg"o cwtg"v'j cv
y qwf "dg"j gctf "qp"cpqj gt" f cvg'Ulo k'ctn'f. "cv'v'kcn'f ghg'pug
eqwpugn'eqpegf gf "v'j cv'ugxgtcpeg'y cu'cr r tqr tkvg'cp'f "v'j cv'v'j g
s w'guk'qp"qh'v'j g"v'cpuhgt"qh'v'j g"v'kcn'v"Xcp"P w'f u'y cu'pqv'cv
kuuw'g"lp"v'j g"eqpv'z'v'qh'v'j g"ugxgtcpeg"o qv'kp'U'Ceet'f lpi n'f.
cp{"erko "tgi ctf lpi "v'j g'r tqugewqt'u' o qv'kcv'kp"lp"o qx'kpi
hqt"ugxgtcpeg"y cu'y c'kxgf O'Ugg" *People v. Williams* "3; ; 9+
38" *Ecn'6vj* "375."476"]88" *Ecn'U'r v'U'f* "345." ; 62" *R'U'f* "932_
]erko "qh'r tqugewqt'kcn' o k'ueq'pf wv'v' i gp'gtcm' "ku'y c'kxgf "kh
f ghg'p'f cpv'f qgu'pqv'qdl'gevd'ng'y _=*People v. Hawkins* "3; ; 7+
32" *Ecn'6vj* " ; 42." ; 62"]64" *Ecn'U'r v'U'f* "858." ; 9" *R'U'f* "796_
]f ghg'p'f cpv'v'j j q'f'k'ku"v"o q'xg"v"ugxgt"eqw'p'u'y c'kx'gu'erko
qp"cr r gcn'=*People v. Mitcham* "3; ; 4+3" *Ecn'6vj* "3249."326:
]7" *Ecn'U'r v'U'f* "452." : 46" *R'U'f* "3499"]f ghg'p'f cpv'v'j c'kx'gu'erko
vj cv'eqw'v'gtt'gf "lp" f gp { lpi "eqf ghg'p'f cpv'v'j ugxgtcpeg"o qv'kp
y j gp" f ghg'p'f cpv'v'f k'f "pqv'lq'kp"lp"v'j g"o qv'kp'U'k'p"cp { "g'x'gpv
vj g'tgeq'tf "f k'ue'ng'u"v'j cv'v'j g'r tqugewqt"y cu'o qv'kcv'gf "d { "c
f gu'k'g"v"ugxgt"v'j g"ecug"lp"y j lej "v'j g'r tqugew'kp"u'qwi j v'v'j g
f gc'v' "r gpcn'f "k'p'x'q'k'k'p' "f ghg'p'f cpv'v'f cp'f "O'quu'+h'qo "v'j g'ecug
kp"y j lej "v'j g'f gc'v' "r gpcn'f "y cu'pqv'd'g'k'p' "u'qwi j v'k'p'x'q'k'k'p'
vj g"q'v'j g't" f ghg'p'f cpw'+cp'f "v" c'x'q'k'f "cp" w'p'o cpci gcdng"v'kcn
k'p'x'q'k'k'p' "v'q'q'v' cp { "f ghg'p'f cpw'v'j cv'v'j g'r tqugewqt"y cp'v'f "v'j
v' { "dq'v' "ecug'u"lp"Xcp"P w'f u'd'gecwug"v'j ku'y cu'v'j g'm'ecv'kp"lp
y j lej "v'j g'etko g'y cu'eqo o k'w'gf. "cp'f "v'j cv'v'j g'f k'uc'x'q'y gf "cp {
w'ng't'k'q't' r w'r qug'0

3. Severance of counts

*7c+F ghg'p'f cpv'eqpv'gf u'v'j g"v'kcn'eqw'v'gtt'gf "lp" f gp { lpi "j ku
o qv'kp"v"ugxgt"v'j g"v'kcn'qh'eqw'p'v'5."cmgi lpi "v'j g"cwgo r v'gf
o w'f gt'qh'I g'qti g'Ectr gpv'gt. h'qo "v'j g'v'kcn'qh'eqw'p'u'3"cp'f "4.
cmgi lpi "o w'f gt'cp'f "eqpur k'ce { "v'j o w'f gt'F g'v'g'v'x'g"Vj qo cu
Y k'k'co u'0

Cm'qh'v'j gug"q'gh'epugu'dgn'p'p' gf "v"v'j g"uco g'er'cu'qh'etko gu.
uq"v'j cv'lq'k'p'f gt"y cu'cr r tqr tkvg't' w'u'w'cp'v'v'q'uge'v'kp"; 76"wp'nguu
c"er'get"uj qy lpi "qh'r q'v'p'v'kcn'r tglw'f leg"y cu'o cf g'0" *People
v. Bradford* "3; ; 9+37" *Ecn'6vj* "344; . "3537"]87" *Ecn'U'r v'U'f*
367." ; 5; " *R'U'f* "47; _0" *8+"Y g'tg'x'k'g'y "v'j g"v'kcn'eqw'v'u'tw'k'p'
hqt"cdwug"qh'f k'ue't'g'v'kp."y j lej "y k'n'd'g'h'q'w'p'f "oy j gp"v'j g"v'kcn
eqw'v'u'tw'k'p' ")'o'h'cm'q'w'uk'f g'v'j g'd'q'w'p'f u'qh't'g'cu'q'p'0"o" *Ibid.* +
F gr gp'f lpi "w'r qp"v'j g'r ct'v'w'w'et"ek'ewo u'w'p'egu'qh'g'cej "ecug.
c"o")t_ghw'ucn'v"ugxgt"o c { "dg"cp"cdwug"qh'f k'ue't'g'v'kp"y j gt'g<
*3+"g'x'k'f g'peg"qp"v'j g'etko gu"v"q"dg"lq'k'p'w'f "v'k'gf "y q'w'f "pqv'd'g

etquu/cf o ku'k'd'ng"lp"ugr ctcvg"v'kcn'="*4+"eg't'v'k'p'qh'v'j g'ej cti gu
ctg"wp'w'w'cm'f " *948 "nk'ng'n {"v"q"l'p'h'co g'v'j g'lw' { "ci c'k'p'u'v'j g
f ghg'p'f cpv'v'="5+c"oy gcn'0'ecug'j cu'd'ggp'lq'k'p'gf "y kj "c"o'w't'q'p'i o
ecug."qt"y kj "cp'q'v'j gt"oy gcn'0'ecug."uq"v'j cv'v'j g"our km'q'x'g'to
gh'ge'v'qh'ci i tgi cv'g"g'x'k'f g'peg"qp"ugxgtcn'ej cti gu'o ki j v'y gm
cngt "v'j g"q'w'eqo g'qh'u'qo g'qt"cm'qh'v'j g'ej cti gu="cp'f " *6+"cp {
pp'g"qh'v'j g'ej cti gu"ectt'k'gu"v'j g'f gc'v' "r gpcn'f "qt"lq'k'p'f gt"qh
v'j go "w't'p'u"v'j g"o c'w'gt"lp'v'q" c"ecr k'cn'f'ecug'0"o" *Ibid.* +7" P qv
cm'qh'v'j gug"eq'p'k'f g't'c'v'k'p'u"ctg"qh'gs w'cn'y g'ki j v'<"o")Vj g
h'ku'v'ug'r "lp"cu'gu'k'p'i "y j g'v'j gt" c"eqo d'k'p'gf "v'kcn'j y q'w'f "j c'x'g
d'ggp_"r tglw'f k'ec'k'n'ku"v"q" f g'v'gt'o k'p'g'y j g'v'j gt" g'x'k'f g'peg"qp"g'cej
qh'v'j g'lq'k'p'gf "ej cti gu"y q'w'f "j c'x'g" d'ggp"cf o ku'k'd'ng."w'p'f gt
G'x'k'f g'peg"Eq'f g'uge'v'kp"3323."lp"ugr ctcvg"v'kcn'qp"v'j g"q'v'j gtu'0
k'i"uq."cp { "k'p'h'gt'g'peg"qh'r tglw'f leg"ku" f k'ur gm'gf 0"]E'k'c'v'k'p'u'0_
Etquu/cf o ku'k'd'k'k'v'f "u'w'h'le'gu"v"q"p'gi cv'g'r tglw'f leg."dw'w'k'ku"p'q'v
gu'g'p'v'kcn'hqt"v'j cv'r w'r qug'0" *People v. Bradford, supra.* "cv
r r 0'3537/3538="ugg"cn'q" *People v. Memro* "3; ; 7+33" *Ecn'6vj*
9: 8." : 72/: 73"]69" *Ecn'U'r v'U'f* "43; . ; 27" *R'U'f* "3527_"]f gp'kcn
qh'ugxgtcpeg"uj q'w'f "dg"u'w'w'k'p'gf "k'h'q'v'j gt"etko gu" g'x'k'f g'peg
ku'etquu/cf o ku'k'd'ng."y kj "r qu'k'd'ng"z'egr v'kp"kh'lq'k'p'f gt"ku"uq
i t'quun { "w'p'h'k'k'cu"v"q" f gp { "f ghg'p'f cpv'v'f w'g'r tq'egu'0_

7 D'gecwug"v'j g'etko gu'y g't'g'eqo o k'w'gf "lp"3; ; 7."v'j g
c'p'cn'f v'ec'n' g'ng'o gp'v' qh' etquu/cf o ku'k'd'k'k'v'f "ku" p'q'v
c'h'g'ev'gf "d { "v'j g'x'q'v'gt'u'cf q'r v'kp"qh'Rt'qr qu'k'k'p'337
lp"3; ; 20" *Ugg"È* ; 760=*People v. Hill* "3; ; 7+56
Ecn'U'r v'U'f "949.'956/957"]63" *Ecn'U'r v'U'f* "5; _0_

*7d+G'x'k'f g'peg"v'j cv'f ghg'p'f cpv'v'w'go r v'gf "v'j k'g'c'j k'v'o cp'v'q'h'km
I g'qti g'Ectr gpv'gt"r tkqt"v"q"Ectr gpv'gt'u'cp'v'k'c'v'gf "v'g'u'ko qp {
ci c'k'p'u'f ghg'p'f cpv'v'v'j ku'q'p'i q'k'p'i "v'kcn'hqt"t'q'd'd'k'p'i "Ectr gpv'gt
y q'w'f "j c'x'g" d'ggp"cf o ku'k'd'ng"cv'c" ugr ctcvg"v'kcn'ej cti lpi
f ghg'p'f cpv'v'j kj "eq'pur k'ce { "v"q"o w'f gt"F g'v'g'v'x'g"Y k'k'co u"v'q
r t'g'x'gp'v'Y k'k'co u'h'qo "v'g'u'k'h' lpi "cv'v'j g'uco g'v'kcn'0'G'x'k'f g'peg'lp
g'cej "ecug'lw'r r q't'v'gf "v'j g'k'p'h'gt'g'peg"v'j cv'f ghg'p'f cpv'v'w'gf hqt"v'j g
uco g'o q'v'x'g"cp'f "y kj "v'j g'uco g'k'p'g'p'v'cu'lp"v'j g"q'v'j gt"ecug/v'q
nk'm'y k'p'g'u'gu'lp'q't'f gt"v'q'r t'g'x'gp'v'j go "h'qo "v'g'u'k'h' lpi "ci c'k'p'u'v
f ghg'p'f cpv'v'v'j g"q'p'i q'k'p'i "t'q'd'd'gt { "v'kcn'0" *Ugg"People v. Arias*
"3; ; 8+35" *Ecn'6vj* " ; 4."349/34: "]73" *Ecn'U'r v'U'f* "992." ; 35" *R'U'f*
; : 2_"]g'x'k'f g'peg" f ghg'p'f cpv'v'nf p'c'r r gf "cp'f "t'q'd'd'gf "q'p'g'x'le'v'o
lp"q't'f gt"v"q"q'd'v'k'p'v'j g"o g'c'p'u'qh'c'x'q'k'f lpi "ctt'gu'v'hqt" c"r tkqt
o w'f gt"y cu'etquu/cf o ku'k'd'ng="g'x'k'f g'peg"t'gi ctf lpi "v'j g'o w'f gt
u'w'r k'g'f "g'x'k'f g'peg"qh"o q'v'x'g" hqt"v'j g"t'q'd'd'gt { "nk'f p'c'r r lpi .
y j lej "lp"v'w'p'lp'f k'ec'v'gf "eq'p'ue'k'q'w'p'gu'u'q'h'i w'k'n'hqt"eqo o k'v'k'p'i
v'j g'o w'f gt _=*People v. Cummings, supra.* "6" *Ecn'6vj* "cv't' 034: 6
]p'q'gt'qt "lp" f gp { lpi "ugxgtcpeg="g'x'k'f g'peg"t'gi ctf lpi "t'q'd'd'gt'k'gu
y cu'etquu/cf o ku'k'd'ng"v"uj q'y "o q'v'x'g" hqt"o w'f gt."d'gecwug
v'j g"o q'v'x'g" "c'x'q'k'f lpi "ctt'gu'v'y cu'ek'ewo u'w'p'v'kcn'g'x'k'f g'peg"qh
r t'go gf k'c'v'k'p'cp'f "f g'k'd'gt'c'v'k'p'p'."dq'v' "qh'v'j lej "y g't'g'ng'o gp'u

v. Morris"3; : : +68"Ecr05f "3."52."lp036"j46; "Ecr0Tr u033; . 978"R04f " : 65_."wr qp'y j lej "f ghgpf cpv'tgrku0-

*; d+"F ghgpf cpv' eqo r rckpu" vj cv' vj g" vlcni' eqwtv' tghwugf " vq i tcpvf' lueqxtg { "qh'r j qvqi tcr j u'qh'r qrlieg"qhilegtu'y j q'y gtg kpxqrxgf "lp'uwtxgkncpi "j ko "r tkqt"vq"Qevqdtg"53."3; : 7."cpf "qh r j qvqi tcr j u'qh'vj g'xgj kergu"uwgf "lp"vj g'r qrlieg"uwtxgkncpeg0 J g"cuugt w'vj cv'uwej "r j qvqi tcr j u'eqwrf "j cxg'dggp"uj qy p"vq pgi j dqtu'qh'f ghgpf cpv'cpf "qvj gt" y kpguugu"ht" vj g'r wtr qug qh'kf gp'v'k'ecv'k'p'OF ghgpf cpv'v'q'w'j v'v'f go qputcv'g'vj cv'r qrlieg uwtxgkncpeg" r'uwgf " m'pi gt" vj cp" vj g" r qrlieg" j cf" cf o kwgf . vj gtgd { "uwi i gukpi "f ghgpf cpv'y qwrf "pq'v'j cxg'gpi ci gf "lp"vj g ej cti gf "etko gu'y j krg"j g'hpgy "j g'y cu'w'pf gt "uwtxgkncpeg0

Cu'tgur qpf gpv'r qkpw"qww" vj g'r tqugewkqp" qh'gtgf "vq" o cng vj g" uwtxgkncpeg" qh'ilegtu' cxckrcdrng" uq" vj cv' y kpguugu" eqwrf xkgy "vj go "lp'r'gtuqp0Vj wu."f ghgpf cpv'j cf "pq'hw'vj gt'pggf "hqt r j qvqi tcr j u'qh'vj g'qhilegtu0

Vj g'eqwtv'cnuq"cev'gf "y kj lp'ku'f luetg'v'k'p'lp" f v'g'to k'p'kpi "vj cv f ghgpf cpv'j cf "pq'v'j qy p'v'v'k'k'p'v'c'wug"v'q' y cttcpvf' lueqxtg { qh'r j qvqi tcr j u'qh' vj g" uwtxgkncpeg" xgj kergu0 Cu" vj g" eqwtv ucvgf . "vj g'f ghgpg" y kpguugu" y j q'v'v'k'k'f "lp" uwr r qtv'qh' vj g f lueqxtg { "o q'v'k'p" tgi ctf kpi " vj g" uwtxgkncpeg" qh' f ghgpf cpv j cf " rkwg" qt" pq" k'p'f gr g'p'f gpv' t'geqng'v'k'p' qh' vj g" xgj kergu f ghgpf cpv'j cf "v'q'f " vj go "y gtg" h'q'm'q' kpi "j ko . "uq" vj g" w'v'k'v' qh'r j qvqi tcr j u'qh' vj g" uwtxgkncpeg" xgj kergu" hqt" f ghgpf cpv'u r wtr qugu" y cu'f q'v'v'k'v'0Vj g'eqwtv'cnuq" q'dugt'xgf "vj cv'k'o ki j v dg" w'p'f w'f "uwi i gukxg" v'q" u'j qy "r j qvqi tcr j u'qh' vj g" xgj kergu v'q" y kpguugu" y j q'j cf "pq" k'p'f gr g'p'f gpv' t'geqng'v'k'p' qh' vj go 0 H'w'v'j gt. "y g'p'q'v'g" vj cv' vj g' eqwtv'f g'p'k'f "vj g'f lueqxtg { "o q'v'k'p y kj qw" r tglw'f leg. "ucv'kpi " vj cv' k'h' f ghgpf cpv'j cf " cf f k'k'q'p'cn g'x'k'f g'peg. " vj g" eqwtv' y qwrf " t'geq'p'k'f gt" vj g" o c'w'g't'0 F ghgpg eqw'p'ug'v'uc'v'gf "j g'r t'q'd'c'd'n'f "y qwrf "r w'f ghgpf cpv'q'p" vj g' u'c'p'f v'q' uwr r n'f "vj g'p'g'g'f "h'q'w'p'f v'k'q'p' hqt" vj g'f lueqxtg { "t'gs w'g'u' d'w w j g'p'g'x'g't' f'k'f "u'q'0 *955

H'p'c'm'f . " vj g" g'x'k'f g'peg" y cu' p'q'v' o c'v'g't'k'n" uwe'j " vj cv' ksu" m'quu f gr t'k'x'g' " f ghgpf cpv' qh' f w'g" r t'q'eg'uu" qh' n'ey 0' F ghgpf cpv' j cu p'q'v'f go q'p'ut'c'v'g'f " vj cv' vj g'r t'q'ug'ew'k'q'p" j cf "lp" k'u" r q'u'gu'k'q'p g'x'k'f g'peg" vj cv' y cu' h'c'x'q't'c'd'r'g" v'q" j ko " cpf" o c'v'g't'k'n' v'q" vj g k'u'u'w'g'u' q'h' i' w'k'n' q't" r w'p'k'uj o g'p'0' *U'gg" Pennsylvania" v. Ritchie. supra." 6: 2' WLU' cv' r 0' 79" j329" UE'v' cv' r 0' 3223_0" Vj gtg k'u' p'q" t'g'c'u'p'c'd'r'g" r t'q'd'c'd'k'v'f " c" f k'h'g't'g'p'v' t'g'u'w'v' y qwrf " j cxg qe'w't'g'f "lp" vj g'r t'q'eg'g'f k'p' i" j cf " vj g" g'x'k'f g'peg" d'ggp" f k'u'e'q'ug'f v'q" vj g'f ghgpg" *i'bid. + vj g" g'x'k'f g'peg" y cu' p'q'v' uwe'j " cu" o" e'q'w'f t'g'c'u'p'c'd'n'f " d'g" v'c'n'g'p" v'q" r w'v'j g' y j q'r'g' e'c'ug' l'p" uwe'j " c" f k'h'g't'g'p'v' r'ki j v'cu" v'q" w'p'f g'to k'p'g' e'q'p'h'k'f g'peg" l'p" vj g' x'g't'f l'v'0' o" *Strickler v. Greene." supra." 749" WLU' cv' r 04; 2" j33; " UE'v' cv' r 03; 74_0-

F ghgpf cpv'y cu'cdng"vq"lpvtqf weg" g'x'k'f g'peg"lp"uwr r qtv'qh'j ku vj g'qt { "vj cv'vj g'r qrlieg"uwtxgkncpeg"j cf "gz'v'p'f gf "w'p'v'k'v'j g'v'ko g qh'v'j g"Y k'k'co u'o w'f gt. "cpf "k'y qwrf "dg"gp'v'k'g'n'f "ur g'w'v'k'x'g v'q"eqpen'f g'v'j cv'r j qvqi tcr j u'qh'uwtxgkncpeg" x'gj kergu" y qwrf j cxg" ch'g'ev'gf " vj g" x'g't'f l'v' g'k'j gt" d { "eq't'q'd'q't'c'v'k'p'i " f ghgpg y k'p'g'u'g'u'q't" d { "r'g'c'f k'p'i "v'q" r q'v'g'p'v'k'v'k'z'ew'r cv'q't { "g'x'k'f g'peg0

F ghgpf cpv'cnuq"eqp'v'p'f u'v'j g'v'lcni'eqwtv'gtt'gf "lp" f g'p' { k'p'i " j ku t'gs w'g'u' h'q't" f lueqxtg { "qh'o go q't'c'p'f c'y t'k'w'p' d { "N'qu' C'p'i g'rgu R'q'r'ieg" E'j k'g'h'I' c'v'g'u' c'p'f "c" r'k'g'w'g'p'c'p'v'k'p' v'j g'r qrlieg" f'gr c't'v'o g'p'v t'gi c't'f k'p'i "c'p' k'p'v'g't'p'c'n'c'h'c'k'u' k'p'x'g'u'k'i c'v'k'q'p' q'h' Q'h'ilegtu' R'g'uc'p'v'g. U'rc'em" c'p'f "T'k'ue'g'p'u' k'p' e'q'p'p'g'v'k'q'p' y k'j " vj g' c'm'g'i g'f "u'c'v'go g'p'v qh'F q'p'c'f "U'w'w'q'p" v'q" Q'h'ilegt' R'g'uc'p'v'g" vj cv'f ghgpf cpv'k'p'v'p'f g'f v'q' h'k'n'i E'c't'r g'p'v'g't'0 C'u't'g'ur q'p'f g'p'v'p'q'v'g'u. " vj g' R'g'q'r r'g' f'k'f " r t'q'x'k'f g f ghgpf cpv' y k'j " vj g" r qrlieg" f'gr c't'v'o g'p'v'u" y t'k'w'p' " t'g'r q't'v' q'p vj g" k'p'v'g't'p'c'n' c'h'c'k'u' k'p'x'g'u'k'i c'v'k'q'p" vj cv' y cu' vj g" d'c'u'k'u' w'r q'p y j k'j " E'j k'g'h'I' c'v'g'u' c'p'f " vj g' r'k'g'w'g'p'c'p'v'k'p' v'j g'k' b' go q't'c'p'f c'0 Vj g" v'lcni'eqwtv' r t'q'r g't'n'f " t'g'x'k'g'y g'f " vj g" f'k'ur w'g'f " o go q't'c'p'f c' k'p'eco g't'c" v'q" y g'k'i j " vj g" R'g'q'r r'g'u' e'rc'ko " qh' r' t'k'k'g'i g" c'i c'k'p'v f ghgpf cpv'u" cu'g't'v'g'f " p'g'g'f " h'q't" vj g" k'p' h'q't'o c'v'k'q'p" *ugg" People" v. Webb" *3; ; 5+8" Ecr06v'j "6; 6." 73: " j46" Ecr0Tr u04f "99; .": 84 R04f "99; _+." c'p'f " f v'g't'o k'p'g'f " vj cv' p'q'v' k'p'i " e'q'p'v'k'p'g'f "lp" vj g o go q't'c'p'f c'y qwrf "dg" o c'v'g't'k'n'v'q" vj g'f ghgpg0 Q'w' t'g'x'k'g'y " qh vj g'f q'ewo g'p'v' e'q'p'h'k'o u' v'j g' e'q'w't'v'u' e'q'p'en'w'k'q'p'0 Vj g' e'q'w't'v'u t'g'h'w'c'n'v'q" i' t'c'p'v'f lueqxtg { "y cu' y k'j lp'ku'f luetg'v'k'p'." c'p'f "pq f w'g' r t'q'eg'uu' x'k'q'r'v'k'q'p" j cu' d'ggp" u'j qy p0

F ghgpf cpv' p'g'z'v' e'q'p'v'p'f u' v'j g' v'lcni'eqwtv'gtt'gf "lp" s'w'c'uj k'p'i c" u'w'd'r q'g'p'c" f w'eg'u' v'g'ewo " h'q't" e'q'r l'g'u' q'h' o c'p'w'c'n'i" q't" q'v'j g't t'g'e'q't'f u' e'q'p'eg't'p'k'p'i " vj g' q'r g't'c'v'k'q'p" qh' vj g' e'q'w'p'v'f " l'c'k'i' o' q'f w'g k'p' y j k'j " f ghgpf cpv'y cu' e'q'p'h'k'p'g'f 0J g' u'q'w' i j v'v'j g'ug' t'g'e'q't'f u'v'q t'g'd'w'v'j g'r t'q'ug'ew'q't'u' e'q'p'v'p'v'k'q'p' vj cv' k'u'f g'r { "lp" f k'u'e'q'v'k'p'i l'c'k'j q'w'g' l'p' h'q't'o c'p'v' E'c't't'q'm'u' u'c'v'go g'p'v'k'o r n'ec'v'k'p'i " f ghgpf cpv w'p'v'k'i' c'h'g't" vj g'r t'g'r'ko k'p'c't { " j g'c't'k'p'i . " y cu" t'g'c'u'p'c'd'r'g" d'g'ec'w'ug qh' e'q'p'eg't'p'u' vj cv'f ghgpf cpv'y qwrf " t'g'v'c'n'c'v'g' c'i c'k'p'v' E'c't't'q'm'i' cu m'p'i " cu" E'c't't'q'm'y cu' j q'w'g'f "lp" vj g' e'q'w'p'v'f " l'c'k'i'0 Y g" q'd'ug't'x'g vj c'v'c'n'j q'w' i j " vj g' e'q'w't'v's w'c'uj g'f " vj g' u'w'd'r q'g'p'c. k'g'z'c'o k'p'g'f " vj g o q'f w'g" k'u'g'n'f c'p'f " e'q'p'en'f g'f " vj cv' vj g'r t'q'ug'ew'k'q'p" u' u'g'ew't'k'f e'q'p'eg't'p'u' y g't'g' t'g'c'u'p'c'd'r'g'0 Y k'j q'w'g'z'c'o k'p'k'p'i " vj g" o g't'k'u' q'h vj g' e'q'w't'v'u' f g'ek'v'k'p' y k'j " t'g'ur g'ev'v'q" f lueqxtg { . " y g' e'q'p'en'f g vj cv' c'p' { " g't't'q't" "lp" f g'p' { k'p'i " f lueqxtg { " y cu" *956 " j c't'o r'g'u' d'g'ec'w'ug" vj g' t'g's w'g'u'v'g'f " g'x'k'f g'peg" y g'p'v'v'q" vj g' k'u'u'w'g' q'h' f g'r { "lp f k'u'e'q'v'k'p'i " E'c't't'q'm'u' u'c'v'go g'p'v'0' *U'gg" People" v. Clark" *3; ; 4+ 5" Ecr06v'j " 63." 356" j32" Ecr0Tr u04f " 776." : 55" R04f " 783_ jf ghgpf cpv'o w'u'v'f go q'p'ut'c'v'g' r t'g'l'w'f l'eg" v'q" r t'g'x'c'k'i' q'p" e'rc'ko qh'f lueqxtg { " g't't'q't_0" Y g'j" cxg" f v'g't'o k'p'g'f " vj cv' vj g' f g'r { " y cu p'q'p'r t'g'l'w'f l'ec'r'0 P q'f w'g' r t'q'eg'uu' x'k'q'r'v'k'q'p' c'r r g'c't'u' d'g'ec'w'ug" vj g g'x'k'f g'peg" y cu' p'q'v' o c'v'g't'k'n' v'j g't'g' k'u' p'q' t'g'c'u'p'c'd'r'g' r t'q'd'c'd'k'v'f

c'f khtg pvt guwn'y qwr' j' cxg'qeewt'gf 'kp'y g'r tqeggf kpi . 'j' cf v'j g'g'xkf gpeg'dggp'f kuenq'gf 'v'j g'f ghgpug0

F ghgpf cpv' cnuq' eqpv'gf u' v'j g' eqwtv' gttgf " kp' f gp{ kpi " j ku tgs wguv' hqt' f kueq'xg{ " qh' cm' ecugu' v'j cv' F gvev'xg' Y k'kco u j cf " lpx'guki cv'f . " qt' " kp' y j lej " j g' j' cf " o cf g' cp' cttg' u' v'j g' { gct' d'gh'qt' g' j' g' y' cu' o w' f g' t' g' f' O' Y' g' q' d' u' g' t' x' g' v' j' cv' v' j' g' t' k' r' i' e' q' w' t' v' i' t' c' p' v' g' f' v' j' g' t' s' w' g' u' v' v' j' v' j' g' z' v' g' p' v' j' cv' k' v' q' t' f' g' t' f' f' k' u' e' n' q' u' w' t' g' q' h' v' j' g' p' c' o' g' u' q' h' t' g' t' u' q' p' u' y' j' q' j' cf " o cf g' v' j' t' g' c' u' i' c' k' p' u' v' Y k' k' c' o' u' 0

F ghgpf cpv'u' v'j g' q' t' { ' y' cu' v' j' cv' c' r' g' t' u' q' p' l' p' x' g' u' k' i' cv' f' q' t' c' t' t' g' u' g' f' d' { ' Y k' k' c' o' u' 0 c' f' j' cxg' d' q' t' p' g' c' i' t' w' f' i' g' c' i' c' k' p' u' v' j' g' q' h' h' e' g' t' c' p' f' v' j' w' u' d' g' g' p' t' g' u' r' q' p' u' k' d' r' g' h' q' t' v' j' g' o' w' f' g' t' q' h' v' j' g' q' h' h' e' g' t' o' F' ghgpf cpv' p' q' v' g' f' v' j' cv' u' q' o' g' g' { g' y' k' p' g' u' u' g' u' v' j' v' j' g' u' j' q' q' v' k' p' i' " q' h' F' g' v' e' v' x' g' Y k' k' c' o' u' j' cf " f' g' u' e' t' k' d' g' f' v' j' g' c' u' u' k' r' e' p' v' c' u' Y' j' k' g' q' t' J' k' u' r' c' p' l' e' . y' j' g' t' g' c' u' f' g' h' g' p' f' c' p' v' k' u' C' h' t' k' e' c' p' / C' o' g' t' k' e' c' p' O' J' g' e' q' p' v' g' p' f' g' f' v' j' cv' g' x' k' f' g' p' e' g' q' h' c' Y' j' k' g' q' t' J' k' u' r' c' p' l' e' u' w' u' r' g' e' v' k' p' q' p' g' q' h' Y' k' k' c' o' u' u' u' e' c' u' g' u' y' j' q' d' q' t' g' c' i' t' w' f' i' g' c' i' c' k' p' u' v' j' g' q' h' h' e' g' t' / k' h' u' e' j' " c' r' g' t' u' q' p' g' z' k' u' g' f' / y' q' w' r' c' f' f' y' g' k' i' j' v' v' j' k' u' f' g' h' g' p' u' g' 0

Cv'v'j g' j' g' c' t' k' p' i' . ' v' j' g' r' t' q' u' e' w' k' p' . ' v' j' t' q' w' i' j' ' v' j' g' N' q' u' C' p' i' g' r' u' E' k' v' C' w' q' t' p' g' { . ' t' g' u' k' u' g' f' f' k' u' e' q' x' g' t' { " q' p' v' j' g' i' t' q' w' p' f' u' v' j' cv' f' g' h' g' p' f' c' p' v' j' cf " o cf g' cp' l' p' c' f' g' s' w' e' v' u' j' q' y' k' p' i' " c' p' f' v' j' cv' v' j' g' t' s' w' g' u' v' y' q' w' r' k' o' r' q' u' g' c' p' l' p' q' t' f' l' p' c' v' g' d' w' t' f' g' p' q' p' v' j' g' r' q' r' k' e' g' f' g' r' c' t' w' o' g' p' v' v' j' u' k' t' v' v' j' t' q' w' i' j' k' u' t' g' e' q' t' f' u' v' q' f' g' v' g' t' o' l' p' g' y' j' c' v' c' t' t' g' u' u' q' t' l' p' x' g' u' k' i' c' v' k' p' u' Y k' k' c' o' u' j' cf " d' g' g' p' l' p' x' q' r' k' g' f' l' p' f' w' t' k' p' i' v' j' g' { g' c' t' r' t' g' e' g' f' k' p' i' j' k' u' f' g' c' y' O' V' j' g' e' k' v' { c' w' q' t' p' g' { q' h' t' g' f' g' z' o' j' v' q' v' j' g' z' v' g' p' v' j' cv' y' g' t' g' c' y' c' t' g' c' p' f' " e' c' p' f' k' u' e' q' x' g' t' { k' h' c' p' { " l' p' f' k' k' f' w' e' n' i' y' j' k' e' j' " F' g' v' e' v' x' g' Y k' k' c' o' u' j' cf " d' g' g' p' l' p' x' q' r' k' g' f' y' k' j' " o cf g' cp' l' " n' l' p' f' q' h' v' j' t' g' c' v' q' t' y' j' k' e' j' v' j' g' f' g' r' c' t' w' o' g' p' v' u' w' u' r' g' e' v' g' f' " o c' { " r' t' g' u' g' p' v' c' v' j' t' g' c' v' v' q' F' g' v' e' v' x' g' Y k' k' c' o' u' . c' b' u' g' t' k' a' w' v' j' t' g' e' v' q' h' d' q' f' k' n' l' p' l' w' t' { q' t' f' g' c' y' . y' g' y' k' n' u' g' t' e' j' " q' w' t' h' k' u' c' p' f' f' k' i' " w' r' v' j' cv' l' p' h' q' t' o' c' v' k' p' v' j' g' z' v' g' p' v' j' cv' y' g' e' c' p' = v' j' g' z' v' g' p' v' j' cv' c' p' { q' p' g' k' u' c' y' c' t' g' q' h' v' j' cv' v' f' r' g' q' h' h' e' v' t' o' V' j' g' v' t' k' n' i' e' q' w' t' v' e' q' p' e' n' x' f' g' f' f' g' h' g' p' f' c' p' v' j' cf " p' q' v' i' k' x' g' p' u' w' h' h' e' k' e' p' v' i' w' u' k' h' e' c' v' k' p' h' q' t' v' j' g' f' k' u' e' q' x' g' t' { . " c' p' f' f' g' p' l' e' f' v' j' g' o' q' v' k' p' g' z' e' g' r' v' o' k' p' u' q' h' c' t' c' u' c' p' { " l' p' h' q' t' o' c' v' k' p' v' j' c' v' u' d' g' g' p' q' d' w' c' l' p' g' f' d' { " v' j' g' R' q' r' k' e' g' F' g' r' c' t' w' o' g' p' v' v' j' cv' r' g' t' j' c' r' u' v' j' g' t' l' p' f' k' k' f' w' e' n' i' o' c' { j' cxg' o' cf g' v' j' t' g' c' u' i' c' i' c' k' p' u' v' q' h' h' e' g' t' Y k' k' c' o' u' 0

F ghgpf cpv'ur gew'v'gu'v'j cv'uo g' r' g' t' u' q' p' v' p' f' g' t' l' p' x' g' u' k' i' c' v' k' p' d' { F g' v' e' v' x' g' Y k' k' c' o' u' . d' w' v' y' j' q' j' cf " p' q' v' v' j' g' h' p' q' y' r' g' f' i' g' q' h' v' j' g' r' t' q' u' e' w' k' p' . " o cf g' cp' l' v' j' t' g' c' v' i' c' k' p' u' v' j' g' q' h' h' e' g' t' . " o c' { j' cxg' d' g' g' p' t' g' u' r' q' p' u' k' d' r' g' h' q' t' o' w' f' g' t' k' p' i' v' j' g' * 957 " q' h' h' e' g' t' O' V' j' g' e' q' w' t' v' c' e' v' g' f' y' k' j' k' p' k' u' f' k' u' e' t' g' v' k' p' l' p' f' g' p' { k' p' i' " f' g' h' g' p' f' c' p' v' u' t' s' w' g' u' v' v' j' v' j' g' z' v' g' p' v' j' g' t' s' w' g' u' v' y' c' u' p' q' v' h' e' w' u' g' f' q' p' g' x' k' f' g' p' e' g' q' h' v' j' t' g' c' u' v' q' " F' g' v' e' v' x' g' Y k' k' c' o' u' 0 * U' g' g' " P' e' o' p' l' e' v' . K' a' u' r' i' s' h' " * 3 ; ; 2 + " 74 E' c' r' i' f' ' 86 : . ' 8 : 8 / 8 : 9 " j' 498 E' c' r' i' f' r' v' 09 : . : . 24 " R' o' l' f' ' 49 : _ 0 " Y g' c' t' g' u' w' r' q' t' v' g' f' l' p' t' g' e' j' k' p' i' v' j' k' u' e' q' p' e' n' u' k' q' p' d' { v' j' g' e' k' t' e' w' o' u' c' p' e' g' v' j' cv' v' j' g' l' p' h' q' t' o' c' v' k' p' t' s' w' g' u' v' g' f' y' c' u' u' w' d' l' g' e' v' v' q' v' j' g' q' h' h' e' l' e' n

l'p' h' q' t' o' c' v' k' p' r' t' k' l' k' i' g' " * G' x' k' f' O' E' q' f' g' . E' 3262 = " In re David W. * 3 ; 98 + " 84 " E' c' r' i' f' r' v' 05 " : 62 . : 68 / : 69 " j' 355 " E' c' r' i' f' r' v' 0 564 = u' g' g' c' n' u' q' " C' r' a' i' g' v' . M' u' n' i' c' i' p' a' l' C' o' u' r' t " * 3 ; 9 ; + " 322 " E' c' r' i' f' r' v' 05 8 ; . " 98 / 9 : " j' 383 " E' c' r' i' f' r' v' 03 ; _] t' g' e' q' i' p' k' k' p' i' v' j' g' p' g' g' f' v' q' n' g' r' e' q' p' h' k' f' g' p' v' k' n' i' v' j' g' c' t' t' g' u' v' t' e' q' t' f' u' q' h' v' j' k' f' r' c' t' v' k' u' _ . " c' v' r' e' c' u' v' v' q' v' j' g' z' v' g' p' v' v' j' g' o' p' g' e' g' u' u' k' { " h' q' t' r' t' g' u' g' t' x' l' p' i' v' j' g' e' q' p' h' k' f' g' p' v' k' r' k' v' { q' h' v' j' g' l' p' h' q' t' o' c' v' k' p' { O' O' q' w' y' g' l' i' j' u' v' j' g' p' g' e' g' u' u' k' { " h' q' t' f' k' u' e' n' q' u' w' t' g' k' p' v' j' g' l' p' v' g' t' g' u' v' q' h' l' w' u' k' e' g' " O' O' O' * G' x' k' f' O' E' q' f' g' . E' 3262 . " u' w' d' f' O' * d + * 4 - 0 " C' u' y' g' j' cxg' q' d' u' g' t' x' g' f' . " o' j' c' n' j' q' w' i' j' " r' q' r' k' e' { " o c' { " h' e' x' q' t' i' t' c' p' v' k' i' " h' k' d' g' t' c' r' i' f' k' u' e' q' x' g' t' { " v' q' e' t' k' o' l' p' c' n' i' f' g' h' g' p' f' c' p' u' . e' q' w' t' u' o' c' { p' g' x' g' t' v' j' g' r' u' u' t' g' h' w' u' g' v' q' i' t' c' p' v' f' k' u' e' q' x' g' t' { " k' h' v' j' g' d' w' t' f' g' p' u' r' r' e' e' g' f' q' p' i' q' x' g' t' p' o' g' p' v' c' p' f' " q' p' v' j' k' f' r' c' t' v' k' u' " s' u' b' s' t' a' n' t' i' a' l' l' y " q' w' y' g' l' i' j' v' j' g' f' g' o' q' p' u' w' c' v' g' f' " p' g' g' f' " h' q' t' f' k' u' e' q' x' g' t' { O' * P' e' o' p' l' e' v' . K' a' u' r' i' s' h' . s' u' p' r' a . " 74 " E' c' r' i' f' r' v' r' 0 8 : 80 " V' j' g' t' g' k' u' c' u' k' i' p' h' e' c' p' v' l' p' v' g' t' g' u' v' k' p' r' t' g' u' g' t' x' l' p' i' v' j' g' e' q' p' h' k' f' g' p' v' k' r' k' v' { " q' h' c' p' l' p' f' k' k' f' w' e' n' i' e' k' k' g' p' u' c' t' t' g' u' v' t' e' q' t' f' u' " i' b' i' d . = " W' e' s' t' b' r' o' o' k' v' . C' o' u' n' t' y' o' f' L' o' s' A' n' g' e' l' e' s * 3 ; ; 6 + " 49 " E' c' r' i' f' r' v' 05 j' " 379 . " 387 / 388 " j' 54 " E' c' r' i' f' r' v' 04 f' " 5 : 4 = " C' r' a' i' g' v' . M' u' n' i' c' i' p' a' l' C' o' u' r' t . " s' u' p' r' a . " 322 " E' c' r' i' f' r' v' 05 " c' v' r' r' 0 98 / 9 : + " c' p' f' f' g' h' g' p' f' c' p' v' u' i' j' q' y' k' p' i' q' h' i' p' g' g' f' h' q' t' v' j' q' u' g' t' e' q' t' f' u' y' c' u' d' c' u' g' f' w' r' q' p' u' r' g' e' w' e' v' k' p' c' p' f' e' q' p' u' k' w' e' g' f' v' j' g' r' t' q' x' g' t' d' k' e' n' i' h' k' u' j' k' p' i' g' z' r' g' f' k' k' p' O' P' c' d' w' u' g' q' h' f' k' u' e' t' g' v' k' p' k' u' i' j' q' y' p' O' Y' g' c' n' u' q' t' g' l' g' e' v' f' g' h' g' p' f' c' p' v' u' i' f' w' g' t' t' q' e' g' u' u' e' n' c' o' k' o' y' k' j' t' g' u' r' g' e' v' v' q' v' j' k' u' x' k' f' g' p' e' g' . q' p' v' j' g' i' t' q' w' p' f' f' g' h' g' p' f' c' p' v' k' u' w' p' c' d' r' g' v' q' f' g' o' q' p' u' t' c' v' g' v' j' g' z' k' u' g' p' e' g' q' h' g' z' e' w' r' c' v' q' t' { " m' a' t' e' r' i' a' l " g' x' k' f' g' p' e' g' k' p' v' j' g' r' q' u' u' g' u' u' k' p' q' h' v' j' g' r' t' q' u' e' w' k' p' o' 9

9 F ghgpf cpv'u' r' t' q' h' q' t' o' c' c' u' u' g' t' v' k' p' v' j' cv' f' g' p' k' e' n' q' h' v' j' k' u' f' k' u' e' q' x' g' t' { " f' g' r' t' k' x' g' f' " j' k' o' " q' h' v' j' g' t' k' i' j' v' v' q' " o' f' g' h' g' p' f' j' k' o' u' g' h' i' c' i' c' k' p' u' v' j' g' u' g' e' c' r' k' c' n' i' e' j' c' t' i' g' u' o' k' u' t' g' l' g' e' v' g' f' d' g' e' c' w' u' g' . " c' u' y' g' j' cxg' u' g' g' p' . " v' j' g' g' x' k' f' g' p' e' g' y' c' u' p' q' v' o' c' v' g' t' k' i' o

7. Denial of continuance before the preliminary hearing * 33 + C' h' g' t' p' w' o' g' t' q' w' u' e' q' p' v' p' w' c' p' e' g' u' q' d' v' k' l' p' g' f' d' { " q' t' e' q' p' e' w' t' t' g' f' k' p' d' { " v' j' g' f' g' h' g' p' u' g' . " f' g' h' g' p' f' c' p' v' u' r' t' g' r' i' k' o' l' p' c' t' { " j' g' c' t' k' p' i' " y' c' u' u' e' j' g' f' w' r' g' f' c' r' r' t' q' z' k' o' c' v' g' n' { " h' k' x' g' o' q' p' v' u' c' h' g' t' j' k' u' c' t' t' g' u' o' C' v' v' j' c' v' v' l' o' g' j' g' o' q' x' g' f' h' q' t' e' q' p' v' p' w' c' p' e' g' q' h' v' j' g' r' t' g' r' i' k' o' l' p' c' t' { j' g' c' t' k' p' i' " q' p' v' j' g' i' t' q' w' p' f' v' j' cv' v' j' g' r' t' q' u' e' w' k' p' j' cf " p' q' v' { g' v' t' t' a' x' k' f' g' f' u' r' g' e' k' h' g' f' k' g' o' u' q' h' f' k' u' e' q' x' g' t' { " c' p' f' " q' v' j' g' t' " k' g' o' u' j' cf " d' g' g' p' r' t' a' x' k' f' g' f' x' g' t' { " t' g' e' g' p' v' u' . " c' p' f' " q' p' v' j' g' h' w' t' v' g' t' i' t' q' w' p' f' v' j' cv' v' j' g' t' g' e' g' p' v' u' { h' k' g' f' " e' q' o' r' n' e' k' p' v' e' j' c' t' i' k' p' i' " y' q' c' f' f' k' k' p' c' n' e' q' f' g' h' g' p' f' c' p' u' y' k' j' e' q' p' u' r' k' c' e' { " v' q' " e' q' o' k' o' w' t' f' g' t' y' q' w' r' f' t' s' w' k' t' g' u' w' d' u' c' p' v' k' e' n' { o' q' t' g' r' t' g' r' c' t' v' k' p' O' V' j' g' e' q' w' t' v' f' g' p' l' e' f' " v' j' g' o' q' v' k' p' O' F' g' h' g' p' f' c' p' v' u' q' w' i' j' v' y' t' k' t' g' x' l' e' y' " q' h' v' j' k' u' f' g' e' k' u' k' p' l' p' v' j' g' E' q' w' t' v' q' h' C' r' r' g' e' n' y' k' j' q' w' c' x' c' k' n' c' p' f' v' j' k' u' e' q' w' t' v' f' g' p' l' e' f' j' k' u' r' g' v' k' k' p' h' q' t' t' g' x' l' e' y' 0 F' g' h' g' p' f' c' p' v' u' h' k' g' f' " c' o' q' v' k' p' v' q' u' g' v' c' u' l' k' g' v' j' g' l' p' h' q' t' o' c' v' k' p' q' p' v' j' g' i' t' q' w' p' f' v' j' g' f' g' p' k' e' n' q' h' c' e' q' p' v' p' w' c' p' e' g' f' g' r' t' k' x' g' f' j' k' o' " q' h' x' c' t' k' q' w' u' e' q' p' u' k' w' k' p' c' n' i' t' k' i' j' u' . " l' p' e' n' x' f' k' p' i' v' j' g' t' k' i' j' v' v' q' v' j' g' g' h' h' e' v' x' g' c' u' i' k' u' c' p' e' g' " * 958 " q' h' e' q' w' p' u' g' n' d' w' v' j' g' v' t' k' n' i' e' q' w' t' v' f' g' p' l' e' f' v' j' g

o qvqpp'qp'vj g'i tqwpf 'vj cvf ghgpug'eqwpugn'r r gctgf 'vq'dg'xgt { r tgr ctgf 'hqt'vj g'r tgrko kpct { 'j gctkpi 'cpf 'eqpf wevgf 'ouwr gtdo gzc0 kpcvqp" qh' vj g" y kpguugu' Vj g" eqwtv' cmq" pqvgf " vj cv f ghgpug'eqwpugn'j cf "ecmgf "74"y kpguugu'cv'vj g"r tgrko kpct { j gctkpi 'y j krg'vj g'r tqugewvqp'j cf "ecmgf "550F ghgpf cpv'ci clp wpuweeguutwnf "uqwi j v'vq"qxgtwtp"vj ku'twki "d{ "y c{ "qh'c r gvkqp'hqt'y tkv'qh'o cpf cvg'qt'r tqj kdkkqp0

F ghgpf cpv' eqpvgpf u' vj g" f gpkcn' qh' c" eqpvkpwpeg" f gr tkxgf j ko "qh' c" o gcpkpi hwn' r tgrko kpct { "j gctkpi . "kp" xkqrcvqp" qh y j cv' j g" ej ctcevgtk gu" cu" c" hgf gtcn' eqpvkwwkqpcn' tki j v' vq vj g" gxgpj cpf gf " cr r rckvqp" qh' uvcg" rcy 0J g' cmq" cr r gctu' vq eqpvgpf 'vj cv' f gpkcn' qh' j ku' o qvqpp' hqt' c' eqpvkpwpeg" f gr tkxgf j ko "qh' vj g" tki j v' vq" vj g" ghgvev' g' cuukwpeg" qh' eqwpugn" vq eqphtqpv' cpf " etquu/ gzc0 kpg" y kpguugu. " cpf " vq" r tgu'gpv' cp chkt0 cvkxg' f ghgpg0J g' eqpvgpf u' j ku' erko " ecppqvdg' tglgevgf qp' vj g' i tqwpf 'vj cv' eqwpugn' eqpf wevgf 'vj g' r tgrko kpct { 'j gctkpi kp" c" eqo r gvgpv' o cpgt. " dgecvug" vj g" etwz" qh' j ku' erko " ku vj cv' eqwpugn' y cu" f gr tkxgf " qh' etwcln' g' xkf gpeg" cpf " vko g" vq r tgr ctg' lp" vj g' hceg' qh' o cvwtu' vj cv' f gxgnr gf " u' j q' t' v' " dghq' g vj g' r tgrko kpct { 'j gctkpi 0

F ghgpf cpv' o c{ " r t' g' x' k' i' k' p' " vj ku' erko " q' p' n' " k' i' j' g' " ecp f go q' p' u' t' c' v' g' " vj cv' vj g" f gpkcn' qh' c" eqpvkpwpeg" dghq' g" vj g r tgrko kpct { "j gctkpi " t' g' u' w' n' g' " l' p' " vj g' f gpkcn' qh' c" h' c' k' t' v' t' c' n' i' q' t' q' vj g' ty kug' chgvev' g' vj g' w' n' k' o' cvg' l' w' f' i' o' g' p' v' 0 *People' v. Pompa- Ortiz." supra. "49" Ecnf " cv' r 0' 74; /752" ugg" cmq" "People" v. Crandell" *3; : : +68" Ecnf " : 55. " : 77"]473" Ecnf r v0' 449. 982" R0f " 645_0" F ghgpf cpv' ku' wpcdr' g" v' f go q' p' u' t' c' v' g' " vj cv h' c' k' w' t' g' " vq" i' t' c' p' v' j' ko " c" eqpvkpwpeg" dghq' g" vj g' r tgrko kpct { j gctkpi " j cf " cp{ " ghgvev' qp" vj g' v' t' c' n' i' q' t' vj g' l' w' f' i' o' g' p' v' 0J g' ku wpr g' tu' c' u' k' x' g' " l' p' " eqpvgpf kpi " vj cv' vj g' t' g' s' w' g' u' g' f' " eqpvkpwpeg y q' w' f' " j' c' x' g' " c' h' q' t' f' g' f' " j' ko " v' k' o' g' " c' p' f' " c' d' k' r' k' v' " vq" f' g' x' g' n' r' k' p' h' q' t' o' c' v' k' p' " t' g' i' c' t' f' k' p' i' " j' ku' f' ghgpg" vj cv' vj g' " e' c' u' g' " c' i' c' k' p' u' v' j' ko y cu' o' l' p' x' g' p' v' g' f' o' d' { " vj g' r' q' n' e' g' 0' Q' p' g' " { g' c' t' " c' p' f' " p' l' o' g' " o' q' p' v' j' u' g' r' r' u' g' f' " d' g' y' g' g' p' " vj g' r' tgrko kpct { "j gctkpi " c' p' f' " vj g' g' x' k' f' g' p' v' c' t' { r q' t' v' k' p' " qh' vj g" v' t' c' n' i' c' m' y' k' p' i' " f' ghgpf cpv' co r r' g' " v' k' o' g' " vq k' p' x' g' u' k' i' c' v' g' " vq' g' z' c' o' k' p' g' vj g' f' k' u' e' q' x' g' t' g' f' " o' c' v' g' t' c' n' i' v' j' c' f' " d' g' g' p' r' t' q' x' k' f' g' f' " d' { " vj g' r' t' q' u' e' w' v' k' p' . " c' p' f' " vq" r' t' g' r' c' t' g' " vq" o' g' g' v' vj g' e' c' u' g' " c' i' c' k' p' u' v' j' ko 0' J' ku' l' p' c' d' k' r' k' v' " vq" u' g' e' w' t' g' " vj g' f' k' u' o' k' u' c' n' i' q' h' vj g' " e' j' c' t' i' g' " vj cv' j' g' " c' w' g' o' r' v' g' f' " vq" o' w' t' f' g' t' " I' g' q' t' i' g' " E' c' t' r' g' p' v' g' t' . g' x' g' p' " l' p' " vj g' w' p' r' k' n' g' n' " g' x' g' p' v' j' g' h' c' k' w' t' g' " vq" i' t' c' p' v' j' ko " c" r' t' g' r' tgrko kpct { / j gctkpi " eqpvkpwpeg" y cu' vj g' e' c' w' u' g' . ku' p' q' v' c' " d' c' u' k' u' h' q' t' g' x' g' t' u' c' n' i' q' h' vj g' g' p' u' w' k' p' i' " eqpvkpwpeg" cu' h' q' p' i' " cu' vj g' f' g' p' k' e' n' i' q' h' c' eqpvkpwpeg" f' k' f' " p' q' v' f' r' t' k' x' g' j' ko " q' h' c' h' c' k' t' v' t' c' n' i' q' p' vj g' v' e' j' c' t' i' g' q' t' q' vj g' ty kug' chgvev' g' vj g' w' n' k' o' cvg' l' w' f' i' o' g' p' v' 0F ghgpf cpv' j' ku' o' c' f' g' p' q' l' j' q' y' k' p' i' " vj cv' vj g' f' g' p' k' e' n' i' q' h' c' eqpvkpwpeg" j' c' f' " u' w' e' j' " c' p' " ghgvev cu' vq" c' p' { " qh' vj g' " e' j' c' t' i' g' u' . " q' t' " vj cv' vj g' f' g' p' k' e' n' i' q' h' c' eqpvkpwpeg j' c' f' " c' p' { " l' o' r' c' e' v' c' v' u' d' u' g' s' w' g' p' v' t' c' n' i' r' t' q' e' g' g' f' k' p' i' u' q' p' " j' ku' t' k' i' j' u

vq'eqwpugn'vq'eqphtqpv'vj g'y kpguugu'ci clpuw'j ko . 'qt'vq'f' tgu'gpv c'f' ghgpg0Ceeqtf kpi n' . 'y g'tglgev'vj gug'erclo u0

8. Faretta motions

*34c+ F ghgpf cpv' eqpvgpf u' vj g' v' t' c' n' i' e' q' w' t' v' f' g' p' k' e' f' " j' ko " vj g' t' k' i' j' v' vq' t' g' r' t' g' u' g' p' v' j' ko u' g' r' h' c' v' vj g' i' w' k' n' r' j' c' u' g' q' h' vj g' v' t' c' n' i' l' p' x' k' q' r' c' v' k' p' q' h' vj g' U' k' vj ' c' p' f' " *959 ' H' q' w' t' v' g' g' p' v' ' C' o' g' p' f' o' g' p' w' i' q' h' vj g' l' g' f' g' t' c' n' E' q' p' u' k' w' w' k' p' 0J g' c' u' g' t' w' i' vj c' v' vj g' v' t' c' n' i' e' q' w' t' v' x' k' q' r' c' v' g' f' " vj ku' t' k' i' j' v' k' p' v' y' q' t' g' u' r' g' e' w' u' h' t' u' v' d' { ' e' q' g' t' e' k' p' i' " j' ko " vq' y' k' j' f' t' c' y' " j' ku' r' t' g' v' t' c' n' o' q' v' k' p' " vq" t' g' r' t' g' u' g' p' v' j' ko u' g' r' h' " c' p' f' " u' g' e' q' p' f' . " d' { " f' g' p' { k' p' i' " vj g' o' q' v' k' p' " h' q' t' u' g' r' h' t' g' r' t' g' u' g' p' v' c' v' k' p' vj cv' j' g' t' g' p' g' y' g' f' " q' p' vj g' " g' x' g' " q' h' v' t' c' n' i' 0

*35+ C' f' ghgpf cpv' y' j' q' h' p' q' y' k' p' i' n' f' ' c' p' f' ' l' p' v' n' k' i' g' p' w' i' q' y' c' k' x' g' u' vj g' t' k' i' j' v' vq' eqwpugn' quuguu' c' t' k' i' j' v' w' p' f' g' t' vj g' U' k' vj ' C' o' g' p' f' o' g' p' v' q' h' vj g' l' g' f' g' t' c' n' i' E' q' p' u' k' w' w' k' p' v' q' e' q' p' f' w' e' v' j' ku' t' f' j' g' t' q' y' p' f' ghgpg0 *Faretta' v. California" *3; 97+644' W' L' U' : 28. : 57; : 58]; 7' U' E' v' 0 4747. " 4763/4764. " 67" N' G' f' 0' f' " 784_0" Y j' g' p' vj g' f' ghgpf cpv o q' x' g' u' vq" f' k' u' o' k' u' i' eqwpugn' c' p' f' " w' p' f' g' t' v' c' n' g' " j' ku' q' t' " j' g' t' " q' y' p' f' ghgpg. " j' g' q' t' u' j' g' o' u' j' q' w' f' " d' g' " o' c' f' g' c' y' c' t' g' " q' h' vj g' f' c' p' i' g' t' u' c' p' f' " f' k' u' c' f' x' c' p' c' i' g' u' q' h' u' g' r' h' t' g' r' t' g' u' g' p' v' c' v' k' p' . " u' q' vj cv' vj g' t' g' e' q' t' f' y' k' n' i' g' u' c' d' i' k' i' j' vj cv' j' g' n' p' q' y' u' y' j' cv' j' g' k' u' f' q' k' p' i' " c' p' f' " j' ku' e' j' q' l' e' g' k' u' o' c' f' g' y' k' j' " g' { g' u' q' r' g' p' 0' o' " *Id. " cv' r 0' : 57"] ; 7' U' E' v' 0' cv' r 0 4763_ = ugg" cmq" "People" v. Pinholster, supra, "3" Ecnf vj " cv r r 0' ; 4: /; 4; 0' H' w' t' vj g' t' . " cu' y' g' j' c' x' g' " g' z' r' r' c' l' p' e' g' f' . " o' c' n' j' q' w' i' j' " k' p' c" e' t' l' o' k' p' c' n' i' v' t' c' n' i' c" f' ghgpf cpv' j' cu' c" h' g' f' g' t' c' n' i' eqpvkwwkqpcn wpeqpf k' k' p' c' n' i' t' k' i' j' v' q' h' u' g' r' h' t' g' r' t' g' u' g' p' v' c' v' k' p' . " l' p' " q' t' f' g' t' vq" l' p' x' q' n' g' vj cv' t' k' i' j' v' j' g' q' t' u' j' g' o' w' u' v' o' c' n' g' " c' p' " w' p' g' s' w' k' x' q' e' c' n' i' c' u' g' t' v' k' p' " q' h' vj cv' t' k' i' j' v' y' k' j' k' p' c' t' g' c' u' q' p' c' d' r' g' w' o' g' t' t' k' t' vq' vj g' e' q' o' o' g' p' e' g' o' g' p' v' q' h' v' t' c' n' i' 0] E' k' c' v' k' p' u' 0' Y j' g' p' c' o' q' v' k' p' " h' q' t' u' g' r' h' t' g' r' t' g' u' g' p' v' c' v' k' p' " ku' p' q' v' o' c' f' g' l' p' c' v' k' o' g' n' f' h' c' u' j' k' p' r' t' k' t' vq' v' t' c' n' i' u' g' r' h' t' g' r' t' g' u' g' p' v' c' v' k' p' p' q' h' q' p' i' g' t' " ku' c' o' c' w' g' t' q' h' t' k' i' j' v' d' w' u' k' u' u' w' d' l' g' e' v' v' q' vj g' v' t' c' n' i' e' q' w' t' v' u' f' k' u' e' t' g' v' k' p' 0 *People' v. Bradford, supra, "37" Ecnf vj " cv' r 035870- k' p' " g' z' g' t' e' k' u' k' p' i' " vj ku' f' k' u' e' t' g' v' k' p' . " vj g' v' t' c' n' i' e' q' w' t' v' u' j' q' w' f' " e' q' p' u' k' g' t' h' c' e' v' t' u' u' w' e' j' " cu' o' " vj g' s' w' c' r' k' v' " q' h' e' q' w' p' u' g' n' u' t' g' r' t' g' u' g' p' v' c' v' k' p' " q' h' vj g' f' ghgpf cpv' vj g' f' ghgpf cpv' u' r' t' k' t' " r' t' q' e' r' k' k' v' " vq" u' w' d' u' k' w' w' g' e' q' w' p' u' g' n' vj g' t' g' c' u' q' p' u' h' q' t' vj g' t' g' s' w' g' u' v' vj g' r' e' p' i' vj " c' p' f' " u' c' i' g' " q' h' vj g' r' t' q' e' g' g' f' k' p' i' u' . " c' p' f' " vj g' f' k' u' w' v' k' p' " q' t' " f' g' r' c' { " y' j' k' e' j' " o' k' i' j' v' t' g' c' u' q' p' c' d' n' " d' g' " g' z' r' g' e' v' g' f' " vq" h' q' m' y' vj g' i' t' c' p' v' k' p' i' " q' h' u' w' e' j' " c' o' q' v' k' p' 0' o' *People' v. Burton" *3; : : +6: " Ecnf " : 65. : 75"] 47: Ecnf r v0' 3: 6. " 993" R0f " 3492_ " s' w' v' k' p' i' " People' v. Windham *3; 99+3; " Ecnf " 343. " 34: "] 359" Ecnf r v0: . " 782" R0f " 33: 9_0-

*34d+ Vj g' t' g' e' q' t' f' " t' g' h' g' e' v' u' vj cv' q' p' " Q' e' v' d' g' t' " : . " 3; : 9. " f' w' l' k' p' i' j' g' c' t' k' p' i' u' " q' p' " r' t' g' v' t' c' n' i' o' q' v' k' p' u' " vq" d' g' " t' g' u' i' k' g' f' " d' g' h' q' t' g' " vj g' e' q' o' o' g' p' e' g' o' g' p' v' q' h' l' w' t' { " u' g' r' e' v' k' p' . " f' ghgpf cpv' . " y' j' q' c' i' t' g' c' f' { j' c' f' " d' g' g' p' " i' t' c' p' v' g' f' " u' c' w' u' " cu' " e' q' e' q' w' p' u' g' n' " o' q' x' g' f' " vq" f' k' u' o' k' u' i' e' q' w' p' u' g' n' i' c' p' f' " w' p' f' g' t' v' c' n' g' j' ku' f' ghgpg" c' n' i' p' g' 0' E' q' w' p' u' g' n' i' g' z' r' r' c' l' p' e' g' f' q' p' f' ghgpf cpv' u' d' g' i' c' h' vj cv' f' ghgpf cpv' h' e' n' u' w' e' j' " u' c' w' u' " y' q' w' f'

ko r t q x g " j k u " v t g e w g p v " l p " v j g " e q w p v " l e k n O K p " c f f k l k q p . e q w p u g n ' g z r n e k p g f " v j c v ' f g h e p f c p v ' x l g y g f " d q v j " q h ' v j g " y q c w a t p g { u ' c r r q l p v g f " v q ' t g r t g u g p v j } k o " c u ' l p e q o r g v g p v l p ' d g l p i w p r t g r c t g f " h q t " v j g ' r g p c n m { " r j c u g O ' F g h e p f c p v ' d g r g x g f " v j c v c v ' c " t e g e p v j } g t k l p i . " f g h e p u g " e q w p u g n j } c f " u g g o g f " w p r t g r c t g f h q t " v j g ' r t q u g e w k q p u ' r n p p g f " l p v t q f w e v k q p " q h ' e g t v c l p " g x k f g p e g c v ' v j g ' r g p c n m { " r j c u g . " d w ' u c v g f " v j c v ' p q " e q p v k p w c p e g " y c u p g e u a c t { 0

Vj g " v t k n ' e q w v ' g z r n e k p g f " v j c v ' f g h e p f c p v u ' e q p e g t p " q x g t " j k u e q w p u g n u ' r t g r c t c v k q p ' y c u ' w p h q w p f g f . ' c p f " v j c v ' e q w p u g n l e n g c t n f y q w f " d g ' r t g r c t g f " g x g p " * 9 6 0 " f w t k p i " v j g ' i w k n ' r j c u g " q h ' v j g v t k n ' v q " o g g v ' v j g " g x k f g p e g " t g h g t g f " v q O ' K p " c f f k l k q p . " v j g " e q w v l p h t o g f " f g h e p f c p v ' v j c v ' g " e c u g " l p x q n k g f " c p " q x g t y j g r o k p i c o q w p v " q h ' y q n m ' g x g p " h q t " v j g " y q " n y { g t u ' y j q " j c f " d g g p c r r q l p v g f " v q ' t g r t g u g p v j } k o . " v j c v ' v j g " e q w v ' y c u ' c y c t g " j q y o w e j " v k o g " e q w p u g n ' y g t g " u r g p f k p i " q p " l p x g u n k i c v k q p " c p f r t g r c t c v k q p " q h ' v j g " e c u g . " c p f " v j c v ' l p " v j g " e q w v u ' x l g y . " v j g " v c u m y q w f " d g ' t w n f " q x g t y j g r o k p i " h q t " c p " l p f k x k f w e n l p ' e w u r q f { " c p f y k j q w ' r g i c n i ' t c l k p i 0 C n j q w i j " v j g " e q w v ' c e n p q y n g i g f " v j g t k i j v ' q h ' f g h e p f c p v ' v q ' t g r t g u g p v j } k o u g h " k ' u c v g f < " o K e t k p i g " c v v j c v ' v j q w i j v l p ' v j k u ' e c u g " d g e c w u g " k ' u ' q p g " q h ' v j g ' o q u v u g t k q w e c u g u " v j c v ' v j k u ' e q w v " j c u ' j c f " k p " c " n p i " v k o g 6 " V j g " e q w v c e n p q y n g i g f " v j c v ' f g h e p f c p v v y c u ' d t k i j v ' d w v y c t p g f " j k o " v j c v j k u ' h e n i q h i g i c n i ' t c l k p i " y q w f " u c p f " l p ' j k u ' y c { " l p ' e q p f w e v k p i j k u ' q y p " f g h e p u g O ' V j g " e q w v ' u c v g f < " o K e q w f " p q v ' c f x l u g " { q w u t q p i n f " g p q w i j " q h ' y j c v ' c p " k o r q u a k d r e " u k w c v k q p " v j c v ' y q w f d g " h q t " { q w 6 " V j g " e q w v w i g f " f g h e p f c p v ' p q v ' v q ' o f g e k f g ' t k i j v n f 6 Y k j " t g i c t f " v q " f g h e p u g " e q w p u g n u ' r t g r c t c v k q p " h q t " v j g ' r g p c n m { " r j c u g . " v j g " e q w v t g o l p f g f " f g h e p f c p v ' v j c v ' c p { " r g p c n m { " r j c u g y c u ' w p i k n g n " v q " e q o o g p e g " h q t " y q " q t " v j t g g " o q p v u . " c p f " v j c v o g x g p " v j g p . " k h ' v k o g " k u ' p g g f g f " v q " r t g r c t g " h q t " c " r g p c n m { " r j c u g . x g t { " q h g p ' e q w u f q t g e g u u h q t l u g x g t c n y g g m u ' d g v y g g p " v j g ' i w k n r j c u g " c p f " v j g " r g p c n m { " r j c u g " 0 0 6 " V j g " e q w v ' u c v g f " k ' y q w f o h g n i d g w g t o " k h " k " n p g y " f g h e p f c p v ' j c f " y j c v ' k ' e q p u k f g t g f " v q d g " v j g " d g u v t g r t g u g p v k q p " c x k c k d r e . " c p f " v j c v ' q v j g t y k u g " o v j c v y q w f " t g c m { " t q w d r e " o g O ' V j c v y q w f " t g c m { " w u g v o g " 0 0 k i ' v j g f g c v " r g p c n m { " k u ' k o r q u g f . " v j g p " K o " i q l p i " v q ' h g n i o q t g ' c d r e " v q n x g y k j " v j c v ' k i g c e j " f g h e p f c p v ' y c u ' i k x g p " e m i j g ' r t e q e f w e n t k i j v u ' v j c v ' { q w ' y g t g " g p v k r g f " v q O ' C p f " v j c v ' l p e n m f g u " v j g " d g u v t g r t g u g p v k q p " { q w e q w f " i g 6

Ko o g f k e v n f " h q n y k p i " v j k u ' u c v g o g p v " q p g " q h ' v j g " f g h e p u g e q w p u g n u w i i g u g f " v j c v ' j g y q w f " x l u k f g h e p f c p v l p ' v j g " e q w p v l e k n i v j g " p g z v f c { . " v q " o v c m i c d q w v j k u ' h w t v j g t O C p f " o c { d g " y g e c p " t g j u q i r g x " v j k u ' y k j q w w c e w e m f " t g s w g u k p i " v q " i q " r t q O r g t O F q " { q w ' y c p v ' v q " v j k p m i c d q w v j k u " c " n k w g " d k v 6 " F g h e p f c p v t g u r q p f g f < " o " Q n e { 6 " V j g " e q w v ' c i t g g f . " p q v k p i " v j c v ' c n j q w i j k v ' y c u ' p q v ' e q p e g t p g f " t g i c t f k p i " f g h e p f c p v u ' e q p f w e v ' c p f " v j c v

k' o k i j v ' g x g p " d g " e q p x g p l e p v " h q t " v j g " e q w v " k h ' f g h e p f c p v ' y g t g v q " t g r t g u g p v j k o u g h " d g e c w u g " v j g " v t k n ' o k i j v ' i q " h e u g t . " v j k u y c u " p q " v j g " e q w v u " e q p e g t p O ' F g h e p f c p v ' t g k g t c v g f " v j c v ' j k u e q w p u g n u f g m { " l p ' r t g r c t c v k q p " h q t " v j g ' t g p c n m { " j c u g " e q p e g t p g f j k o . " d g e c w u g " y l p g u u g u " o k i j v ' f k u c r r g c t " k h " e q w p u g n ' y c k g f w p v k i c h g t " v j g ' i w k n ' r j c u g " v q " e q o r r g v g " v j g " l p x g u n k i c v k q p O ' V j g e q w v ' p q v g f " v j c v ' e q w p u g n ' y q w f " j c x g " v k o g " v q " e q o r r g v g " v j g l p x g u n k i c v k q p " f w t k p i " l w t { " u g r e v k q p . " c p f " o y g ' e c p " v c n g " c " t g e g u u c v ' v j g " g p f " q h ' v j g " i w k n ' r j c u g " d g h q t g " v j g " r g p c n m { " r j c u g O ' C p f p q t o c m { " v j c v k u f q p g " h q t " c v ' h e c u v ' c " e q w r g ' y g g m u 6 " F g h e p f c p v u c v g f " j g ' y q w f " u r g e m ' v q " e q w p u g n ' v j g " h q n y k p i " f c { . " o d w " K u k n ' y c p v ' v j g " t g e q t f " v q ' u j q y " v j c v ' K o " u k n i v k p n k p i " c d q w " : 2 r t e g e p v ' q h ' o { " o l p f " q h ' l w u v ' c n k p i " v j k u ' y j q r e " e c u g " r t q O r g t O C p f " K j c x g p v ' e q o r r g v g f " v j c v ' f g e l u k q p " { g v w p v k i K u r g e n i y k j O t 0 R t e g ' c p f " u g g ' y j c v ' j g ' j c u ' v q " u c { " q o q t t q 6 " 6 " * 9 6 1

C h g t " e q w p u g n ' f k u e w u g f " v j g " o c w g t " y k j " f g h e p f c p v " e q w p u g n u g e w t g f " h t q o " v j g " e q w v " c " d t k g h " e q p v k p w c p e g " l p " q t f g t " v q e q o r r g v g " v j g " l p x g u n k i c v k q p " v j c v ' f g h e p f c p v " h g n " u j q w f " d g e q p f w e v g " l p " c f x c p e g " q h ' v j g " v t k n " c p f " t g r t g u g p v g f " v j c v ' v j k u y q w f " u c v k u h { " f g h e p f c p v u ' e q p e g t p u O ' F g h e p f c p v ' u c v g f " v j c v w p f g t " v j g u g " e k t e w o u c p e g u " j g y q w f " r t e q e g f " t g r t g u g p v g f " d { e q w p u g n }

F g h e p f c p v ' e q p v g p f u " v j c v " j g " o c f g " c " o q v k q p " h q t " u g h / t g r t g u g p v k q p ' y g m l p " c f x c p e g " q h ' v j g " e q o o g p e g o g p v ' q h ' v t k n c p f " c e e q t f k p i n f " y c u " g p v k r g f " v q " t g r t g u g p v j k o u g h " d w " v j c v v j g " v t k n ' e q w v ' e q g t e g f " j k o " l p v q " y k j f t c y k p i " v j g " o q v k q p " d { o c n k p i " h e n g " c u u w t c p e g u " v j c v ' v j g t g " y q w f " d g " c o r r g " v k o g " v q e q o r r g v g " l p x g u n k i c v k q p " d g w y g g p " v j g ' i w k n ' c p f " r g p c n m { " r j c u g u q h ' v j g " v t k n " c p f " d { " k o r t g u u k p i " w r q p " f g h e p f c p v ' v j c v ' k ' y q w f e c w u g " v j g " e q w v ' f k u t g u u " k h ' j g " y g t g " v q " t g r t g u g p v j k o u g h O J g e q p v g p f u ' v j k u ' e a g t e k q p " e q p u k w w g f " c " f g p k e n i q h ' v j g ' t k i j v v q " f w g r t e q e u a ' q h ' i x y 0

V j g " t g e q t f " g u c d r i k j g u . " j q y g x g t . " v j c v ' v j g " e q w v ' f k f " p q v e q g t e g " f g h e p f c p v ' l p v q " y k j f t c y k p i " j k u " o q v k q p O T c y g t . " v j g e q w v ' r t q r g t n f " c f x l u g f " f g h e p f c p v ' q h ' v j g " r k h e m u " q h " u g h / t g r t g u g p v k q p O E a p v t c t { " v q " f g h e p f c p v u ' e q p v g p v k q p . " v j g " e q w v f k f " p q v ' u w i i g u v ' v j c v ' k h ' f g h e p f c p v ' r g t u k u g f " l p " t g r t g u g p v k p i j k o u g h " j g y q w f " h e g " c " j q u k r g " e q w v O C n j q w i j " f g h e p f c p v u o q v k q p " h q t " u g h / t g r t g u g p v k q p " y c u " d c u g f " l p " r c t v ' w r q p " c e q p e g t p v j c v ' f g h e p u g " e q w p u g n j c f " h e k r g f " v q " l p x g u n k i c v g " e g t v c l p r t q r q u g f " r g p c n m { " r j c u g " g x k f g p e g . " y g " c t g " w p r g t u w c f g f " v j c v v j g " e q w v ' e q g t e g f " f g h e p f c p v ' l p v q " y k j f t c y k p i " v j g " o q v k q p d { " o c n k p i " c " h e n g " r t q o k u g " v j c v ' c " e q p v k p w c p e g " y q w f " d g i t c p v g f " d g v y g g p " v j g ' i w k n ' c p f " r g p c n m { " r j c u g u O ' V j g " t g e q t f g u c d r i k j g u " v j c v ' f g h e p f c p v ' y c u " u c v k u h g f " v j c v " e q p v k p w c p e g d g h q t g " l w t { " u g r e v k q p " e q o o g p e g f " y q w f " r t q x k f g " c f g s w e g

vlo g" hqt" lpxgunkl cvkqp0' Cnuq. "cu" yj g" eqwtv' r tgf levgf. "yj gtg y cu'cp'crr r tqzko cvgnf "y q/y ggnlj kwwu'dgwy ggp' yj g"xgtf lev cv' yj g" i wkn' r j cug" cpf " yj g" eqo o gpego gpv' qh' yj g" r gpcmf r j cug0Hlpcmf. k'ku'gxkf gpv'yj cvk'y cu'f ghgpf cpv'u'eqpuwncvklp y kj " f ghgpug" eqwpugn' tevj gt" yj cp" yj g" eqwtv'u" eqo o gpwu yj cv' r gtuwcf gf "f ghgpf cpv'vq"y kj f tcy "j ku"o qvklp" hqt" ugrh/ tgr tguypcvklp0

Y kj " tgur gev' vq" f ghgpf cpv'u" ugeqpf " o qvklp" vq" tgr tguypv j lo ugrh" yj g" o cwtg" y cu' rgn' vq" yj g" vlcni' eqwtv'u" uqwpf f kuetgvlkp." dgecwug" yj g" o qvklp" y cu" o cf g" chgt" yj g" lwt { j cf " dggp" ugrgevgf " cpf " yj g" r tqugewklp" j cf " f grkxgtgf " ku qr gpklpi "ucvgo gpv0*People v. Barnett, supra."39"Ectf6j "cv rr03326/33270-

Vj g" tgeqtf " guvdrkuj gu' yj cv' f ghgpf cpv' o qxgf " vq" tgr tguypv j lo ugrh'qpv' yj ku'ugeqpf "qecucakp'y kj qw'gzz r nklpi " yj g'dcuku hqt" j ku' tgs wgu0J g' f kf "pqv'tgs wgu'c" eqpvkwcpeg0'Vj g" vlcni eqwtv' f gerctgf " yj cv. " i wkf gf " d { " yj g" hcvqtu" gpwo gtcvgf " kp [People v. Windham, supra.](#)"3; "Ectf5f"343. "k'y cu'gz gteklpi ku' f kuetgvlkp" vq" f gp { " yj g' o qvklp0'Vj g' eqwtv'ucvdf <0Hktu'v'qh cm" { " qw'j cxg'vq" tgcrlk g' yj ku' ku'pqv'j ku' hktu'v'tgs wgu'vq" i q" r tq0 r g0K0u'j ku'ugeqpf "qpg'lp'htqpv' *962 'qh'o g'000'Vj gtg'engctnl ku'c' r tgerkxkf "qh' uqo g' nkp' "vq" uggni'vq" uwdunxwgg" eqwpugn'qt tgo qxg' eqwpugn' j y gp' O t0Lgpnkpu" ku'wpj cr r { " y kj " yj g' y c { yj g' r tqeggf lpi u'ctg" i qlpi 0'Vj g' eqwtv' tgeqwpvgf " cv' rgni yj yj g' gzezmpege' qh' yj g' tgr tguypcvklp" yj cv' j cf " dggp" chgtf gf " vq f ghgpf cpv0

Vj g' eqwtv'cnuq' tghgtgf "vq" yj g' r qvgnknlhqt' f kutw vklp. "pqv'kpi f ghgpf cpv'u" o cpgt'cpf "f go gcpqt. "cpf "j ku' y tkwgp" yj tgecv'vq f kutw v' yj g' vlcni'cpf "vq" vgnlwtqtu'qh'o cwtg'u' yj cv' yj g' eqwtv' j cf y kj j grf "htqo " yj go 0' "Vj g' eqwtv. " qdugt xkpi " yj cv' f ghgpf cpv cr r gctgf "vq" rnen' uvcdkkx' "cpf" go qvklp'cn' o cwtkx' . "ucvdf <0K hgg' yj cv' j g' cu' f go qputcvgf "f wtkpi " yj gug' r tqeggf lpi u'lp' j ku hckm' g' vq" eqo g' qw. " j ku' yj tgcw' vq" yj g' eqwtv. " c' rnen' qh' eqpv' qn qxgt" j ku' go qvklpu' cpf " j ku' dgj cxkqt0' Hct "htqo " gpi ci lpi "lp dcugnuu" oco cvgtw" r u' ej qmji { . "0" cu' cmgi gf " d { " f ghgpf cpv yj g' eqwtv' ectghw' " tgeqwpvgf " f ghgpf cpv'u" tgegpv' eqpf wev' lp tghwklpi "vq" cr r gct "lp" eqwtv' y j gp' j g' y cu' cpgq { gf " y kj " yj g eqwtv'u' t'wklpi u' qp" o qvklpu'0' Vj g' eqwtv' ucvgf " f ghgpf cpv' j cf y tkwgp" yj g' eqwtv' c' tgrwt' lp' y j lej " j g' ucvgf " j ku' lp' v'p'v' qp/ r' vgt cr r ctgpw' " t' gvtcvgf /vq" f kutw v' yj g' r tqeggf lpi u'0' Vj g' eqwtv eqo o gpvgf <0Kecp) "vcng" yj g' tkunq' h'j cxkpi " j lo " tghwug' vq" luj qy w' f wtkpi " vlcni' j qw'f " K' wng' ci clpuv' j lo 0' Vj g' eqwtv' cnuq' p' qvgf f ghgpf cpv'u' t' qerxkx' hqt' cti wklpi " cv' h' gpi yj " y kj " yj g' eqwtv' chgt yj g' eqwtv' j cf " lphqto gf " j lo " yj cv' pq' hwt' yj gt' cti wo gpv' y cu lp' qtf gt. " cpf " s wgu'v' kpgf " y j g' yj gt" j g' eqw'f " t' gwt' cklp" j lo ugrh htqo " r g' tuku'kpi " lp' yj ku' r tceveg' h' j g' yj g' yj ku' qy p' eqwpugn0

Cnj qwi j " f ghgpf cpv' cuwv' gf " yj g' eqwtv' j g' y qw'f " cr r gct " qp gcej " f c { " qh' v' t' k' n' h' i' c' e' e' q' t' f " r' t' q' u' g' u' c' w' w' u' . yj g' eqwtv' g' x' k' f " g' p' w' f " f " k' " p' q' v' e' t' g' f " k' v' j " ku' cu' w' t' c' p' e' g' 0

C' tgrwt' y tkwgp' d { " f ghgpf cpv' vq" yj g' eqwtv' lpenmf gf ucvg' go gpv' uvej "cu' <0K' o c { "vcng" o g' j cxkpi "vq" r c { uqo g' ukpi lpi "vrgi tco o gt' } sic_ "vq' uk' lp' eqwtv' cpf yj gp' qw' qh' pqy j gtg. " i gv' w' " cpf " t' g' c' f " o { " 5 " r' k' p' g ucvg' go gpv' lp' eqwtv' 0' Q' t' K' o c { " j cxg' vq" j cxg' uqo g r t' k' v' k' pi " r' n' e' g' v' q' j cxg' 32' v' g' g' p' c' i " g' t' u' y " c' k' w' p' v' k' i' b' f " 0 0 qpg' f c { " cpf " r' w' h' n' g' t' u' q' p' c' m' i' y " g' e' c' t' u' l' p' v' j " g' r' c' t' n' k' pi " q' v' c' p' f " y " k' j " l' p' y " q' " d' n' e' m' i' q' h' v' j " ku' eqwtv' ucvklpi " yj g t' g' u' a' p' y " j { " K' o " p' q' v' t' c' t' v' e' k' r " c' v' k' pi " 0' Q' t' K' o c { " u' c' { " yj cv K' f " q' y " c' p' v' v' q' " c' w' g' p' f " o { " v' t' c' n' " e' q' o " g' l' p' " e' q' w' t' v' . y " c' k' w' 52 ugeqpf u' chgt " yj g' lwt { " j cu' dggp' ugcvgf . " yj gp' uc' p' f w' " c' p' f " u' c { " yj cv' K' j " cxg' vq" u' c { " d' g' h' q' t' g' { " q' w' f " g' r " w' l' g' u " t' w' j " o " g' q' w' 000' } [_ q' w' e' c' p') " u' a' q' r " o " g' 000' K' o " c { " d' g " c' y " g' n' i' q' t' " yj t' g' g' o " p' q' y " u' h' t' q' o " p' q' y " 0' C' p' q' y " g' t' r' g' w' g' t' z' r " n' k' l' p' g' f " j " q' y " w' u' g' v' f " g' h' g' p' f " c' p' v' y " c' u' v' j " c' v' j " g' " e' q' w' t' v " j " c' f " " t' g' h' w' u' g' f " vq" v' g' m' l' w' t' q' t' u' " l' p' h' q' t' o " c' v' k' a' p' " f " g' h' g' p' f " c' p' v " y " c' p' v' g' f " yj go " vq" j cxg. " j qy " j g' h' g' n' w' p' h' c' k' n' { " v' t' g' c' v' g' f " d { " yj g' eqwtv' cpf " d { " yj g' r' tqugewqt. " cpf " eqpenmf gf < 0' Vcng' cmi' yj ku' lp' vq' c' e' e' q' w' p' v' . " j " q' y " f " q' { " q' w' g' z' r " g' e' v' c " r " g' t' u' a' p' " vq" h' g' g' r " j " ku' eqo " r " q' u' w' t' g' t' " g' o " q' v' k' a' p' u' q' w' a' 0

Vj g' eqwtv'cnuq' p' qvgf " yj g' c' f x' c' p' e' g' f " u' c' i " g' q' h' v' j " g' r " t' q' e' g' g' f " l' p' i " u. c' p' f " u' c' v' g' f " yj " c' v' j " g' q' p' n' { " h' c' e' v' q' t' " l' p' f " g' h' g' p' f " c' p' v' u' " h' c' x' q' t' " y " c' u' v' j " c' v' j " g " f " k' " p' q' v' t' g' s " w' g' u' v' c' " e' q' p' v' k' w' c' p' e' g' 0

F ghgpf cpv' hcku' vq" guvdrkuj " yj cv' yj g' vlcni' eqwtv' cdwugf " ku f kuetgvlkp" lp" f gp { lpi " yj ku" o qvklp" hqt" ugrh' tgr tguypcvklp0 Vj g' eqwtv' tgcuppcdn' " eqw'f " eqpenmf g" yj cv' f ghgpf cpv' y cu y gni' tgr tguypvgf " d { " eqwpugn' yj cv' j g' j cf " uqo g' r tgerkxkf " vq xcekx' v' y kj " t' gur gev' vq" t' gr tguypcvklp" d { " eqwpugn' cpf " yj cv yj g' i t' cpv' kpi " qh' v' j g' o qvklp' y qw'f " f kutw v' yj g' q' t' f g' t' n' { " eqpf wev qh' v' j g' v' t' k' n' 0

F ghgpf cpv' eqpv' p' u' yj g' y cu' p' q' t' k' u' n' j " g' y qw'f " f kutw v' yj g r tqeggf lpi u. " dw' v' j g' eqwtv' tgcuppcdn' " eqpenmf gf " q' yj g' ty lug0 Vj g' eqwtv' y cu' cy ctg' v' j cv' *963 " f ghgpf cpv' j cf " cwgo r vgf " vq lphwv' p' e' g' yj g' eqwtv' v' q' e' j cpi g' c' t' w' k' pi " f wtkpi " lwt { " u' g' n' e' v' k' p' d { " c' d' u' g' p' v' k' pi " j lo ugrh' htqo " yj g' r tqeggf lpi u. " cpf " yj cv. " uko k' c' t' n' . f ghgpf cpv' j cf " tghwugf " vq" cr r gct " hqt" yj g' r tqugewqt u' cpf " j ku qy p' eqwpugn' u' qr gpklpi " ucvg' go gpv' 0' Vj ku' eqpf wev. " lp" c' f f k' k' p' v' q' v' j g' y tkwgp' yj tgcv' v' f kutw v' yj g' r tqeggf lpi u. " f go qputcvgf c' r' n' g' r' k' j " q' q' f " p' q' v' g' x' k' f " g' p' v' c' v' j " g' v' o " g' q' h' v' j " g' r " t' g' t' k' n' i' Faretta o qvklp' + yj cv' yj g' r tqeggf lpi u' y qw'f " dg' f kutw v' g' f " lp' yj g' g' x' g' p' v' f ghgpf cpv' yj g' t' g' r g' t' o k' w' g' f " vq" t' g' r t' g' u' p' v' j lo ugrh0

F ghgpf cpv\ueqpvpgvkp"vj cv"vj g"eqwtvu"twlpi "y cu"vj g"tguwn qh"tgugpvo gpv"qp"vj g"r ctv"qh"vj g"eqwtv"ku"pqv"uwr r qtvgf "d{ vj g"tgeqtf OJ g"t qgu"pqv"uwr r qtvy kj "cwj qtkf "j ku"eqpvpgvkp vj cv" vj g" eqwtv" mcngf" f kuetgkqp" vq" f gp{ "vj g" o qvkqp" qp vj g" i tqwpf. "kp"r ctv" vj cv" j ku" tghwcn" vq" r ctvlekr cvg" kp" vj g r tqeggf kpi u'y j gp" f kucr r qlpvgf "y kj "vj g"eqwtvu"twlpi u'y cu r tgf levkxg" qh" f kutw vlxg" dgj cxkqt" f wtkpi " vtkcn" F ghgpf cpv tgrgu"wr qp"cwj qtkf. "cr r rcdcdng"vq" c"vko gn" o qvkqp" hqt"ugrh/ tgr tgugpvcvkp. "vj cv"ku"pqv"cr r qukg"y j gp"vj g"o qvkqp"ku"o cf g chngt"vj g"eqo o ppego gpv"qh"vtkcn"cpf "ku" f kgevgf "vq"vj g"eqwtvu f kuetgkqp"Ugg" *People v. "Superior Court" "George" *3; ; 6+46 Ecncrr06j "572"J4; "Ecncrr06j "527"J* j qrf kpi "vj cv"vj g"vtkcn eqwtv"gttgf "kp" f gp{ kpi "c" *Faretta* "o qvkqp" o cf g"kp" cf xcpeg"qh vtkcn" y j gp" f ghgpf cpv\ueqpvpgvkp" y vq"ugrh"tgr tgugpvcvkp" y cu"cm quv cduqng. "qp"vj g"dcuku"qh" c" f gvgt o kpcvkp" vj cv"vj g" f ghgpf cpv r tgugpvgf "c"ugewtkf "cpf" guerc g"tkum"ugg"cnq" *U.S. v. Flewitt *; vj "Ek03; ; +; 96"t04f "88; .896"* f ghgpf cpv"y j q"j cf "dggp i tcvpvgf "r tq"ug"ucwku"kp" cf xcpeg"qh"vtkcn"eqwv"pqv"dg" f gr tkxgf qh" vj cv"ucwku" dgecvug" qh" vj gk" hckwtg" vq" r tgr ctg" r tqr gtnf hqt"vtkcn" gur gekm{ "y j gp" c" hckwtg" vq" qdg{ "c"eqwtv"qt f gt"qt cp"cev"qh"eqpvgo r v'y cu"pqv"cmgi gf "f ghgpf cpv"o"l"r_tgvtkn cev\kxk{ "ku"tgrgxcpv"qpnf "hik"chhqt f u" c" lntqpi "kp" f lecvkqp" vj cv"vj g f ghgpf cpv"y knif kutw v'y g" r tqeggf kpi u"kp" vj g"eqwtv"tqo o_0-

Eqpvtct { "vq" f ghgpf cpv\ueqpvpgvkp. "vj g" eqwtv"gz gteklugf "ku f kuetgkqp" cpf "hqwpf" vj cv" eqpukf gtpi "vj g" tgrgxcpv" hcevtu. vj g" o qvkqp" hqt"ugrh"tgr tgugpvcvkp" uj qwf" dg" f gplgf O' Vj g ektevo ucpeg" vj cv" f ghgpf cpv" f kf" pqv"uggn" c" eqpvkpcpeg" ku pqv" f gvgt o kpcvkxg" *People v. Barnett. supra. "39" Ecnc06j "cv" r 033280* P q"cdwug"qh" f kuetgkqp" cr r gctu0

9. Pretrial motions to suppress evidence

a. Evidence obtained as a result of interrogation of Duane Moody

*36+ F ghgpf cpv\ueqpvpgvf u"vj g"vtkcn"eqwtv"gttgf "kp" r gto kvkpi "vj g kpvqf vevkqp"qh" gkxkf gpeg"vj g" r qrleg" qdvckpgf "cu"vj g" tguwn"qh ucvg o gpw" o cf g" d{ "F wcp" O qqf { /ucvgo gpw" vj g"vtkcn"eqwtv f gvgt o kpgf "y gtg" lpxqmpvct { O' F ghgpf cpv" eqpvpgvf u" vj cv" vj g o wtf gt "y gcr qp. "gkxk f gpeg" tgrvki "vq" vj g" cwqo qdkng" vj qvi j v vq" j cxg" dggp" wugf "kp" vj g" vj qvki "qh" F gvgevkxg" Y knko u. "cpf *964 "vj g" vguvko qp{ "qh" Cnk" cpf "Ec" vj { "Y qqf uqp" y qwf" j cxg dggp" gzenmf gf "cu" vj g" htwk"qh" O qqf { "lpxqmpvct { "ucvgo gpw0 Ceeqtf kpi n. "f ghgpf cpv" eqpvpgvf u" vj g" vtkcn" eqwtv" xkqvvgf "j ku tki j v" q" f wgr" tqegu"qh" rvy "cu" i wctcvvgf "d{ "vj g" ucvg" cpf hgf gtcn" Eqpvkwwkqpu0J g" cnq" eqpvpgvf u" vj ku" gkxk f gpeg" vj qwf j cxg" dggp" gzenmf gf "cu" vj g" htwk"qh" c" xkqvvgf "qh" O qqf { "u" Hkxj Co gpv" r tkxki g" ci kpv"ugrh" kpetko kpcvkp0

Kp" r tgvtkcn" r tqeggf kpi u. "dghqtg" vj gk" ecugu" y gtg" ugxgtgf. f ghgpf cpv\lqkpgf "kp" eqf ghgpf cpv" O qqf { "u" o qvkqp" vq" uwr r tguu gkxk f gpeg" r wuwcpv" vq" *ugevkp" 375: 0* O' F ghgpf cpv" eqpvpgvf gf j g" j cf "ucpvf kpi "vq" erlko "vj cv" O qqf { "u" cttguv" xkqvvgf "vj g Hqwtv" Co gpv" o gpv" dgecvug" vj g" y cttcvpvguu" cttguv"qh" O qqf { eqpvkwwgf "qwtci gqwu" l qxgtpo gpv" eqpvf vevkpv" xkqvvgf "qh" vj g eqpvkwwkqpcn" i wctcvvgf "qh" f wgr" r tqegu0J g" o clpvckpgf "vj cv O qqf { "u" ucvg o gpv" vq" vj g" r qrleg" cpf "cm" gkxk f gpeg" qdvckpgf "cu vj g" htwk"qh" vj g" ucvg o gpv" vj qwf" dg" uwr r tguugf O' F ghgpf cpv cnq" lqkpgf "kp" eqf ghgpf cpv" O qqf { "u" o qvkqp" vq" uwr r tguu" vj g ucvg o gpw" qp" vj g" i tqwpf "vj cv" vj g" y gtg" lpxqmpvct { "dgecvug vj g" y gtg" qdvckpgf "cu" vj g" tguwn"qh" hthgtu"qh" htpkgepe { "cpf" vj g" r j { ulecn" cpf "r u" { ej qnq i lecn" eqgtekqp" r tgegf kpi "cpf" f vtkpi kvgttqi cvkqp0 F ghgpf cpv" cuugtvgf "vj cv" vj g" j cf "ucpvf kpi "vq" tckug vj g" erlko "vj cv" O qqf { "u" ucvg o gpw" y gtg" lpxqmpvct { "wpf gt Hkxj "Co gpv" o gpv" r tkpek ngu. "cnq" cuugt vki "cp" kpf gr gpv gpv f wgr" tqegu" tki j v" wpf gt "vj g" ucvg" cpf "hgf gtcn" Eqpvkwwkqpu" pqv vq" j cxg" j ku" eqpvkvwkqp" dcugf "wr qp" vj g" lpxqmpvct { "eqpvkwwkqp qt" ucvg o gpv" qh" cpqv" gt0 J g" o qxgf "vq" uwr r tguu" O qqf { "u ucvg o gpw" cpf "cm" vpi kdrng" cpf "kp" vpi kdrng" gkxk f gpeg" qdvckpgf d{ "vj g" g" zr kpkcvkqp" qh" vj g" lpxqmpvct { "ucvgo gpw" cpf "vj gk htwku0

Gkxk f gpeg" r tgugpvgf "cv" vj g" j gctkpi "qp" vj g" o qvkqp" vq" uwr r tguu kpf lecvgf "vj cv" kp" c" P qxgo dgt" 6. "3; : 7. "kvgttqi cvkqp. "O qqf { kphqto gf " vj g" r qrleg" y j gtg" j g" j cf " ugetvgf" vj g" o wtf gt y gcr qp0 Vj g" y gcr qp" y cu" f kvexgtgf" cv" vj g" nqcvkqp kpf lecvgf /vj g" Y qqf uqp" j qwug0 Kp" c" P qxgo dgt" 8. "3; : 7. ucvg o gpv" O qqf { "uck" vj g" xgi keng" vj cv" j cf "dggp" wugf "kp" vj g uj qvki "qh" F gvgevkxg" Y knko u" y cu" c" un{ /dng" Qrf uo qdkng y kj "c" y j kg" vqr. "cpf" j g" f guetkdgf "ku" nqcvkqp0 Vj g" xgi keng y cu" hqwpf "cv" vj cv" nqcvkqp0

Vj g" vtkcn" eqwtv" j gctf "pwo gtqwu" y kvpuguu. "cpf" eqpenwf gf vj cv" O qqf { "u" cttguv" y cu" uwr r qtvgf "d{ "r tqdcdng" ecwug= O qqf { "u" erlko "vj cv" vj g" r qrleg" r j { ulecnf " o kvtgcvf" j ko y cu" pqv" uwr r qtvgf "d{ "vj g" tgeqtf "ucvgo gpw" O qqf { "o cf g vq" vj g" r qrleg" r tkqt" vq" P qxgo dgt" 6. "3; : 7. "y gtg" xqmpvct { . dw" vj cv" O qqf { "u" ucvg o gpw" vq" vj g" r qrleg" qp" P qxgo dgt" 6. 3; : 7. "y gtg" lpxqmpvct { "cpf" kpcf o kuukdrng. "cr r ctgpv" { "qp" vj g i tqwpf "vj cv" vj g" { "y gtg" vj g" r tqf vev"qh" qhthgtu"qh" htpkgepe { O' Kp cf f kkvkqp. "vj g" eqwtv" hqwpf " O qqf { "u" ucvg o gpv" vq" vj g" r qrleg qp" P qxgo dgt" 8. "3; : 7. "kpcf o kuukdrng" cu" c" htwk"qh" vj g" gctkng eqgtegf "ucvgo gpv0P qpvj gguu. vj g" eqwtv" j g" vj cv" vj g" o wtf gt y gcr qp. "vj g" xgi keng" *965 "eqpvpgvf" y kj "vj g" o wtf gt. "cpf vj g" vguvko qp{ "qh" Cnk" cpf "Ec" vj { "Y qqf uqp" y gtg" cf o kuukdrng dgecvug" lpxkcdn{ "vj g" l" y qwf" j cxg" dggp" f kvexgtgf "f vtkpi vj g" eqwtv"qh" c" rvy hwn{ "eqpf vevgf "kvxgkvi cvkqp0

Qp" cr r gcn" f ghgpf cpv' eqpvpgf u' vj cv' vj g" tlcni' eqwtv' gttgf
kp" cf o kwpi " kvq" gxf gpeg" vj g" o wtf gt" y gcr qp." gxf gpeg
eqpegtkpi "vj g"xgj kerg"ltqo "y j lej "vj g"hcni'uj qu'cr r gctgf
vq" j cxg" dggp" hktgf ." cpf " egtvclp" uj gmi' ecukpi u" f kueqxtgf
kp" vj g" xgj kerg' F ghgpf cpv' cnuq" ercko u" vj cv' vj g" tlcni' eqwtv
gttgf "kp" r gto kwpi "vj g"vuwko qp{ "qh'vj g"Y qqf uapu'tgi ctf kpi
eqf ghgpf cpv'O qqf { "u'cevkap"kp"uqtkpi "vj g"o wtf gt" y gcr qp
cv'vj gkt"j qo g"qp"vj g"pki j v'qh'vj g"o wtf gt'J g"o clpvcapu"vj cv
vj ku'gxf gpeg'y cu'vj g'htwk'qh'O qqf { "u'lxqnpvct { "ucvgo gpw.
cpf "vj cv'vj g"tlnieqwtv'gttgf "kp" f gvto klpki "vj cv'vj g" gxf gpeg
kpgxkcdn' " y qwf " j cxg" dggp" f kueqxtgf " kp" vj g" eqwtug" qh
c" rny hwn' " eqpf wevf " kpxguki cvkap" gxp" y kj qw" O qqf { "u
ucvgo gpw'k'j ku'tgr n' "dtlgh' f ghgpf cpv'cnuq'eqpvpgf u'vj cv'vj g
j cu'ucpf kpi "vq" tclug'vj ku'ercko "dgecwug'xlqrvkap"qh'O qqf { "u
r tklxgi g'ci clpuv'ugrh'kpetko kpcvkap'eqpukwgf "c"xlqrvkap"qh
j ku'qy p" f wgr' treguu'tki j vu'Vj g" eqgtekap" cr r rkgf "vq" O qqf {
j g'eqpvpgf u" ecwugf " O qqf { "vq" f kuerqug" vj g" y j gtcddqwu'qh
vj g" y gcr qp" cpf " vj g" xgj kerg. " cpf " vq" f kuerqug" vj g" kf gpw' " qh
vj g" Y qqf uapu'Y kj qw' c" t wrg" tgs wtkpi " uwr r tguakp" qh' vj g
ej cmgi gf " gxf gpeg. " j g'cmgi gu. r rkgf " o kueqpf wev' y qwf " dg
gpeqwtci gf " tvj gt " vj cp' f gvttgf O

Tgur qpf gpv'eqpvpgf u'vj cv'vj g" tlcni'eqwtv'gttgf "kp" f gvto klpki
vj cv' O qqf { "u" ucvgo gpw" y g" g' kpxqnpvct { " vj cv' f ghgpf cpv
rcnu" ucpf kpi " vq" eqo r rclp" qh' cp { " xlqrvkap" qh' O qqf { "u
Hkhj " Co gpf o gpv' tki j u. " cpf " vj cv' vj g" tlcni' eqwtv' eqttgevn'
f gvto kpgf " vj cv' vj g" ej cmgi gf " gxf gpeg" kpgxkcdn' " y qwf
j cxg" dggp" f kueqxtgf " kp" vj g" eqwtug" qh' c" rny hwn'
eqpf wevf " kpxguki cvkap' O Tgur qpf gpv'ercko u. " hpcmf. " vj cv' vj g
kpvqf wevkap' qh' vj g' gxf gpeg. " gxp' h' qdvclp'gf " cu'c' tguwn' qh' cp
kpxqnpvct { " ucvgo gpw. f kf " bq'v'xlqrv' f ghgpf cpv' u' f wgr' treguu
tki j v'q' c' hck' tlcni' Cu' y g' vj cmgzr rclp. " y g'bggf " bq'v'cp' f q'pqv
f gvto kpg' y j gvj gt " vj g' ucvgo gpw' y g' xqnpvct { " qt' y j gvj gt
vj g' gxf gpeg' kpgxkcdn' " y qwf " j cxg' dggp' f kueqxtgf. " dgecwug
y g'ci tgg' y kj " t'gur qpf gpv' u' hpcni' eqpvpgf vj cv' kp' cp { " gxpv.
vj g' kpvqf wevkap' qh' vj ku' gxf gpeg' f kf " pqv' xlqrv' g' f ghgpf cpv' u'
f wgr' treguu' tki j uo

Cu'cp' kpkni' o ewgt. " y g'ci tgg' y kj " t'gur qpf gpv' vj cv' f ghgpf cpv
rcnu" ucpf kpi " vq" tclug' vj g" ercko " vj cv' kp" eqpf wevpi " vj gkt
kpvgtqi cvkap. " r rkgf " qh' k' egtu" xlqrv'gf " O qqf { "u" r tklxgi g
ci clpuv' ugrh' kpetko kpcvkap' O C" f ghgpf cpv' rcnu" ucpf kpi " vq
eqo r rclp' qh' vj g' xlqrvkap' qh' c' vj kf " r ctv' " u' Hkhj " Co gpf o gpv
r tklxgi g'ci clpuv' ugrh' kpetko kpcvkap' O *People v. Badgett* 3; ; 7+
32" Ecrf6j " 552." 565" j63" Ecrf r u0f " 857. " : ; 7" R0f " : 99 =
People v. Douglas* 3; ; 2+72" Ecrf6j " 68. " 723" j48: " Ecrf r u0
348. " 9: : " R0f " 862_ " f kcr r t'xgf " qp" cpqj gt " r klp' kp " People
v. Marshall* 3; ; 2+72" Ecrf6j " 29. " ; 55. " Ip06" j48: " Ecrf r u0
48: . 9; 2" R0f " 898_0" *966

F ghgpf cpv' f qgu' p' q'v' eqpvpgf u' vj cv' vj g" tlcni' eqwtv' gttgf
kp" cf o kwpi " kvq" gxf gpeg" vj g" o wtf gt" y gcr qp." gxf gpeg
eqpegtkpi "vj g"xgj kerg"ltqo "y j lej "vj g"hcni'uj qu'cr r gctgf
vq" j cxg" dggp" hktgf ." cpf " egtvclp" uj gmi' ecukpi u" f kueqxtgf
kp" vj g" xgj kerg' F ghgpf cpv' cnuq" ercko u" vj cv' vj g" tlcni' eqwtv
gttgf "kp" r gto kwpi "vj g"vuwko qp{ "qh'vj g"Y qqf uapu'tgi ctf kpi
eqf ghgpf cpv'O qqf { "u'cevkap"kp"uqtkpi "vj g"o wtf gt" y gcr qp
cv'vj gkt"j qo g"qp"vj g"pki j v'qh'vj g"o wtf gt'J g"o clpvcapu"vj cv
vj ku'gxf gpeg'y cu'vj g'htwk'qh'O qqf { "u'lxqnpvct { "ucvgo gpw.
cpf "vj cv'vj g"tlnieqwtv'gttgf "kp" f gvto klpki "vj cv'vj g" gxf gpeg
kpgxkcdn' " y qwf " j cxg" dggp" f kueqxtgf " kp" vj g" eqwtug" qh
c" rny hwn' " eqpf wevf " kpxguki cvkap" gxp" y kj qw" O qqf { "u
ucvgo gpw'k'j ku'tgr n' "dtlgh' f ghgpf cpv'cnuq'eqpvpgf u'vj cv'vj g
j cu'ucpf kpi "vq" tclug'vj ku'ercko "dgecwug'xlqrvkap"qh'O qqf { "u
r tklxgi g'ci clpuv'ugrh'kpetko kpcvkap'eqpukwgf "c"xlqrvkap"qh
j ku'qy p" f wgr' treguu'tki j vu'Vj g" eqgtekap" cr r rkgf "vq" O qqf {
j g'eqpvpgf u" ecwugf " O qqf { "vq" f kuerqug" vj g" y j gtcddqwu'qh
vj g" y gcr qp" cpf " vj g" xgj kerg. " cpf " vq" f kuerqug" vj g" kf gpw' " qh
vj g" Y qqf uapu'Y kj qw' c" t wrg" tgs wtkpi " uwr r tguakp" qh' vj g
ej cmgi gf " gxf gpeg. " j g'cmgi gu. r rkgf " o kueqpf wev' y qwf " dg
gpeqwtci gf " tvj gt " vj cp' f gvttgf O

Vj g" xlqrvkap" qh' c" vj kf " r ctv' " u' r tklxgi g" ci clpuv' ugrh/
kpetko kpcvkap" o c { " f gr t'xg" c" f ghgpf cpv' qh' j ku' qt" j gt" f wgr
r treguu' tki j u' k' h' u' w'j "cevkap' cf xgtug' " ch'geu' vj g' t' g' r' k' d' k' s' v' " qh
vuwko qp { " qh' g' t' g' " ci clpuv' vj g' f ghgpf cpv' cv' tlcni' Cu' y g' j cxg
ucl' < o' j " j gp" vj g' gxf gpeg" r tqf wevf " at trial" ku' uwd' gev' vq
eqgtekap" (O) f ghgpf cpv' u' f wgr' r treguu' tki j u' " j ctg_ " ko r r' ecv' gf
cpf " vj g' g' z' enu' k' p' ct { " t' wrg' (O) j ku_ " cr r rkgf O' Y j gp' c' f ghgpf cpv
uggnu' vq' g' z' enu' f g' gxf gpeg' qp' vj ku' i tqw' p' . " vj g' f ghgpf cpv' o wuv
cmgi g' vj cv' vj g' tlcni' vuwko qp { " ku' eqgtegf " j' ekcvkap_ " cpf " vj cv' ku
cf o ku' k' p' y k' n' f gr t' xg' j ko " qh' c' hck' tlcni' j' ekcvkap_ (O) *People
v. Badgett. supra. " 32" Ecrf6j " cv' r 0566. " kcrku' kp' qtki kpcni'

F ghgpf cpv' f qgu' p' q'v' eqpvpgf u' vj cv' vj g" tlcni' eqwtv' gttgf
kp" cf o kwpi " kvq" gxf gpeg" vj g" o wtf gt" y gcr qp." gxf gpeg
eqpegtkpi "vj g"xgj kerg"ltqo "y j lej "vj g"hcni'uj qu'cr r gctgf
vq" j cxg" dggp" hktgf ." cpf " egtvclp" uj gmi' ecukpi u" f kueqxtgf
kp" vj g" xgj kerg' F ghgpf cpv' cnuq" ercko u" vj cv' vj g" tlcni' eqwtv
gttgf "kp" r gto kwpi "vj g"vuwko qp{ "qh'vj g"Y qqf uapu'tgi ctf kpi
eqf ghgpf cpv'O qqf { "u'cevkap"kp"uqtkpi "vj g"o wtf gt" y gcr qp
cv'vj gkt"j qo g"qp"vj g"pki j v'qh'vj g"o wtf gt'J g"o clpvcapu"vj cv
vj ku'gxf gpeg'y cu'vj g'htwk'qh'O qqf { "u'lxqnpvct { "ucvgo gpw.
cpf "vj cv'vj g"tlnieqwtv'gttgf "kp" f gvto klpki "vj cv'vj g" gxf gpeg
kpgxkcdn' " y qwf " j cxg" dggp" f kueqxtgf " kp" vj g" eqwtug" qh
c" rny hwn' " eqpf wevf " kpxguki cvkap" gxp" y kj qw" O qqf { "u
ucvgo gpw'k'j ku'tgr n' "dtlgh' f ghgpf cpv'cnuq'eqpvpgf u'vj cv'vj g
j cu'ucpf kpi "vq" tclug'vj ku'ercko "dgecwug'xlqrvkap"qh'O qqf { "u
r tklxgi g'ci clpuv'ugrh'kpetko kpcvkap'eqpukwgf "c"xlqrvkap"qh
j ku'qy p" f wgr' treguu'tki j vu'Vj g" eqgtekap" cr r rkgf "vq" O qqf {
j g'eqpvpgf u" ecwugf " O qqf { "vq" f kuerqug" vj g" y j gtcddqwu'qh
vj g" y gcr qp" cpf " vj g" xgj kerg. " cpf " vq" f kuerqug" vj g" kf gpw' " qh
vj g" Y qqf uapu'Y kj qw' c" t wrg" tgs wtkpi " uwr r tguakp" qh' vj g
ej cmgi gf " gxf gpeg. " j g'cmgi gu. r rkgf " o kueqpf wev' y qwf " dg
gpeqwtci gf " tvj gt " vj cp' f gvttgf O

Qw' r k' k' p' kp" People v. Badgett, supra. " 32" Ecrf6j " 552.
j qy gxtg. " gu' d' h' k' u' j gu' vj cv' c' f ghgpf cpv' o c { " pqv' r t' g' x' k' i' u' k' o r n'
d { " cmgi kpi " vj cv' vj g" ej cmgi gf " gxf gpeg" y cu' vj g" h' w' k' qh
cp" cuug' v' g' n' " kpxqnpvct { " ucvgo gpv' qh' c" vj kf " r g' tu' qp' O k' p'
vj cv' ecug. " y g' f gvto kpgf " ur gek' h' e' c' m' { " vj cv' c' f ghgpf cpv' o c {
pqv' u' g' e' w' t' g' vj g' g' z' enu' k' p' ct { " qh' vj g' trial testimony" qh' c" vj kf
r ctv' " u' k' o r n' " qp" vj g' i' tqw' p' vj cv' k' y cu' vj g' h' w' k' qh' vj g' vj kf
r ctv' " u' k' p' x' q' n' p' v' ct { " ucvgo gpv' O *Id. " cv' r 0568. " 56: / 5720" Y g
g' z' r' k' p' g' f " vj cv' y j gp" vj g' f ghgpf cpv' u' ercko " ku' d' cu' g' " w' r' q' p' vj g
kpxqnpvct k' p' g' u' qh' c' vj kf " r ctv' " u' ucvgo gpv' g' g' z' enu' k' p' ct {
t' wrg' " cr r r' e' c' d' r' g' v' q' c' " ercko gf " xlqrvkap' qh' vj g' r' t' k' l' x' g' i' g' ci clpuv
ugrh' kpetko kpcvkap' f qgu' p' q' v' cr r n' O *Id. " cv' r 05680" T' vj gt. " vj g
f ghgpf cpv' o c { " r' t' g' x' k' i' q' n' d { " f g' q' p' u' t' c' v' k' p' i' " h' w' p' f' c' o' g' p' v' n'

dw'pqv'qj gty kug'uj qy p"vq"dg"vptgrkcdrg"qt"uwdlgev"vq"vj g qpi qkpi "ghgewa"qh'eqgtekqp."uj qwrf "dg"gzewf gf "kp"qtf gt"vq xlpf lecvg'vj g'lpvgi tkv' qh'vj g'lwf lecln'u{ungo 0

; Kp'r cuukpi . "f ghgpf cpv'eqpvgpf u"vj cv'vj g'vklcn'eqwtv gttgf "kp"tggevkpi "vj g'erlko "vj cv'O qpf {u}cttguv qeewtvgf "y kj qw'r tqdcdrg"ecwug."kp"xkqrvkqp"qh vj g'Hqwtvj "Co gpf o gpv'vq" ghgpf cpv'j cu'pq'ucpf kpi vq"cuugt'vj g"Hqwtvj "Co gpf o gpv'tki j w'qh'qvj gtu. cpf "j ku'erlko "ku'tglgevgf "qp"vj cv'dcuku0*People v. Badgett.'supra.'32'Ecn6vj 'cv'r 05650-

F ghgpf cpv'vklcu'vq'f go qpucv'vj cv'j ku'tki j v'q'c'hclt'vklcn'y cu vpf gto kpgf "d{ "vj g'kptqf vevkqp"qh'r j { ulecln'gxlk' gpeg'y j qug tgrkcdkklv' "ku"pqv's wguvqpgf . "qt" d{ "vj g'kptqf vevkqp"qh'vj g vguvko qp{ "qh'v' kpguugu'y j q"y gtg"pqv'uj qy p"vq"dg"uwdlgev vq"cp{ "r qrlkg"eqgtekqp"dghqts"qt" f wtkpi "vklcn'Wpf gt"vj gug ekteu ucpegu. "vj g'vklcn'eqwtv'f kf "pqv'gt"kp"cf o kvlpi "vj g ej cmgpi gf "gxlk' gpeg. "cpf "y g'tglgev'f ghgpf cpv'u'f vgr' tgeguu erlko 0' *969

b. Seizure of defendant's briefcase

*37c+Kp" c" o qvklp"vq"uwr r tguu'gxlk' gpeg"dtqwi j v'r wtuwepv'vq ugevkp"375: 07. "f ghgpf cpv'eqpvgpf gf "vj cv'vj g'ugk' wtg"qh'j ku dtlghcug"cpf "ku"eqpvgpw'ltqo "j ku'ukvgt'u"j qo g"xkqrv'gf j ku' tki j v' vpf gt" vj g' Hqwtvj " Co gpf o gpv' vq" dg" ltrgg" ltrgo vptgcuqpcdrng"ugctej gu"cpf "ugk' wtgu'Vj g'vklcn'eqwtv'f gplgf vj g'o qvklp."hkp' kpi "vj cv'c"y cttcpv'cwj qtk' kpi "vj g'ugctej "qh f ghgpf cpv'u'lggr. "y j lej "j cf "eqvklpgf "vj g'dtlghcug"wpvkl'kv y cu'tgo qxgf "d{ "f ghgpf cpv'u'ukvgt. "cwj qtk' gf "vj g'ugctej "qh vj g'dtlghcug="vj cv'f ghgpf cpv'u'ukvgt"eqpvgpf "vq"vj g'ugk' wtg qh'vj g'dtlghcug="vj cv'vj g'eqpvgpw'qh'vj g'dtlghcug"kp'gxlkcdn' y qwrf "j cxg"dggp" f kueqxtgf. "dgecwug" c"y cttcpv'y qwrf "j cxg kuwgf "vq" cwj qtk' g" vj g' ugctej = cpf " hpcmf. "vj cv' g'zki gpv ekteu ucpegu'lwvkl'gf "vj g'ugctej "qh'vj g'dtlghcug'0F ghgpf cpv' eqpvgpf u"vj g'vklcn'eqwtv'gttgf "cu"vq" gcej "i tqwrf "ucv'gf "kp f gp{ kpi "vj g'o qvklp"vq"uwr r tguu'0J g'cnuq"eqpvgpf u"vj cv'vq"vj g gzv'p'k'hwqpf "j ku'ukvgt. "F kcpg"lgpmkpu."j cf "eqpvgpf "vq vj g'ugctej . "vj g'eqwtv'gttgf "kp" f g'vgt o kplpi "vj cv'j gt"eqpvgp y cu' xqnpwct {0' Tgur qpf gpv' eqpvgpf u" f ghgpf cpv' wengf " c tgcucpdrng'gzr gevklp'qh'r tkxce { 'kp' ku'dtlghcug. 'cpf "vj cv'vj g vklcn'eqwtv'eqttgevd' f g'vgt o kpgf "vj cv'vj g'ugctej "y cu'tgcucpdrng qp"vj g'i tqwrf u"qh'eqpvgp'kp'gxlkcdng" f kueqxtgf { . "cpf "gzki gpv ekteu ucpegu'0Kp"cf f kklp. "tgur qpf gpv'eqpvgpf u"cp{ "gttqt"kp cf o kvlpi "vj g'gxlk' gpeg"y cu"j cto nguu"dg{ qpf "c"tgcucpdrng f qvd0

Hqt" vj g'tgcucpu" vj cv' hmqy . "y g' eqpenf g" vj cv' vj g' eqwtv r tqr gtn' "f gplgf "vj g'o qvklp"vq"uwr r tguu'dgecwug"vj g'ugctej

y cu'eqpvgpw'0*38+Kp" tglxgy kpi "vj g'vklcn'eqwtv'u'f gplcn qh" c" o qvklp"vq"uwr r tguu'gxlk' gpeg. "y g'xlgy "vj g'tgeqtf "kp vj g'vkl j v'o quv'hcxqtcdrng"vq"vj g'vklcn'eqwtv'u'wtkpi . "f ghgtpkpi vq"vj qug"gzr tguu"qt"ko r rkgf "hkp' kpi u"qh'hcev'uwr r tqv'gf "d{ uwdv'vklcn'gxlk' gpeg0*People v. Alvarez"*3; ; 8+36"Ecn6vj 377."3: 4" J7: " Ecn0Tr v04f"5: 7."; 48" R04f"587 = "People" v. Miranda"*3; ; 5+39"Ecn0Cr r 06vj ; 39."; 44" J43" Ecn0Tr v04f 9: 7_0"Y g'kpf gr gpf gpv'vq" tglxgy "vj g'vklcn'eqwtv'u'cr r rkecvklp qh'vj g'ncy "vq"vj g'hcev'0*People v. Alvarez, supra.'36"Ecn6vj cv'r 03: 40-

*37d+Vj g'j gctkpi "qp"vj g'o qvklp"vq"uwr r tguu'r tqf vefg "vj g hmqy kpi "gxlk' gpeg'0F g'vexg"J qrf gt" qh'v' g'Nqu" Cpi grgu Rqrkg' F gr cto gpv'ugtxgf "c"ugctej "y cttcpv'cv'f ghgpf cpv'u tguv' gpeg"qp" P qxgo dgt"4. "3: : 70C"pgki j dqt"lphqto gf "j ko vj cv'qp" vj g'r tglxkwu" g'xgplki . "uqo g'r tguu"j cf "tgo qxgf r tqr gtv' "ltqo "vj g'tguv' gpeg'0Vj g'pgki j dqt"uwr r rkgf "J qrf gt y kj "vj g'vkl'g'pug"pwo dgt"qh'vj g'xg' keng" wugf "vq"tgo qxg"vj g r tqr gtv'0'Qp"vj g'hmqy kpi "f c{ . "J qrf gt. "c'qpi "y kj "ugxgtcn qv'j gt" qh'kgu. "y gpv'vq"vj g'cf f tguu"y j g'vj g'xg' keng"y cu tgi kugtgf 0J qrf gt "vkl'k'gf "vj cv'vj g'qeev' cpv' F kcpg"lgpmkpu. y j q"lphqto gf "Qh'kgu" J qrf gt" vj cv'vj g'tguv' gpeg"y cu"j gtu. r gto kwgf "j ko "vq"gpv'gf "y j gp'j g'v'qrf "j gt'j g'y cu'eqpf vevkpi 'cp kpxguki cvklp'qh'c' b wtf gt'qh'c' b qrlkg'qh'kgu'cpf "cungf "y j gv'j gt j g'cpf "qv'j gt"qh'kgu'eqwrf "eqo g'kp"cpf " *970 "mqmictqwpf 0 J g'f kf "pqv'j cxg" c"y cttcpv'0' u'0'lgpmkpu'eqpvgpf "xgtdcm' vq" vj g'ugctej . "cpf "uj g'uki pgf " c" y tkwgp" hqto " kpf lecvkpi j gt"eqpvgp'cpf "cnuq"pqv'kpi "vj cv'uj g'r ckl "vj g'tgpv'qp"vj g r tgo kugu'Y j gp"J qrf gt" cunf "y j gv'j gt"vj g'tg'y g'tg'y gcr qp u kp'vj g'j qwug. "uj g'clh'ko gf "vj cv'vj g'tg'y g'tg. "h'cf kpi "j ko "vq"j gt dgt tqo "cpf "f kuerukpi "vj g'vkl'vklp'qh'v' q'f wpu'uj g'cuugt'v'f dgrpi gf "vq"j gt"dq{ h'kgp'0' C'm quv'uko wncp'g'wun' "y kj "j ku tgs wguv'vq"eqpf vev'vj g'ugctej . "J qrf gt" cunf "y j gv'j gt"vj g'tg y cu'cp{ "r tqr gtv' "dgrpi kpi "vq"j gt"dtqj gt. "f ghgpf cpv' "kp"vj g j qo g'0J qrf gt" dng'xgf "vj cv'uj g'wpf gtuqqf "j g'y cu"vj g'tg"vq kpxguki cv'g'c' b wtf gt'kp'y j lej "j gt"dtqj gt"o ki j v'dg'kpxq'k'g'0 Y j gp"J qrf gt" cunf "y j gv'j gt" vj g'tguv' gpeg" eqp'vklpgf " cp{ r tqr gtv' "dgrpi kpi "vq"j gt"dtqj gt. "0' u'0'lgpmkpu'tgur qpf gf "vj cv vj g'tg"y cu" c" dtlghcug" dgrpi kpi "vq"j ko 0'Y j gp"uj g'j cpf gf vj g'w'p'engf "dtlghcug"vq"j ko "kp"j gt" dgt tqo . "j g'qr gpgf k'vq" f g'vgt o kpg"y j gv'j gt" k'v'eqp'vklpgf "h'kg'cto u. "kp" r ct'v'w'ct vj g'o wtf gt"y gcr qp. "y j lej "vq"j ku'npqy r'gf i g'j cf "pqv'dggp tgeqxtgf 0J g'cnuq"gzco kpgf "vj g'eqpvgpw'qh'vj g'dtlghcug"vq ckl' kp'kf gp'vkl' kpi "cf f kklp'cn'w'ur gev. "h'kp' kpi "vj cv'v'eqp'vklpgf c" dklp'gt"y kj "vj g'pco g" F cp" qp" k. "xct'kwu" r cr gtu. "uqo g y kj "pco gu. "cf f tguu. "cpf "vgr'j qpg" pwo dgtu" qp" vj go . r j qv'j tcr j u. "cpf "c'xg' keng' h'kg'p'0J g'v'q'nm'y g'dtlghcug"y kj j ko "y j gp'j g'gh'v'j g't tgo kugu'ch'gt'eqpenf kpi "vj g'ugctej 00 u'0' lgpmkpu'kpf lecv'f kp'y tkkpi "vj cv'vj g't tqr gtv' ugk' gf "f wtkpi "vj g

ugctej . 'ur gekhlecml "kpenw lpi "vj g"dtlghcug"cpf "ku"eqpvgrvu . y cu"oi kxgp"vq" F gvevxxg" J qrf gt" d{ "o g"tggm "y kj qvw"j tgcvc qt"r tqo kug0

F gvevxxg"Vj lgu"vukhgf "vj cv"j g"tgegxgf "vj g"dtlghcug"ltqo J qrf gt" c'p'f "gzco kpgf "ku"eqpvgrvu0k"eqpvclpgf "c"t'egpug"t r'v'g . c"r j ppg"o guaci g"t'gtl'gxn'cr r ctcwu . "c"eqo d'k'c'v'k'p"npl'g . dtcuu" npv'emgu . "c" d'q'q'm' eqpvcl'k'p'i " f gh'g'p'f'c'p'v'u" n'ko q'w'ul'p'g r'k'v'k'p'i u . "r j ppg" d'k'm . "c" v'g'r'j ppg" c'p'f " c'f'f't'g'u" d'q'q'm' y kj p'q'v'c'v'k'p'u"l'p" f gh'g'p'f'c'p'v'u"j c'p'f y t'k'l'p'i . "c'p'q'v'j g't"v'g'r'j ppg" c'p'f c'f'f't'g'u" d'q'q'm' d'g'c't'k'p'i " c'p'q'v'j g't" r'g't'u'q'p'u" j c'p'f y t'k'l'p'i . " c'p'f c" d'w'ul'p'g'u" e'c't'f'0' k'p" c'f'f'k'l'k'p . "vj g't'g" y cu" c" r' k'g'eg" q'h" r'c'r g't d'g'c't'k'p'i "G'r'j w'g'D't'q'q'o h'g'r'f' u"v'g'r'j ppg'p'w'o d'g't'0'v'j g'b' c'v'g't'k'eu h'q'w'p'f "k'p"v'j g"dtlghcug"cnuq"eqpvclpgf "vj g"v'g'r'j ppg'p'w'o d'g'tu q'h" T'g'g'e { "E'q'q'r g't" c'p'f "V{t'q'p'g" J k'eu . "c'p'f "vj g" c'f'f't'g'u" c'p'f v'g'r'j ppg'p'w'o d'g't"q'h" C'p'v'j q'p { "D't { c'p'0

F k'c'p'g" l'g'p'n'k'p'u" v'g'u'k'h'g'f "c'v" v'j g" j g'c't'k'p'i " q'p" v'j g" o q'v'k'p" v'q u'w'r t'g'u" v'j c'v" u'j g" j c'f" n'g'c't'p'g'f " q'h" f gh'g'p'f'c'p'v'u" c'tt'g'u'v" q'p P q'x'g'o d'g't"3 . "3 ; : 7 . "t'q'o "c" r' g't'u'q'p" y j q'u'g" l'f' g'p'v'k'f " u'j g" e'q'w'f p'q'v't'g'c'n'0'U'j g'f' k'f "p'q'v'c'm'v'q" f gh'g'p'f'c'p'v'q'p" v'j c'v'f' c'v'g'0'c'v'j g't o q'v'j g't' u' t'g's w'g'u" u'j g'r' k'eng'f "w'r" f gh'g'p'f'c'p'v'u" w'p'iq'eng'f " l'g'r' "c'v v'j g" U'c'p' H'g't'p'c'p'f' q' e'q'w't'v' q'w'g . h'k'p'f' k'p'i " v'j g'h'g'f' u'w'p'f' g't" v'j g'h'q'q't o c'v'0'U'j g't'g'o q'x'g'f " v'j g" d't'l'g'h'c'ug" l't'q'o " v'j g" l'g'r' "c'p'f" r' n'eg'f "k'v k'p" j g't" t'g'u'k'f' g'p'eg'0'U'j g'ur g'p'v'v'j g" p'k'j j v'c'v'f' gh'g'p'f'c'p'v'u" j q'o g . h'g'c't'k'p'i "k'v'o k'j j v'd'g' u'w'd'l'g'v'q" c" d't'g'm'l'p" k'p" j k'u" c'd'ug'p'eg'0'U'j g v'g'u'k'h'g'f " v'j c'v'v'j j g'p" J q'f' g't" c'tt'k'x'g'f "c'v'j g't" j q'o g" q'p" P q'x'g'o d'g't 4 . "3 ; : 7 . " u'j g" c'u'ng'f " y j g'v'j g't" j g' j c'f" "c" u'g'c't'ej " y c'tt'c'p'v" c'p'f j g" t'g'ur q'p'f' g'f " v'j c'v'j g' f' k'f " p'q'v" . *971 " d'w" v'j c'v' w'p'g'u" u'j g e'q'p'g'p'v'g'f " v'q" c' u'g'c't'ej . " j g'y q'w'f "c'tt'g'u'v'j g't" q'p" c'p" q'w'w'c'p'f' k'p'i v'c'h'h'e" y c'tt'c'p'v' c'p'f " u'g'c't'ej " v'j g'r' t'g'o k'ug'u" c'p' { y c' { 0'U'j g" u'c'v'g'f v'j c'v'j J q'f' g't" q'd'ug't'x'g'f " v'j g" d't'l'g'h'c'ug" k'p" j g't" d'g'f' t'q'o . " u'g'k'f' g'f " k'v . c'p'f " g'z'c'o k'p'g'f " k'u" e'q'p'v'g'p'u'0'U'j g" v'g'u'k'h'g'f " v'j c'v'v'j g" y cu" w'p'f' g't f' w'g'u" v'j j g'p' u'j g' u'k'i p'g'f " v'j g'h'q't'o " k'p'f' k'c'v'k'p'i " j g't" e'q'p'g'p'v'q" v'j g' u'g'c't'ej " c'p'f " v'j g't'g'o q'x'c'n'q'h'r' t'q'r g't'v'f " t'q'o " j g't" t'g'u'k'f' g'p'eg'0

V'j g" v'k'c'n' e'q'w't'v' u'c'v'g'f " v'j c'v'k'v' d'g'r'g'x'g'f " u'g'x'g't'c'n' g'z'eg'r' v'k'p'u" v'q v'j g" u'g'c't'ej " y c'tt'c'p'v' t'g's w'k't'g'o g'p'v' c'r r' n'g'f' 0' H'k't'u'v" k'v' f' g'e'r'c't'g'f v'j c'v'v'j g" q'h'h'g'g't'u'r' q'u'g'u'g'f " c" y c'tt'c'p'v' v'q" u'g'c't'ej " f gh'g'p'f'c'p'v'u l'g'r' . "c'p'f " u'c'v'g'f " k'u" d'g'r'g'h'v' c'v'0'v'j g't'g' k'u" c" i' q'q'f " c'ti' w'o g'p'v'v'j c'v v'j c'v' d't'l'g'h'c'ug" j c'f " d'g'g'p" k'p" v'j g" e'c't' = v'j c'v'v'j g" u'g'c't'ej " y c'tt'c'p'v c'w'j q't'k'f' g'f "c" u'g'c't'ej " q'h'v'j g' e'c't' c'p'f " c'w'j q't'k'f' g'f "c" u'g'c't'ej " q'h" 0' t'0 l'g'p'n'k'p'u" r' t'q'r g't'v'f " k'p'u'k'f' g'v'j g'j q'w'g' = v'j c'v'v'j g't'g' c'e'w'c'm' " y cu c' u'g'c't'ej " y c'tt'c'p'v' v'q" e'q'x'g't " k'0" v'j g" e'q'w't'v' c'f' f' g'f . "0'k'v'j k'p'n'v'j g q'v'j g't" v'j g'q't { "k'u'f' q'u'k'd'n'f " c' e'q'p'g'p'v'v'j g'q't { . 'c'n'j q'w'j j " k'v'q'o g'y j c'v c'i' t'g'g" j y k'j " f gh'g'p'g' e'q'w'p'g'u" u'c'ti' w'o g'p'v' v'j c'v' e'q'p'g'p'v'v'q" w't'p k'v'q'x'g't' q't' w't'p'k'p'i " k'v'q'x'g't' f' q'g'p'u" p'g'e'g'u'c't' k'v'f " i' k'x'g' e'q'p'g'p'v'v'q q'r' g'p" k'v' c'p'f " v'q" u'g'c't'ej . " k'p" c'p'f " q'h" k'u'g'r'h'0" Q'v'j g't" v'j g'q't'k'g'u" v'j g' e'q'w't'v' h'q'w'p'f "0'r' q'u'k'd'n'f " c'r r' n'c'c'd'g'o" y g't'g' l'p'g'x'k'c'd'g'f' f' k'ue'q'x'g't' {

c'p'f "g'z'k'i g'p'v'k't'ewo u'c'p'eg'u'0'Y k'j "t'g'ur g'ev'v'q" v'j g'h'k't'u'v' v'j g' e'q'w't'v g'z'r' n'c'k'p'g'f "0'v'j g't'g'j c'f "d'g'g'p" c' u'g'c't'ej " y c'tt'c'p'v' h'q't' v'j g' e'c't' c'p'f " v'j g' r' t'q'r g't'v'f { 0'k'v' y q'w'f "b'q'v'j c'x'g' c'v'c'n'g'p' h'q'p'i " h'q't" v'j g'o " j y g't' q'r'eg' _v'q j c'x'g'i' q'w'g'p' c' u'g'c't'ej " y c'tt'c'p'v' c'p'f " q'r' g'p'g'f " v'j g" d't'l'g'h'c'ug" 0'Y k'j t'g'ur g'ev'v'q" v'j g" u'g'c'p'f . "k'v'g'z'r' n'c'k'p'g'f "0'k't' g'c'm'f " f' q' v'j k'p'n'v'j c'v'v'j g' go g'ti' g'p'e { " g'z'eg'r' v'k'p' . " v'j g" g'z'k'i g'p'v'k't'ewo u'c'p'eg'u" g'z'eg'r' v'k'p' . c'r r' k'g'u'v' j g'p' { q'w'j c'x'g' c' p'k'p'g' / o k'r'k'o g'g't' y g'c'r' q'p' q'w'w'c'p'f' k'p'i v'j c'v'j c'u' { g'v'v'q' d'g' h'q'w'p'f 0'c'p'f " d'c'ug'f " q'p" v'j g' l'p'h'q't'o c'v'k'p' k'p" v'j g' c'h'h'f' c'x'k'v'j g't'g'y c'u'c'x'g't { i' q'q'f " e'j c'p'eg'v'j c'v'k'b' k'j j v'j c'x'g' d'g'g'p h'q'w'p'f " y k'j k'p" v'j g" d't'l'g'h'c'ug" 0

*39+ " V'j g" H'q'w'v'j " Co g'p'f' o g'p'v' r' t'q'v'g'evu" c'p" k'p'f' k'k'f' w'c'n'u t'g'c'u'q'p'c'd'g' " g'z'r' g'ev'v'k'p' " q'h" r' t'k'x'c'e { " c'i' c'k'p'u'v" w'p't'g'c'u'q'p'c'd'g' k'p't'w'ul'q'p' q'p" v'j g'r' c't'v'q'h'v'j g'i' q'x'g't'p'o g'p'v'0'c' y c'tt'c'p'v' k'u' t'g's w'k't'g'f w'p'g'u" e'g't'v'c'k'p' " g'z'eg'r' v'k'p'u" c'r r' n'f . " l'p'ew'f' k'p'i " v'j g" g'z'eg'r' v'k'p' " v'j c'v' r' g't'o k'u" e'q'p'g'p'w'c'n' u'g'c't'ej g'u" *Florida" v. Jimeno" *3 ; : 3+ "722 WLU046 : .472/473" j333 "UE v03 : 23 .3 : 25/3 : 26 .336 "NOGf 04f 4 ; 9 _= In re Tyrell J . " *3 ; : 6+ : "E'c'r'0'v'j " 8 : . '9 ; " j54 "E'c'r'0'r' v04f 55 . : 98 "R04f "73 ; 0-

Cu" v'j g" j k'j j " e'q'w't'v' j cu" g'z'r' n'c'k'p'g'f " 0'v'j g" v'q'w'ej' u'q'p'g' " q'h v'j g" H'q'w'v'j " Co g'p'f' o g'p'v' k'u" t'g'c'u'q'p'c'd'g'p'g'u" 0' J E'k'c'v'k'p'0_ " V'j g H'q'w'v'j " Co g'p'f' o g'p'v' f' q'g'u" p'q'v' r' t'q'u'et'k'd'g" c'n'f' u'c'v'g' / k'p'k'c'v'g'f u'g'c't'ej g'u" c'p'f " u'g'k'f' w'g'u" = k'v'o g't'g'n'f " r' t'q'u'et'k'd'g'u" v'j q'u'g' " y j k'ej " c't'g w'p't'g'c'u'q'p'c'd'g" 0 " *Florida" v. Jimeno . " supra . " 722 " WLU0' c'v' r' 0 472 " j333 " UE v0' c'v' r' 0'3 : 25_0 " C" y c'tt'c'p'v'g'u" u'g'c't'ej " o c' { " d'g t'g'c'u'q'p'c'd'g" p'q'v' q'p'n'f " k'h'v'j g'f' gh'g'p'f'c'p'v' e'q'p'g'p'w'v'q" v'j g' u'g'c't'ej . d'w'c'n'q' k'h'c'v' r' g't'u'q'p' q'v'j g't" v'j c'p" v'j g'f' gh'g'p'f'c'p'v'v' k'j " c'w'j q't'k'f' q'x'g't" v'j g'r' t'g'o k'ug'u" x'q'n'w'p'c't'k'f' " e'q'p'g'p'w'v'q" v'j g' u'g'c't'ej 0 " *United States" v. Matlock " *3 ; 96+ "637" WLU0386 . "392/393" j ; 6 " UE v0 ; : . . ; ; 4 ; ; 5 . "5 ; " NOGf 04f "464_ " j r' g't'u'q'p' u'j c't'k'p'i " c" d'g'f' t'q'o y k'j " f gh'g'p'f'c'p'v'j c'f " *972 " c'w'j q't'k'f' " v'q" e'q'p'g'p'v'v'q" c' u'g'c't'ej " q'h v'j g'r' t'g'o k'ug'u" c'p'f " f' k'c'r' g't' d'c'i' " h'q'w'p'f " v'j g't'g'k'p' = u'g'g' c'n'q' " Frazier v. Cupp " *3 ; 8 ; +5 ; 6 " WLU0953 . "962" j ; ; " UE v0'3642 . "3647 . "44 NOGf 04f "8 : 6_ " j e'q'w'ul'p' j c'f " c'w'j q't'k'f' " v'q" e'q'p'g'p'v'v'q" u'g'c't'ej " q'h'v'j g' f gh'g'p'f'c'p'v'u" f' w'h'g'n' d'c'i' . " y j k'ej " d'q'v' " o g'p' w'ug'f " c'p'f " y j k'ej " j c'f d'g'g'p' r'g'h'v'k'p" v'j g' e'q'w'ul'p'u" j q'o g_0-

H'w't'v'j g't . " v'j g" W'p'k'g'f " U'c'v'g'u" U'w'r' t'g'o g" E'q'w't'v' j cu" u'c'v'g'f " v'j c'v' 0'k'p' q't'f' g't" v'q" e'c'k'o " v'j g'r' t'q'v'g'v'k'p' q'h'v'j g" H'q'w'v'j " Co g'p'f' o g'p'v' c" f gh'g'p'f'c'p'v' o w'w'f' g'o q'p'u't'c'v'g' v'j c'v' j g' r' g't'u'q'p'c'm' " j cu" c'p' g'z'r' g'ev'v'k'p' q'h' r' t'k'x'c'e { " k'p" v'j g' r' n'c'eg" u'g'c't'ej g'f . " c'p'f " v'j c'v' j k'u g'z'r' g'ev'v'k'p' k'u't' g'c'u'q'p'c'd'g' = . e'0' q'p'g'y j k'ej " j cu" c' u'q'w't'eg' q'w'ul'k'f' g' q'h'v'j g" H'q'w'v'j " Co g'p'f' o g'p'v' g'k'j g't' d' { " t'g'h'g't' g'p'eg'v'q" e'q'p'eg'r' w'v'q'h t'g'c'n' q't" r' g't'u'q'p'c'n' r' t'q'r g't'v'f " r'ey " q't" v'q" w'p'f' g't'u'c'p'f' k'p'i u'v'j c'v' c't'g t'g'eq'i' p'k'f' g'f " c'p'f " r' g't'o k'w'g'f' d' { " u'q'el'g'v'f { 0'0 " *Minnesota" v. Carter *3 ; ; +747 " WLU0 : 5 . : " j33 ; " UE v0'68 ; "694 . "364 " NOGf 04f 595_ " s'v'q'v'k'p'i " Rakas" v. Illinois " *3 ; 9 : +65 ; " WLU034 : . "356 j ; ; " UE v0'643 . "647/648 . "7 : " NOGf 04f "5 : 9_0 " V'j g" f gh'g'p'f'c'p'v'

o wuv'cuugt'v'c"tgcupcdng"gzr gev'v'q"qh'r tkxce{ "lp" o" }j g particular area searched or thing seized"lp"qt'f'gt"vq"dtlpi "c Hqwt'v' "Co gpf o gpv'ej cmgpi gO'o*People'v. McPeters, supra, 4'Ecrf6vj "cv'r 03393. 'kcrkeu'lp'qt'ki kpcr0-

C'f ghgpf cpv'j cu'vj g'dwtf gp'cv'tkcrq'h'gucdrkuj kpi 'b'ngi kko cvg gzr gev'v'q"qh'r tkxce{ "lp" 'j g" r mreg"ugctej gf "qt" 'j g" 'j kpi ugk' gf 0*Ugg'Rakas'v. Illinois.'supra.'65; "WUO'cv'r 0352/353. lp03.'356"; ; "UE'v'0'cv'r 0646.'647/648 _=ugg'cnuq"People"v. McPeters.'supra.'4'Ecrf6vj "cv'r 033940'Vj g'r tqugew'v'q"j cu vj g'dwtf gp'q'h'gucdrkuj kpi 'vj g'tgcupcdng'p'gu'q'h'c'y cttepv'guu ugctej 0*Ugg'People'v. Williams'*3; ; +67'Ecrf5f'348: .3522]46: "Ecrf0r v0: 56.'978"R0f'443 _=ugg'cnuq"United States"v. Matlock.'supra.'637"WUO'cv'r 0393.'399"; 6'UE'v'0'cv'r 0; ; 5. ; ; 8_0'Vj g'ucv'g'o c{ "ectt{ "ku'dwtf gp'q'h'f go qp'ut'cv'pi "vj g tgcupcdng'p'gu'q'h'c'ugctej "d{ "f go qp'ut'cv'pi "vj cv'v'j g'q'h'leg' eqpf vev'kpi "vj g'ugctej "j cf "c'tgcupcdng'dng'gh'v' cv'v'j g'r gtuqp eqpug'v'kpi "vq"vj g'ugctej "j cf "cwj qtk'v{ "vq" f q"uq'k'ku"pqv tgs vkt'gf "vj cv'v'j g'ucv'g'gucdrkuj "vj cv'v'j g'r gtuqp"eqpug'v'kpi vq"vj g'ugctej "j cf "c'ewcn' cwj qtk'v{ "vq" eqpug'v'0 *Illinois" v. Rodriguez'*3; ; 2+6; 9"WUO399.'3: 8"]332"UE'v'0'49; 5.'4: 22. 333'NOGf 0f'36: _=ugg'cnuq"People"v. Jacobs'*3; ; 9+65'Ecrf5f 694.'6: 3"]455'Ecrf0r v0545.'94; "R0f'979 _=People"v. Bishop *3; ; 8+66'EcrfCrr 06j "442.'458"]73'Ecrf0r v0f'84; _0-

*37e+F ghgpf cpv'f'k'k'gf "vq"cuugt'v'v'j cv'j g'j cf "cp{ "r quuguqt { kp'v'gt'guv'qt"ngi kko cvg"gzr gev'v'q"qh'r tkxce{ "lp"j ku"ukngt'u j qo g."uq"j g'h'k'k'gf "vq"gucdrkuj "vj cv'v'j g'ugctej "qh'v'j g'j qo g kugr'h'x'k'q'v'gf "j ku'q'y p'eqp'v'k'w'k'p'c'n'k'j j w0

F ghgpf cpv'f'k'f. "j qy g'xgt."cuugt'v'v'j cv'j g'j cf "c" tgcupcdng gzr gev'v'q"qh'r tkxce{ "lp"j ku'dtl'gh'ecug.'cpf 'y g'cuuwo g'ht'v'j g r vtr qug'qh'v'j ku'cr r gcn'v'j cv'j g" *973 "ectt'lgf "j ku'dwtf gp"qh vj qy kpi 'c'ngi kko cvg'gzr gev'v'q"qh'r tkxce{ "lp"vj cv'q'dl'ge'v³² P qpg'v'j gruu.'y g'eqpen'f'g'v'j cv'v'j g'ugctej "qh'v'j g'dtl'gh'ecug'y cu tgcupcdng'd{ "x'k'w'g'q'h'f ghgpf cp'v'u'ukngt'u'x'q'w'p'v'ct{ "eqpug'v' vq"vj g'ugctej 0

32 Tgur qpf gpv'eqp'v'p'f u'f ghgpf cpv'f'k'k'gf "vq"gucdrkuj vj cv'v'j g'j cf "c" tgcupcdng"gzr gev'v'q"qh'r tkxce{ "lp" j ku" dtl'gh'ecug." cuugt'v'kpi "vj cv' f ghgpf cpv' j cf tgr'k'p' v'kuj gf "cp{ "gzr gev'v'q"qh'r tkxce{ "lp" vj g dtl'gh'ecug" d{ " tgr'k'p' v'kuj kpi " eqp'v'q'n' q'x'gt" vj g dtl'gh'ecug" vq" j ku" ukngt'0 Y g' eqpen'f'g" vj cv' vj g g'x'k'f' g'peg' k'p'v'q'f' v'eg'f" cv' vj g" j gct'kpi " f'q'gu" p'q'v' gucdrkuj "vj cv'f' ghgpf cpv'c'ewcn'f "cung'f "j ku"ukngt vq"v'cng"r quugu'k'p"qh'v'j g' dtl'gh'ecug." cnj' q'w'j j "cv vj g"v'k' g"v'j g'ugctej "y cu' eqp'f' v'eg'f." vj g' q'h'leg' tu k'p'x'q'x'g'f" tgcupcdng" eqw'f" d'ng'k'x'g" vj cv' F'k'c'p'g

Igp'v'k'p'u"j cf "ugew't'gf "v'j g' dtl'gh'ecug"cv'j g' dt'q'v' g't'u f'k'g'ev'k'p'0'k'p'c'p{ "g'x'g'p'v'y g'f'g'ek'f'g'v'j g'kuu'w'g'q'p'v'v'j g't i tqw'p'f u0

Cv'v'j g'q'w'w'g'v.'f' ghgpf cpv'eqp'v'p'f u'f'v'j cv'v'j ku'ukngt'u'eqpug'v'v'q' ugctej "j g't'j qo g'cp'f "v'j g' dtl'gh'ecug"y cu'p'q'v'x'q'w'p'v'ct{ 0*Ugg Schneckloth" v. Bustamonte"*3; 95+634"WUO'43: .449"; 5 UE'v'0'4263."426:/426; .58"NOGf 0f": 76_]y j g'v'j g't'eqpug'v' y cu'x'q'w'p'v'ct{ "qt"y cu'v'j g'r r'q'f'v'ev'q'h'eq'g't'ek'p"q'p"v'j g'r'c'tv qh'ugctej kpi "q'h'leg' tu'ku" c" s'w'g'v'k'p"qh'h'c'ev'v'q"dg'f' g'v'g'to k'p'gf h'q'o "v'j g'v'q'v'k'v'f' q'h'v'j g'ek't'ewo u'c'p'eg'u_0'Vj g'g'x'k'f' g'peg'cv'v'j g j gct'kpi "q'p"v'j g'o q'v'k'p"v'q"u'w'r r'g'u'u'y cu'k'p'uj c'tr "eq'p'h'k'v'q'p vj ku'r q'k'p'0'F'g'v'ev'k'x'g"J q'f'g't"v'g'u'k'k'gf "v'j cv'f' ghgpf cp'v'u'ukngt y cu'h'k'p'f' n{ "cp'f "eq'q'r g't'c'v'k'x'g."cp'f "t'g'c'f' k'f{ "eq'pug'v'p'f "v'q"v'j g' ugctej "y k'j q'w'v'v'j g'c'r r'k'c'v'k'p"qh'c'p{ "r'g'u'w't'g"q'p"v'j g'r'c'tv qh'v'j g'r' r'q'k'eg'0'J g'f'g'p'k'gf "v'j t'g'c'v'p'k'pi "j g't'v'j k'j "c'tt'g'u'0'Uj g o go q't'k'k'f' g'f "j g't' eq'pug'v'p' k'p" y t'k'k'pi . "u'c'v'k'pi "v'j cv'v' k'v' y cu h'g'g'n'f' i k'x'g'p'0' u'0'lgp'v'k'p'u'v'g'u'k'k'gf .] q'y g'x'g't."v'j cv'v'j g't'eq'pug'v' v'q"v'j g'ugctej "y cu'eq'g't'eg'f" d{ "c"v'j t'g'c'v'v'q"c'tt'g'u'v'j g't'q'p"cp q'w'w'c'p'f' kpi "y c'tt'c'p'v'k'h'uj g't'g'h'w'g'f" v'q" u'w'r r' n{ "j g't' eq'pug'v'0 Y g'x'k'g'y "v'j g't'g'eq't'f' "k'p"v'j g'r'i'k'j j v'o qu'v'h'x'q't'c'dng"v'q"v'j g'v't'k'n eq'w'v'u't'w'k'p'i .f' gh'g't'k'p'i "v'q"v'j q'ug'gz'r'g'u'v'q't'k'o r'k'eg'f' h'k'p'f' kpi u qh'h'c'ev' u'w'r r'q't'v'g'f" d{ "u'w'd'uc'p'v'k'n' g'x'k'f' g'peg'0' *Ugg' "People" v. Alvarez.'supra.'36'Ecrf6vj "cv'r 03: 4=People"v. Miranda.'supra. 39"EcrfCrr 06j "cv'r r 0 43;/ 440'k'k'k'v'g'x'k'f' g'p'v' h'q'o "v'j g'v't'k'n eq'w'v'u't'g'r'k'c'p'eg'v'r q'p'eq'pug'v'p'cu'c' l'w'v'k'h'c'v'k'p' h'q't'v'j g'ugctej vj cv'v'j g'v't'k'n'eq'w'v'v'g'u'v'k'g'f' "k'p"v'x'q't' q'h'v'j g'r' t'q'ug'ew'k'p"v'j g h'c'ew'c'n'f' k'ur w'g't'g'i c't'f' k'pi "v'j g'ek't'ewo u'c'p'eg'u'w'p'f' g't'y j k'ej "0 u0 Igp'v'k'p'u'f' t'c'p'v'g'f' "j g't'eq'pug'v'p'c'p'f' f'k'f' p'q'v'v'et'g'f' k'v'j g't'v'g'u'k'o q'p{ vj cv'v'j g't' eq'pug'v'p'v' y cu'v'j g'r' r'q'f'v'ev'q'h'c"v'j t'g'c'v'v'q"c'tt'g'u'v'j g't0 Y g'f' gh'g't" v'q" vj ku" k'o r'k'eg'f' h'c'ew'c'n'f' g'v'g'to k'p'c'v'k'p."y j k'ej "ku u'w'r r'q't'v'g'f" d{ "u'w'd'uc'p'v'k'n' g'x'k'f' g'peg'0'E'q'p'ug's' w'g'p'v'f."y g't'g'l'g'ev f' ghgpf cp'v'u'eq'p'v'p'v'k'p"v'j cv'0 u'0'lgp'v'k'p'u'eq'pug'v'v'q"v'j g'ugctej y cu'k'p'x'q'w'p'v'ct{ 0

Y g'p'g'z'v'w't'p"v'q"v'j g's'w'g'v'k'p"y j g'v'j g't'v'j g'x'q'w'p'v'ct{ "eq'pug'v' i k'x'g'p'd{ "0 u'0'lgp'v'k'p'u'gucdrkuj gf "v'j g'ugctej "cu'tgcupcdng0 0 u'0'lgp'v'k'p'u' er'g'c't'n{ "j cf "cwj q't'k'v{ "v'q" eq'pug'v'p' v'q" c" ugctej qh'j g't'q'y p"cr'c't'v'o g'p'v'c"r' m'eg"lp" y j k'ej "f' ghgpf cp'v'j cf "p'q r'qu'gu'q't{ "k'p'v'g't'g'u'0 *3: +k'p"u'q'o g'ek't'ewo u'c'p'eg'u."j q'y g'x'g't. vj g' eq'pug'v'p' v'q" c" ugctej "i k'x'g'p'd{ "c" r'g'tu'q'p"y k'j "cwj q't'k'v{ v'q"eq'pug'v'p'v'q" c" ugctej "qh'v'j g'r' t'g'o k'ug'u'f' q'g'u'p'q'v'p'g'g'u'c't'k'f' u'w'r r' n{ "eq'pug'v'v'q"ugctej "r'g'tu'q'p'c'n'f' t'q'r g't'v'f' h'q'w'p'f' y k'j k'p"v'j g r' t'g'o k'ug'u'0'Cu' l'w'v'k'eg"Q'E'q'p'p'q't'gz'r' r'k'p'g'f' "lp"j g't'eq'p'ew't'k'p'i q'r'k'p'k'p"lp" *974 "United States"v. Karo"*3; ; 6+68: "WUO927. 947"]326"UE'v'0'54; 8."552: .": 4"NOGf 0f"752_]o]c_r tkxce{ k'p'v'g't'g'u'k'p'c'j qo g'k'ug'r'h'p'g'g'f' p'q'v'd'g'eq'z'v'p'uk'x'g'y k'j 'c't' tkxce{ k'p'v'g't'g'u'v'k'p"v'j g'eq'p'v'p'w'0'0'q'h'g'x'g't{ vj k'pi "uk'w'c'v'g'f' "k'p'k'f'g"v'j g j qo g'0'Vj ku"j cu'd'g'g'p"t'g'eq'i p'k' g'f' "d'g'h'q't'g"lp"eq'p'p'g'v'k'p"y k'j vj k'f' /r'c't'v'f' "eq'pug'v'v'q"ugctej g'u'0'c"j qo g'q'y p'g't'u'eq'pug'v'v'q" c

ugctej 'qh'v'j' qo g'b c{ 'p'v'dg'ghgex'g'eqpugpv'v'c'ugctej 'qh c'equgf 'qdlgev'k'p'k'f'g'v'j' qo g'OE'pugpv'v'ugctej 'c'eqp'v'k'p'gt qt'c'r' r'ceg'ku'ghgex'g'q'p'n' 'y' j' gp'i' k'xgp'd' 'q'p'g'y' k'j' }eqo o qp cwj qtk'f' 'q'x'g't' 'q'y' g't' u'w'h'k'p'v't' g'r'v'k'p'uj' k'r' 'v'q' 'v'j' g'r' t'go' k'ugu qt' 'g'h'g'ew'u'q'w' j' v'v'q'd'g' 'k'p'ur' g'ev'g'f' 0'United States v. Matlock. 637'WLU'c'v'393'; 6'UE'v'c'v'r'0'; ; 5_0'E'qo o qp'cwj' qtk'f' (00 t'gu'u'00)q'p'o' w'w'c'n'w'ug'q'h'v'j' g'r' t'qr' g't'v'f' 'd' { 'r' g't'u'q'u'p'i' g'p'g't'c'm'f' j' c'x'k'p'i' 'l'q'k'p'v'c'ee'g'u'u'q't' 'e'q'p't'q'n' 'h'q't' 'o' q'u'v'r' w'r' q'u'g'u' (00)Id'0'cv 393.'p'09'; 6'UE'v'c'v'r'0'; ; 5_0

Cu' v'j' ku' n'p'i' w'c'i' g' 'k'p'f' k'ec'v'u'." c'v' n'g'cu'v' 'y' q' 's'w'g'u'k'q'p'u' c't'g r' t'g'u'p'v'f' 'y' j' gp' 'y' g' 'u'v'c'v'g' 'u'g'g'm' 'v' 'l'w'u'k'h' 'c' 'y' c't't'c'p'v'g'u'u'ugctej d' { 't'g'n'f' 'k'p'i' 'w'r' q'p' 'v'j' g' 'e'q'p'ug'p'v' 'q'h' 'c' 'v'j' k'f' 'r' c't'v'f' 'y' j' q' 'k'u' 'v'j' g' q'ee'w' c'p'v'q'h'v'j' g'r' t'go' k'ugu'ugctej' g'f' <'y' j' g'y' g't' 'v'j' g' 'v'j' k'f' 'r' c't'v'f' j' c'f' 'c'w'j' q't'k'f' 'v'q' 'e'q'p'ug'p'v'v' 'v'j' g' 'u'g'c't'ej' . 'c'p'f' 'y' j' g'y' g't' 'v'j' g' 'u'eq'r' g' q'h'v'j' g' 'e'q'p'ug'p'v'v' i' k'x'g'p' 'k'p'en'f' g'f' 'v'j' g' 'q'd'l'g'ev' 'q't' 'e'q'p'v'c'k'p'g't' 'v'j' c'v' y' c'u' 'u'g'c't'ej' g'f' 0'k'p' 'v'j' g' 't'g'u'q'w'k'q'p' 'q'h'v'j' g'ug' 's'w'g'u'k'q'p'u'." c'u'p'q'v'g'f' . 'v'j' g' 'u'v'c'v'g' 'o' c' { 'e'c't't' { 'k'u' 'd'w't'f' g'p' 'd' { 'f' g'o' q'p'u'w'c'k'p'i' 'v'j' c'v'k'y' c'u' q'd'l'g'ev'k'x'g'n' 't'g'c'u'q'p'c'd'r'g' 'h'q't' 'v'j' g' 'u'g'c't'ej' k'p'i' 'q'h'h'eg't' 'v'q' 'd'g'r'k'x'g' v'j' c'v'v'j' g'r' g't'u'q'p' 'i' k'k'p'i' 'e'q'p'ug'p'v'v' j' c'f' 'c'w'j' q't'k'f' 'v'q' 'f' q' 'u'q'." c'p'f' v'q' 'd'g'r'k'x'g' 'v'j' c'v'v'j' g' 'u'eq'r' g' 'q'h'v'j' g' 'e'q'p'ug'p'v'v' i' k'x'g'p' 'g'p'eq'o' r' c'u'ug'f' v'j' g' 'k'g'o' 'u'g'c't'ej' g'f' 0'Florida'v. Jimeno.'supra.'722'WLU'cv r'0'473'j'333'UE'v'c'v'r'0'3: 25/3: 26_]ue'q'r' g' 'q'h' 'e'q'p'ug'p'v'v' o' c' { d'g' 'g'u'w'c'd'r'k'uj' g'f' 'd' { 'u'j' q'y' k'p'i' 'v'j' c'v'v'j' g' 'u'g'c't'ej' k'p'i' 'q'h'h'eg't'u'j' c'f' 'c'p' q'd'l'g'ev'k'x'g'n' 't'g'c'u'q'p'c'd'r'g' 'd'c'u'k'u' 'v'q' 'd'g'r'k'x'g' 'v'j' g' 'e'q'p'ug'p'v'v' 'k'p'en'f' g'f' v'j' g' 'k'g'o' 'u'g'c't'ej' g'f' =Illinois'v. Rodriguez.'supra.'6; 9'WLU'cv r'0'3: 8'j'332'UE'v'c'v'r'0'4: 22_]ug'c't'ej' 'o' c' { 'd'g' 't'g'c'u'q'p'c'd'r'g' 'k'h' q'h'h'eg't' 'j' c'f' 'c'p' 'q'd'l'g'ev'k'x'g'n' 't'g'c'u'q'p'c'd'r'g' 'd'g'r'k'g'h' 'v'j' c'v'v'j' g'r' g't'u'q'p' e'q'p'ug'p'v'k'p'i' 'v'q' 'v'j' g' 'u'g'c't'ej' 'j' c'f' 'c'w'j' q't'k'f' 'v'q' 'f' q' 'u'q'0-

k'p' Florida'v. Jimeno.'supra.'722'WLU'46: . 'v'j' g' 'j' k'j' 'e'q'w't'v' g'z'r' m'k'p'g'f' 'v'j' c'v'v'j' g' 'u'eq'r' g' 'q'h' 'e'q'p'ug'p'v'v'w'w'c'm'f' 'k'u'f' g'h'k'p'g'f' 'd' { 'v'j' g' g'z'r' t'g'u'g'f' 'q'd'l'g'ev'q'h'v'j' g' 'u'g'c't'ej' 0'Id.'c'v'r'0'473'j'333'UE'v'c'v'r' r'0'3: 25/3: 26_0'k'p' 'v'j' c'v'ec'ug' . 'y' j' g't'g' 'c' 'r' q'r'leg'q'h'h'eg't' 'u'v'q'r' r' g'f' c' 'x'g'j' k'eng' . 'k'p'h'q't'o' k'p'i' 'v'j' g' 'q'ee'w' c'p'v'q'h'v'j' g' 'q'h'h'eg't' 'u' 'u'w'ur' k'ek'q'p' v'j' c'v'v'j' g' 'x'g'j' k'eng' 'e'q'p'v'c'k'p'g'f' 'p'c't'eq'v'k'eu' . 'v'j' g' 'f' 't'k'x'g't' 'u' 'e'q'p'ug'p'v'v' c' 'u'g'c't'ej' 'q'h'v'j' g' 'x'g'j' k'eng' 't'g'c'u'q'p'c'd'r'g' 'e'q'w'f' 'd'g' 'w'p'f' g't'u'v'q'q'f' 'v'q' k'p'en'f' g' 'y' k'j' k'p' 'k'u' 'u'eq'r' g' 'v'j' g' 'u'g'c't'ej' 'q'h' 'c' 'e'q'ug'f' 'r' c'r' g't' 'd'c'i' f' k'ue'q'x'g't'g'f' 'y' k'j' k'p' 'v'j' g' 'x'g'j' k'eng' 0'V'j' g' 'u'v'c'p'f' c't'f' 'h'q't' 'o' g'c'u'w't'k'p'i' 'v'j' g' 'u'eq'r' g' 'q'h' 'e'q'p'ug'p'v'v' 'v'j' g' 'e'q'w't'v' 'u'c'k'f' . 'k'u' 'v'q' 'c'u'n'i'f'o'y' j' c'v'v'j' q'w'f' 'v'j' g' 'v'f' r' k'ec'n' 't'g'c'u'q'p'c'd'r'g' 'r' g't'u'q'p' 'j' c'x'g' 'w'p'f' g't'u'v'q'q'f' 'd' { 'v'j' g' 'g'z'ej' c'p'i' g' d'g'y' g'g'p' 'v'j' g' 'q'h'h'eg't' 'c'p'f' 'v'j' g' 'u'w'ur' g'ev'0' *Ibid.'+ 'V'j' g' 'e'q'w't'v' r' q'l'p'v'g'f' 'q'w'v'j' c'v'k'p'i' 't'c'p'v'k'p'i' 'r' g't'o' k'u'k'q'p' 'v'q' 'u'g'c't'ej' 'v'j' g' 'x'g'j' k'eng' . 'v'j' g' 'f' g'h'g'p'f' c'p'v'f' o'f' k'f' "p'q'v'r' m'eg' c'p' { 'g'z'r' r'ek'k' 'r'ko' k'c'v'k'q'p' "q'p' 'v'j' g' 'u'eq'r' g' 'q'h'v'j' g' 'u'g'c't'ej' 0' *Ibid.'+ 'V'j' g' 'q'h'h'eg't' 'j' c'f' "k'p'h'q't'o' g'f' 'v'j' g' 'f' g'h'g'p'f' c'p'v'j' g' 'd'g'r'k'x'g'f' 'v'j' g' 'f' g'h'g'p'f' c'p'v'j' c'u' 'e'c't't' { k'p'i' 'p'c't'eq'v'k'eu' . c'p'f' 'v'j' c'v'v'j' g' 'q'h'h'eg't' 'y' q'w'f' 'd'g' 'm'q'w'k'p'i' 'h'q't' 'p'c't'eq'v'k'eu' 0'V'j' g' 'e'q'w't'v' e'q'p'en'f' g'f' <'o'Y' g' 'v'j' k'p'n'i'v'j' c'v'k'y' c'u' 'q'd'l'g'ev'k'x'g'n' 't'g'c'u'q'p'c'd'r'g' 'h'q't' v'j' g' 'r' q'r'leg' 'v'q' 'e'q'p'en'f' g' 'v'j' c'v'v'j' g' 'i' g'p'g't'c'n' *975 'e'q'p'ug'p'v'v'

ugctej 't'g'ur' q'p'f' g'p'v'u' 'e'c't' 'k'p'en'f' g'f' 'e'q'p'ug'p'v'v' 'u'g'c't'ej' 'e'q'p'v'c'k'p'g't'u' y' k'j' k'p' 'v'j' c'v'ec't' 'y' j' k'ej' 'o' k'j' j' v'd'g'c't' 'f' t'w'i' u'0'c' 't'g'c'u'q'p'c'd'r'g' 'r' g't'u'q'p' o' c' { 'd'g' 'g'z'r' g'ev'g'f' 'v'q' 'm'p'q'y' 'v'j' c'v'p'c't'eq'v'k'eu' c't'g' 'i' g'p'g't'c'm'f' { 'e'c't't'k'g'f' k'p' 'u'q'o' g' 'h'q't'o' 'q'h' 'c' 'e'q'p'v'c'k'p'g't' (00)V'j' g' 'c'w'j' q't'k'f' c'v'k'q'p' 'v'q' 'u'g'c't'ej' 'k'p' v'j' k'u' 'e'c'ug' . 'v'j' g't'g'h'q't'g' . 'g'z'v'g'p'f' g'f' 'd'g' { q'p'f' 'v'j' g' 'u'w't'h'c'eg'u' 'q'h'v'j' g' 'e'c't' 'u' k'p'v'g't'k'q't' 'v'q' 'v'j' g' 'r' c'r' g't' 'd'c'i' 'h'f' 'k'p'i' 'q'p' 'v'j' g' 'e'c't' 'u' 'h'q'q't'0' *Ibid.'+

C'n'j' q'w'i' j' 'v'j' g' 'e'q'w't'v' 'e'c'w'k'q'p'g'f' 'v'j' c'v'v'j' g' 'f' g'h'g'p'f' c'p'v'u' 'e'q'p'ug'p'v' r' t'q'd'c'd'n' 'y' q'w'f' 'p'q'v'g'z'v'g'p'f' 'v'q' 'c' 'm'q'eng'f' 'd't'k'g'h'ec'ug' 'k'p' 'v'j' g' 't'w'p'm' q'h'v'j' g' 'e'c't' . 'v'j' g' 'e'q'w't'v' t'g'l'g'ev'g'f' 'v'j' g' 'f' g'h'g'p'f' c'p'v'u' 'e'q'p'v'g'p'v'k'q'p' 'v'j' c'v' v'j' g' 'r' q'r'leg' 'o' w'w'v' 't'g's' w'g'u'v' 'u'g'r' c't'c'v'g' 'r' g't'o' k'u'k'q'p' 'v'q' 'u'g'c't'ej' 'g'c'ej' e'q'p'v'c'k'p'g't' 'k'p' 'v'j' g' 'c't'g'c' 'v'q' 'd'g' 'u'g'c't'ej' g'f' 0'Florida'v. Jimeno. supra.'722'WLU'c'v'r'0'473/474'j'333'UE'v'c'v'r'0'3: 25/3: 26_0- V'j' g' 'e'q'w't'v' 'h'q'w'p'f' 'p'q' 'd'c'u'k'u' 'h'q't' 'c'f'f' k'p'i' 'u'w'ej' 'c' 't'g's' w'k't'g'o' g'p'v' . q'd'ug't'x'k'p'i' 'v'j' c'v'v'j' q'w'i' j' 'c' 'u'w'ur' g'ev'v' o' c' { 'r'ko' k'v' 'v'j' g' 'u'eq'r' g' 'q'h' e'q'p'ug'p'v' . k'h' 'e'q'p'ug'p'v'v' t'g'c'u'q'p'c'd'r'g' 'y' q'w'f' 'd'g' 'w'p'f' g't'u'v'q'q'f' 'v'q' 'g'z'v'g'p'f' v'q' 'c' 'e'q'p'v'c'k'p'g't' . 'p'q' 'h'm'v'j' g't' 'c'w'j' q't'k'f' c'v'k'q'p' 'k'u' 't'g's' w'k't'g'f' 0'Id.'c'v'r'0'474'j'333'UE'v'c'v'r'0'3: 26_0'V'j' g' 'e'q'w't'v' t'g'l'g'ev'g'f' 'w'r' q'p' 'v'j' g' 'r' w'd'h'e' 'u' k'p'v'g't'g'u'k'p' 'r' g't'o' k'w'k'p'i' 'e'q'p'ug'p'v'v'w'c'r' 'u'g'c't'ej' g'u' 'u'v'c'k'p'i' 'v'j' c'v'v'j' 'v'j' g' e'q'o' o' w'p'k'f' { 'j' c'u' 'c' 't'g'c'n' 'k'p'v'g't'g'u'v' 'k'p' 'g'p'eq'w't'c'i' k'p'i' 'e'q'p'ug'p'v'v' 'h'q't' v'j' g' 't'g'u'w'k'p'i' 'u'g'c't'ej' 'o' c' { ' { k'eng'f' 'p'g'eg'ug'c't' { 'g'x'k'f' g'p'eg' 'h'q't' 'v'j' g' u'q'n'w'k'q'p' 'c'p'f' 'r' t'q'ug'ev'w'k'q'p' 'q'h' 'e't'k'o' g' . 'g'x'k'f' g'p'eg' 'v'j' c'v'v'j' o' c' { 'k'p'w'w'g' v'j' c'v'c' 'y' j' q'm'f' 'k'p'p'q'eg'p'v'r' g't'u'q'p' 'k'u' 'p'q'v'y' t'q'p'i' n'f' 'e'j' c't'i' g'f' 'y' k'j' 'c' e't'k'o' k'p'c'n' 'q'h'h'eg'p'ug'0'0' *Ibid.'+

Q'v'j' g't' 'e'q'w't'v' 'c'p'f' 'e'q'o' o' g'p'v'c'v'q't'u' 'j' c'x'g' 'q'd'ug't'x'g'f' 'v'j' c'v'v'j' q'r' g'p' / g'p'f' g'f' 'e'q'p'ug'p'v'v' 'u'g'c't'ej' 'p'q't'o' c'm'f' 'f' q'g'u'p'q'v' 'u'w'i' i' g'u'v'j' c'v'v'j' g' r' g't'u'q'p' 'e'q'p'ug'p'v'k'p'i' 'y' q'w'f' 'g'z'r' g'ev'v'j' g' 'u'g'c't'ej' 'v'q' 'd'g' 'r'ko' k'g'f' 'k'p' c'p' { 'y' c' { 'c'p'f' 'v'j' c'v'c' 'i' g'p'g't'c'n' 'e'q'p'ug'p'v'v' 'u'g'c't'ej' 'k'p'en'f' g'u' 'e'q'p'ug'p'v' v'q' 'r' w't'u'w'g' 'v'j' g' 'u'v'c'v'g'f' 'q'd'l'g'ev'q'h'v'j' g' 'u'g'c't'ej' 'd' { 'q'r' g'p'k'p'i' 'e'q'ug'f' e'q'p'v'c'k'p'g't'u'0' *Ugg' 'People'v. \$48,715 United States Currency *3; ; 9+ 7: 'E'c'n'0'c'r'r'0'6'j' "3729." 3737']8: "E'c'n'0'f'r'v'0'4'f' " : 4; _]e'q'p'ug'p'v'v' 'u'g'c't'ej' 'x'g'j' k'eng' 'h'q't' 'f' t'w'i' u' 'k'p'en'f' g'f' 'u'g'g'f' 'd'c'i' u' 'c'p'f' u'w'k'ec'ug'u' . q't' 'c'p' { 'c't'g'c' 'q'h'v'j' g' 'x'g'j' k'eng' 'v'j' c'v'v'j' k'j' j' v'eq'p'v'c'k'p' 'f' t'w'i' u' = U.S.'v. Stewart' *7'j' "E'k'0'3; ; 8+; 5" 'H'5'f' "3; ; . 3; 4']e'q'p'ug'p'v' v'q' 'o'm'q'n'f' 'c'v'v' 'o' o' g'f' k'ek'p'g' 'd'q'w'g' 'k'p'en'f' g'u' 'e'q'p'ug'p'v'v' 'q'z'c'o' k'p'g' e'q'p'v'g'p'v' = U.S.'v. Snow' *4'f' "E'k'0'3; ; 7+ 66" 'H'5'f' "355." 357]e'q'p'ug'p'v'v' 'u'g'c't'ej' 'x'g'j' k'eng' 'h'q't' 'f' t'w'i' u' 'k'p'en'f' g'u' 'e'q'p'ug'p'v'v' 'q'r' g'p' c'p'f' 'u'g'c't'ej' 'c' 'f' w'h'g'n' 'd'c'i' 'k'p'u'k'f' g' 'v'j' g' 'x'g'j' k'eng' = U.S.'v. Zapata *3'v' "E'k'0'3; ; 6+ 3: " 'H'5'f' " ; 93. ; 99']e'q'p'ug'p'v'v' 'u'g'c't'ej' 'x'g'j' k'eng' k'p'en'f' g'u' 'e'q'p'ug'p'v'v' 'v'q' 'u'g'c't'ej' 'f' w'h'g'n' 'd'c'i' 'h'q'w'p'f' 'k'p' 'v'w'p'm' = 5 N'e'h'x'g' . 'U'g'c't'ej' 'c'p'f' "U'g'k'f' w'g' " *5'f' 'g'f' 0' ; ; 8+ 'E' : 0' *e' + " r' 0'835]i' g'p'g't'c'n' 'e'q'p'ug'p'v'v' q't'f' k'p'c't'k'f' 'o' c' { 'd'g' 'w'p'f' g't'u'v'q'q'f' 'v'q' 'g'z'v'g'p'f' 'v'q' c'p' 'g'z'c'o' k'p'c'v'k'q'p' / k'p' 'h'm'v'j' g't'c'p'eg' 'q'h'v'j' g' 'q'd'l'g'ev'q'h'v'j' g' 'u'g'c't'ej' / q'h' e'q'ug'f' 'e'q'p'v'c'k'p'g't'u' 'h'q'w'p'f' 'k'p' 'v'j' g' 'c't'g'c' . 'o'r' c't'v'ew'r't'n'f' 'k'h'v'j' g'r' q'r'leg' j' c'x'g' 'k'p'f' k'ec'v'g'f' 'v'j' g' { 'c't'g' 'u'g'c't'ej' k'p'i' 'h'q't' 'c' 'u'o' c'm'f' 'q'd'l'g'ev'v' j' k'ej' o' k'j' j' v'd'g' 'e'q'p'eg'c'g'f' 'k'p' 'u'w'ej' 'c' 'e'q'p'v'c'k'p'g't' 'o' = u'gg' 'c'w'q' 'G't'y' k'p' 'g'v' c'r'0' 'E'c'n'0'Et'k'o' k'p'c'n'f' g'h'g'p'ug' 'R't'c'ev'k'eg' *3; ; : 'g'f' 0' *E'4404']8_ 'r' 0'44/53' 'v'q'44/54']e'q'p'ug'p'v'v' 'u'g'c't'ej' 'i' g'p'g't'c'm'f' 'k'o' r' n'k'u' 'e'q'p'ug'p'v'

vq" c" eqo r rvgv" ugctej . "wprguu" c" nko kvvqpp" ku" gZR tguugf _= "dw
ugg" U.S. v. Infante-Ruiz" *3uvEk03; ; 6+35" H5f "6; ; . "726/727
Jy j gp" vj kf" r ctv{ "eqpugpv" *976 "vq" ugctej "c" xgj kerg" cpf
vwpnku" s wrkthgf "d{ "c" y ctplpi "vj cv" vj g" dtlghcug" dgrpi gf "vq
cpqj gt. "qhlhgtu" eqwrf "pqv" cuwo g" y kj qwhwtj gt lps vkt { "vj cv
vj g" eqpugpv" gZ vgpf gf "vq" vj g" dtlghcug_0³³

33 Y g" pqvg" vj cv" vj qug" ecugu" nko kxpi "vj g" cdkkv{ "qh
r rkeg" qhlhgtu" vj" ugctej "eqpvkpgtu" dgrpi kpi "vq
r cuugpi gtu" qh" xgj kergu" pqv" qy pgf "d{ "vj g" r cuugpi gt.
kp" vj g" cdugpeg" qh" xcrkf "eqpugpv" d{ "vj g" r cuugpi gt.
o c{ "tgs vktg" tggzco kpcvqpp" chgt "vj g" j ki j "eqwv" u
tgegpv" f gekvqpp" kp" Wyoming. Houghton" *3; ; ; +
748" WLU04; 7" J33; "UE" 034; 9. "365" NGf 04f "62: _
y j lej " j qrf u" vj cv" r rkeg" qhlhgtu" y kj " r tqdcdrg
ecwug" vq" ugctej "c" xgj kerg" qtf kpcvqpp" o c{ "ugctej "vj g
dgrpi kpi u" qh" r cuugpi gtu. "y j gp" uwej " dgrpi kpi u
tgcupcdn{ "o c{ "dg" dgrgxf "vq" eqpvkpp" vj g" qdldgevh
vj g" ugctej 0

*37f +Wpf gt "vj g" ekewo ucpegu" qh" vj g" r tguugv" ecug. "vj g" qhlhgtu
j cf "bp" qdldgevxgnf "tgcupcdn" dcuku" vq" eqpenmf "vj cv" vj g" ueqr g
qh" F kcpg" Lgpnkpu" u" eqpugpv" kpenmf gf "vj g" dtlghcug" 0F gvgevkg
J qrf gt" gZr rckpgf "vq" O u" Lgpnkpu" vj cv" j g" y cu" kpxgvki cvkpi
vj g" o wtf gt "qh" c" r rkeg" qhlhgtu" cp" kpxgvki cvkpp" vj cv" tgcupcdn
y qwrf "dg" wpf gtuvqf "cu" kpxqmkpi "cp" kvpukxg" ugctej "hqt
uwej " qdlgeu" cu" y gcr qpu" Y j gp" uj g" i tcvpf "qr gp" gpf gf
eqpugpv" vj g" ugctej "qh" i gt" j qo g. "uj g" j cf "dggp" kphqto gf
vj cv" vj g" qhlhgtu" y cu" ugnkpi "gxkf gpeg" eqpegtpkpi "j gt" dtqj gt 0
k" cf f kxkp. "j cxkpi "uwr r kfg" eqpugpv" vj" ugctej . "y j gp" cungf
y j gvj gt "cp" { "qh" gt "dtqj gt" u" dgrpi kpi u" y gt g" k" j gt" j qo g. "lj g
j cpf gf "vj g" qhlhgtu" j gt" dtqj gt" u" dtlghcug" *Ugg. "g" 0 "People
v. Fierro" *3; ; 3-3" Ecn06j "395." 439. "hp036" J5" Ecn0T r v04f
648." : 43" R04f "3524_" Jj kf" r ctv{ u" eqpugpv" vj" ugctej " j gt
qy p" r wtug. "y kj "ucvgo gpv" vj cv" y cngv" eqpvkpgf "vj gt gk" y cu
f ghgpf cpv. "cti wcdn{ "gzvpf u" vj g" ueqr g" qh" eqpugpv" vj" kpenmf g
vj g" y cngv_0" J gt" y tkvpp" eqpugpv" kpf kcvgf "gZr tguu" eqpugpv" vj
ugctej " j gt" j qo g. "cpf "kpenmf gf "c" ucvgo gpv" vj cv" vj g" dtlghcug
j cf "dggp" i kxgp" vq" J qrf gt "tggg" . "y kj qw" vj g" tcvq" r tqo kug0Cu
pqvgf . "J qrf gt" y cu" pqv" tgs vktgf "vq" uggm" ugr ctcvg" eqpugpv" hqt
gcej "eqpvkpgt" ugctej gf . "r tqxkf kpi "vj g" ugctej "qvj gty kug" y cu
tgcupcdn" 0" Florida" v. Jimeno. "supra. "722" WLU0c" v" r 0473/474
J333" UE" 0c" v" r 03: 25/3: 26_0-

C" dtlghcug" qdxkqwnf "ku" c" eqpvkpgt" vj cv" tgcf kx{ "o c{ "eqpvkpp
kpetko kpcvpi " gxkf gpeg. " kpenmf kpi " y gcr qpu" Dgecwug" vj g
cpqwpgef "qdlgevh" vj g" ugctej "y cu" gxkf gpeg" eqppgevgf "y kj
vj g" o wtf gt "qh" c" r rkeg" qhlhgtu" vj wu" kpenmf kpi "y gcr qpu" vj cv
eqwrf " dg" j kf gp" kp" c" dtlghcug/ cpf " kpxqmkpi " j gt" dtqj gt.

O u" Lgpnkpu" u" eqpugpv" vj" ugctej " j gt" j qo g" cpf " j gt" cevqpp
kp" f kuenqkpi "vj g" kvcevqpp" qh" vj g" dtlghcug. "kf gpvkh{ kpi "k" cu
j gt" dtqj gt" u. "cpf " j cpf kpi "k" vq" vj g" r rkeg" qhlhgtu" y qwrf "dg
wrf gtuvqf " d{ "c" tgcupcdn" r gtuqpp" vj" kpenmf g" eqpugpv" vj
ugctej "vj g" dtlghcug 0

*3; c- "Cu" hqt "O u" Lgpnkpu" u" authority" vj" eqpugpv" vj" vj g" ugctej
qh" f ghgpf cpv" u" dtlghcug. "k" ku" ugvwrf "vj cv" vj g" eqpugpv" qh" qpg
y j q" r quuguu" eqo o qp" cwj qtkf "qxgt" r tgo kugu" qt" ghgewa" ku
xcrkf "cu" ci kpv" vj g" cdugpv. "pqpeqpugpv" kpi " r gtuqpp" y kj "y j qo
vj cv" cwj qtkf "ku" u" j ctgf 0" * *977 "United States v. Matlock.
supra. "637" WLU0c" v" 0392"]; 6" UE" 0c" v" 0; ; 5. 0" Hqt "gzco r rg. "kp
vj g" Matlock" ecug. "vj g" j ki j "eqwv" f gvto kpgf "vj cv" vj g" eqpugpv
qh" c" vepcpv" y j q" u" j ctgf "c" dgf tqo "y kj "vj g" f ghgpf cpv" cpf
y cu" vqrf "vj cv" vj g" r rkeg" y gt" ugctej kpi "hqt" uvqpp" ewt gpe {
y cu" ghgevkg" vq" lwxkh{ "c" ugctej "qh" vj g" dgf tqo . "kpenmf kpi "c
f kcr gt" dci "hqwrf "kp" c" emugv" *Id. "cv" r 0388/389"]; 6" UE" 0c" v
r r 0; ; 2; ; 3_0" Vj g" eqwv" gZr rckpgf "vj cv" vj g" eqpugpv" qh" c" vj kf
r ctv{ "o c{ "dg" xcrkf "kh" vj cv" r ctv{ "br quuguu" eqo o qp" cwj qtkf
qxgt" qt" vj gt "uwlhkeppv" tgcupkj kr "vq" vj g" r tgo kugu" qt" ghgeu
uqwi j vq" dg" kpur gevdf 0" *Id. "cv" r 0393"]; 6" UE" 0c" v" 0; ; 5_="ugg
cnuq" People" v. Clark" *3; ; 5+7" Ecn06j " ; 72. " ; 144" Ecn0T r v04f
8; ; . "79" R04f "32; ; _= "People" v. Jacobs. "supra. "65" Ecn0f "cv" r 0
6: 30-

Cr r n{ kpi " vj g" u" twgu. " eqwv" j cxg" f gvto kpgf " kp" xctkqwu
ekewo ucpegu" vj cv" vj kf" r ctv" u" y gt" g" cwj qtkf gf "vq" eqpugpv
vq" c" ugctej "qh" ni i ci g. "dci u. "qt" qvj gt" r gtuqpp" dgrpi kpi u
qh" c" f ghgpf cpv" *U.S. " v. Davis" *4f " Ek0' 3; ; 4+; 89" H04f
: 6. " : 7. " : 8/ 9" Jvpcpv" j cu" cwj qtkf "vq" eqpugpv" vj" ugctej "qh
hqvqengt" lj ctgf "y kj " f ghgpf cpv" cpf "qh" eqpvkpgt" u" dgrpi kpi
vq" f ghgpf cpv" hqwrf " y kj kp" vj g" hqvwqengt _= "United States
v. Falcon" *32j "Ek0'3; ; 7+988" H04f "368; . "3696" Jdtqj gt" u
eqpugpv" vj" gZco kpcvqpp" qh" f ghgpf cpv" u" cwf kvcr g" o ctngr "o
eqpkf gpv" cni" y cu" cwj qtkf gf "dgecwug" vj g" vcr g" y cu" kvexgtgf
kp" c" tqo "qeerw kfg" uqrgn{ "d{ "vj g" dtqj gt. "cpf "vj g" dtqj gt
j cf "gzenukxg" eqpvqrf qxgt" ku" eqpvqpu _= "United States" v.
Miroff" *9j "Ek0'3; 9; +828" H04f "999." 99: /99; " Jof qo kpcv" o
qeerw cpv" qh" r tgo kugu" cwj qtkf gf "vq" eqpugpv" vj" ugctej " qh
f ghgpf cpv" i wgu" r gtuqpp" dgrpi kpi u" hqwrf "kp" ctgc" uwdlgev
vq" eqo o qp" wug. "gur gekm{ "dgecwug" i wgu" cuwo gf "vj g" tkum
qh" kpur gevqpp" d{ "cuwtkpi "qeerw cpv" vj gt" y cu" pqj kpi "kriekv
vj gt gk _= "State" v. Schadd" *3; ; 3+34; "Ctk 0779" J855" R04f "588.
594_ " j krlhkepp" cwj qtkf gf "vq" eqpugpv" vj" ugctej "qh" f ghgpf cpv" u
y cngv" qp" i tqwrf "vj cv" f ghgpf cpv" cuwo gf "vj g" tkum" vj g" y qwrf
r gto k" kpur gevqpp" y j gp" j g" i cxg" k" vq" j gt _= "Johnson" v. State
*Hrc0f kv0c" r r 0'3; ; : +73; "Uq04f "935." 936" Jj kf" r ctv{ "kp
y j qug" r quuguu" kpi" f ghgpf cpv" j cf "hgn" c" uwlkccug" j cf "cwj qtkf
vq" eqpugpv" vj" c" ugctej "qh" vj g" uwlkccug" j gf gpvkh{ "cu" dgrpi kpi

vq'f ghgpf cpv_="U.S.'v. Salinas-Cano"*32j 'Ek03; ; 4+; 7; 'H4f : 83.". 87"]pqv'tgcuqpcdrng'hqt"qhlhgt"vq'dgrkxg"fgghgpf cpv'u i krlt'kgpf "j cf "cwj qtkf {"vq"eqpugpv'vq"ugctej "qh'f ghgpf cpv'u nwi i ci g'hqwpf "lp"j gt"j qo g'y j gp"vj gtg'y cu'pq"gxkf gpeg"qh o wwn'wug"qt "lqkpv'lpvgtguv'cpf "eqpvtqn'qxtg"vj g"uwkecug=" Owens"v. State"*3; ; 3+544"Of 0'838"j7; ; "C04f"7; ."88/89_]qhlhgtu'eqwrf "pqv'tgcuqpcdrng' "dgrkxg"qeewr cpv'qh'cr ctvo gpv j cf "cwj qtkf {"vq"eqpugpv'vq"ugctej "qh'nwi i ci g'rhv'dgj kpf "d{ xkukqt."dgecwug"vj gtg'y cu'pq"gxkf gpeg"qh'eqo o qp"cwj qtkf qxgt"vj g'dci _0-

*37g+Vj g's wgvkqp"dghqtg"wu'ku'y j gvj gt"vj g'ohcevu'cxkkrdrng vq"vj g"qhlhgt"cv"vj g'o qo gpv'(00)jy qwrf _)y cttcpv'c"o cp"qh tgcupqpcdrng'ecwkp'lp"vj g'dgrkxg"vj cv'vj g'eqpugpv'vq' r ctv'j cf cwj qtkf {"vq"eqpugpv'vq"ugctej "qh'nwi i ci g'rhv'dgj kpf "d{ xkukqt."dgecwug"vj gtg'y cu'pq"gxkf gpeg"qh'eqo o qp"cwj qtkf qxgt"vj g'dci _0-

*978 "Illinois"v. Rodriguez."supra."6; 9"wu0cv'r 03: : "j332 UEv0'cv'r 0'4: 23_0"Wpf gt"vj g'ektewo ucpegu"qh'vj g'r tgvpgv ecug.'k'y cu'qldgve'kxgn' tgcupqpcdrng'vq'eqpenf g'F kcp'g'lgpnkpu j cf "cwj qtkf {"vq"eqpugpv'vq"ugctej "qh'f ghgpf cpv'u'dtlghe'cug. dgecwug'k'y cu'tgcupqpcdrng'hqt"vj g"qhlhgtu'vq'dgrkxg"uj g"j cf g'z'gte'kugf "eqpvtqn'qxtg"vj g'dtlghe'cug"cpf "j cf "pqv'qpn' "lqkpv. dw'cv'vj g'k'o g'qh'vj g'ugctej .gzemuxk'g'ceeguu'vq'k'cpf "eqpvtqn qxgt"ko'k'ku'tgcupqpcdrng'vq'eqpenf g'vj cv'c"ho k'f "o go dgt y j q"qhlhgtu' dgrkxg"j cu' tgv'kxgf "c" dtqvj gt'u) dgrnpi kpi u htqo "j ku'r tgo kugu"cpf "uvtqgf "uwej "dgrnpi kpi u"lp"j gt"qy p dgf tqo "j cu'cv'vj g'xgt {"ngcu' lqkpv'ceeguu"vq" cpf "eqpvtqn qxgt"vj g'dgrnpi kpi u'Wpf gt"vj g'ektewo ucpegu'npqy p"vq"vj g qhlhgtu'cv'vj g'k'o g'qh'vj g'ugctej /vj cv'vj qtv' "chgt'f ghgpf cpv'u cttguv."kgo u'y gtg'tgo qxgf "lp"j g'xg' lerg'tgi kngt'gf "vq'F kcp'g'lgpnkpu'htqo "vj g'ctgc'pco gf "lp"j g'ugctej "y cttcpv'f k'gevgf "cv f ghgpf cpv'u' tgu'f gpeg"cpf "xg'j lergu."cpf "vj cv'vj g'qpn' "kgo dgrnpi kpi "vq"j k'o "tgo c'k'p' "lp"j gt"j qo g'y cu'vj g'dtlghe'cug/k'y cu'tgcupqpcdrng'hqt"vj g"qhlhgtu'vq'eqpenf g'vj cv'F kcp'g'lgpnkpu'j cf 'ugew'gf "vj g'dtlghe'cug'cv'j gt'dtqvj gt'u'dgi gu'0Uwej c'tgs wguv."qh'eqwtug."y qwrf "k'o r qug"wr qp"v'f ghgpf cpv'vj g'tkum vj cv'F kcp'g'lgpnkpu'o ki j v'eqpugpv'vq'c'ugctej "qh'vj g'dtlghe'cug'0 *Ugg.'g0 0'Frazier"v. Cupp."supra."5; 6"wu0cv'r 0962"] ; ; "UEv0 cv'r 03647_"]f ghgpf cpv'lp'r tgo k'k'p' "vj k'f r ctv' {"vq'wug'c'f v'htgn dci "cpf "lp"ngcx'k'p' "vj g'dci "cv'vj g"j qo g'qh'vj g"vj k'f r ctv'. öcuwo gf "vj g'tkum'vj cv'vj g'vj k'f r ctv'_"y qwrf "cmjy "uqo g'qpg gnu'g'vq' h'q'q'k'p'k'f g0_="ugg'cnuq"United States"v. Matlock."supra. 637"wu0cv'r 0393.'hp09"] ; 6"UEv0cv'r 0; ; 5_="People"v. Jacobs. supra."65"Ec'f'f'cv'r 06: 3="U.S.'v. Davis."supra." ; 89"H4f "cv r 0: : 0-

Uqo g'nyj gt"hg'f g'cni'eqwtu"j cxg'cuugt'gf "vj cv'cwj qtkf {"vq'eqpugpv'vq'c'ugctej "f gr gp'f u'lp'r ctv'wr qp"v'c"uj qy kpi "vj cv'vj g r gtuqp"eqpugpv'vq' g'plq'gf "pqv'qpn' "ceeguu"vq" cpf "eqpvtqn qxgt."dw'cnuq"o wwn'wug"qh'vj g'r tqr gtv' "ugctej gf 0' *Ugg.

g0 0"U.S.'v. Whitfield"*F 0'Ek03; ; 3+; 5; "H4f "3293."3296]4; 3"Cr r (F 0'465_"]o qvj gt"m'engf "cr r ctgpv'cwj qtkf {"vq'eqpugpv'vq'ugctej "qh'cf w'u'up'u)dgf tqo "y k'j qw'g'xkf gpeg vj cv'vj g'g'plq'gf "eqo o qp'wug'qh'vj g'tqo "cpf 'emqvg'lp'y j lej eqpvtcdcpf 'y cu'hqwpf _="ugg'cnuq"U.S.'v. Welch"*; j 'Ek03; ; 5+ 6"H5f "983."986"]vj k'f r ctv' "y j q"lqkpv' {"j cf "tgpvgf "xg'j lerg y k'j "f ghgpf cpv'j cf "cwj qtkf {"vq'eqpugpv'vq'c'ugctej "qh'vj g xg'j lerg'dw'm'engf "ceewr'qt"cr r ctgpv'cwj qtkf {"vq'eqpugpv'vq c'ugctej "qh'vj g'f ghgpf cpv'u'r wug'm'ecvgf "lp"j g't'w'p'n'qh'vj g xg'j lerg."dgecwug"vj gtg'y cu'pq"gxkf gpeg"qh' "lqkpv'ceeguu"qt eqpvtqn'qt "wug'qh'vj g'r wug_="U.S.'v. Salinas-Cano, supra," ; 7; H4f "cv'r 0: 85"]i krlt'kgpf 'h'engf "cr r ctgpv'cwj qtkf {"vq'eqpugpv vq"ugctej "qh'f ghgpf cpv'u' uwkecug" rgh'lp"j gt"j qo g."y j gp j g'ungr v'lp"vj g"j qo g'ugxgt'c'n'p'k'j w'u'c'y ggn'cpf "o c'k'p'k'p'gf eqpvtqn'qxtg"vj g"uwkecug."cpf "vj gtg'y cu'pq"gxkf gpeg"j ku i krlt'kgpf "wugf "vj g'uwkecug_0-

*3; d+Vj g'ecugu'ek'gf tgn' "wr qp'c' h'q'v'p'q'v'cr r gct'kpi "lp"United States"v. Matlock-"öE'qo o qp'cwj qtkf {"ku'qh'eqwtug.'pqv'vq'dg ko r r'k'gf "htqo "vj g'o g'tg'r tqr gtv' {"lpvgt'guv'c"vj k'f r ctv' "j cu'lp vj g'r tqr gtv'0'Vj g'cwj qtkf {"y j lej " *979 "Iwuk'h'ku'vj g'vj k'f / r ctv' "eqpugpv'f qgu'pqv'tguv'wr qp"vj g'mey "qh'r tqr gtv'."y k'j ku'cw'g'p' cpv'j ku'q'k'c'n'cpf "ngi c'n't'gh'k'p'go gpv."ugg"Chapman v. United States."587"wu0832"] ; 3"UEv0998."7"NGf 04f " : 4: _ *r'p'f r'q'f "eqw'f "p'q'v'x'c'k'f n' "eqpugpv'vq'vj g'ugctej "qh'c'j qwug'j g j cf "tgpvgf "vq'cp'qvj gt+."Stoner v. California."598"wu06: 5"] ; 6 UEv0: : ."33"NGf 04f " : 78_"p'k'j v'j q'v'g'n'g't'm'eqw'f "p'q'v'x'c'k'f n' eqpugpv'vq'ugctej "qh'ewu'qo g'tu' tqo +dw't'guu'tcv'j gt"qp o wwn'wug'qh'vj g'r tqr gtv' "d{ r gtu'p'u'i g'p'g'tcm' "j c'x'k'p' "lqkpv ceeguu"qt "eqpvtqn'htqo"o quv'r w'r qugu."uq"vj cv'k'ku'tgcupqpcdrng vq'tge'qi p'k'g'vj cv'cp {"qh'vj g'eq'k'p'j c'dk'c'p'u'j cu'vj g't'k'j v'vq r gto k'v'j g'lpur'ge'v'qp"lp"j ku'qy p't'k'j v'cp'f "vj cv'vj g'q'v'j gtu j cxg'cuwo gf "vj g'tkum'vj cv'q'p'g'qh'vj g'k'p'wo dgt'o ki j v'r gto kv vj g'eqo o qp'ctgc'vq'dg'ugctej gf 0'"United States"v. Matlock. supra."637"wu0cv'r 0393.'hp09"] ; 6"UEv0cv'r 0; ; 5_0-

Vj ku' r'p'i wci g."tgcf "lp" eqpl'w'p'v'k'p'p" y k'j "vj g'ecugu"ek'gf . j qy g'xgt.'cf f t'guugu'vj g'r t'q'dr'go "qh'vj g'cwj qtkf {"qh'cp'qy pgt. o c'p'ci gt."qt "eq'q'ee'wr cpv'qh'premises"vq'eqpugpv'vq'c'ugctej qh'vj qug'r tgo kugu'0'k'p'uwej "c'ecug."o wwn'wug'qh'vj g'r tgo kugu y qwrf "dg'uk'i p'h'k'c'p'v'lp"gu'cd'k'uj kpi "c"vj k'f r ctv' "u'cwj qtkf {"vq'eqpugpv'vq'c'ugctej "qh'vj g'r tgo kugu."dgecwug'k'v'eg't'k'p'n'f ku'pqv'vj g'ecug'vj cv'g'xgt {"qy pgt"qh'r tqr gtv' "o c {"eqpugpv vq'c'ugctej "qh'j ku'qt"j gt"v'g'p'c'p'v'u'j qo g'0'Y g'f q'pqv'dgrkxg. j qy g'xgt."vj cv'vj g"v'p'k'g'f "U'cv'gu'U'wr tgo g'Eqw'v'lp'v'g'p'f gf "vq tgs w'k'g"vj cv'lp" g'xgt {"ektewo ucpeg"lp"y j lej "c"vj k'f r ctv' qeewr cpv' qh'r tgo kugu'eqpugpv'vq'vj g'ugctej "qh'personal property"qh'cp'qvj gt"m'ecvgf "qp"vj g'r tgo kugu."cwj qtkf {"vq'eqpugpv'vq'ugctej "f gr gp'f u'wr qp"vj g'vj k'f r ctv' "u'ceewr'no wwn

35

Qp"Qevdgt"35."y g" dwnu/g{g'o gj qf "y cu" wugf dgecwug" k'y cu" vqg" rvg" vq" uqr "y g" eqo r wgt "twp hqt" y g" eqwtv u" wucn' o gj qf "Qevdgt"37."y g dwnu/g{g'b gj qf "y cu" wugf "dgecwug" y g" g'j cf "dggp cp" gctv s weng" cpf "y g'b gj qf "qtf g'g' d{ "y g' eqwtv y cu" lo r tcewkdrg0

Vj g" f ghepf cpv' o cf g" c" o qvqp" vq" s wcu j "y g" xgpk g" qp" y g i tqwpf "k' f k' "pqv' eqpukwgg" c" tgr tguvpcvkg" etquu/ugevqp qh' y g" eqo o wpk{0' k' c" j gctkpi "qp" y g" o qvqp." y g" lwt { eqo o kuukpqt" vgwkhgf "y cv' ; 0 " r gtegpv' qh' y g" r qr wvkvqp rlxkpi "y kj kp" c"42/o kg" tcf kwu" qh' y g" Xcp" P w' u' eqwtv qwug cpf " r tguwo r vkg' n' " g'ri kdrng" hqt" lwt { " ugtxleg" y cu" Chkcep/ Co gtlecp0C" f ghepug" g'zr gtv' vgwkhgf . "qp" y g" q'j g' j cpf . "y cv yj g" r gtegpvc i g" qh' Chkcep/Co gtlecp" r gtuqpu' rlxkpi "y kj kp yj cvtcf kwu" y cu"320: " r gtegp0Qp" Qevdgt"35."y g" r gtegpvc i g qh' Chkcep/Co gtlecp" r gtuqpu' ecnmg' hqt" ugtxleg" kp' f ghepf cpv' u ecug' y cu"30 9' r gtegpv' cp' q'p" Qevdgt"37."k'y cu"409' r gtegp0 Qp" Qevdgt"36."8065' r gtegpv' qh' y g" r gtuqpu' ecnmg' hqt" ugtxleg kp' f ghepf cpv' u' ecug' y g' g' Chkcep/Co gtlecp0Ceeqtf kpi n' . "cu yj g" v'kcn' eqwtv' ucv' gf " cpf " f ghepf cpv' eqpegf gu."60' " r gtegpv qh' y g" v'qcn' pwo dgt" qh' r tqur gevkg" lwtqtu" c'xckdrng" vq" ugtxg kp' r cpnu' h' tgo "y j lej " f ghepf cpv' y cu" vq" ugrgevf " ku" lwt { "y g' g' Chkcep/Co gtlecp0

F ghepf cpv' u' g'zr gtv' vgwkhgf " y cv' yj g" dwnu/g{g" o gj qf f g'etkdgf "bdq' xg' r tqf wegf "cp" w'p' g' tgr tguvpcvkg" qh' Chkcep/ Co gtlecp" r gtuqpu' eqo r ctgf "y kj "y j gk' r tguvpeg" kp" yj g"42/ o kg" tcf kwu" qh' y g" Xcp" P w' u' eqwtv qwug. " cpf " yj g" g'zr gtv qw'w'p' g' cp" cngt'p'cvkg" o gj qf "qh' ugrgevf" yj g" lwt { "xgpk g dcugf " w' qp" e'p'w' u' t'cew' yj cv' y qwf " t'gcf k' " r tqf wegf " c tgr tguvpcvkg" xgpk g0

Vj g" v'kcn' eqwtv' f g'p'gf "y g" o qvqp" vq" s wcu j . "f v'gto k'p'kpi "y cv yj g" f k'htg' g'peg" d'gy ggp" yj g" r gtegpvc i g" qh' Chkcep/Co gtlecp r tqur gevkg" lwtqtu" *60' r gtegpv' kp' f ghepf cpv' u' ecug. " cpf " yj g r gtegpvc i g" qh' Chkcep/Co gtlecp" r gtuqpu' g'ri kdrng" hqt" lwt { f w' "kp" yj g"42/o kg" ctgc" ugtxg' d{ "y g" Xcp" P w' u' eqwtv qwug *; 0 " r gtegpv' y cu' p'q' v' u' v'k'v'k'c' m' " u'ki p'k'lep'0' k'p' c'f f k'k'p' . "y g v'kcn' eqwtv' f v'gto k'p'gf "y cv' f ghepf cpv' j cf "h'k'gf "vq" guvdrkuj u' u'ngo cvk' "gzenwukqp" qh' c" *982 "eqi p'k' c' d'ng' e'rcu. "d'gecwug yj g" eqw'p' v' u' wug" qh' F gr ctvo gpv' qh' O qvqt "Xg'j k'ngu" cpf "x'q'gt tgi k'ut'cvk'p' r'kuu' l'p'f k'ec'v'gf "y cv' yj g" eqw'p' v' "y cu' f q'k'p' i "cni" yj cv t'gcu'p'cdn' "eqw'f "d'g' z'g'z'v'gf "vq" c'ej k'x'g' c' h'k' t'et'quu/ugevqp0

F ghepf cpv' t'g'p'gy u" j ku" e'rclo " y cv' j ku" h'gf g'c'ri' eqpukw'k'p'cn tki j v'q' c' l'wt { " f tcy p' h' tgo " c' tgr tguvpcvkg" e' t'quu/ugevqp" qh' yj g eqo o wpk{ "y cu" x'k'q'v'gf 0* WLU' E'q'p'w'0'8y "Co gp'f 0" Duren v. Missouri" *3; 9; +65; "WLU'579."57: /589" j; ; "UE'v'0'886.

887/892."7: "NOGf 04f "79; 0" *43+ "Vj cv' tki j v' i w'et'cp'v'ggu" o'j cv yj g' t' q'nu' h' tgo "y j lej " lwt' k'gu' c' t'g' f tcy p' b' w'v'p'q'v' u' u'ngo cvk'c'm' g'z' e'nm' g' f k'v'k'p'v'k'g" i tqur u' l'p" yj g" eqo o wpk{0' E'k'c'v'k'p'0' } k'p' q' t'f g' t' vq" guvdrkuj "c" r t'ko c" h'c'k'g" x'k'q'v'k'p' qh' yj g" h'k' t'et'quu/ ugevqp" t'gs w'k' go gpv' yj g' f ghepf cpv' o w'v' u'j qy " *3+ " yj cv' yj g i tqur " c'ngi g' f " vq" d'g" g'z' e'nm' g' f " ku" c" o'f k'v'k'p'v'k'g" o' i tqur " kp yj g" eqo o wpk{ " *4+ " yj cv' yj g" t'gr t'g'ug'p'v'k'p' qh' yj ku" i tqur kp" x'g'p'k'g' u' h' tgo "y j lej " lwt' k'gu' c' t'g' u'gr'ge'v'f " ku" p'q'v' h'k' t' c'p'f t'g'cu'p'cdn' kp" t'g'v'k'p' vq" yj g" p'wo d'gt" qh' u'we j " r g' t' u' q' p' u' kp yj g" eqo o wpk{ " c'p'f " *5+ " yj cv' yj ku' w'p'f g' t'gr t'g'ug'p'v'k'p' ku" f w'g vq" u' u'ngo cvk' " g'z' e'nm' k'p' qh' yj g' i tqur " kp" yj g" lwt { / u'gr'ge'v'k'p r t'q'eu'0' } E'k'c'v'k'p' u' } The relevant 'community' for cross-section purposes is the judicial district in which the case is tried0 *People'v. Horton" *3; ; 7+33' E'c'ri'0'6y "328: .32: 9/32: : 169' E'c'ri'0' r v'0'4f "738. ; 28' R04f "69: . " k'c'ri' e' u' c' f f g' f . " s v'q' v'p' i Duren' v. Missouri." supra."65; "WLU' c'v' r 0'586" j; ; "UE'v'0' cv r 088: 0' F ghepf cpv' eq'p'v'p' u' yj g' o' gj qf "go r n'q' { g' f "vq" u'gr'ge'v' yj g' x'g'p'k'g' h' tgo "y j lej " j ku' r c'p'g'nu' y g' t'f tcy p' u' u'ngo cvk'c'm' e'cw'gf "w'p'f g' t'gr t'g'ug'p'v'k'p' qh' Chkcep/Co gtlecp" r gtuqpu0

42d+ "F ghepf cpv' h'k'k'gf "vq" guvdrkuj "c" r t'ko c" h'c'k'g" ecug" qh u' u'ngo cvk' w'p'f g' t'gr t'g'ug'p'v'k'p' qh' c' e'q' i p'k' c' d'ng' e'rcu. "d'gecwug j g' h'k'k'gf "vq" t'gh'g' t' vq" yj g' c' r r tqur t'k'v'g' eqo o wpk{ "kp" c'w'go r v'p' i vq" r tq'x'g" yj g" f g'p'k'ri' qh' c" t'gr t'g'ug'p'v'k'g" lwt { " x'g'p'k'g'0' J g c'w'go r v'gf " vq" o g'g'v' yj g" u'ge'q'p'f " r t'q'p' i " qh' yj g" Duren" v'g'v' d{ " f go q'p'ut'v'k'p' i " c" f k'ur c't'k'f " d'gy ggp" yj g" r gtegpvc i g" qh Chkcep/Co gtlecp" r gtuqpu' kp" yj g' x'g'p'k'g' c'p'f " yj g" r gtegpvc i g qh' Chkcep/Co gtlecp" r gtuqpu' g'ri kdrng" hqt" lwt { " ugtxleg" yj q rlxg'f "y kj kp"42' o k'gu' qh' yj g" Xcp" P w' u' eqwtv qwug0C' u' p'q'v'gf . yj g' c' r r tqur t'k'v'g' eqo o wpk{ "y kj "y j lej "vq" guvdrkuj "u'we j "c eqo r c't'ku'p' y cu" yj g" l'w'f k'c'ri' f k'ut'lev' kp" yj j lej "y j g' Xcp" P w' u' eqwtv qwug" ku" u'k'w'c'v'gf 0 People'v. Horton." supra."33' E'c'ri'0'6y cv' r r 0'32: 9/32: : =People'v. Mattson" *3; ; 2+72' E'c'ri'0' f "48: : 66" j48: "E'c'ri'0' r v'0' 24."9: ; "R04f " ; 5 =Williams'v. Superior Court" *3; ; ; +6; "E'c'ri'0' f "958."967" j485' E'c'ri'0' r v'0' 725."9: 3 R04f "759_0"36. "k'p' c'p' { "g'x'g'p'v' cu' yj g' v'k'cn' eqwtv' h'q'w'p'f . "y g' t'g' y cu k'p' u' h'k'k'ep'v' u'j qy kpi "y cv' c'p' { "w'p'f g' t'gr t'g'ug'p'v'k'p' y cu' f w'g' vq" c' u' u'ngo cvk' "gzenwukqp0 h' t' v'j g' u'g' t'g'cu'p' u' f ghepf cpv' h'k'k'gf "vq" o c'ng' yj g' t'ko c' h'c'k'g' u'j qy kpi "t'gs w'k' g'f "d{ " *983 "Duren." c'p'f j ku' e'rclo "c'eeq' t'f k'p' i n' " ku' t'g' l'ge'v'f 0* People'v. Horton." supra."33' E'c'ri'0'6y cv' r r 0'32: : /32; 2=People'v. Mattson." supra."72' E'c'ri'0' f cv' r 0: 660+

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Y g" p'q'v'g" yj cv' c'nj q'w' i j " f ghepf cpv' f k'f " p'q'v' q'htg' cp { " r tq'q' h' t'gi c' t'f k'p' i " yj g" r gtegpvc i g" qh' Chkcep/ Co gtlecp" r gtuqpu' rlxkpi "kp" yj g' l'w'f k'c'ri' f k'ut'lev' yj g r t'q'ue'w'q' t' u'c'v'gf "kp" c'ti wo gpv' yj cv' yj g'3; : 2' e'g'p'w' u' u'j qy g'f " yj cv' yj g" Chkcep/Co gtlecp" r qr w'v'k'p'

gxpv."y g"grgo gpv'qh'y g'ucvgo gpv'y cv'f ghgpf cpv eqo r rclpu" y cu" gttqpgqwan{ " vcpuetkdgf " y cu" pqv tghgtgf "vq'd{ "y g'tkcn'eqwtv'kp'i tcv'kpi "y g'o qv'kq vq"gzewug"y g'r tqur gev'kg"lwtqt"lqt"ecwugO'Fwt y gt. cr ctv'ltqo "y g"ucvgo gpv'tgm'kpi "vq" y g"ocw.c.õ y g'eqwtv'tgndgf "w qp"y g'r tqur gev'kg"lwtqt"u"qv' gt ucvgo gpw'cpf "w qp"y g'eqwtv'u'qdugtxcv'kpu'qh'y g lwtqt"u'eqpf wv'cpf "f go gcpqt0

39 Lwt { "ugrgekpp" qeewtgef "lp" 3; : 9." uj qtwn " dghgtg Eqf g'qh'EkkiRtqegf wt g'ugev'kp"3; : "y cu'tgr gcrgf 0 *Ucvu03; : . : 'ej 03467. 'E'3. 'r 063620-

F ghgpf cpv'qdlgevu'y cv'y g'v'kcn'eqwtv'cev'f "w qp"r tglw' leg ci clpuv'o { u'kcn'tgrki kqwu'dgrghu"lp"gzewulpi "U0'tcy gt"y cp w qp"r y gm'hqwpf gf "dgrgh"y cv'y g'r tqur gev'kg"lwtqt"y cu o gpcv' { "wpcv'pegf "qt" wpcdr"vq"r gthqto "y g" f w'kgu"qh'c lwtqt0J g"eqp'v'p'f u'y cv'y j ku'cev'kp"qp"y g'r ctv'qh"y g'v'kcn eqwtv' ku" cp" o "cht'ppv" vq" y g" eqpuk'w'kqpcn' i wctcp'vg" y cv ltggf qo "qh'tgrki kqwu" y qtuj k "y kn'pqv'dg"lpt'kpi gf "w qp"d{ y g'ucvgo'cpf "y cv'ko k'kpi "y g'otcpi g'qh't gto ku'kdr'g'tgrki kqwu x'gy u'hqt"lwtqtu"ut'kn'g"cv'y j g' gctv'qh'dqy "y g' H'ku"cpf Ulz y "Co gpf o gpv'0"Y g'dgr'g'g."j qy g'xg."y cv'y g"tgeqtf f go qpwtcv'g'y g'eqwtv'y cu'b q'k'cv'gf "pqv'd{ 'r tglw' leg'qt "dku ci clpuv'cp{ 'i tqw "vq'y j lej "y g'r tqur gev'kg"lwtqt"dgmp' gf "dw d{ 't'gcu'p'cdng'eqpegr'y cv'y g'r tqur gev'kg"lwtqt"u' { u'kkuo cpf "qv' gt"qdugtxcv'g'ej ctcev'tk'v'ku' y qwf "ko r ckt" j ku'cdk'k' / cu"cp" kpf k'k' wcn'vq" f gr'kd'g'cv"t'cv'kpcv'0 *Ugg." g'f 0' U.S." v. Stafford" *9y "Ek0'3; ; : +358" H5f "332; . "3336" jf gekukp"qh Rqupgt."Ej lgh'lw'f i g."ucv'kpi "lp"y g'eqp'v'v'qh'c'er'ko "w'pf gt Batson" v. Kentucky" *3; : 8+ 698" WLU'9; "J328" UE'0'3934. ; 2"NGGf 0f "8; _ "y cv'õ]k'y y qwf "dg"ko r tqr gt"cpf "r gtj cr u wpeq'puk'w'kqpcn'vq" ut'kn'g" c"lwtqt"qp"y g'dcuku"qh"j ku" *989 dglpi "c"Ec'y qre."c"lgy ."c"O warko ."gve'0'k'y qwf "dg"r tqr gt"vq ut'kn'g"j ko "qp"y g'dcuku'qh'c'dgr'gh'y cv'y qwf "t'g'xgp'y ko "ltqo dcukpi "j ku'f gekukp"qp"y g'g'x'k'f g'peg"cpf "lpwt'w'v'k'p'pu."g'xgp"kh y g'dgr'gh"j cf "c't'grki kqwu'dcencpi "0000_0-

Vj g'ugeqpf "er'ko /y cv'y g'eqwtv'gtt'gf "lp"t'gl'gev'kpi "ej cmgpi gu vq"cuugt'v'f n' "f gc'y /r tqpg'r qv'p'v'cn'lwtqtu/t'gcf kn' "ku't'gl'gev'f 0 P q"gtt'qt"cr r gctu"qp"y ku't'geqtf 0'F ghgpf cpv'u"qpn' "ur gek'le qdl'gev'kpu"ct'g"vq"lwtqtu"Dp0"Eu0"Xp0"cpf "F p0'Cu"vq" gcej lwtqt."y g'v'kcn'eqwtv'cr r tqr t'k'v'gn' "eqwf "f g'v'gto l'p'g"y cv'y j g r tqur gev'kg"lwtqt"u"x'gy u't'gi ctf kpi "y g'f gc'y "r gpcv' "y qwf pqv'r t'g'xgp'v'qt"u'wdu'w'p'v'k'cm' "ko r ckt"y g'r gthqto c'peg"qh'y g r gtu'p'u'f w'kgu"cu"c"lwtqt0'Dp0'y qwf "r'k'v'gp"vq"y g'g'x'k'f g'peg dghgt" f g'v'gto l'p'kpi " cr r tqr t'k'v'g" r gpcv'." g'xgp" kh" ur gekcn ek'ewo uc'pegu"l'q'w'p'f "v'w'g=g'zr t'gu'gf "p'g'w'c'k'k'f "y k'j "t'g'ur gev vq"r gpcv' =g'zr t'gu'gf "cp"qr gp"o l'p'f =y qwf "pqv'j gu'k'cv'g"vq ko r qug'r w'kuj o gpv'qh'rk'g"lp"r t'ku'p."gur gekcn' "kh"g'x'k'f g'peg

uj qy gf 'ouqo g'y kpi 'i q'qf "v'k'nci g'õ'qt' l'qo g'ek'ewo uc'peg'lp o k'ki cv'k'p =Eu0'y qwf "j cxg"vq"j gct "r gpcv' "r j cu'g'g'x'k'f g'peg dghgt'g'f g'v'gto l'p'kpi "r gpcv' =d'g'k'g'x'g'f "f ghgpf cpv'u'dcenc' t'q'w'p'f y cu"t'g'g'x'c'p'v'vq"r gpcv' =y qwf "pqv'ko r qug"r w'kuj o gpv'qh f gc'y "uko r n' "d'g'ec'w'ug"qh"ur gekcn'ek'ewo uc'peg"qh'o w'f gt"qh r q'rk'eg'q'h'k'eg'g' =y qwf "eq'p'uk'f g'x'k'v'kpi "h'q'f'k'k'g'v'gto =y qwf "p'g'g'f vq"j gct "r gpcv' "r j cu'g'g'x'k'f g'peg"dghgt'g'f g'v'gto l'p'kpi "r gpcv' = Xp0'y qwf "pqv'ko r qug" f gc'y "r gpcv' "uko r n' "d'g'ec'w'ug" qh i w'k'v' f g'v'gto l'p'cv'k'p"qt" d'g'ec'w'ug" qh"ur gekcn'ek'ewo uc'peg" qh o w'f gt" qh" r q'rk'eg" q'h'k'eg'g' =g'zr t'gu'gf "p'g'w'c'k'k'f "qp" f gc'y r gpcv' =pqv'cw'qo cv'k'ew'r r q't'v'g'qh'f gc'y "r gpcv'."k'p'cn'f k'pi h'q' "r gtu'p'u"y j q"o w'f gt" r q'rk'eg" q'h'k'eg'g' =eqwf "dg"uy c{ g'f d{ "o k'ki cv'k'pi "ek'ewo uc'pegu =F p0'y qwf "pqv'cw'qo cv'k'ecm' x'q'v'g'h'q' "y g'f gc'y "r gpcv' "c'h'g' "h'k'p'f k'pi "ur gekcn'ek'ewo uc'pegu v'w'g' =y qwf "v'c'ng" g'x'k'f g'peg" k'p" o k'ki cv'k'p" k'p'vq" c'ee'q'w'p'v' k'p f g'v'gto l'p'kpi "r gpcv' =p'q' "h'k'z'g'f "q'r k'p'k'p"y k'j "t'g'ur gev'v'q" f gc'y r gpcv' =o k'ki cv'k'pi "g'x'k'f g'peg"eqwf "y c'tt'c'p'v'rk'g'v'gto "g'x'gp"kh dt'w'cn'ur { k'pi "r t'q'x'g' =y qwf "u'g't'k'w'wn' "eq'p'uk'f g't'g'x'k'f g'peg" k'p o k'ki cv'k'p_0-

F ghgpf cpv'eqp'v'p'f u'y g'eqwtv'y cu'p'q'v'g'x'gp'j cpf gf "lp"t'w'k'pi "qp o v'k'p'u'vq"gzem'f g'h'q't'ec'w'ug0J g'eqp'v'p'f u'y g'eqwtv'gzewugf õf gc'y /f q'w'd'v'w'õ"lwtqtu"y j q"i cxg"co d'ki w'q'wu"cpuy gtu"dw t'g'h'w'ugf "vq"gzewug"õf gc'y /h'x'q't'cdng'õ"lwtqtu"y j q"i cxg"gs w'cm' co d'ki w'q'wu"cpuy gtu'0Vj g't'geqtf ."j qy g'xg."f go qpwtcv'g'y cv y j g' f gc'y /h'x'q't'cdng' lwtqtu" qh" y j qo " f ghgpf cpv' eqo r rclpu er'g'c'n' "l'p'f k'ec'v'g' "y g'k' "cd'k'k'f "vq"eq'p'uk'f g't'ek'ewo uc'pegu"lp o k'ki cv'k'p."vq'y k'j j q'r "lw'f i o gpv'v'w'qp"y g's w'g'u'k'p'q'h'k' gpcv' w'p'v'k'y g'g'x'k'f g'peg"y cu'dghgt'g'y go ."cpf "u'g't'k'w'wn' "vq"gp'v'g'v'k'p y j q'r v'k'p"qh'ko r qu'k'pi "c"ug'p'v'p'eg"qh'rk'g"y k'j q'w'r qu'k'k'k'f qh'rk'ct'q'ng'0Vj g'q'p'g'f gc'y /f q'w'd'v'w'õ"lwtqt"y j q"y cu'gzem'f gf "lp r ctv'd'g'ec'w'ug"qh'x'k'gy u't'gi ctf kpi "y g'f gc'y "r gpcv'."qp"y g'q'v'j gt j cpf ."f go qpwtcv'g' "cp"l'p'cd'k'k'f "vq"r w'w'c'uk'f g'r t'g'eq'p'eg' v'k'p'pu cpf "q'r k'p'k'p'u"t'gi ctf kpi "y j g'f gc'y "r gpcv' "cpf "vq"eq'p'uk'f g't c'n'q'h'y g'ug'p'v'p'ek'pi "q'r v'k'p'u'0Vj g'q'v'j g't'f gc'y /f q'w'd'v'w'õ"lwtqt y j q" f ghgpf cpv'er'ko u'y cu'gzem'f gf "ko r t'qr g't'n' "y cu" *990 g'zewugf "h'q't"cp'q'y g't'g'cu'p."y cv'ku."y cv'y g'eqwtv'qdu'gt'x'g'f "lp j ko "g'x'k'f g'peg"qh'o gp'v'cn'ko r c'k'to gp'v'q't'k'p'uc'd'k'k'f'0Vj g't'geqtf f q'g'u'p'q'v'w'r r q't'v'f ghgpf cpv'u'er'ko "y cv'y g'v'kcn'eqwtv'v'k'k'g'f vq'cr r n' "y g'v'k'p'f ctf "gp'w'p'el'cv'g'f "lp"Wainwright"v. Witt."supra. 68; "WLU634."lp"cp"g'x'gp'j cpf gf "o c'p'p'g't0³:

3: F ghgpf cpv'u" uwi i gu'k'p" y cv' k' y cu" gtt'qt" hq' y j g' r t'q'ug'ew'qt" vq" r g'tgo r v'k'k'f "ej cmgpi g" lwtqtu y j q" g'zr t'gu'gf "t'g'ug't'x'c'v'k'p'u"eq'p'eg't'p'k'pi "y j g'f gc'y r gpcv' "ku" t'gl'gev'f "cu" y k'j q'w' o g't'k'õ' *Peoplev. Ashmus."supra."76'Ec'f'õf'cv'r'0; 890-

b. Restriction on voir dire

*48+F ghgpf cpv'cnuq'eqpvgpf u'vj g'tkcnleqwtv'gtt g'f 'lp'tgutlevkpi j ku'cdkxk' 'vq'cunlr tqd'kpi 's wguv'kpu'f wtkpi 'xqk'f ktg.'y j gtdg' r t'g'x'g'p'v'kpi " j ko " 'ht'qo " 'eqpf wex'kpi " 'cp' 'gzco kpcv'kqp' uwe'j " 'cu y cu'p'geguuct { 'vq'gzg'tekug'ej cmgpi gu'cpf 'g'puw'g'cp'ko r ctv'kcn lwt { 'cu'i wctcpvggf 'd { 'y j g' 'Hk'ny " 'Co gpf o g'p'v'qh' 'y j g' 'Wpk'g'f U'cv'g' 'Eqpu'kww'kqp' 'cpf' 'ct'v'erg' 'K'ugev'kqp' '38' qh' 'y j g' 'Ecr'kt'p'lc Eqpu'kww'kqp' '0'Ur gek'k'ecm'f. 'j g' 'eqp'vg'p'f u'j g' 'uj q'w'f " j c'x'g' 'd'gg'p r g'to k'w'g'f " 'vq'cun'iq'p'g' r t'qur gev'k'g' 'lwt'qt' 'y j cv' 'h'ce'v'qtu' 'y q'w'f dg' 't'g'x'g'cp'v' 'vq' j ku'f gek'uk'qp' " 'vq'x'q'v' 'h'q' 'y j g' 'f' g'cv'j " 'r g'p'c'm'f = 'vq cun'ic'p'q'v' g't' r t'qur gev'k'g' 'lwt'qt' 'vq' 'y j cv' 'g'z'v'p'v' 'uj g' 'ce'eg' r v'g'f 'y j g' eq'p'eg' r v' 'qh' 'h'g'g' 'y km' = 'vq'cun'ic' r t'qur gev'k'g' 'lwt'qt' 'vq' 'cpuy g't y j g'v' g't. " 'ch'g't' 'eq'p'uk'f g't'k'pi " 'c' 't'cv'j g't' 'f' g'v'ck'g'f " 'ce'eq'w'p'v' 'qh' 'y j g' h'ce'v' 'qh' 'y j ku' 'ecug. 'uj g' 'y q'w'f 'ko r qu'g' 'y j g' 'f' g'cv'j " 'r g'p'c'm'f = 'cp'f 'vq cun'ic' r t'qur gev'k'g' 'lwt'qt' 'y j g'v'j g't' 'k'v'o c'f g' 'cp' { 'u'g'p'ug' 'h'q' 'f' gh'ep'ug eq'w'p'ug'n' 'vq'cun'ic'f gh'g'p'f cp'v' 'vq' 'v'c'ng' 'y j g' 'u'cp'f " 'h'i' 'y j g' 'lwt'qt' 'y cu un'g'r v'k'c'n' 'qh' 'j' ku' 'v'g'u'ko q'p'f. " 'cp'f 'y j g'v'j g't' 'y j g' 'lwt'qt' " 'oy cp'v'g'f 'vq j g'ct' 'h'q'qo " 'f' gh'g'p'f cp'v' 'v'f' gh'g'p'f cp'v' 'c'r r ct'g'p'v' 'eq'p'vg'p'f u' 'k'v'y cu p'geguuct { 'vq' 'u'g'ew't' 'cpuy g'tu' 'vq' 'y j g'ug' 's w'g'u'k'p'u' 'lp' 'q't'f g't' 'vq g'z'r qu'g' 'lwt'qt' 'd'k'u. 'h'c' { 'y j g' 'h'q'w'p'f cv'k'p' 'h'q' 'c' 'e'j cm'g'pi g' 'h'q' 'e'cw'ug q't' r g'to r v'qt' { 'e'j cm'g'pi g. " 'cp'f " 'g'z'r n'q't'g' 'y j g' 'r t'qur gev'k'g' 'lwt'qt' 'u x'k'g'y u' 'y j k'j 't'g'i c't'f 'vq' 'y j g' 'f' g'cv'j " 'r g'p'c'm'f (0

Y g'j' c'x'g' " 't'ge'qi p'k' g'f " 'y j cv' 'v'j g' " 'v'k'c'n' 'e'q'w't'v'j cu' " 'oe'q'p'uk'f g't'c'd'rg f'k'ue't'g'v'k'p' (00) 'vq' " 'eq'p'v'k'p' " 'x'q'k' " 'f'k'g' " 'y k'j' k'p' " 't'g'c'u'q'p'c'd'rg r'ko ku'o " *People v. Williams " *3; ; 3+4; " 'Ecr'f'f' " 5; 4. " 62: "]396 Ecr'f'r v'0539. " 84: 'R0'f' " 8; = 'u'g'g'c'nuq' " *People v. Ramos " *3; ; 9+ 37 " 'Ecr'f'v'j " 3355. " 337: "]86 " 'Ecr'f'r v'04'f' " : ; 4. " ; 5: " 'R0'f' " ; 72_0 Vj ku'f'k'ue't'g'v'k'p' 'g'z'v'g'p'f u' 'vq' 'y j g' 'r t'q'eg'u' 'qh' 'f' g'cv'j /s w'c'k'h'k'ec'v'k'p' x'q'k' " 'f'k'g' " 'g'u'c'd'r'k'uj g'f " 'd { " *Witherspoon v. Illinois " *3; 8: +5; 3 WU0732 "]: : " UE v'03992. " 42 " 'N'G'f' 0'f' " 998_ " 'cp'f " *Wainwright v. Witt. " supra. " 68; " WU06340 *People v. Ramos. " supra. " 37 " 'Ecr'f'v'j cv'r 0337: 0+ 'N'ko k'c'v'k'p'u' 'q'p' 'x'q'k' " 'f'k'g' " 'c't'g' 'u'w'd'g'ev' 'vq' 't'g'x'k'g'y 'h'q' c'd'w'ug' 'qh' 'f'k'ue't'g'v'k'p' " *People v. Ashmus, supra, " 76 " 'Ecr'f'f' " cv r'0; 7; 0+ " 'W'p'f g't' 'y j g' 'r'ny " 'lp' " 'g'h'g'ev' 'cv' 'y j g' " 'ko g' " 'q'h' " 'v'k'c'n " 3; " 'y j g' eq'w't'v' 'e'q'w'f " 'r t'g'x'g'p'v' 'eq'w'p'ug'n' 'h'q'qo " 's w'g'u'k'p'k'pi " 'y j g' 'lwt' { " 'y k'j' cp' " 'ko r t'q'r g't' " 'r w'r qu'g. " 'uwe'j " 'cu' " 'vq' " 'o' " 'p'f w'ec'v'g' " 'y j g' 'lwt' { " 'r cp'gn vq' " 'y j g' " 'r ct'v'k'w'c't' " 'h'ce'v' 'qh' 'y j g' " 'ecug. " 'vq' " 'eq'o r g'n' 'y j g' " 'lwt'qtu' " 'vq eq'o o k'v'j go u'g'r'g'u' 'vq' 'x'q'v'g' " 'c' " 'r ct'v'k'w'c't' " 'y c' { . " 'vq' " 't'g'l'w'f 'leg' " 'y j g' lwt' { 'h'q' " 'q't' " 'c'i c'k'p'u'v'c' " *991 " 'r ct'v'k'w'c't' " 'r ct'v'f. " 'vq' " 'c'ti w'g' " 'y j g' " 'ecug. vq' " 'k'p'f q'ev't'k'p'cv'g' " 'y j g' " 'lwt' { . " 'q't' " 'vq' " 'k'p'u't'w'ev' " 'y j g' " 'lwt' { " 'lp' " 'o c'w'g'tu' " 'q'h n'cy 0'6 " *People v. Williams. " supra. " 4; " 'Ecr'f'f' " cv'r 062: = 'u'g'g'c'nuq *People v. Ashmus. " supra. " 76 " 'Ecr'f'f' " cv'r 0; 7; 0-

3; Pgy " tw'gu' ew't'g'p'w'f " c'r'r'n' (0 " *Ugg' " *People v. Carpenter " *3; ; 9+ 37 " 'Ecr'f'v'j " 534. " 575 "]85 Ecr'f'r v'04'f' " 3. " ; 57 " 'R0'f' " 92: _0-

Y g'q'd'ug't'x'g'p'q' 'k'p'f k'ec'v'k'p' 'q'p' 'y j ku' 't'g'eq't'f " 'y j cv'f gh'ep'ug' 'eq'w'p'ug'n' o' " 'y cu' " 'r t'g'x'g'p'v'g' " 'h'q'qo " 'o c'n'k'pi " 'r'ea'son'able' " 'k'p's w't' { " 'k'p'v' " 'y j g'

h'k'p'g'u' 'q'h' 'c'p' { " 'x'g'p'k'g' " 'r g'tu'q'p' " 'vq' " 'u'g't'x'g' " 'q'p' " 'y j g' " 'lwt' { (0 " 'o' " *People v. Carpenter, supra. " 37 " 'Ecr'f'v'j " cv'r 0576. " 'k'c'r'le'u' 'k'p' " 'q't'k'i k'p'c'r'0- G'cej " 'lwt'qt' " 'y cu' " 'cun'g'f. " 'lp' " 'x'c't'k'q'w' " 'y c' { u. " 'y j g'v'j g't' " 'j g' " 'q't' " 'uj g' d'g'r'k'x'g'f " 'y j g' " 'f' g'cv'j " 'r g'p'c'm'f " 'uj q'w'f " 'd'g' " 'ko r qu'g'f " 'c'w'q'o c'v'k'ec'm'f w'r q'p' " 'eq'p'x'k'ev'k'p' " 'q'h' " 'c' " 'e'c'r k'c'n' 'q'h'g'p'ug' " *Ugg' " *People v. Lucas *3; ; 7+ 34 " 'Ecr'f'v'j " 637. " 69; /6: 2 "]6: " 'Ecr'f'r v'04'f' " 747. " ; 29 R0'f' " 595_0+ " 'Y k'j " 't'g'ur gev' 'vq' " 's w'g'u'k'p'u' " 'f'k'g'ev'k'pi " 'y j g' " 'lwt'qt' 'u c'w'g'p'v'k'p' " 'vq' 'y j g' 'h'ce'v' 'qh' 'y j g' " 'ecug. 'y j g' 'c'x'g' 'q'd'ug't'x'g'f " 'y cv'k'v'j g' 'Witherspoon/ Witt' "]ek'c'v'k'p'u' " 'x'q'k' " 'f'k'g' " 'u'g'g'u' " 'vq' " 'f' g'v't'o k'p'g' 'q'p'n'f 'y j g' 'x'k'g'y u' " 'q'h' 'y j g' " 'r t'qur gev'k'g' " 'lwt'qtu' " 'c'd'q'w' " 'e'c'r k'c'n' 'r' w'p'k'uj o g'p'v k'p' " 'y j g' " 'c'd'unt'cev' (000)]E'k'c'v'k'p'u' " Vj g' " 'k'p's w't' { " 'ku' " 'f'k'g'ev'g' " 'vq y j g'v'j g't. " 'y k'j q'w' " 'h'p'q'y k'pi " 'y j g' " 'ur gek'h'le'u' 'qh' 'y j g' " 'ecug. 'y j g' " 'lwt'qt j cu' " 'cp' " 'q'r g'p' " o k'p'f 'y'q'p' " 'y j g' " 'r g'p'c'm'f " 'f' g'v't'o k'p'c'v'k'p' " '0'Vj g't'g' " 'y cu p'q' " 'g't't'q't' " 'k'p' " 't'w'k'pi " 'y j cv' 's w'g'u'k'p'u' " 't'g'r'v'g'f " 'vq' 'y j g' " 'lwt'qtu' " 'c'w'k'w'f gu v'q'y c't'f " 'g'x'k'f g'p'eg' " 'y cv' 'y cu' " 'vq' " 'd'g' " 'k'p' " 't'q'f w'eg'f " 'k'p' " 'y j ku' " 'v'k'c'n' 'e'q'w'f p'q'v' " 'd'g' " 'cun'g'f " 'f' w't'k'pi " 'y j g' " 'u'g's w'g'u'g't'g'f " *Witherspoon/ Witt' " 'x'q'k'f k'g' (0 " *People v. Clark " *3; ; 2+ 72 " 'Ecr'f'f' " 7: 5. " 7; 9 "]48: Ecr'f'r v'05; ; ; " 9; ; " R0'f' " 349_ " = 'u'g'g'c'nuq' " *People v. Sanders *3; ; 7+ 33 " 'Ecr'f'v'j " 697. " 75; "]68 " 'Ecr'f'r v'04'f' " 973. " ; 27 " R0'f' 642_0+ " 'P'q't' " 'ku' " 'k'v' " 'g't'q't' " 'vq' " 'r t'g'ew'f g' " 'eq'w'p'ug'n' " 'h'q'qo " 'u'g'g'n'k'pi " 'vq eq'o r g'n' " 'c' " 'r t'qur gev'k'g' " 'lwt'qt' " 'vq' " 'eq'o o k'v' " 'vq' " 'x'q'v'g' " 'k'p' " 'c' " 'r ct'v'k'w'c't y c' { " *People v. Rich " *3; ; : + 67 " 'Ecr'f'f' " 3258. " 3327 "]46: Ecr'f'r v'0732. " 977 " 'R0'f' " ; 82_+ " 'q't' " 'vq' " 'r t'g'ew'f g' " 'eq'w'p'ug'n' " 'h'q'qo k'p'f q'ev't'k'p'c'v'k'pi " 'y j g' " 'lwt' { " 'cu' " 'vq' " 'c' " 'r ct'v'k'w'c't' " 'x'k'g'y " 'q'h' " 'y j g' " 'h'ce'v'0 *People v. Sanders. " supra. " 33 " 'Ecr'f'v'j " cv'r r 075: /75; 0+ " 'Vj w'u k'v'y cu' " 'p'q'v' " 'g't'q't' " 'vq' " 't'g'h'w'ug' " 'vq' " 'r g'to k'v' " 'eq'w'p'ug'n' " 'vq' " 'cun'ic' 's w'g'u'k'p'u d'c'ug'f " 'w'r q'p' " 'cp' " 'ce'eq'w'p'v' " 'qh' " 'y j g' " 'h'ce'v' " 'qh' " 'y j ku' " 'ecug. " 'q't' " 'vq' " 'cun'ic' lwt'qt' " 'vq' " 'eq'p'uk'f g't' " 'r ct'v'k'w'c't' " 'h'ce'v' " 'y j cv' 'y q'w'f " 'e'cw'ug' " 'j ko " 'q't' " 'j g't vq' " 'ko r qu'g' " 'y j g' " 'f' g'cv'j " 'r g'p'c'm'f (0D'g'ec'w'ug' " 'cp' { 's w'g'u'k'p' " 'eq'p'eg't'p'k'pi c' " 'r t'qur gev'k'g' " 'lwt'qt' " 'u'c'w'k'w'f g' " 'vq'y c't'f " 'y j g' " 'e'q'p'eg' r v'q'h' " 'h'g'g' " 'y k'auku j k'i j n'f " 'r j k'q'u'q'r j k'ec'n' " 'k'v'y cu' " 'y k'j k'p' " 'y j g' " 'v'k'c'n' 'e'q'w't'v' " 'f'k'ue't'g'v'k'p' vq' " 'eq'p'ew'f g' " 'uwe'j " 'c' " 's w'g'u'k'p' " 'y q'w'f " 'p'q'v' " 'd'g' " 'h'w'k'h'w' " 'h'q' " 'y j g' r w'r qu'g' " 'qh' " 'f' g'cv'j /s w'c'k'h'k'ec'v'k'p' " 'x'q'k' " 'f'k'g' (0

Y k'j " 't'g'ur gev' " 'vq' " 'f' gh'ep'ug' 'eq'w'p'ug'n' " 's w'g'u'k'p' " 'k'p' " 'y j g' " 'i g'p'g't'c'n x'q'k' " 'f'k'g' " 't'g'i c't'f'k'pi " 'y j g'v'j g't' " 'y j g' " 'r t'qur gev'k'g' " 'lwt'qtu' " 'y q'w'i j v k'v' " 'o' c'f' g' " 'cp' { " 'u'g'p'ug'o' " 'vq' " 'r t'g'ug'p'v' " 'f' gh'g'p'f cp'v' " 'u' " 'v'g'u'ko q'p' { " 'k'h lwt'qtu' " 'y q'w'f " 'x'k'g'y " 'j ku' " 'e't'g'f k'd'k'k'k' { " 'f'k'h'g't'g'p'v' " 'h'q'qo " 'y j cv' " 'q'h q'v' g't' " 'y k'p'g'u'g'u. " 'y j g' " 's w'g'u'k'p' " 'c'ti w'c'd'n' " 'u'q'w'i j v'v'q' " 'k'p'h'w'g'p'eg' " 'y j g' lwt'qtu' " 'c'w'k'w'f g' " 'vq'y c't'f " 'y j g' " 'h'ce'v' " 'qh' " 'y j g' " 'ecug' " 'cp'f " 'vq' " 'k'p'f q'ev't'k'p'c'v'g 'y j g' " 'lwt'qtu' " 'k'p' " 'ecug' " 'f' gh'g'p'f cp'v' " 'uj q'w'f " 'h'c'k'v'q' " 'v'g'u'k'h' (0'k'p' " 'cp' { " 'g'x'g'p'v. 'y j g' " 'eq'w't'v' " 'r g'to k'w'g'f " 'y j g' " 's w'g'u'k'p' " 'y j g'v'j g't' " 'lwt'qtu' " 'y q'w'f " 'o'j q'r'f k'v' " 'c'i c'k'p'u'v' " 'f' gh'g'p'f cp'v' " 'uj q'w'f " 'j g' " 'h'c'k'v' " 'vq' " 'v'g'u'k'h'f. " 'cp'f " 'f' gh'ep'ug eq'w'p'ug'n' " 'y cu' " 'r g'to k'w'g'f " 'vq' " 'r qu'g' " 'c' " 'u'g't'k'g'u' " 'q'h' " 's w'g'u'k'p'u' " 't'g'i c't'f'k'pi 'y j g' " 'r t'qur gev'k'g' " 'lwt'qtu' " 'c'w'k'w'f g' " 'vq'y c't'f " 'y j g' " 'g'z'g't'ek'ug' " 'qh' " 'y j g' r t'k'x'k'g'i g' " 'c'i c'k'p'u'v' " 'u'g'n' " 'k'p'et'ko k'p'c'v'k'p' " '0'P'q' " 'c'd'w'ug' " 'qh' " 'f'k'ue't'g'v'k'p' c'r r g'c'tu' " *992

c. Wheeler error

*49c+F ghgpf cpv'eqpvpgf u'vj g'v'kcn'eqwtv'gtt'gf 'kp'f gvgto klpki j g'j cf "hckgf"vq" guvcdkuj "c" r tko c "hcekg"ecug'wpf gt "*People v. Wheeler*"*3; 9: +44"Ecnf"47: "]36: "Ecnf r v0: ; 2."7: 5 Rf"96: _**Wheeler*+vj cv'vj g'r tqugewqt "gzewugf "Rtqur gevkg Lwtqt "T'v'dgecwug"qh'tcekn'dlcu0J g'eqpvpgf u'vj cv'vj ku'gttqt eqpvkxwgf "c" xkqv'kqp" qh' j ku' tki j v' vq" v'kcn' d{ "c" hck" cpf ko r ctv'knlwt { "wpf gt'vj g'Ukz'vj 'cpf 'Hqwtv'ggpy 'Co gpf o gpv'qh vj g'hgf gtcn'E'qpvkxwkp0

Cv' v'kcn" vj g" r tqugewqt "gzetekugf "c" r gtgo r vqt { "ej cngpi g ci clpuv' Rtqur gevkg" Lwtqt "T'v" cp" Chk'ecp/Co gtlecp" o cp0 F ghgpf cpv'qdl'gevgf "vq" vj g'ej cngpi g. "emko kpi "k'y cu'dcugf r wtgn { "wr qp" vj g'r tqur gevkg' lwtqt' h' tceg. "cpf "o cf g'c" o qv'kqp hqt" o kvt'kcn' d'cugf "vr qp" *Wheeler*. "supra." 44"Ecnf" 47: . "cpf *Batson*" v. *Kentucky*. "supra." 698" WU09; 0J g'eqpvpgf gf "vj cv pq'ektewo ucpeg'dw' tceg' eqwf "j cxg' b' qv'kx'cvf "vj g'ej cngpi g. dgecwug" Rtqur gevkg" Lwtqt "T'v' f k" "pqv' g'zr t'guu" ungr v'ekuo eqpegtpkpi "vj g'f gcv' 'r gpcn' { "cpf "j ku' h'v'j gt'j cf "dggp" c'f gr w'f uj g'tkh' hqt" 42" { gctu0F ghgpf cpv'cuugt'vgf "vj g' r tqugewqt "j cf guvcdkuj gf "c" r tcevg' qh' g'z'etekupi "r gtgo r vqt { "ej cngpi gu ci clpuv' Chk'ecp/Co gtlecp' r tqur gevkg' lwtqtu. 'eqpvpgf kpi "vj cv vj gt'j cf "dggp" b'q' l'w'k' h'ecv'k'p' g'z'egr v' tceg' hqt' vj g' r tqugewqt u gct'kgt" r gtgo r vqt { "ej cngpi g" qh' Rtqur gevkg" Lwtqt "Ur 0" cp Chk'ecp/Co gtlecp" o cp0

Vj g'eqwtv'tgur qpf gf <0jY _kj qw'hkpf kpi "c" r tko c "hcekg"ecug j cu'dggp" o cf g'Ky qwf "cun'k'i" vj g' r tqugewk'p' y qwf "ect'g' vq t'gur qpf Að

Vj g' r tqugewqt "g'zr' r'cl'p'gf "vj cv'j g" j cf "gzewugf "Rtqur gevkg Lwtqt "T'v'dgecwug" j g'dgn'x'gf "j ku'go r m { o gpv'cu" c" t'gr q'v'gt hqt "c" n'ecn'p'gy ur cr gt' y qwf "vj t'gcv'p" vj g' r tqur gevkg' lwtqt u ko r ctv'k'k'f { 'cpf 'bd'k'k'f { 'vq' f' gekf g'vj g' e'cug' t' wtgn { "wr qp" vj g' h'cew r t'gug'p'vgf "cv'vj g' v'kcn' "cpf "d'gecwug' k'v'c' r gct'gf "vj g' r tqur gevkg lwtqt' y qwf "h'ceg" c' t'k'um'q'h' i'ku'kpi "j ku'go r m { o gpv'k'i'cungf "vq ugt'x'g' cu'c' lwtqt0Vj g' r tqugewqt 'd'gn'x'gf "vj g' r tqur gevkg' lwtqt y qwf "d'g'v'q'tp' d'gwy ggp" j ku'go r m { o gpv'c'p'f "j ku'f w'f "cu'c' lwtqt0

Vj g'eqwtv'f g'p'lgf "vj g" f' ghg'pug" o qv'kqp. "ucv'kpi <0K'v'j kpm'v'j g t'geqtf "pggf u" vq" dg" engt" vj cv' vj gt'g" y gt'g" r q'v'p'k'cm { "h'qwt Chk'ecp/Co gtlecp" lwtqtu' ecngf "vq" vj g' lwt { "dqz' <0 t0']U_ O tu0']J _" O t0']T'v0_ " cpf " O t0']N_0' K'v'j kpm'v'j g' t'geqtf " f' qgu p'ggf "vq' t'gh'ng'ev'j cv' { guv'gt'f c { "O t0']U_ y cu'gzewugf. "dw'v'j gt'g y gt'g' t'gcu'qpu' uc'v'gf "r t'k'q' "vq" vj cv'0Vj cv'0 tu0']J _" cp" Chk'ecp Co gtlecp' y qo cp. "y cu'gzewugf "d { "vj g' f' ghg'pug0

0K'cnuq' t'g'eg'k'x'gf "c" r' j q'p'g' ecn' h' t'qo "j ku'go r m { gt0C' r r ct'g'p'v'f. vj g't' r' q'ne { 'ku'q'p'n { 'vq' t' c { 'h'q' t'32' f' c { u'q' t'37' f' c { u'q' t' b'qo g'v' kpi 0 C'p'f "Ky cu' i' q'kpi "vq" j' cxg" *993 "vq" o cng' c' ur' gekn' r' j q'p'g' ecn' q' t' y' t'kg' c' h'g'w'g' t' y' j' k'ej. " { q'w' h'p'qy. "K'v' c' n'v' c { u' y' k'k'kpi "vq" f' q' vq i' g'v'j ko "vq" v'c { 0

0K'cnuq' t'g'eg'k'x'gf "c" r' j q'p'g' ecn' h' t'qo "j ku'go r m { gt0C' r r ct'g'p'v'f. vj g't' r' q'ne { 'ku'q'p'n { 'vq' t' c { 'h'q' t'32' f' c { u'q' t'37' f' c { u'q' t' b'qo g'v' kpi 0 C'p'f "Ky cu' i' q'kpi "vq" j' cxg" *993 "vq" o cng' c' ur' gekn' r' j q'p'g' ecn' q' t' y' t'kg' c' h'g'w'g' t' y' j' k'ej. " { q'w' h'p'qy. "K'v' c' n'v' c { u' y' k'k'kpi "vq" f' q' vq i' g'v'j ko "vq" v'c { 0

0Ky cu'v' t'q'w'd'ngf "d { "j ku'go r m { o g'p'v'k'w'c'v'k'p'0Ky cu'v' t'q'w'd'ngf d { "vj g' h'ce'v'j g' y' gt'g' i' q'kpi "vq" j' cxg' vq" j' cxg' ur' gekn' r' t'g'ecw'k'p' u' c'ng'p' h'q' t' j' ko "k'i' j' g' y' g'p'v' vq" y' q't'n' q'p" H'k'f' c { u' "q' t' "q'x'g' t' vj g' j' q'k'f' c { u' q' t' y' j' g'p' y' g' y' g' t'g' p'q'v'k'p' u'g'u'k'p' vj cv'v'qo g'q'p'g' y' q'w'f j' cxg' vq' u'et'g'p' vj g'p'gy ur cr gt' h'q' t' j' ko "cpf "r' g'q' r' ng' y' q'w'f "j' cxg vq' p'q'v'c' m' i' c' d'q'w'k'v'k'p' h' t' q'p'v'q'h' j' ko 0

0Y g' cmi' n'p'qy "vj cv' vj g" f' c'k' { "P gy u' j cu' eqx'g' t'gf "vj ku' ecug g'z'v'p'k'x'gn { 0K' y' k'm' eqx'g' t' vj g' ecug' g'z'v'p'k'x'gn { "y j' g'p' k'v' u'c' t' u' ci clp0

0Kj cf "b { "qy p' s' w'c'm u' c' d'q'w'k'0Vj g' h'ce'v'j g' r' g'q' r' ng' g'z'g' t'ekugf c' r' gtgo r vqt { "f' q'gu' p'q'v' u'g'go "vq" o g' vq' d'g' t'cekn' { "d'cugf 0Uq Ky q'w'f "h'k'p' "v'j cv'k'v' y' cu' p'q'v. "cpf "Ky q'w'f "f' g'p { "vj g" *Wheeler* o q'v'k'p'0

*4: +Vj ku' eqwtv' guvcdkuj gf "kp" *Wheeler*. "supra." 44"Ecnf" 47: . "0j cv' r' gtgo r vqt { "ej cngpi gu' b' c { "p'q'v' d'g' v'ugf "vq" t'go q'xg r tqur gevkg' lwtqtu' u'q'ng' { "qp" vj g' d'cuku' qh' r' t'guwo gf "i' t'q'w' d'ku'0Y g' f' gh'k'p'gf "i' t'q'w' "d'ku' cu' c" r' t'guwo r' v'k'p' vj cv' e'g' t' v'k'p' lwtqtu' ct'g' d'cugf "o g' t'gn' "d'gecwug" vj g' { "ct'g" o go d'gtu' qh' c'p k'f' g'p'v'k'c' d'ng' i' t'q'w' f' k'k'kpi v'k'ij gf "q'p' t'cekn' t'g'k'i' k'q'w. "g'v' p'le" q' t' uko k'c' t' i' t'q'w' p'f u'0] E'k'v'k'p' u'0_ **People*" v. *Johnson*" *3; ; +69 Ecnf" 33; 6. "3437"]477" Ecnf r v078; . "989" Rf" 3269_0-

C' r' ct'v'f "y j' q' l'w'ur' g'ew'ko r' t'q' r' g' t' w'ug' q'h' r' gtgo r vqt { "ej cngpi gu o w'v' t'c'k'ug' c' v'ko g'n { "q' d' l'g'ev'k'p' c'p'f "o cng' c' r' t'ko c' h'cekg' l'ij' qy kpi vj cv' p'p'g' q' t' o q' t' g' lwtqtu' j' cu' d'ggp' g'z'ew'f' gf "qp" vj g' d'cuku' qh i' t'q'w' "q' t'cekn' k'f' g'p'k'v { 0Vj g' j' k' i' j' "eqw' v'j cu' g'z' r' r'cl'p'gf "vj cv'vj g' f' ghg'p' cp'v'k' t'g' s' w'k' gf "vq' d' t'c'k'ug' c'p' k'p' h'g' t' p'eg' o' vj cv'vj g' g'z'ew'k'p' y cu' d'cugf "qp" i' t'q'w' "q' t'ceg' d'lcu'0* *Batson*" v. *Kentucky*. "supra. 698" WU0' cv' r' 0; 8"]328" UE'v'0' cv' r' r' 0' 3944/3945_0" Q'peg' c' r' t'ko c' h'cekg' u'j' qy kpi "j' cu' d'ggp" o cf g. "v'j g' r' tqugewqt" vj g'p o w'v' e'c' t' t' { "vj g' d'w'f' g'p' q'h' l'ij' qy kpi "vj cv'j g' q' t' l'ij' g' j' cf "i' g'p'v'k'p'g p'q'p'f k'ue' t'ko k'p'c'v'q' t' { t'g'cu'q'p' u' h'q' t' vj g' e'j' cngpi gu' c'v' k'uw'g'0* *People v. Monteil*" *3; ; 5+7" Ecnf" vj " 99. " 2; "]43" Ecnf r v0f' 927. " 77 Rf" 3499_0-

Vj g'v'kcn' eqwtv'v' f' g'v'g'to k'p'c'v'k'p' vj cv'p'q' r' t'ko c' h'cekg' l'ij' qy kpi "qh i' t'q'w' "d'ku' j' cu' d'ggp" o cf g' ku' u'w' d' l'g'ev' vq' t'g'x'k'gy "vq" f' g'v'g'to k'p'g y j' g'v'j g' t' k'v' ku' u'w' r' q' t' v'g' f' d { "u'w' d' u'c'p'k'c' n' i' g'x'k'f' g'p'eg'0* *People*" v. *Alvarez*, supra, "36" Ecnf" vj "cv' r' r' 0'3; 8/3; 90." 42 "Y g' g'z'co k'p'g

r tguwo r vkp qh'lpqpegpeg0**People v. Duran**3; 98+38'Ecnf 4: 4."4; 2"J349"Ecnf r v0'83: ."767"R0f "3544." ; 2" C0N0f 3_0" Xkukdng" r j { ulecn' tguwckpw' uj qwf " pqv' dg" qtf gtgf " kp vj g"cdugpeg'qh'ogxkf gpv'pgeguukf o'qt"oo cpkhu'p'ggf .o'cpf kpf ggf .o'v'j g'ko r qukq'qh'r j { ulecn'tgutckpw'lp'vj g'cdugpeg qh'c'tgeqtf 'lj qy kpi 'qh'xkqpeg'qt'c'vj tgc'v'qh'xkqpeg'qt'qy gt p'p'eqp'htqo kpi 'eqpf we'v'y kridg'f ggo gf 'v'q'eqpukw'w'c'p'cdwug qh'f kuetg'v'k'p0**Id.*'cv'r 04: ; .4; 2/4; 30+

Qvj gt" ugewtkf " o gcuwtgu." j qy gxtg." o c { " pqv' tgs wkt g" uwej l'wukh'ecv'k'p." cpf " t'gukf g'y kj kp" vj g' uqwpf " f kuetg'v'k'p" qh' vj g' v'kcn'eqw'v'Y g'g'zr n'k'p'g'f . " hq" g'zco r ng. " vj cv'v'j g' r t'gugpeg" qh cto gf 'i wctf u'k'p' vj g' eqw'v'k'p' g' l'wukh'ecv'k'p qp" vj g' t'geqtf " o'w'p'g'u' vj g { " ctg" r t'gugpv' k'p" wpt'g'cu'p'cdng pwo dgtu0* *People v. Duran.* *supra.* " 38" Ecnf " cv' r 0'4; 3. lp0: =ugg'cnuq" *996 "*People v. Ainsworth*" *3; : : +67" Ecnf ; : 6. " 3225/3226" J46: " Ecnf r v0'78: ." 977" R0f " 3239_" j'v'kcn eqw'v' f'k' " pqv' g'tt" k'p" f' g'v'gto k'p'k'p' " vj cv' v'p'w'w'cn' p'wo dgt" qh i wctf u' y cu' p'q'v' wpt'g'cu'p'cdng 0" Vj g' W'p'k'g'f " U'c'v'g'u' U'w' t'go g' E'q'w'v'c'nuq' f' k'v'k'p' i w'k'j g'u' d'g'v' g'g'p' u'g'ewtkf " o gcuwtgu. " uwej " cu u'j c'emi'p' . " vj cv' t'g'hr'ev' q'p' f' g' h'g'p'f' c'p'v'v'v' e'w'r c'd'k'k'v' " q't" x'k'q'p'v' r t'q'r g'p'uk'g'u. " cpf " q'j g't. " o q'tg' p'g'w'c'n'r t'g'ec'w'k'p'u0* *Holbrook v. Flynn* " *3; : 8+ 697" WU0 782. " 789/78: " J328" UE v0'3562. 3566/3568. : ; " NCGf 04f " 747_0" G'cuwtgu' u'wej " cu' u'j c'emi'p' " q't vj g' r' r' g'c't'p'eg' qh' vj g' f' g' h'g'p'f' c'p'v'v'v' l'c'n'i' c't'd' " ctg" k'p'j g't'g'p'v' r t'g'lw'f' k'ec'n' c'p'f " ctg' u'w'd'g'v'v'v' " g'z'c'ev'k'p' " u'et'w'k'p { **Id.*'cv'r 078: J328" UE v0'c'v'r r 0'3567/3568_+ " d'w'r t'g'ec'w'k'p'u' u'wej " cu' vj g' wug' qh' c'f f' k'k'p'c'n' c'to g'f " u'g'ewtkf { " h'q't'eg'u' c'tg" p'q'v' " d'g'ec'w'g' qh o'v' g' y' k'f g't' t'c'p'i g' qh' l'p'ht'g'p'eg'u' vj cv'c' l'w'q't " o k'i j v't'g'cu'p'cdn' f' t'c'y " h'q'o " vj g' q'h'k'eg'tu' r t'g'ug'peg0* *Id.*'cv'r 078; " J328" UE v0'c'v'r 0'3568_0" Vj g' e'q'w'v'g'z'r n'k'p'g'f <0Y j k'g' u'j c'emi'p' " cpf " r' t'lu'q'p' e'q'v'j g'u' c'tg' v'p'o k'v'c'n'ed'ng' l'p'f' k'ec'v'k'p'u' qh' vj g' p'g'g'f " v'q' u'g'r c't'c'v'g' c' f' g' h'g'p'f' c'p'v'v'v' h'q'o " vj g' e'q'o o w'p'k'f { " cv' r'c't'i g. " vj g' r t'g'ug'peg" qh i wctf u' c'v'c' f' g' h'g'p'f' c'p'v'v'v' t'k'n' l'p'g'g'f " p'q'v' d'g' l'p'v'g'r t'g'v'g'f " cu' c' u'k'i p vj cv' j'f' g' h'g'p'f' c'p'v'v'v' l'k'u' r c't'v'w'w'c'n' " f' c'p'i g't'q'w'v' q't' e'w'r c'd'ng' 0' l'w'q'tu o c { " l'w'v'cu' g'c'uk'v' " d'g'ri'x'g' vj cv' vj g' q'h'k'eg'tu' c'tg' vj g't'g' v'q' i wctf ci c'k'p'v'f' k'ut'w' v'k'p'u' g'o c'p'c'v'k'p' " h'q'o " q'w'uk'f' g' vj g' e'q'w'v'k'p' q'o " q't v'q' g'p'w'v'g' vj cv' v'g'p'ug' e'q'w'v'k'p' " g'z'ej c'p'i g'u' f' q' " p'q'v' g't'w' v' l'p'v'q' x'k'q'p'eg' 0' k'p'f' g'g'f . " k'v' k'u' g'p'v'k'g' " r' q'u'k'd'ng' " vj cv' l'w'q'tu' v' k'm' p'q'v' l'p'ht'g' " c'p' { vj k'p'i " cv' c'm' l'w'q'o " vj g' r t'g'ug'peg' qh' vj g' i wctf u' 0' k'i' vj g { c't'g' r' m'eg'f' c'v'v'q'o g' f' k'v'c'p'eg' l'w'q'o " vj g' b'ee'w'g'f . " u'g'ewtkf { " q'h'k'eg'tu o c { " y g'm' d'g' r' g't'eg'k'g'f " o q't'g' cu' g'g'o g'p'w' qh' c'p' " l'o r t'g'u'k'x'g' f' t'c'o c'v'j c'p' c'u' t'g'o k'p'f' g'tu' q'h' vj g' f' g' h'g'p'f' c'p'v'v'v' u'r g'ek'v'c'n' l'w'w'0' Q'w' u'q'el'g'v' " j' cu' d'g'eq'o g' l'p'w'g'f " v'q' vj g' r t'g'ug'peg' qh' c'to g'f " i wctf u' k'p' o' q'u'v' r' w'd'le' r' m'eg'u' = vj g { " c't'g' f' q'w'd'v'g'u'v' c'ng'p' h'q't' i' t'c'p'v'g'f' l'q' n'p'i " cu' vj g'k' " p'w'o d'g'tu' q't' " y g'c'r' q'p't { " f' q' p'q'v' u'w'i i g'u'v' r' c't'v'w'w'c'n' q'h'k'ec'n' e'q'p'eg't'p' q't' c'r'c'to 0' J' E'k'c'v'k'p' 0_0* *Ibid.* + C'ee'q't'f' k'p' i' n' . " vj g' e'q'w'v'k'p' e'p'nm'f' g'f . " vj g' r t'g'ug'peg' qh' l'w'ej " i wctf u' k'u' p'q'v'k'p'j g't'g'p'v' r' t'g'lw'f' k'ec'n' c'p'f " vj g'k' " c'r' r' g'c't'p'eg' c'v'v'j g' f' g' h'g'p'f' c'p'v'v'v' t'k'n' y' k'n

dg't'g'x'k'g'y g'f " q'p' c' e'c'ug' d { / e'c'ug' d'c'uk'v'q' f' g'v'g'to k'p'g' y j g'v'j g't' vj g' f' g' h'g'p'f' c'p'v'v'v' c'w'c'm' { " y cu' r' t'g'lw'f' k'eg'f 0* *Ibid.* = ugg'c'nuq' "*People v. Miranda*" *3; : 9+ 66" Ecnf " 79. " 337" J463" Ecnf r v0'7; 6. " 966 R0f " 3349_0+

*4; d+ " Y g' d'g'ri'x'g' vj cv' vj g' wug' qh' c' o g'c'n' f' g'v'g'v'q't' " q'w'uk'f' g' c' e'q'w'v'k'p'o . " h'k'p' vj g' wug' qh' c' f' k'k'p'c'n' l'w'g'w'k'v' { " h'q't'eg'u' y' k'j k'p' vj g' e'q'w'v'k'p'o . " k'u' p'q'v'c' b' g'c'u'w'v' g' v'k'v'k'p'j g't'g'p'v'v' { " r' t'g'lw'f' k'ec'n' 0' l'w'v' cu' k'p' "*Holbrook* . " k'p' y j k'ej " vj g' j' k' i j " e'q'w'v'j g' r' t'g'ug'peg' qh' h'q'w' c'f f' k'k'p'c'n' w'p'k'q'to g'f " r' q'r'k'eg' q'h'k'eg'tu' c'v' t'k'n' y' cu' p'q'v' o'v'j g' u'q't' v'q'h'k'p'j g't'g'p'v'v' { " r' t'g'lw'f' k'ec'n' t'c'v'k'eg' vj cv' h'k'p' u'j c'emi'p' . u'j q'w'f' " d'g' r' g'to k'v'g'f' " q'p'v' { " y j g't'g' l'w'uk'h'g'f' " d { " c'p' g'u'g'p'v'c'n' l'w'v'c'v'g' k'p'v'g't' g'u'v' r' g'ek'h'e' " v'q' g'c'ej " v'k'c'r'0* "*Holbrook v. Flynn, supra*," 697 WU0 cv' r r 0'78: /78; " J328" UE v0'c'v'r r 0'3567/3568_+ " vj g' wug' qh' c' o g'c'n' f' g'v'g'v'q't' c'v'v'j g' g'p't'c'p'eg' v'q' vj g' e'q'w'v'k'p'o " k'p' y j k'ej vj g' e'c'ug' k'u' v'q' d'g' v'k'g'f " k'u' p'q'v' k'p'j g't'g'p'v'v' { " r' t'g'lw'f' k'ec'n' 0' W'p'k'ng' u'j c'emi'p' " cpf " vj g' f' k'ur' n' { " q'h' vj g' f' g' h'g'p'f' c'p'v'v'v' l'c'n' i' c't'd. " vj g' wug' qh' c' o g'c'n' f' g'v'g'v'q't' f' q'g'u' p'q'v' k'f' g'p'v'k'v' { " vj g' f' g' h'g'p'f' c'p'v'v'v' c' r' g'tu'q'p' c'r' c't'v'q't' cu' y' q't' vj { " q'h' h'c't' c'p'f " u'w'r k'ek'p' 0' k'p' c'f f' k'k'p' . vj g' l'w' { " k'p' vj g' r' t'g'ug'p'v' e'c'ug' f' k'f " p'q'v' r' c'u' " *997 " vj t'q'w' j " vj g' o g'c'n' f' g'v'g'v'q't' c'p'f " o c { " p'q'v' j' c'x'g' d'g'g'p' " c'y c't'g' q'h' k'0' G'x'g'p' k'h' vj g' l'w' { " y cu' c'y c't'g' qh' vj g' o g'c'n' f' g'v'g'v'q't. " vj g' l'w' { " o c { y g'm' j' c'x'g' e'q'p'uk'f' g't'g'f " k'v'c' t'q'w'k'p'g' u'g'ewtkf { " f' g'x'k'eg' " cu' vj g' v'k'n' e'q'w'v' r' t'g'f' k'ev'g'f . " q't' c'v' o' q'u'v' c' " f' g'x'k'eg' " p'g'eg'u'c't' { " v'q' " o c'k'p'v'k'p' q't'f' g't' " c'o q'p'i " vj g' u'r g'ev'v'q'tu' 0' Vj g' r' w'd'le' " k'u' l'p'w't'g'f' " v'q' vj g' wug' qh' o g'c'n' f' g'v'g'v'q'tu' k'p' r' w'd'le' r' m'eg'u' u'w'ej " cu' e'q'w'v'j q'w'g'u. " cpf o c'p { " t'g'x'k'g'y k'p'i " e'q'w'v'j' c'x'g' h'q'w'p'f' " vj g'k' " wug' p'q'p'r' t'g'lw'f' k'ec'n' 0* *Jenner v. Class* " vj " Ek03; : 8+9; H5f " 958. 964/965 = *Hellum v. Warden U.S. Penitentiary-Leavenworth* " vj " Ek03; : 6+4: H5f " ; 25. " ; 28; 2; = *U.S. v. Scarfo* " *5f " Ek03; : : +: " 72" H0f 3237. " 3246/3247 = *U.S. v. Carter* " *v. " Ek03; : 9+ : 37" H0f 3452. " 3453 = *United States v. Heck* " *v. " Ek03; 96+6; ; " H0f 99: . " 9: : = *State v. Aguilar* " *0' k'p'p'0'3; : 6+ 574" P 0Y 0f " 5; 7. 5; 8/5; 90" P q' t'g'hr'ev'k'p' " w' r' q'p' f' g' h'g'p'f' c'p'v'v'v' i' w'k'n' q't' " k'p'p'q'eg'peg' p'g'g'f' " d'g' l'p'ht'g'f' " h'q'o " vj g' wug' qh' c' o g'c'n' f' g'v'g'v'q'to

F' g' h'g'p'f' c'p'v'v'v' e'q'p'v'g'p'f' u' vj cv' wug' qh' c' o g'c'n' f' g'v'g'v'q't' " k'p' h'q'p'v' qh' vj g' e'q'w'v'k'p'o " k'p' y j k'ej " c' e'c'ug' k'u' v'q' d'g' v'k'g'f " k'u' l'w'uk'h'g'f' " q't' r' g'to k'uk'd'ng' q'p'v'v' { " h'v'j g't'g' k'u' e'q'o r' g'm'k'p'i " g'x'k'f' g'p'eg' qh' k'o o k'p'g'v' vj t'g'c'v' " v'q' vj g' u'g'ewtkf { " qh' vj g' e'q'w'v'k'p'o " c'v'k'd'w'c'd'ng' " v'q' vj g' f' g' h'g'p'f' c'p'v'v'v' " e'k'k'p'i " *People v. Duran.* *supra.* " 38" Ecnf " 4: 4= *State v. Hartzog* " *3; : 3+; 8" Y p'0f " 5: 5" J857" R0f " 8; 6_ = c'p'f *U.S. v. Carter, supra.* " : 37" H0f " 3452" 0' J' g' e'q'p'v'g'p'f' u' p'q' u'w'ej e'q'o r' g'm'k'p'i " g'x'k'f' g'p'eg' y' cu' r' t'g'ug'p'v'g'f' " k'p' vj k'u' e'c'ug' 0' v'j g' e'c'ug'u' j' g' e'k'g'u' f' q' p'q'v' u'w' r' q't' v'j k'u' e'q'p'v'g'p'v'k'p' 0' E'q'o r' g'm'k'p'i " l'w'uk'h'ec'v'k'p' y' cu' t'g'v' w'k'g'f' " k'p' "*Duran*" d'g'ec'w'g' vj g' f' g' h'g'p'f' c'p'v'v'v' cu' u'j c'emi'p' . c'p' l'p'j g't'g'p'v'v' { " r' t'g'lw'f' k'ec'n' b' g'c'u'w'v' g'v'j g' e'q'w'v'k'p' "*U.S. v. Carter, supra.* " : 37" H0f " 3452. " f'k' " p'q'v' c'r' r' n' " vj g' u'c'p'f' c't'f' " w'i g'f' " d { f' g' h'g'p'f' c'p'v'v'v' d'w' l'p'w'g'f' " c'r' r' n' g'f' " vj g' c'd'w'g' qh' f' k'uet'g'v'k'p' u'c'p'f' c't'f

*id."cv'r0'3453+"cpf "lp"State v. Hartzog."supra."857"R04f 8; 6."y g"eqwtv'hqwpf"o ci pgvqo gvt"ugctej gu'qh'jurors"vq"dg j cto nguu'gttqt0*Id."cv'r 0927/9280-

Ugewtkv' b gcuwtgu'vj cv'vtg'p'qv'lpj gtgpv' r' tglwf lekcn'p'ggf'p'qv dg'lw'v'k'g'f' d' { 'eqo r gmkpi 'g'x'k'f' p'g'g'q'h'f'lo o kpgpv'y tgcw'v'q' y' g ugewtkv' 'qh'y g'eqwtv'Ugg'Holbrook'v. Flynn.'supra.'697'WLU cv'r 078: /78; 'J328'UE'v'cv'r 03567/3568. =People'v. Duran. supra."38'Ecn'f' cv'r 0'4; 3."lp0: =Morgan'v. Aispuro"*; y Ek03; ; 3+; 68'HDf'3684.'36870'P qt'f' qgu'f' ghgpf cpv'k'f' gpv'k'f' cp' { 'cewcn'r' tglwf leg'ctk'ulpi 'It'qo 'y' g'v'kcn'eqwtv'f' gekukpp'v'q go r nq' { "c"o gcn'f' g'veqvt' cv'y' g' g'p'v'c'p'eg'v'q' y' g' eqwtv'q'qo 0 *Holbrook'v. Flynn.'supra.'697'WLU'cv'r 0794'J328'UE'v'cv'r 0 3569/356: =ugg'cnuq'People'v. Miranda.'supra.'66'Ecn'f' cv'r 0 3370'Y g'eqpen'f' g'y' g'v'kcn'eqwtv'f' k'f' 'p'q'v'cdwug'ku'f' kuet'g'v'k'p'lp o clp'v'cl'p'pi 'c' b' gcn'f' g'veqvt' cv'y' g' g'p'v'c'p'eg'v'q' y' g' eqwtv'q'qo lp'y' j' lej' 'f' ghgpf cpv'u'ecug'y' cu'd'g'k'pi 'v'k'g'f' 0

b. Numerous bailiffs

F ghgpf cpv'eqp'v'p'f' u'y' cv'y' g' eqwtv'x'k'q'v'g'f' j' ku'tki' j' v'v'q' "f' w'g r' t'q'g'uu' qh' r'cy "d' { "r' g'to' k'v'k'pi . "lp" c'f' f' k'k'q'p' v'q' y' g' d'c'k'k'k'hu p'q'to' c'm' { "cu'ki' p'g'f' "v'q' y' g' eqwtv'q'qo . " *998 "y' g' r' t'g'ug'p'eg' qh' c'f' f' k'k'q'p'c'n' c'to' g'f' " d'c'k'k'k'hu' f' w'k'pi " y' g' v'g'u'ko' q'p' { " qh' y' k'p'g'uu L'g'ht'g' { 'D't' { cp'v'0

Cv' v'kcn' f' ghgpf cpv' qdl'g'v'g'f' "v'q" y' j' g' cr' r' g'c't'p'eg' qh' y' t'g'g' c'f' f' k'k'q'p'c'n' d'c'k'k'k'hu' lp" y' g' eqwtv'q'qo " f' w'k'pi " y' j' g' lp" r'ko' k'p'g' v'g'u'ko' q'p' { 'qh'L'g'ht'g' { 'D't' { cp'v'0

Vj' g' eqwtv'eqp'ht'g'f' "y' k'j' "q'p'g' qh'y' g' d'c'k'k'k'hu." y' j' q' g'z'r' r'k'p'g'f' y' j' cv' u'q'o' g' u'k'g'p'v' eq'o' o' w'p'k'c'v'k'p'p' dg'y' g'p'p' y' j' g' y' k'p'g'uu' c'p'f' f' ghgpf cpv'u'd't'q'y' g't. 'y' j' q' u'c'v'lp' y' g' eqwtv'q'qo . 'ec'w'ug'f' j' ko' 'v'q' q't'f' g't' y' g' c'f' f' k'k'q'p'c'n' u'g'ewtkv' { '0'V'j' g' eqwtv'p'q'v'g'f' "y' cv'c'n'j' q'w' j' k'f' k'f' "p'q'v' y' k'j' "v'q' r' t'q'x'k'f' g' g'z'eg'uu'k'g' u'g'ewtkv' { . "k'v' y' g' d'c'k'k'k'hu y' cu' qh' y' g' q'r' k'p'k'p' y' cv' c'f' f' k'k'q'p'c'n' u'g'ewtkv' { "y' cu' p'g'eg'uu'c' { . y' j' g' eqwtv' y' q'w'f' "f' g'ht' "v'q" y' g' d'c'k'k'k'hu' f' gekukpp'0' Vj' g' eqwtv' f' k'g'v'g'f' "f' ghg'p'ug' eq'w'p'ug'n'v' eq'p'ht' y' k'j' "y' g' d'c'k'k'k'hu' v'g' t'g'u'q'k'g' y' j' g' f' k'k'k'ew'w' { 0

Vj' g' h'q'm'y' k'pi' "f' c' { . "f' ghg'p'ug' eq'w'p'ug'n' qdl'g'v'g'f' "y' cv'y' g't'g' j' c'f' d'g'g'p' g'z'v'c' d'c'k'k'k'hu' lp" y' g' eqwtv'q'qo " y' j' g'p' "y' k'p'g'uu' L'g'ht'g' { 'D't' { cp'v' v'g'u'k'k'g'f' . " c'p'f' " c'ung'f' " y' cv'y' g' p'w'o' d'g't' qh' d'c'k'k'k'hu' dg' t'g'f' w'eg'f' 0'E'q'w'p'ug'n'p'q'v'g'f' y' cv'q'p'n' { "c' h'g'y' "q'h'f' ghg'p'f' cpv'u' l'it'k'g'p'f' u' c'p'f' "t'g'r'v'k'g'u' y' g't'g' c'w'g'p'f' k'pi' "y' g' v'k'cn' c'p'f' "y' cv'd'g'ec'w'ug' y' g' { j' c'f' "r' cu'g'f' "y' t'q'w' j' "y' g' b' g'cn'f' g'veqvt. "y' g' { "r' qu'g'f' "p'q'f' c'p'i' g't'0' Vj' g' eqwtv' q'd'ug't'x'g'f' "y' cv'y' g' p'w'o' d'g't' qh' d'c'k'k'k'hu' h'w'ew'c'v'g'f' dg'y' g'p'p' y' t'g'g' c'p'f' "h'q'w' . "y' cv'y' g' t'g'g' y' cu'v'j' g' d'c't'g'o' k'p'lo' w'o' "cv' c' l'q'k'p'v'v'k'cn'q'h'y' q' l'p'ect'eg't'c'v'g'f' "f' ghg'p'f' cp'w' . "y' cv' u'q'o' g'v'ko' g'u'k'v' y' cu'v'j' g' r' t'g'ug'p'eg' q'h' l'eg't' v'cl'p' 'ur' g'ew'c'v'q'tu' t'c'y' g't' y' cp'v'j' g' k'f' g'p'v'k'f'

qh'y' g' y' k'p'g'uu' y' cv'r' t'q'o' r' v'g'f' "c'f' f' k'k'q'p'c'n' u'g'ewtkv' . "y' cv' u'q'o' g' qh'y' g' d'c'k'k'k'hu' y' g't'g' p'q'v'x'k'k'ud'g' "v'q' y' g' l'w' { . "y' cv'y' g' r' t'g'ug'p'eg' qh' c'p' c'f' f' k'k'q'p'c'n' d'c'k'k'k'hu' y' cu' o'k'p'p'q'ew'q'w'u' o' c'p'f' "y' cv'y' g't'g' y' cu' p'q' o'c't'o' g'f' "eco' r' o'c'v'o' q'ur' j' g't'g' . "d'w'q'p' "y' g' eq'p'v'c't' { "c' h'q'y' /n'g' { c'v'o' q'ur' j' g't'g' } c'f' "d'g'g'p' r' t'g'ug't'x'g'f' 0

Eq'p'v'c't' { "v'q' "f' ghg'p'f' cpv'u' eq'p'v'g'p'v'k'p'u' . "p'q' c'd'w'ug' qh' f' k'uet' g'v'k'q'p' q't' "c'd't'q'i' c'v'k'p'p' qh' l'w'f' lek'cn' c'w'j' q't'k'v' { "q'x'g't' eq'w't'v'q'q'o' " u'g'ewtkv' c'r' r' g'c'tu' 0'Y' g' j' c'x'g' g'z'r' r'k'p'g'f' "y' cv'r' w'tu'w'c'p'v'v'q' "W'p'k'g'f' "U'c'v'g'u' U'w' t'g'o' g' "Eq'w't'v' c'w'j' q't'k'v' . "o'y' g' w'ug' qh' k'f' g'p'v'k'k'c'd'g' "u'g'ewtkv' i' w'c't'f' u' "lp" y' j' g' " eqwtv'q'qo " f' w'k'pi " c' " et'ko' k'p'c'n' v'k'cn' k'u' "p'q'v' k'p'j' g't'g'p'v' r' t'g'lw'f' lek'cn' o' k'p' r'c't'i' g'r' c't'v'd'g'ec'w'ug' u'w'ej' "c' r' t'g'ug'p'eg' k'u' u'g'g'p' d' { "l'w'q'tu' cu' q't'f' k'p'c't' { "c'p'f' "g'z'r' g'ev'g'f' "c'p'f' "d'g'ec'w'ug' qh' y' j' g' " o' c'p' { "p'q'p'r' t'g'lw'f' lek'cn' k'p'ht'g'p'eg'v'q' "v'q' "d'g'f' t'c'y' p' "l'it'q'o' "y' g' r' t'g'ug'p'eg' qh' u'w'ej' " u'g'ewtkv' " r' g'tu'q'p'p'g'n'r' *People v. Miranda. supra.'66'Ecn'f' cv'r 0336/3370'Y' g'z'c'o' k'p'g'q'p' c'ec'ug' d' { / ec'ug' d'cu'ku'y' g's' w'g'u'k'p'p' y' j' g'y' g't' c'f' f' ghg'p'f' cpv'c'ew'c'm' { j' cu'd'g'g'p' r' t'g'lw'f' k'g'f' d' { "y' g' r' t'g'ug'p'eg' qh' u'g'ewtkv' q'h' l'eg't' u'0' *Id. "cv'r 03370-

P' q' r' t'g'lw'f' k'g'f' c'r' r' g'c'tu'lp' "y' g' r' t'g'ug'p'v'ec'ug' 0'V'j' g' t'g'eq't'f' "t'g'h'g'ew' u' y' cv' v' n'g'cu'v' y' t'g'g' q'h' l'eg't' u' y' g't'g' " y' j' g' " o' k'p'lo' w'o' " p'w'o' d'g't' u'w'k'k'g'p'v'q' r' t'q'x'k'f' g' l'eg'ewtkv' { k'p'c' l'q'k'p'v'v'k'cn'q'h'y' q' l'p'ect'eg't'c'v'g'f' f' ghg'p'f' cp'w' . " r' c't'v'ew'w'c't'n' { " y' j' g'p' "q'p'g' q'h' l'eg't' " y' cu' "p'g'g'f' g'f' " v'q' c'w'g'p'f' "v'q' y' j' g' " o' g'cn'f' g'veqvt' 0'U'q'o' g' qh' y' g' q'h' l'eg't' u' y' g't'g' p'q'v' x'k'k'ud'g' "v'q' y' g' l'w' { . "c'p'f' "y' g' eqwtv'p'q'v'g'f' "h'q't' y' g' t'g'eq't'f' "y' cv'y' g' c'v'o' q'ur' j' g't'g'lp' "y' g' " *999 "eqwtv'q'qo' y' cu' p'q'v'q'p'g' q'h' c'p'c't'o' g'f' eco' r' . "d'w'q'p' "y' g' eq'p'v'c't' { "y' cu' t'g'r'v'k'g'g'n' { "t'g'r'z'g'f' 0'V'j' g't'g' k'u' p'q' k'p'f' k'ec'v'k'p' "y' cv'f' ghg'p'f' cpv'y' cu' r' t'g'lw'f' k'g'f' d' { "y' g' q'ec'ec'uk'q'p'c'n' r' t'g'ug'p'eg' qh' q'p'g'q't' "y' q' w'p'k'k'q't'o' g'f' "d'c'k'k'k'hu' dg' { q'p'f' "y' g' p'w'o' d'g't' eq'p'v'k'w'k'p'i' "y' g' d'c't'g'o' k'p'lo' w'o' "p'g'eg'uu'c' { "v'q' r' t'q'x'k'f' g' u'g'ewtkv' { 0' Vj' g' eqwtv' u' g'z'v'g'p'f' g'f' "eq'o' o' g'p'w' "q'p' "y' g' t'g'eq't'f' "k'p'f' k'ec'v'g' y' cv' k'f' k'f' "p'q'v'c'd't'q'i' c'v'g' "ku' c'w'j' q't'k'v' { "q'x'g't' "y' g' " o' c'w'g't' qh' u'g'ewtkv' { 0' D'cu'g'f' "q'p' "y' g' t'g'eq't'f' . "y' g' eq'p'en'f' g'y' g' v'k'cn'eqwtv'f' k'f' 'p'q'v'cd'w'ug' ku'f' k'uet'g'v'k'q'p' q't' "f' g'r' t'k'g' "y' g' f' ghg'p'f' cpv'q'h'f' w'g' r' t'q'g'uu' qh' r'cy' k'p' t'g'i' w'v'k'pi' "y' g' p'w'o' d'g't' qh' u'g'ewtkv' " r' g'tu'q'p'p'g'n'r' t'g'ug'p'v'lp' "y' g' eqwtv'q'qo 0

14. Conditions of confinement

*53c-+F ghg'p'f' cpv'eq'p'v'g'p'f' u'y' cv'p'w'o' g't'q'w' c'f' x'g't'ug' eq'p'f' k'k'q'pu' qh' eq'p'h'k'p'g'o' g'p'v'd'g'h'q't'g' c'p'f' "f' w'k'pi' "y' g' i' w'k'u' r' j' c'ug' qh' y' g' v'k'cn' ew'o' w'v'c'v'g' "v'q' k'o' r' c'k't' j' ku' c'd'k'k'v' { "v'q' cu'ku'v'lp' j' ku' f' ghg'p'ug' c'p'f' v'q' "f' ghg'p'f' "j' ko' u'g'ri'lp' x'k'q'v'k'q'p' qh' y' g' "U'k'v'j' "c'p'f' "H'q'w'v'g'g'p'j' Co' g'p'f' o' g'p'w' qh' y' g' "W'p'k'g'f' "U'c'v'g'u' Eq'p'v'k'w'k'q'p' c'p'f' "c't'v'k'g' K' u'g'ev'k'p' 37. "qh' y' g' E'c'n'k'k'p'k'c' Eq'p'v'k'w'k'q'p' 0'J' g' cu'g't'v' u' y' cv' y' j' g'ug' x'k'q'v'k'q'p' u' k'p'en'f' g'f' "j' ku' t'k'i' j' v'v'q' "f' w'g' r' t'q'g'uu' qh' r'cy' . v'q' cu'ku'v'lp' j' ku' q'y' p' "f' ghg'p'ug' . "v'q' y' g' g'h'g'ev'k'g' cu'ku'v'c'p'eg' qh' eq'w'p'ug'n' "v'q' dg' "r' t'g'ug'p'v' d'q'j' " r' j' { u'k'ec'm' { "c'p'f' "o' g'p'v'c'm' { "cv' c'm' r' t'q'eg'g'f' k'pi' u'c'i' c'k'p'v'j' ko' . "c'p'f' "o'p'q'v'v'q' dg' "eq'o' r' g'n'g'f' "v'q' u'c'p'f' v'k'cn' g'z'eg'r' v'y' j' g'p' "c'd'g' "v'q' "o' g'c'p'k'pi' h'w'n' { "cu'ku'v'j' ku' eq'w'p'ug'n'0

Ugctej gu'qh'j ku'egm'y gtg'iko kgf . "d{ "qtf gt "qh'j g'eqwtv"vq
vj qug'pgeguukcvgf 'd{ 'ugewtkf 'eqpegtpu. 'cpf 'vj g'eqwtv'qtf gtgf
vj cv'j g'eqpvgpw'qhf ghgpf cpv'u'igi crh'kg'pqv'dg'f'kw' gf 'vq' 'vj g
r tqegewkqp'Ugg'People'v. Hardy'*3; ; 4+'4'Ecrf6j ' : 8.'3: 3']7
Ecrf'r u0f'9; 8.' : 47'R0f'9: 3_]r'gi kko cvg'ugewtkf 'eqpegtpu
o c{ "qwy gli j 'r tgvtkn'f g'clp'gg'u'r t'kx'ce{ 'tki j w_0'F ghgpf cpv
j cf 'ht'gs wgpv'ceegu'v'q' 'vj g'rcy 'h'kdtct{0^43 'Vj g'tgeqtf 'lpf lecvgu
vj cv'f ghgpf cpv'eqp'kto gf 'j' g'j' cf 'eqpuw'ngf 'y kj 'eqwpugn'q'p'c
f c'k'f 'dcuku'f v'k'p' 'v'k'c'f'Vj g'tgeqtf 'cnuq'lpf lecvgu'f ghgpf cpv
y cu'gzegr v'k'p'cm'f 'y g'm'lr tgr ctgf 'h'q' 'v'k'c'f'ht'eqwpugn'cuugt'v'f
cu'b' wej 'lp'v'wi k'p' 'vj g'eqwtv'q'f' t'cpv'vj g'Faretta'o v'k'q'p' 'b' cf g
d{ 'f ghgpf cpv'q'p' 'vj g'g'x'g'q'h'v'k'c'f'F ghgpf cpv'v'q'q. 'cuugt'v'f 'cv'vj g
j gct'k'p' 'q'p' 'vj g'Faretta'o v'k'q'p' 'vj cv'j g'y cu'y g'm'lr tgr ctgf 'cpf
cu'hp'qy r'gf i g'cd'ng'cd'q'w'vj g'ecug'cu'f ghg'pug'eqwpugn'ucv'k'p' <
o'k'k'g'd'ggp'w' 'lp' 'vj g't'q'0'f'gt'0' q'f w'g'ht' 'vj g'icuv'3: 'b' q'p'vj u'0'k'o
cy ctg'q'h'vj g'ecug'0'k'p'qy 'vj g'ecug'1'wuv'cu'f' q'q'f 'cu'cp' { q'p'g'0'0'0

43 F ghgpf cpv' uwi i guu' 'vj cv' l'p'v'gt'o kv'gpv' l'p'v'gt'tw v'k'p'
qh'j' ku'rd'k'tct { 'r t'k'k'g'gi gu'c't'k'k'p' 'ht'q'o 'f' l'ue'k' r'k'p'ct {
uc'p'v'k'p'u' eqpu'k'w'w'f " c " f w'g" r t'q'eguu' x'k'q'r'v'k'p'.
t'g'n' l'p' 'w' q'p' Hewittv. Helms'*3; ; 9+'6: 4" WU0977
J329" UE'v'04894. "; 8" NGGf 04f "876_" cpf " Meachum
v. Fano"*3; 98+'649" WU0437"]; 8" UE'v'04754. "6;
NGGf 04f "673_0'Vj g'ek'v'k'p'u'ctg'r w' | r'k'p' i Hewitt
j q'f u' 'vj cv'c' r' qu'eq'p'x'v'k'p' r' t'k'q'p' 'l'p'o cv'g' y cu'p'q'v
c' r' t'g'x'c'k'k'p' " r' c't'v' " h'q' " vj g' r' w'r' qu'g' q'h' q'd'v'c'k'p'k'p'
cv'q't'p'g { 'h'g'u' 'l'p'c' 'ek'k'k'k'k'k' j w'c'v'k'p' 'd't'q'w' i v'w'p'f'gt
64" W'p'k'g'f " U'c'v'g'u' E'q'f'g' u'g'v'k'p' " 3; : 5." d'g'ec'w'g
g'x'g'p' 'vj q'w' i j " vj g' E'q'w't'v' q'h' C'r'r' g'c'u' " o c { " j c'x'g
e'q'p'e'n'f' g'f 'vj g' l'p'o cv'g'u' r' qu'eq'p'x'v'k'p' f' l'ue'k' r'k'p'ct {
r t'q'eg'g'f' l'p' " j' c'f " x'k'q'r'v'g'f " j' ku' eqpu'k'w'w'k'p'e'n' t'k' i j w
d { " eq'p'x'v'k'p' " j' ko " q'h' o' k'ue'q'p'f' w'e'v' u'q'r'g'n { " w' q'p' 'vj g
d'cuku'q'h'j' g'c't'uc { . " p'q' t'g'n'k'g'h' y cu'c'h'q'f' g'f 'vj g' l'p'o cv'g
c'r' c't'v' h'q'o " vj g' o' q't'e'n' u'c'w'k'c'v'k'p' q'h' n'p'q' y l'p' " vj cv
c' h'g'f' g't'e'n' e'q'w't'v' j' c'f " e'q'p'e'n'f' g'f " j' ku' t'k' i j w' j' c'f " d'g'g'p
x'k'q'r'v'g'f 0' Meachum" j' g'f " vj cv'c'p' l'p'o cv'g' j' c'f " p'q' f' w'g
r t'q'eguu' t'k' i j v'v'q' c' j' g'c't'k'p' " d'g'h'q't'g' t'c'p'u'h'g't' d'g'w' g'g'p
r t'k'q'p'u' 0' Y' g' q'd'ug't'x'g' p'q' f' w'g' r t'q'eguu' x'k'q'r'v'k'p' " l'p'
y j' cv' y g't'g' " cv' o' q'u'v' q'ee'c'u'k'p'e'n' l'p'v'gt'tw v'k'p'u' q'h
rd'k't'ct { " r t'k'k'g'gi gu. " r c't'v'w'c't'n' " y j' g'p' " k'w' ku' g'x'k'f' g'p'v
f ghgpf cpv'j' c'f " u'w'h'k'k'g'p'v'ceegu'v'q' d'g' y g'm'lr tgr ctgf
h'q' t'v'k'c'f'0

F ghgpf cpv' cnuq' eqp'v'g'p'f u' vj cv' vj g' ek't'ewo u'c'p'egu' qh
eqp'h'k'p'g'o g'p'v'x'k'q'r'v'g'f 'j' ku'cuugt'v'f 't'k' i j v'0'p'q'v'q' d'g'eqo r g'm'g'f
v'q' u'c'p'f " v'k'c'n' g'z'egr v' y j' g'p' c'd'ng' v'q' o' g'ep'k'p' i h'm'k'f " cuuk'v
eqwpugn'0' Q'h'eqwt'ug. " f w'g' r t'q'eguu' q'h'rcy " r t'q'j' k'k'u'v'j g'v'k'c'n'q'h
c'p' l'p'eqo r g'v'g'p'v'f ghgpf cpv'j' y q' ku'v'q' o' g'p'v'c'm'f " ko r c'k'g'f " cu'v'q
d'g' *1002 " w'p'c'd'ng'v'q' eqpu'w'v'c'v'k'p'c'm'f 'y kj 'eqwpugn' *Dusky

v. United States'*3; 82+'584' WU0624"]; 2' UE'v'09: : . '6' NGGf 04f
: 46_+ " q'f. " w'p'f' g't' 'vj g' E'c'r'k'k'q't'p'k'c' u'c'p'f' c't'f. " u'q' l'ko r c'k'g'f " cu'v'q' d'g
w'p'c'd'ng'v'q' o'cu'k'v'v'eqwpugn' l'p' " vj g' " eq'p'f' w'e'v' q'h'c' " f' gh'g'p'ug' " l'p' " c'
t'v'k'p'c'n' o' c'p'p'g't'0' " E' " 3589. " u'w'd'f' 0' " c' " 0' " F' gh'g'p'f' c'p'v' " j' q'y g'x'g't.
o' c'n'g'u' p'q' " c'w'g'o r v'v'q' " g'u'c'd'r'k'j " vj cv'j g' y cu' l'p'eqo r g'v'g'p'v'q
u'c'p'f " v'k'c'n'f' w'w'c'p'v'v'q' vj g' c'd'q'x'g' u'c'p'f' c't'f' u. " p'q't' f' q'g'u' j' g'cuugt'v
vj cv'eqwpugn'0' q'x'g'f' h'q't' c'p' g'z'c'o l'p'c'v'k'p' q'h'j' ku'eqo r g'v'g'p'e { . " q't
vj cv'vj g' v'k'c'n' e'q'w't'v' u'j' q'w'f " j' c'x'g' f' q'w'd'v'g'f " j' ku'eqo r g'v'g'p'e { " c'p'f
q't'f' g't'g'f " c'j' g'c't'k'p' " q'p' vj g' k'u'w'g'0' Ugg' E' " 358: = People'v. Davis,
supra, " 32' Ecrf'6j " cv'r' 0749 = People'v. Price, supra, " 3' Ecrf'6j
cv'r' 05; 8/5; 90+

U'q'o g'eqwt'v'j c'x'g' t'g'eq' i p'k' g'f. " l'p' " vj g' eq'p'v'g'z'v' q'h' e'k'k'k'k'k'k' i j w
c'v'k'p'u' d't'q'w' i v'd { " r t'g't'k'n'f' g'c'l'p'g'g'u. " vj cv'eg't'v'c'k'p' eq'p'f' k'k'q'p'u
q'h' eq'p'h'k'p'g'o g'p'v' o' c { " u'q' l'ko r c'k' " vj g' f' gh'g'p'f' c'p'v'u' c'd'k'k'k'f { " v'q
eq'o o' w'p'le'c'v'g' y kj " eq'w'p'u'g'n' q't' " q'j' g't'y k'g' " r c't'v'k'c'k' cv'g' " l'p' " vj g
f' gh'g'p'ug' " vj cv' c' " f' w'g' r t'q'eguu' x'k'q'r'v'k'p' " q't' " c'p' " l'p'h' l'p' i go g'p'v
q'h' vj g' t'k' i j v'v'q' " g'h'g'v'k'x'g' " cu'k'u'c'p'eg' q'h' eq'w'p'u'g'n' t'g'u'w'u'0' *Ugg
Johnson-El' v. Schoemel' * vj E'k'0' 3; ; + : 9: " H0f " 3265.
3273" j' q'd'ug't' x'k'p' " vj cv'r' t'g't'k'n'f' g'c'l'p'g'g'u' j' c'x'g' c' l'w'd'u'c'p'v'k'n'f' w'g
r t'q'eguu' l'p'v'g't'g'u'v' l'p' " g'h'g'v'k'x'g' eq'o o' w'p'le'c'v'k'p' y kj " eq'w'p'u'g'n' c'p'f
vj cv'k'h'v'j ku' l'p'v'g't'g'u'v' ku' t'g'u'r g'e'v'g'f " l'p'c'f' g's w'c'v'g'n'f. " vj g' h'c'k'p'g'u' q'h
v'k'c'n' o' c { " d'g' " eq'o r t'q'o k'g'f " = Campbell" v. McGruder" * F E0
E'k'0' 3; 9: + 7: 2" H0f " 743. " 753/754" j3: : " C'r'r' 0' E0' 47: _
j' u'c'v'k'p' " vj cv'eq'p'f' k'k'q'p'u' q'h' eq'p'h'k'p'g'o g'p'v' " c'r' c't'v' h'q'o " vj g' h'c'v
q'h' eq'p'h'k'p'g'o g'p'v' k'ug'h' " vj cv' l'ko r g'f' g' c' " f' gh'g'p'f' c'p'v'u' o' g'p'v'c'n'c'g't' v'p'g'u
c'v' v'k'c'n' c't'g' " o'eq'p'u'k'w'w'k'p'c'm'f " u'w'u'r' g'e'v'o' c'p'f " o' w'u'v' d'g' l'w'u'w'h'k'g'f
d { " eq'o r g'n'k'p' " p'g'eg'u'k'v' { = Jones" v. City and County of San
Francisco" * P 0' Ecrf'0'3; ; 9+; 98" H0w'r' 0' : ; 8. ; 35" j' r'e'n'f' q'h
r t'k'x'c'e { " h'q' " r' t'g't'k'n'f' g'c'l'p'g'g'u' " eq'p'u'w'v'c'v'k'p' y kj " eq'w'p'u'g'n' o' c {
l'ko r n'ec'v'g' h'q'w'v'g'g'p'v' " c'p'f " U'k'z'v' " C'o' g'p'f' o' g'p'v' k'h' c'v'q't'p'g { u
c'd'k'k'k'f { " c'f' g's w'c'v'g'n'f " v'q' " r' t'g'r' c't'g'c' " f' gh'g'p'ug' " ku' l'ko r c'k'g'f " = Dillard
v. Pitchess" * E 0' Ecrf'0'3; 97+'5; ; " H0w'r' 0' 3447. " 3458" j' u'ng'g'r
f' g'r' t'k'c'v'k'p' " f' w'g'v'q' " t'c'p'u'r' q't'v'c'v'k'p' " u'e'j' g'f' w'g' d'g'w' g'g'p' " l'c'k'k'c'p'f
e'q'w't'v' q'w'ug' " o' c { " x'k'q'r'v'g'f " f' w'g' r t'q'eguu' q'h' " r'y " d { " c'h'g'v'k'p' i
f' gh'g'p'f' c'p'v'u' c'd'k'k'k'f { " v'q' " cu'k'u'v' eq'w'p'u'g'n' 0' " Q'p' " vj g' " q'j' g't' " j' c'p'f.
eq'p'f' k'k'q'p'u' q'h' eq'p'h'k'p'g'o g'p'v' vj cv'j c'x'g' p'q'v' c'ew'c'm'f { " c'h'g'v'g'f
vj g' " f' gh'g'p'f' c'p'v' c'f' x'g't'ug'n'f { " c't'g' " p'q'v' i t'q'w'p'f' u' h'q' " t'g'x'g't'uc'n' q'h' c'
eq'p'x'v'k'p' = cu' y g' j' c'x'g' f' g'v'g't'o l'p'g'f. " c' " f' gh'g'p'f' c'p'v' y j' q' y cu
t'g'r' t'g'u'g'v'k'p' " j' ko u'g'n' j' cu' p'q' t'k' i j v'v'q' c' " eq'p'v'k'w'c'p'eg' " q'p' " vj g
i t'q'w'p'f' " j' g' j' c'f " p'q'v' t'g'eg'k'x'g'f " g'k' i v'j' q'w't'u' q'h' u'ng'g'r " vj g' p'k' i j v
d'g'h'q't'g' " vj g' r t'q'eg'g'f' l'p' i . " y j' g'p' p'q'v' k'j' u'c'p'f' l'p' i " vj ku' c'f' x'g't'ug
eq'p'f' k'k'q'p' q'h' eq'p'h'k'p'g'o g'p'v' vj g' t'g'eq't'f' l'p'f' l'ec'v'g'f' vj g' f' gh'g'p'f' c'p'v
y cu' c'y c'n'g' c'p'f " e'c'r' c'd'ng' q'h' r' c't'v'k'c'k' v'k'p' i " l'p' " vj g' r t'q'eg'g'f' l'p' i u0
* People'v. Smith" *3; : 7+'5: " Ecrf'6f " ; 67. ; 75" j' 438' Ecrf'r' u0
; ; . " 924" R0f' " 3: 2_ = ugg' cnuq' " People" v. Davis" *3; : 9+'3: ;
Ecrf'Cr' r 0f' " 3399. " 33; 9" j' 456' Ecrf'r' u0' : 7; _] p'q' l'p'f' l'ec'v'k'p'f
f' gh'g'p'f' c'p'v'u' r' g'h'q't'o c'p'eg' " cu' r' t'q' " ug' " eq'w'p'u'g'n' y cu' c'h'g'v'g'f

cf xgtugn d{ 'lungr f gr tkxcvqp_ f kucr r tqxgf 'qp'bpqj gt 'r qlpv
kp "People v. "Snow" *3; : 9+66 "Ecrf 438. "447" "464" "Ecrf r v0
699. "968" "R0f "674_0-

Vj g" tgeqt f "lp" vj g" r tguqpv" ecug" f qgu" pqv" kpf kecvg" vj cv' vj g
eqpf kkpqu'qh'f ghgpf cpv'u' eqphkpgog gpv'uq' kpvgtgtgf "y kj" j ku
cdkrk\ "v" eqo o wplecvg' y kj *1003 "eqwpugn'qt" cuukv'lp" vj g
f ghgpeg" cu" v" eqpukwvg" c" xkqv'vqp" qh'f ghgpf cpv'u' tki j u' v
f vg" r tqegu" qt" vj g" ghgpeg" cuukv'peg" qh' eqwpugn' Y g" ctg
r gtuwcf gf "vj cv'vj g' ekewo ucpegu" f gnetkdgf "d{ "f ghgpf cpv'j cf
pq" r tglw' lekcn' ghgpeg" qp" j ku" cdkrk\ "v" cuukv'lp" j ku' f ghgpeg
qt" qp" eqwpugn' cdkrk\ "v" f ghgpf "j ko O'Y kj "tgr gev" vj" vj g
eqpf kkpqu'qh'f ghgpf cpv'u' eqphkpgog gpv'dghqt g' vj g' g' xkf gpvkt {
r qt'vqp' qh' vj g' i wkn' r j cu' g' qh' vj g' v' tlcneqo o gpegf. 'k' ku' g' xkf gpv
eqwpugn' j cf "eqphgttgf" emugn' "y kj" f ghgpf cpv'vj tqwi j qw' vj g
r tqeggf kpi u0' Vj g' eqwv' y cu' u' r' ekv' q' u' t' gi ct' f kpi "f ghgpf cpv'u
eqo r r' k' p' u. 't' gs wgpv' "eqpvcv' kpi" l' c' k' w' j qt' k' ku' c' p' f "j q' f kpi
j gct' kpi u' v' q' c' w' go r v' v' q' t' gu' k' r' t' q' d' r' go u. 'c' p' f "t' f' g' t' kpi "v' cv' p' q
ugctej gu' qh' f ghgpf cpv'u' egm' d' g' eqpf w' v' g' f' z' e' g' r' v' h' q' t' u' g' e' w' t' k' v'
t' g' c' u' p' u' O' Cu' t' g' u' r' q' p' f' g' p' v' q' d' u' g' t' x' g' u. "p' q" o' c' v' g' t' k' n' q' d' u' g' t' x' g' f' "d{
uj g' t' k' h' u" f' g' r' w' k' u" f' w' t' kpi "c" u' g' c' t' e' j "q' h' f' ghgpf cpv'u' egm' y cu
k' p' v' q' f' w' e' g' f' "c' v' t' k' n' q' t' "w' u' g' f' "d{ "v' j" g' r' t' q' u' g' e' w' k' q' p' "v" f' g' x' g' m' r'
ku" ecug" ci c' k' p' u' v' j ko . "c' p' f "f' ghgpf cpv'u' cdkrk\ "v" c' k' "lp" j ku
f ghgpeg" y cu' p' q' v' ko r c' k' t' g' f' "d{ "v' j" g' m' u' u' q' h' c' p' { "e' t' k' e' c' n' i' r' e' i' c' n'
o' c' v' g' t' k' n' i' p' j" k' u' r' q' u' g' u' k' p' o' *U' g' g' "People v. Stansbury" *3; ; 5+
6" Ecrf vj "3239. "3269/326: "j39" Ecrf r v0 f "396.": 68" R0f
978_ "t' g' x' f' O' q' p' q' v' j' g' t' i' t' q' w' p' f' u" k' p' "Stansbury v. California
*3; ; 6+733" W0U 53: "j336" U' E' v' 3748. "34: "N' G' f' O' f' "4; 5_0-
F ghgpf cpv' k' p' e' w' t' g' f' "f' k' u' e' r' k' p' c' t' { "u' c' p' e' v' k' p' u" k' p' l' c' n' d' w' g' x' g' p'
f ghgpeg" eqwpugn' eqpegf gf "vj cv'f ghgpf cpv' p' g' g' f' gf "v' ko r t' q' x' g'
j ku' d' g' j' c' x' k' q' t' "k' p' q' t' f' g' t' "v' c' x' k' f' "u' w' e' j "u' c' p' e' v' k' p' u" k' p' v' j' g' h' w' w' i' g' O'
k' p' l' w' t' k' u' l' p' h' i' e' v' g' f' "d{ "q' v' g' t' k' p' o' c' v' g' u' y' g' t' g' o' k' p' q' t' "c' e' e' q' t' f' k' p' i' "v' q' c'
r j { u' e' k' c' p' y' j' q' "g' u' k' h' g' f' "c' v' c' j' g' c' t' k' p' i' "q' p' v' j' g' b' c' w' g' t. 'c' p' f' f' ghgpeg
eqwpugn' eqpegf gf "cu' o' w' e' j' O

O quv'ki p' h' i' e' c' p' v' n' f. 'c' u' p' q' v' g' f. 'v' j' g' e' q' o' o' g' p' v' q' h' f' ghgpeg' eqwpugn
c' p' f' q' h' f' ghgpf cpv'j ko u' g' r' i' q' p' v' j' g' g' x' g' q' h' v' j' g' g' x' k' f' g' p' v' k' t' { 't' q' t' v' q' p'
q' h' v' j' g' v' t' k' n' i' g' u' c' d' i' k' j' "e' r' g' c' t' n' f' "v' j' c' v' f' ghgpf cpv' y' cu' p' q' v' r' t' g' l' w' f' l' e' g' f'
d{ "c' f' x' g' t' u' g' e' k' e' w' o' u' c' p' e' g' u' q' h' e' q' p' h' k' p' g' o' g' p' v' d' w' q' p' v' j' g' e' q' p' v' t' c' t' {
j' c' f' "d' g' g' p' "c' d' r' g' "v' q' "c' v' n' g' "c' f' x' c' p' v' i' g' "q' h' "c' f' g' s' w' e' g' "q' r' r' q' t' w' p' k' l' e' u'
v' q' "c' u' u' k' v' "k' p' "j' k' u' "q' y' p' "f' ghgpeg' O' Y' j' g' p' "f' ghgpf cpv' o' c' f' g' "j' k' u'
u' g' e' q' p' f' "Faretta" o' q' v' k' p. "eqwpugn' cuugt' v' g' f' "v' j' c' v' f' ghgpf cpv' y' cu'
y' g' m' r' t' g' r' c' t' g' f' "c' p' f' "k' p' "c' i' q' q' f' "r' q' u' k' k' q' p' "v' q' "f' ghgpf "j' ko u' g' r' h'
y' k' j' q' w' c' p' { "e' q' p' v' k' w' c' p' e' g. "d' g' e' c' w' u' g' q' h' j' k' u' z' e' g' m' g' p' v' h' p' q' y' r' g' f' i' g'
q' h' v' j' g' "e' c' u' g' "c' p' f' "k' p' v' o' c' v' g' "h' c' o' k' r' i' c' t' k' v' { "y' k' j' "v' j' g' "r' e' i' c' n' i' k' u' u' g' u'
k' p' x' q' n' g' f' O' E' q' w' p' u' g' n' i' e' j' c' t' e' c' v' g' t' k' f' g' f' "f' ghgpf cpv' cu' o' g' o' k' p' g' p' v' n'
s' w' e' r' k' h' g' f' "O' v' j' j' c' p' f' n' g' "v' j' k' u' "e' c' u' g' o' p' q' v' k' p' i' "f' ghgpf cpv'u' r' t' k' t'
c' u' u' k' v' c' p' e' g' "v' q' "e' q' w' p' u' g' n' i' c' p' f' "e' q' p' e' n' f' k' p' i' "v' j' c' v' f' ghgpf cpv' n' p' g' y'
v' j' g' "e' c' u' g' "c' u' y' g' m' i' c' u' q' t' "r' g' t' j' c' r' u' d' g' w' g' t' "v' j' c' p' "e' q' w' p' u' g' n' i' E' q' w' p' u' g' n

u' c' v' g' f' "j' g' j' c' f' "i' k' x' g' p' f' g' h' g' p' f' c' p' v' v' j' g' "g' p' v' k' t' g' "e' c' u' g' "h' k' g. "c' p' f'
o' j' g' j' c' u' y' q' t' n' g' f' "v' j' g' "e' c' u' g. "c' p' f' "j' g' "n' p' q' u' y' v' j' g' "e' c' u' g' "x' g' t' {
x' g' t' { "y' g' n' O' J' "g' r' t' q' d' c' d' n' f' "n' p' q' y' u' v' j' k' u' "e' c' u' g' "d' g' w' g' t' "v' j' c' p' o' c' p' {
o' c' p' { "r' e' y' { g' t' u' y' q' w' f' "n' p' q' y' "k' w' k' v' j' g' { "y' g' t' g' t' g' r' t' g' u' g' p' v' k' p' i' "j' ko O'
Vj g' f' ghgpf cpv' j' cu' "O' d' g' g' p' "i' k' x' g' p' r' t' q' O' r' g' t' O' r' t' k' x' k' e' i' g' u. "v' q' q' m'
v' j' g' o' q' u' v' q' h' v' j' g' o' "c' p' f' "o' c' f' g' "v' j' g' o' q' u' v' q' h' v' j' g' o' O' "E' q' w' p' u' g' n'
t' g' h' g' t' g' f' "c' f' o' k' k' p' i' n' f' "v' q' c' p' c' p' c' n' f' u' k' u' f' g' h' g' p' f' c' p' v' j' c' f' "t' g' r' c' t' g' f' "q' h' c'
y' k' p' g' u' u' v' g' u' k' o' q' p' { . y' k' j' "e' k' e' v' k' p' u' v' q' v' j' g' t' g' e' q' t' f' "c' p' f' "h' q' v' p' q' v' g' u.
c' p' f' "q' d' u' g' t' x' g' f' "v' j' c' v' f' ghgpf cpv' j' c' f' "r' e' g' c' t' p' g' f' "t' t' q' o' "e' q' w' p' u' g' n' i' c' p' f'
v' j' g' r' t' q' u' e' w' a' q' t' u' b' o' q' v' k' p' u' j' q' y' "v' q' z' r' t' g' u' j' k' o' u' g' r' i' k' p' c' i' r' e' y' { g' t' n' f'
u' f' r' e' O' F' g' h' g' p' f' c' p' v' "v' q' q. "u' c' v' g' f' "c' v' v' j' k' u' j' g' c' t' k' p' i' "v' j' c' v' j' g' y' c' u' t' g' c' f' {
v' q' *1004 "r' t' q' e' g' g' f' "c' u' j' k' u' y' p' "e' q' w' p' u' g' n' i' q' p' v' j' g' x' g' t' { "f' c' { "q' h' j' k' u'
o' q' v' k' p. "y' k' j' q' w' c' p' { "e' q' p' v' k' w' c' p' e' g' O' F' g' h' g' p' f' c' p' v' c' u' u' g' t' v' g' f' "v' j' c' v' j' g'
y' c' u' y' g' m' i' r' t' g' r' c' t' g' f' "c' p' f' "c' u' n' p' q' y' r' e' f' i' g' c' d' r' g' "c' d' q' w' v' j' g' "e' c' u' g' "c' u'
e' q' w' p' u' g' n' "c' p' f' "e' q' w' p' u' g' n' i' c' u' u' g' t' v' g' f' "v' j' c' v' f' ghgpf cpv' j' c' f' "d' g' g' p' "x' g' t' {
j' g' r' h' w' i' k' p' "c' u' u' k' v' k' p' i' "v' q' "r' t' g' r' c' t' g' f' v' j' g' f' ghgpeg' O' Vj g' u' g' "u' c' v' g' o' g' p' u'
c' t' g' s' w' k' g' "k' p' e' q' p' u' k' v' g' p' v' y' k' j' "v' j' g' "e' q' p' v' g' p' v' k' p' i' v' j' c' v' v' j' g' "e' q' p' f' k' k' p' u'
q' h' f' ghgpf cpv'u' eqphkpgog gpv' u' w' d' u' c' p' v' k' e' m' f' "j' c' f' "k' o' r' c' k' t' g' f' "j' k' u'
c' d' k' r' k' \ "v' "c' u' u' k' v' "k' p' j' k' u' f' ghgpeg" q' t' j' k' u' c' d' k' r' k' \ "v' "e' q' o' o' w' p' l' e' c' v' g'
y' k' j' "e' q' w' p' u' g' n' O

Y kj 'tgr gev'v' u' d' u' g' s' w' g' p' v' t' t' q' e' g' g' f' k' p' i' u' f' w' t' k' p' i' "v' j' g' i' w' k' n' r' j' c' u' g'
q' h' v' j' g' v' t' k' n' i' v' j' g' t' g' e' q' t' f' "c' n' u' f' f' q' g' u' p' q' v' l' w' r' r' q' t' v' j' g' e' q' p' v' g' p' v' k' p' i' v' j' c' v'
v' j' g' "e' q' p' f' k' k' p' u' q' h' e' q' p' h' k' p' g' o' g' p' v' e' c' w' u' g' f' "f' ghgpf cpv' v' q' "d' g' "w' p' c' d' r' g'
v' q' "e' q' o' o' w' p' l' e' c' v' g' "c' f' g' s' w' e' v' n' f' "y' k' j' "e' q' w' p' u' g' n' i' q' t' "r' c' t' v' e' k' r' c' v' g' "k' p' v' j' g'
f' ghgpeg' O' Q' p' v' j' g' "e' q' p' v' t' c' t' { . "f' ghgpeg" eqwpugn' u' c' v' g' f' "c' v' x' c' t' k' q' w' u'
r' q' l' k' w' i' k' p' "v' j' g' "v' t' k' n' i' v' j' c' v' f' ghgpf cpv' j' c' f' "f' q' p' g' "c' "v' t' g' o' g' p' f' q' w' u'
c' o' q' w' p' v' q' h' y' q' t' n' i' q' p' v' j' g' "e' c' u' g' "c' p' f' "j' c' f' "d' g' g' p' "q' h' x' k' c' n' i' c' u' u' k' v' c' p' e' g'
v' q' "e' q' w' p' u' g' n' "c' p' f' "v' j' c' v' f' ghgpf cpv' c' p' f' "e' q' w' p' u' g' n' i' y' g' t' g' "k' p' "e' m' u' g'
e' q' o' o' w' p' l' e' c' v' k' p' O' Vj g' e' q' w' t' v' e' q' o' o' g' p' v' g' f' "v' j' c' v' j' g' "c' w' a' t' p' g' f' / "e' r' k' p' v'
t' g' r' v' k' p' u' j' k' r' "j' c' f' "d' g' g' p' "y' q' t' n' k' p' i' "y' g' m' i' c' p' f' "v' j' c' v' f' ghgpf cpv' c' p' f'
e' q' w' p' u' g' n' i' e' q' p' h' g' t' t' g' f' "t' g' i' w' r' e' t' n' f' O' Vj g' v' t' k' n' i' e' q' w' t' v' k' p' v' g' t' x' g' p' g' f' "y' k' j'
l' c' k' n' i' c' w' j' q' t' k' k' g' u' "v' q' "g' p' u' w' t' g' v' j' c' v' f' ghgpf cpv' y' q' w' f' "j' c' x' g' "c' e' e' g' u' u'
v' q' j' k' u' "r' e' i' c' n' i' o' c' v' g' t' k' n' i' . "c' p' f' "c' n' u' q' "e' q' p' v' c' e' v' g' f' "l' c' k' n' i' c' w' j' q' t' k' k' e' u' "v' q'
c' t' t' c' p' i' g' "v' q' v' j' g' z' v' g' p' v' r' q' u' i' k' d' r' g. "v' j' c' v' f' k' u' e' k' r' k' p' g' h' q' t' "f' ghgpf cpv'u'
l' c' k' n' i' p' h' t' c' e' v' k' p' u' y' q' w' f' "p' q' v' k' p' v' g' t' g' t' y' k' j' "f' ghgpf cpv'u' c' d' k' r' k' \ "v' q'
r' c' t' v' e' k' r' c' v' g' "k' p' v' j' g' r' t' q' e' g' g' f' k' p' i' u' d' { "r' e' g' c' x' k' p' i' "j' ko "v' q' j' w' p' i' t' { "q' t'
v' t' g' f' O' Vj g' "e' q' w' t' v' t' g' e' g' u' g' f' "g' c' t' n' f' "v' q' "c' e' e' q' o' o' q' f' c' v' g' "f' ghgpf cpv'u'
p' g' g' f' "v' q' "e' q' p' u' w' t' "j' k' u' "h' k' g' u. "c' p' f' "k' p' x' k' g' f' "e' q' w' p' u' g' n' i' v' q' "t' g' e' c' m'
c' "y' k' p' g' u' u' "e' q' p' e' g' t' p' k' p' i' "y' j' q' o' "f' ghgpf cpv' "e' r' e' k' o' g' f' "v' q' "j' c' x' g'
d' g' g' p' "w' p' r' t' g' r' c' t' g' f' "v' q' "c' u' u' k' v' "h' q' t' o' w' e' v' k' p' i' "e' t' q' u' u' / g' z' c' o' k' p' c' v' k' p' O'
Vj g' "e' q' w' t' v' e' q' o' o' g' p' v' g' f' . "j' q' y' g' x' g' t. "v' j' c' v' k' u' c' d' k' r' k' \ "v' q' "k' p' v' g' t' x' g' p' g'
y' c' u' "r' i' k' o' k' g' f' "k' p' "r' c' t' v' d' g' e' c' w' u' g' "f' ghgpf cpv' d' t' q' w' i' v' j' v' t' g' u' t' k' e' v' k' g'
f' k' u' e' k' r' k' p' g' q' p' j' ko u' g' r' i' v' j' t' q' w' i' j' "e' q' o' d' c' v' k' g' "d' g' j' c' x' k' q' t' "k' p' l' c' k' O

F k' h' i' e' w' n' k' u' y' k' j' "tgr gev' v' q' "f' ghgpf cpv'u' v' c' p' u' r' q' t' v' k' p' u' e' j' g' f' w' g' "c' p' f' "y' k' j' "u' j' c' e' m' i' k' p' i' "k' p' v' j' g' j' q' r' f' k' p' i' "e' g' m' i' r' t' k' t' "v' q' "e' q' w' t' v'
r' t' q' e' g' g' f' k' p' i' u' t' g' e' w' t' g' f' "r' g' t' k' f' k' e' c' m' f' . "c' p' f' "v' j' g' "e' q' w' t' v' t' g' u' r' q' p' f' g' f' "v' q'
g' c' e' j' "q' h' f' ghgpf cpv'u' e' q' o' r' r' e' k' p' u' d' { "e' q' p' v' c' e' v' k' p' i' "v' j' g' t' g' u' r' q' p' u' k' d' r' g

uj gtktu" f gr ctvo gpv' r gtuqppgn' qt" dcktkh' kp" cp" ghqtv' vq
co grtkctvg" vj g' ukwcvkqp" d{ "ugewtkpi "f ghgpf cpv' c" r mceg" qp
cp" gctrktg" dwu" qt" gpuwtkpi "vj cv' j ku" y tkkpi "j cpf" tgo clpgf
wpuj cemgf "kp" vj g' j qrf kpi "egm' Cn' j qwi j "vj gug" ghqtu" y gte
pqv' c' u' uweegulm' y g' bqvg' vj cv' xgp' f ghgpg' eqwpugn' tgy
y gct { "qh' f ghgpf cpv' u' eqo r rckpw' cpf' ej cvkugf "f ghgpf cpv' hqt
lckkpi "vq" tgeqi pk' g' vj cv' vj g' eqwtv' j cf "f qpg" gxtg { vj kpi "kp
ku" r qy gt "vq" co grtkctvg" vj g' eqpf kkp' u' qh' j ku' eqphkgo gpv'
Vj g' eqwtv' ucvgf "kv' j cf "eqpvcvgf "vj g' lckl' qp" gxtg { "qecukqp
y j gp' f ghgpf cpv' eqo r rckpgf "qh' t' gwtpkpi "r' v' v' j' ku' egm' l' t' qo
eqwtv' "cpf" pgct "vj g' eqpenwkqp" qh' vj g' r tqeggf kpi u' f ghgpg
eqwpugn' ucvgf "vj cv' f ghgpf cpv' u' t' cpur qt' v' kqp" r tqdrgo u' j cf
dggp' cwpgf gf "vq" cpf "vj cv' r tqdrgo u' t' grv' kpi "vq" eqpf kkp' u'
qh' eqphkgo gpv' y gte' dgkpi "v' n' gp' ectg' qh' cu' vj g' { "eco g' v' r 0
*1005

Eqpegtpu" tgi ctf kpi " r tkcvg" ur ceg" hqt" cwqtpg { /erkgpv
k' v' t' x' l' y u' y gte' t' gu' k' g' f "ur g' g' k' k' . "cpf "u' d' u' c' p' v' k' n' c' v' w' q' t' p' g' { /
erkgpv' eqpvcvg' cu' g' pu' w' t' g' f 0Vj g' eqwtv' b' q' v' g' f vj cv' f ghgpf cpv' b' p' f
eqwpugn' eqphgt' t' g' f "tgi w' c' t' n' k' p' vj g' eqwtv' q' qo "kp" vj g' o q' t' p' k' i
cpf "cv' t' g' e' g' u' . "cpf "f ghgpf cpv' ucvgf "j g' j cf "dggp' eqphgt' k' p' i
y k' j "eqwpugn' y q' t' vj tgg' v' k' o gu' c' f c { "ukpeg' vj g' v' t' k' n' d' e' i' cp 0
F ghgpf cpv' u' ucvg' o gpw' v' q' vj g' eqwtv' t' g' i' c' t' f' k' p' i "eqpf kkp' u' qh'
eqphkgo gpv' y gte' eqj gte' gpv' b' p' f "g' x' g' p' k' p' e' k' u' k' g' . "f go q' p' u' t' v' k' p' i
p' q' u' k' i p' qh' o gpv' n' eqphwkqp 0F ghgpf cpv' b' p' f "eqwpugn' c' i' t' g' g' f
vj cv' f ghgpf cpv' j cf "dggp' c' d' n' g' v' q' t' r' g' t' g' c' f' c' k' n' { "c' p' n' { "u' k' u' qh' vj g'
r tqeggf kpi u' y k' j "u' w' i' g' u' n' g' f "s' w' g' u' k' p' u' h' q' t' "eqwpugn' v' q' v' u' g' "k' p'
g' z' c' o' k' p' k' p' i "y' k' p' g' u' g' u' 0

Cu' pqvgf . "eqwpugn' o cf g' p' q' "erko "f v' t' k' p' i "v' j' ku' r' g' t' k' q' f "v' j' cv
vj g' cumulative" d' w' t' f' g' p' qh' c' f' x' e' t' u' g' eqpf kkp' u' qh' eqphkgo gpv'
eqpukwgf "c" U' k' z' vj "q' t' "H' q' w' t' v' g' g' p' j "C' o' g' p' f' o' g' p' v' x' l' q' r' v' k' p' . "p' q' t'
f' k' j "g' o' c' n' g' "c' o' q' v' k' p' "h' q' t' o' k' u' t' k' r' i' p' v' j' ku' d' c' u' k' o' P' q' "c' d' w' u' g' qh'
f' k' u' e' t' g' v' k' p' "c' r' r' g' c' t' u' "k' p' vj g' v' t' k' n' e' q' w' t' v' u' j' c' p' f' r' k' p' i "qh' f' ghgpf cpv' u'
eqo r rckpw' . "p' q' t' "f' q' u' v' j' g' t' e' q' t' f' "q' p' "c' r' r' g' e' n' f' g' o' q' p' u' t' v' g' vj cv'
f ghgpf cpv' y cu' w' p' c' d' n' g' v' q' r' c' t' v' e' k' r' c' v' g' "k' p' vj g' r' tqeggf kpi u' q' t'
eqphgt' "c' r' r' t' q' r' t' k' v' n' g' n' y' k' j "eqwpugn' q' t' vj cv' j' ku' c' d' k' k' v' { "v' q' "c' u' u' k' v'
k' p' j' ku' f' ghgpg' y' cu' k' o' r' c' k' t' g' f' "w' p' e' q' p' u' k' w' k' p' c' m' { 0

Y kj "t' g' u' r' g' e' v' v' q' "f' ghgpf cpv' u' "eqpvcvgf" vj cv' j' g' u' w' t' g' t' g' f "c
x' l' q' r' v' k' p' qh' j' k' u' t' k' i' j' v' v' q' "d' g' r' t' g' u' g' p' v' c' v' t' k' n' y' g' q' d' u' g' t' x' g' vj cv'
g' z' e' g' r' v' j' g' p' j' g' e' j' q' u' g' v' q' c' d' u' g' p' v' j' k' o' u' g' h' "h' t' q' o' "v' j' g' v' t' k' n' c' p' f'
t' g' o' c' l' p' "k' p' vj g' j' q' r' f' k' p' i "c' p' m' f' ghgpf cpv' y' cu' r' t' g' u' g' p' v' c' v' t' k' n'
r' t' q' e' g' g' f' k' p' i' u' vj cv' r' u' e' u' g' f' "h' q' t' "o' c' p' { "o' q' p' v' u' c' p' f' "k' p' y' j' k' e' j' "j' g'
e' r' g' e' t' n' g' "y' cu' c' d' n' g' v' q' "c' u' u' k' v' e' q' w' p' u' g' n' k' p' "o' q' w' v' k' p' i "c' x' l' i' q' t' q' u' w'
f' ghgpg' 0H' w' t' g' t' . "f' ghgpf cpv' f' q' u' v' p' q' v' t' g' h' t' "v' q' c' p' { "c' w' j' q' t' k' v'
g' u' c' d' r' i' k' j' k' p' i "k' p' y' j' cv' t' g' u' r' g' e' v' c' o' g' p' v' c' m' { "e' q' o' r' g' v' g' p' v' f' ghgpf cpv'
j' cu' c' h' w' t' vj g' t' t' k' i' j' v' v' q' "d' g' o' g' p' v' c' m' { "r' t' g' u' g' p' v' c' v' j' g' r' t' q' e' g' g' f' k' p' i' u' 0
Y g' p' q' v' g' vj cv' v' t' k' n' e' q' w' p' u' g' n' f' k' f' "p' q' v' c' u' u' g' t' v' v' j' cv' f' ghgpf cpv' y' cu'

l' p' e' q' o' r' g' v' g' p' v' q' "u' c' p' f' "v' t' k' n' o' f' g' h' g' p' f' c' p' v' y' c' u' p' q' v' k' p' vj g' r' q' u' k' k' q' p'
q' h' c' r' g' t' u' q' p' y' j' q' u' g' r' j' { u' k' e' c' n' f' k' u' c' d' k' k' v' . "u' w' e' j' "c' u' f' g' c' h' p' g' u' u' "k' u'
u' w' e' j' "c' u' v' q' k' o' r' q' u' g' w' r' q' p' vj g' e' q' w' t' v' j' g' f' w' f' "v' q' b' o' c' n' g' t' g' c' u' q' p' c' d' n' g'
r' t' q' x' k' u' k' p' u' v' q' c' k' f' vj g' f' ghgpf cpv' u' q' c' u' v' q' g' p' u' w' t' g' vj cv' j' ku' q' t' j' g' t'
r' t' g' u' g' p' e' g' c' v' v' t' k' n' i' k' u' b' o' g' c' p' k' p' i' h' w' o' "U' g' g' . "g' d' 0 "People v. Freeman
*3; 6-: "E' c' i' f' 6' vj "672. '69: /69; "J56' E' c' i' f' r' v' t' o' f' 77: .: : 4 "R' o' f'
46; . "53" C' O' N' O' T' 0' vj " : : : "] p' q' v' k' p' i " f' w' f' " q' h' e' q' w' t' v' v' q' " r' t' q' x' k' f' g'
t' g' c' u' q' p' c' d' n' g' "h' e' k' k' k' l' g' u' h' q' t' " c' j' g' e' t' k' p' i " k' o' r' c' k' t' g' f' " f' ghgpf cpv' o' " C' u'
y' g' j' c' x' g' q' d' u' g' t' x' g' f' . " o'] g' x' g' p' v' q' v' c' i' r' j' { u' k' e' c' n' c' d' u' g' p' e' g' " h' t' q' o' " c'
j' g' e' t' k' p' i " k' u' p' q' v' t' g' x' t' u' k' d' n' g' w' p' r' g' u' u' vj g' f' ghgpf cpv' u' r' t' g' u' g' p' e' g'
d' g' e' t' u' c' t' g' c' u' q' p' c' d' n' g' " u' w' d' u' c' p' v' k' n' t' g' r' v' k' p' v' q' vj g' h' w' m' p' g' u' u' qh' vj g'
f' ghgpf cpv' u' q' r' r' q' t' w' p' k' v' " v' q' f' ghgpf " c' i' c' k' p' u' v' j' g' e' j' c' t' i' g' u' 0 " * I d .
c' v' r' 0' 69; = u' g' g' c' n' u' q' " People v. Medina " * 3; ; 2- " 73 " E' c' i' f' 6' f' : 92.
; 24; 25 " J496 " E' c' i' f' r' v' t' o' : 6; . " 9; ; " R' o' f' " 34: 4 . " c' h' f' 0' s' u' b' n' o' m .
Medina v. " California " * 3; ; 4- " 727 " W' L' U' 659 " J334 " U' E' : 04794.
342 " N' G' f' 0' f' 575 _] p' q' v' k' p' i ' b' c' p' { " e' c' u' g' u' k' p' y' j' k' e' j' vj g' f' ghgpf cpv' u'
c' d' u' g' p' e' g' h' t' q' o' ' e' g' t' v' c' k' p' r' t' q' e' g' g' f' k' p' i' u' y' c' u' f' g' g' o' g' f' " p' q' p' r' t' g' l' w' f' k' e' k' n'
k' p' h' i' j' v' q' h' vj g' f' ghgpf cpv' u' q' x' g' t' c' m' c' d' k' k' v' { " v' q' f' ghgpf " c' i' c' k' p' u' v' j' g'
e' j' c' t' i' g' 0 " k' p' c' p' { " g' x' g' p' v' c' u' y' g' " * 1006 " j' c' x' g' f' g' o' q' p' u' t' v' c' v' g' f' . " vj g'
t' g' e' q' t' f' " q' u' v' b' q' v' i' w' r' r' q' t' v' f' ghgpf cpv' u' e' q' w' p' v' k' p' vj cv' j' g' y' c' u' b' p' q' v'
o' o' g' p' v' c' m' { " r' t' g' u' g' p' v' o' c' v' j' k' u' v' t' k' n' 44

44 Vq" vj g' g' z' v' g' p' v' f' ghgpf cpv' eqpvcvgf u' vj cv' vj g'
eqpf kkp' u' qh' j' ku' eqphkgo gpv' eqpukwgf "c' f' gpken
qh' hwpf co gpv' n' f' v' g' r' t' q' e' g' u' u' qh' r' e' y' " k' p' vj cv' vj g' {
eqpukwgf " r' w' p' k' u' j' o' g' p' v' k' p' c' f' x' c' p' e' g' qh' l' w' f' i' o' g' p' v'
* u' g' g' " Bellv. Wolfish " * 3; 9; + " 663 " W' L' U' 742. " 756.
769/76: "] ; ; " U' E' v' 0' 3: 83. " 3: 93. " 3: 9: /3: 9; . " 82
N' G' f' 0' f' " 669 _ + " y' g' p' q' v' g' vj cv' c' v' t' k' n' e' q' w' t' v' r' t' q' r' g' t' n' g'
f' g' h' g' t' u' v' q' " c' i' t' g' c' v' g' z' v' g' p' v' v' q' vj g' l' w' f' i' o' g' p' v' qh' l' c' k' n'
c' w' j' q' t' k' l' g' u' t' g' i' c' t' f' k' p' i " vj g' eqpf kkp' u' qh' c' r' t' g' v' t' k' n'
f' g' v' c' l' p' g' g' u' " eqphkgo gpv' 0 * I d . " c' v' r' r' 0' 762. " h' p' 0' 45.
769/76: "] ; ; " U' E' v' 0' c' v' r' r' 0' 3: 97. " 3: 9: /3: 9; _ 0-
Vj g' eqwtv' i' g' p' g' t' c' m' { " f' g' h' g' t' u' v' q' u' w' e' j' " c' w' j' q' t' k' l' g' u'
t' g' i' c' t' f' k' p' i " t' g' u' t' c' l' p' u' " q' p' vj g' f' ghgpf cpv' u' h' d' g' t' v'
k' h' vj g' u' g' t' g' u' t' c' l' p' u' c' t' g' t' g' c' u' q' p' c' d' n' g' t' g' r' v' g' f' " v' q' " c'
n' e' i' k' l' o' c' v' g' i' q' x' g' t' p' o' g' p' v' r' w' r' q' u' g' / u' w' e' j' " c' u' v' q' g' p' u' w' t' g'
v' j' g' f' ghgpf cpv' u' r' t' g' u' g' p' e' g' v' c' v' t' k' n' i' q' t' " v' q' " o' g' v'
k' p' u' k' w' w' k' p' c' n' i' g' e' w' t' k' v' { " p' g' g' f' u' c' p' f' vj g' p' g' g' f' h' q' t' k' p' v' t' p' c' n'
q' t' f' g' t' c' p' f' " f' k' u' e' k' r' i' k' p' g' " * I d . " c' v' r' r' 0' 758/762. " 769/76:
] ; ; " U' E' v' 0' c' v' r' r' 0' 3: 94/3: 96. " 3: 9: /3: 9; _ + w' p' r' g' u' u'
v' j' g' t' g' k' u' u' w' d' u' c' p' v' k' n' i' g' x' l' f' g' p' e' g' " k' p' vj g' t' g' e' q' t' f' " v' q'
k' p' f' l' e' c' v' g' vj cv' u' w' e' j' " eqpf kkp' u' k' o' r' q' u' g' t' g' u' t' c' l' p' u'
v' j' cv' c' t' g' g' z' e' g' u' k' x' g' t' g' r' v' k' x' g' v' q' vj g' n' e' i' k' l' o' c' v' g'
i' q' x' g' t' p' o' g' p' v' c' n' i' r' w' r' q' u' g' 0 * I d . " c' v' r' 0' 76: "] ; ; " U' E' v' 0'
c' v' r' 0' 3: 9; _ 0- " Vj g' t' g' e' q' t' f' " u' w' i' g' u' w' u' t' q' p' i' n' g' " vj cv'
v' j' g' eqpf kkp' u' k' o' r' q' u' g' f' w' r' q' p' f' ghgpf cpv' t' g' r' v' g' f' v' q'
n' e' i' k' l' o' c' v' g' i' q' x' g' t' p' o' g' p' v' c' n' i' r' w' r' q' u' g' . " c' p' f' k' p' c' p' { " g' x' g' p' v'
j' k' u' e' r' k' o' " j' c' u' r' k' w' g' v' q' f' q' y' k' j' vj g' x' c' r' i' f' k' v' { " qh' vj g'

lwf i o gpv'gpvgtgf "ci kpuv'j ko "kh'j ku'tki j v'vq" c"hc k
v'kriqvj gty kug'y cu'qudugt'xgf 0

15. Testimony of Arvie Carroll

*55c+ F ghgpf cpv' eqpvpgf u" Ctxlg" Ecttqm) vgu ko qp {
tgeqwpvki "f ghgpf cpvu'lckj qwug'cf o kuukqp"vj cv'j g'o wtf gtgf
F gyevkxg"Y krko u'y cu'cf o kvgf "kp"xlqrkvqp"qh'f ghgpf cpvu
Ukz vj "Co gpf o gpv'tki j v'vq"eqwpugr0*Ugg"Massiah"v. United
States"3; 86+599"WO0423."427": 6"UE v033; ; "3424/3425.
34" NCGf 04f " 468_0" Kp" cf f kkkp." f ghgpf cpv' eqpvpgf u" vj g
vguko qp { "y cu'vq" wptgrkdng"v"ucvuh { "o kpo wo "f go cpf u
qh'f wg" r tqegu" qh' r y . " vj cv' k' y cu' o qtg" r tglw' lckri' vj cp
r tqdckxg"cpf "vj gtgd { "r tqr gtn { "uwdlgev"v" gzenwukp" wpf gt
Gxkf gpeg"Eqf g"ugevqp"574."cpf "vj cv'k'y cu'v'j g'r tqf wev'qh
o" ucvg/qtej gmtcvgf "kphqto cpv'uej go g"y j lej . "r tqugewqtu
mpgy . "y cu'rkngn { "v"i gpgtcvg"r gtlw { "cpf "xlqrkv" f ghgpf cpvu
Ukz vj "Co gpf o gpv'tki j v'vq" Hkpcn { "f ghgpf cpv'eqpvpgf u" vj g
v'kriqv'v'gtgf "d { "f gp { kpi "j ko "cp" g'xkf gpvkt { "j gctkpi "qp" j ku
o qv'kqp"v" gzenw' g'v'j g'vguko qp { "qh'v'j ku'y kpguu0

Eqpvct { "v" f ghgpf cpvu' eqpvpgv'kqp. "vj g" v'kri' eqwv' f kf "pqv
f gp { "f ghgpf cpv' cp" g'xkf gpvkt { "j gctkpi "qp" j ku' o qv'kqp" v
gzenw' g'v'j g'vguko qp { "qh' Ctxlg" Ecttqm) Vj g' tgeqtf "gucdrkuj gu
vj cv' f ghgpf cpv' hkgf "c" o qv'kqp" v" gzenw' g'v'j g'vguko qp { "qh
cm'lckj qwug" kphqto cpvu' cpf "hqt" cp" g'xkf gpvkt { "j gctkpi . "dw
vj cv' y j gp" vj g" eqwv' ecngf "vj g" o qv'kqp" hqt" j gctkpi . "eqwpugn
uwo kvgf "vj g' o cvgt' qp" vj g' r rcf kpi u0Vj g' g' ku' pq' uwi i gukqp
vj cv' eqwpugn' ukn' f guk' gf "cp" g'xkf gpvkt { "j gctkpi "qt" vj cv' vj g
eqwv' tglgevgf "c" f go cpf "hqt" uwej "c" j gctkpi 0

Kp" cf f kkkp. "vj g" o qv'kqp" f kf "pqv' eqpvpgf " rtko ctkn { "vj cv' vj g
vguko qp { "qh' vj g" kphqto cpvu' u'j qwf " dg" gzenw' gf " dgecwug
qh' cp { "xlqrkvqp" qh' f ghgpf cpvu' Ukz vj "Co gpf o gpv'tki j v'vq
eqwpugn0Kpf g'gf . "vj g" o qv'kqp" tghgtgf "v" uwej "c" erko "qpn { "kp
c" hq'v'v'v'v' vj cv' ucvgv' <0Vj g' g' ku' uqo g' kpf lecvkqp" vj cv' egtv' k
kphqto gtu' o c { "j cxg" cev'gf "cu" cp" ci gpv' qh' vj g" r r' kreg" cv' vj g
vko g' qh' vj g' f ghgpf cpvu' *1007 "cngi gf "ucvgo gpw0Kc' v' vj g
g'xkf gpvkt { "j gctkpi "k' ku' f v'v'v'v' kpgf " vj cv' vj ku' ku' vj g" ecug.
f ghgpf cpv'v' kno qxg' v' f ku' ku' hqt' xlqrkvqp" qh' vj g' f ghgpf cpvu
Ukz vj "Co gpf o gpv'tki j v'vq" eqwpugn0Tcvj gt. " vj g" o qv'kqp
eqpvpgf gf "vj cv'vguko qp { "qh'lckj qwug" kphqto cpvu' u'j qwf " dg
gzenw' gf "qp" vj g' i tqwpf "vj cv' uwej "kphqto cpv'vguko qp { "oku' uq
k'j g' g' w' "wptgrkdng" vj cv' k' ecppqv' eqpukwkwqpcn { "uwr r qtv
c" ecr kcn' o wtf gt "xgtf lev' qt" f gcvj "ugpv'peg" = cpf " vj cv' uwej
kphqto gt' v'vguko qp { "ku' uq' r tglw' lckri' vj cv' w' p' gt "Gxkf gpeg" Eqf g
Jugevqp_574" cp { " r tqdckxg' xcnw' ku' uducpv' km { "qwy gli j gf
d { "ku' r tglw' lckri' ko r cev'0

Kp' cf f kkkp" v' tghgtt kpi "v' vj g' cuugtvgf' k'j g' gpv' wptgrkdng { "qh
kphqto cpv'vguko qp { . "vj g" o qv'kqp" ucvgf . "y k'j qw' tghgtgpeg" v
vguko qp' k' r' t' f qewo gpvct { "g'xkf gpeg. "vj cv' vj g' h' ceu' eqpv' k' p' g' f
k' " vj g" kphqto cpvu' ucvg' o gpw' y g' g' r' w' r' k' n' p' q' y' r' f' i' g' . " cpf
o' vj g' u' g' k' p' h' q' t' o' g' t' u' j' c' x' g' " c' j' k' u' q' t' { " q' h' u' g' n' k' p' i' " v' g' u' k' o' q' p' { " v' q' " v' j' g'
r' q' r' e' g' " k' p' " q' t' f' g' t' " v' q' " g' x' c' f' g' " r' t' q' u' g' e' w' k' q' p' " q' p' " v' j' g' k' t' " q' y' p' " e' t' k' o' k' p' c' n'
e' j' c' t' i' g' u' " q' t' " v' q' " q' d' v' k' p' " c' " d' g' w' g' t' " f' g' c' n' U' q' o' g' " q' h' " v' j' g' " k' p' h' q' t' o' g' t' u'
j' c' x' g' " c' " t' g' r' w' e' v' k' q' p' " h' q' t' " w' p' v' w' j' h' w' p' g' u' U' q' o' g' " q' h' " v' j' g' " k' p' h' q' t' o' g' t' u'
k' p' h' q' t' o' c' v' k' p' " j' c' u' " d' g' g' p' " t' g' h' w' g' f' " d { " q' v' j' g' t' " l' c' k' j' q' w' u' g' " k' p' o' c' v' g' u' 0
Kp" eqpenwukp. " vj g" o qv'kqp" ucvgf " vj cv' v' vj g" g'xkf gpvkt {
j gctkpi . " r' c' t' v' e' w' r' c' t' " e' k' e' w' o' u' c' p' e' g' u' " u' j' q' y' k' p' i' " v' j' g' " w' p' t' g' r' k' d' n' k' k' {
q' h' " v' j' g' " k' p' h' q' t' o' g' t' u' " k' p' " v' j' g' " r' t' g' u' g' p' v' e' c' u' g' " y' q' w' f' " d' g' " u' j' q' y' p' 0 C' v'
v' j' g' j' g' c' t' k' p' i' . " j' q' y' g' x' g' t' . " f' g' h' g' p' f' c' p' v' r' t' g' u' g' p' v' g' f' " p' q' " g' x' k' f' g' p' e' g' " c' p' f'
f' k' " p' q' v' e' q' p' v' g' p' f' " v' j' c' v' p' { " U' k' z' v' j' " C' o' g' p' f' o' g' p' v' x' l' q' r' k' v' q' p' " j' c' f'
q' e' e' w' t' g' f' 0

Cuuwo kpi .y k'j qw'f gekf kpi . "vj cv'j ku'Ukz vj "Co gpf o gpv'kuwug
o c { "p'q'p'g'v' g'rgu' d'g' t'ckugf "q'p' er r gcn' y' g' h'k'p' k'v'q' d'x'k'w'v' vj cv'
f ghgpf cpv' h'k'g'f "v" e'ctt { "j ku' d'w'f gp" qh' f go qp' u' t' v' k' p' i' " u' e' j'
c" x' l' q' r' k' v' q' p' " c' v' v' j' g' j' g' c' t' k' p' i' " q' p' " v' j' g' o' q' v' k' p' 0 Kp' q' t' f' g' t' " v' q' " o' c' n' g'
q' w' f' v' j' g' " U' k' z' v' j' " C' o' g' p' f' o' g' p' v' e' r' k' o' . " f' g' h' g' p' f' c' p' v' j' c' f' " v' j' g' d' w' t' f' g' p'
q' h' o' f' g' o' q' p' u' t' v' k' p' i' _ " v' j' c' v' v' j' g' r' q' r' e' g' " c' p' f' " v' j' g' k' t' " k' p' h' q' t' o' c' p' v' v' q' q' m'
u' q' o' g' c' e' v' k' p' . " d' g' { q' p' f' " o' g' t' g' n' { " r' k' u' g' p' k' p' i' . " v' j' c' v' y' c' u' f' g' u' k' i' p' g' f'
f' g' r' i' d' g' t' c' v' g' n' { " v' q' " g' r' e' k' s' " k' p' e' t' k' o' k' p' c' v' k' p' i' " t' g' o' c' t' m' u' 0 *Kuhlmann" v.
Wilson" 3; : 8+ 699" WO0658." 67; " J328" UE v04838." 4852.
; 3" NCGf 04f " 586_0" F ghgpf cpv' o cf g' p' q' " c' w' g' o' r' v' v' q' " o' g' g' v' v' j' k' u'
d' w' t' f' g' p' " k' p' " v' j' g' v' k' r' i' e' q' w' v' 0 F ghgpf cpvu' t' g' h' g' t' g' p' e' g' u' " q' p' " e' r' r' g' c' n'
v' q' " v' j' g' " v' t' c' p' u' e' t' k' v' " q' h' " v' j' g' " i' t' c' p' f' " l' w' t' { " t' g' r' q' t' v' t' g' i' c' t' f' k' p' i' " v' j' g' " w' u' g'
q' h' " k' p' o' c' v' g' u' " v' q' " u' g' e' w' t' " k' p' e' t' k' o' k' p' c' v' k' p' i' " u' c' v' g' o' g' p' w' " h' t' q' o' " r' g' t' u' p' p' u'
t' g' r' t' g' u' g' p' v' g' f' " d { " e' q' w' p' u' g' n' " c' t' g' " w' p' c' x' c' k' i' p' i' 0 Vj ku' t' g' e' q' t' f' " y' c' u' " p' q' v'
d' g' h' q' t' g' " v' j' g' " v' k' r' i' e' q' w' v' . " c' p' f' " y' g' " j' c' x' g' " f' g' e' r' k' p' g' f' " f' g' h' g' p' f' c' p' v' u'
t' g' s' w' g' u' v' v' j' c' v' y' g' " c' n' g' " l' w' f' l' e' k' r' i' p' q' v' e' g' " q' h' " k' o' Vj g' t' g' e' q' t' f' " d' g' h' q' t' g'
v' j' g' " v' t' k' r' i' e' q' w' v' f' k' f' " p' q' v' u' w' r' q' t' v' f' g' h' g' p' f' c' p' v' u' " e' q' p' v' g' p' v' k' p' " v' j' c' v' j' k' u'
u' c' v' g' o' g' p' v' v' q' " C' t' x' l' g' " E' c' t' t' q' m' i' y' c' u' " c' n' g' p' " k' p' " x' l' q' r' k' v' q' p' " q' h' j' k' u' " U' k' z' v' j'
C' o' g' p' f' o' g' p' v' t' k' i' j' v' v' q' " e' q' w' p' u' g' n' " c' p' f' " y' g' t' g' l' g' e' v' j' k' u' " e' q' p' v' g' p' v' k' p' " v' j' c' v'
v' j' g' " v' t' k' r' i' e' q' w' v' g' t' g' f' " k' p' " f' g' p' { k' p' i' " v' j' g' o' q' v' k' p' " q' p' " v' j' c' v' i' t' q' w' p' f' 0⁴⁵

45 F ghgpf cpvu' tgrkpeg" wr qp" g'xkf gpeg" r t'gugp'v'g'f
f' w' k' p' i' " v' j' g' " g' x' k' f' g' p' v' k' t' { " r' q' t' v' k' p' " q' h' " v' j' g' " v' k' r' i' e' k' u'
w' p' c' x' c' k' i' p' i' 0 J' g' " u' w' i' i' g' u' w' " v' j' c' v' v' k' r' i' e' t' g' h' g' t' g' p' e' g' u' " v' q'
E' c' t' t' q' m' i' y' g' h' h' q' t' u' " v' q' " e' q' p' c' e' v' l' e' k' n' c' w' j' q' t' k' l' e' u' . " c' n' p' i'
y' k' j' " k' p' h' g' t' g' p' e' g' u' f' t' c' y' p' " h' t' q' o' " v' j' g' " i' t' c' p' f' " l' w' t' { " t' g' r' q' t' v'
y' k' j' " t' g' u' r' g' e' v' " v' q' " l' c' k' i' c' w' j' q' t' k' l' e' u' " n' p' q' y' k' p' i' " w' u' g' " q' h'
k' p' h' q' t' o' c' p' u' " k' p' " v' j' g' " N' q' u' " C' p' i' g' r' u' " E' q' w' p' v' { " l' c' k' n' " o' g' g' v'
v' j' g' " u' c' p' f' c' t' f' " g' u' c' d' r' k' u' j' g' f' " k' p' " Kuhlmann v. Wilson,
supra. " 699" WO06580 C' u' g' z' r' n' e' k' p' g' f' . " f' g' h' g' p' f' c' p' v' o' c' {
p' q' v' t' g' n' { " w' r' q' p' " v' j' g' " i' t' c' p' f' " l' w' t' { " t' g' r' q' t' v' " v' j' k' u' " e' r' r' g' c' n'
c' p' f' " v' j' g' " g' x' k' f' g' p' e' g' " t' g' e' g' k' x' g' f' " c' v' v' t' k' r' i' e' h' c' k' u' " v' q' " g' u' c' d' r' k' u' j'
v' j' c' v' l' c' k' i' c' w' j' q' t' k' l' e' u' " f' k' f' " c' p' { v' j' k' p' i' " d' g' { q' p' f' " o' g' t' g' n' {

rkungplpi 'vq'Ecttqm'ij cv'oy cu'f guki pgf 'f grkdgtcvgnf vq'gnelk'kpetko lpcvpi 'tgo ctmu0*'Id.'cv'r 067; [328 UEv'0'cv'r 0'4852_0'f'p'cf f kkkp. "y g'pqvg" 'y cv' y j g v'kcn' g'xkf gpeg" 'tgrkgf " 'wr qp" d{ "f ghgpf cpv' y cu' pqv dghqtg" 'y g'v'kcn'eqwtv' y j gp'k'twrgf "qp" 'y j g' o qv'kqp vq'gzemf g'Ecttqm'u'v'guko qp{0F ghgpf cpv'f qgu'pqv eqpvpgf "y j cv' y j gtg' y cu' cp{ "rcvgt" o qv'kqp" vq'utknng Ecttqm'u'v'guko qp{ 'qp'Ukz y 'Co gpf o gpv' i tqwpf u0

F ghgpf cpv'u'eqpvpgv'kqp" 'y cv' Ctxkg' Ecttqm'u'v'guko qp{ 'y cu' uq wptgrkdng" 'y cv' y j g' v'kcn' eqwtv' u'j qwf " j cxg" f gvgto kpgf " y cv ku" cf o ku'kqp" y qwf " eqpukxwg" c" xkqr'v'kqp" qh' f wg" r tqeguu qh'rcy "cnuq" ku' tglgevgf 0F ghgpf cpv'u'eqpvpgv'kqp" *1008 " y cv Ecttqm'u'v'guko qp{ 'y cu' wptgrkdng' cpf 'uwdlgev' q'gzemf kqp' qp f wg" r tqeguu' i tqwpf u' hqt" 'y j g' uco g' tgcup" 'y cv' eqwtv' u'gzemf g g'xkf gpeg" r tqf wegf " d{ "v'kcpv'gf " kf gp'v'k'ecv'kqp" r tqegf vtgu" ugg. g0 0' Manson' v. Brathwaite" *3; 99+654" WLU; : .335/336"]; 9 UEv'0'4465."4474/4475."75" NCGf 0'f "362_+" ku" wpr gtuwckxg. dgecvwg' k'f gr gpf u'wr qp' cp' wpuwducp'v'kvgf 'hcewcn' cu'ugt'v'kqp y j cv' Ecttqm'u'v'guko qp{ 'y cu' v'kcpv'gf " d{ "ko r tqrgt" r tqegf vtgu hqt "ugev'kpi "lckj qvug" kphqto cpv'v'guko qp{ 0'Erclo u' y cv' y j g' v'guko qp{ "o wu" j cxg" dggp" wptgrkdng" qt" r tglwt'kqu' dgecvwg qh' y j g" kphqto cpv' u' u'ngo " k'p" y j g" Nqu" Cpi grgu" Eqwv'f " lckn ctg" ur g'w'v'kxg" qp" y j ku' tgeqtf 0' Vj g' tgeqtf " dghqtg" 'y j g' v'kcn eqwtv' f k' "pqv' f go apu'v'cv'g" y j cv' Ecttqm'u'v'guko qp{ "y cu" k'p hcev" wptgrkdng 0' k'p' cf f kkkp. "y g" eqpukv'gpv' " j cxg" tglgevgf y j g' eqpvpgv'kqp. "o cf g' k'p' eqppg'v'kqp" y j k'j "ecr kcn' r r gcn. "y j cv kphqto cpv'v'guko qp{ "ku" inherently" wptgrkdng 0' Ugg" People" v. Ramos, supra, 37" Ecnf 6j "cv'r 03387=People" v. Turner, supra, " Ecnf 6j "cv'r r 0423/4240" F ghgpf cpv' j cf "co r ng'qr r qtwpk'f "vq etqu'v'gzco kpg' Ecttqm'v'q' g'zr qug'v'q" y j g' lwt{ "cp{ "wptgrkdng' k'p' j ku'v'guko qp{ .cp'qr r qtwpk'f " j g'zr nq'kgf " hwm{ 0

*56+Hkpcmf. 'y k'j "t'gur gev'v'q" y j g' eqpvpgv'kqp" y cv' y j g' g'xkf gpeg u'j qwf " j cxg" dggp" g'z'emf gf " r vtuwcpv' vq" Gxkf gpeg" Eqf g uge'v'kqp" 574. "o'j y j gp' cp' qdlgev'kqp" vq' g'xkf gpeg" ku' t'ckugf " wpf gt Gxkf gpeg" Eqf g" uge'v'kqp" 574. " y j g' v'kcn' eqwtv' ku" t'gs v'k'gf " vq y g'ki j " y j g' g'xkf gpeg" u' r tqd'v'kxg' xcnwg" ci k'p'v' y j g' f cpi gtu' qh r tglw'f leg. "eqp'hwkqp. "cpf " wpf wg" v'ko g' eqpuwo r v'kqp' 0' Wprguu y j g'ug" f cpi gtu" u'wducp'v'kcm' " qwy g'ki j " r tqd'v'kxg' xcnwg. " y j g' qdlgev'kqp" o wu'v'gd' q'xgtt'wrgf 0' J Ekc'v'kqp 0' Qp' er r gcn' y j g' t'w'kpi ku' t'gx'lg' y gf " hqt" cdwag' qh' f kuetg'v'kqp 0' *People v. Cudjo" *3; ; 5+ 8" Ecnf 6j "7: 7." 82; " [47" Ecnf 0' r v'0'f "5; 2." : 85" R0'f "857_0" * 55d+Vj g' r tqd'v'kxg' hqteg' qh' y j g' g'xkf gpeg' t'gr'v'kpi " f ghgpf cpv'u cf o ku'kqp" y j cv' j g' h'kn'gf " F g'v'kxg' Y kn'ko u'ku' qdx'kqu' 0' Vj gtg y cu' p'q' f cpi gtu' qh' w'p'f wg' eqpuwo r v'kqp' qh' v'ko g' qt' qh' eqp'hwkqp qh' y j g" ku'wgu' 0' Vj g' g'xkf gpeg" y cu' p'q'v' qh' c" uqt'v' rkn'gn' " vq r tqxqng" go qv'kpcn' d'ku' ci k'p'v' c" r ctv' "qt" vq' ecwug" y j g' lwt{ vq" r tglw'f i g' y j g' ku'wgu' w'p'f v'q" y j g' dcuku' qh' g'z' v'kcp'g'q'w' hce'v'qtu 0' Ugg" People v. Minifie" *3; ; 8+35" Ecnf 6j "3277." 3292/3293

[78" Ecnf 0' r v'0'f "355." ; 42" R0'f "3559." 77" C'NO'f 0' v' j " : 57_"] k'p y j g' eqpvpgv' qh' Gxkf gpeg" Eqf g' uge'v'kqp" 574. w'p'f w'f " r tglw'f k'ekcn g'xkf gpeg" ku" g'xkf gpeg" y j cv' y qwf " g'xqng" cp" go qv'kpcn' d'ku ci k'p'v'v'k'p'p'g' r ctv' { _=People v. Zapien" *3; ; 5+6" Ecnf 6j " ; 4; . : 7: [39" Ecnf 0' r v'0'f "344." : 68" R0'f "926_"] o' r tglw'f lego' cu' w'p'f " k'p Gxkf gpeg" Eqf g' uge'v'kqp" 574" t'ghgtu' vq" y j g' cto " qh' r tglw'f i k'pi qp" y j g' dcuku' qh' g'z' v'kcp'g'q'w' hce'v'qtu 0' F ghgpf cpv'u' er'ko " y j cv y j g' g'xkf gpeg" y cu' w'p'f w'f " r tglw'f k'ekcn' qt" *1009 " r'ecn'kpi " k'p r tqd'v'kxg' xcnwg" y cu' dcugf " w'p'f " j ku' cu'wo r v'kqp" y j cv' k'v' y cu wptgrkdng= y cv' cu'wo r v'kqp' y cu' r g'w'v'kxg. 'cpf " y j g' t'kcn' eqwtv' y cu' g'p'v'k'ngf " vq' tglge'v'k0' Ugg" People v. Cudjo, supra. 8" Ecnf 6j cv' r 0'832" J f q'v'w' t'gi ct'f k'pi " y j g' etgf k'k'k'v' " qh' c" y k'p'guu' f q p'q'v' co q'w'p' v'q" r tglw'f leg" w'p'f gt " Gxkf gpeg" Eqf g' uge'v'kqp" 574= etgf k'k'k'v' " qh' y k'p'guu' ku' y j g' r tq'x'k'p'eg' qh' y j g' lwt{ _=ugg" cnuq People v. Ramos, supra. 37" Ecnf 6j "cv'r 0'3387"] k'p'qto cpv' v'guko qp{ "ku' p'q'v' k'p' j gt'g'v'w'f " wptgrkdng_0' Vj g' eqwtv' y cu' y gm y k'j k'p' ku" f k'uetg'v'kqp" k'p' f gp{ k'pi " y j g' o qv'kqp" vq' g'z'emf g' y j ku g'xkf gpeg" r vtuwcpv'v'q' Gxkf gpeg" Eqf g' uge'v'kqp" 574. " eqpuk'f gt'k'pi y j g' hce'v' dghqtg' k'v'cv' y j g' v'ko g' qh' y j g' o qv'kqp 0

16. Accomplice testimony

*57+ F ghgpf cpv' eqpvpgf u' y j g' v'kcn' eqwtv' gttgf " k'p" f gp{ k'pi j ku" o qv'kqp" vq' g'z'emf g' y j g' v'guko qp{ " qh' h'qwt" ceeqo r r'legu y j q' v'guk'k'kgf " hqt" y j g' r tqegew'kqp < C'rcf tqp" J w'p'v'g. " L'gh'g{ Dt{ cpv' V{ tqpg' J k'enu. 'cpf " F c'xk'f " D'gp'v'g{ 0J g' w'v' g' u' y j cv' y j g' k' v'guko qp{ " y cu' uq" wptgrkdng" y j cv' ku' cf o ku'kqp" x'k'qr'v'gf " j ku tki j v'v'q" f wg" r tqeguu' qh'rcy 0

Cv' v'kcn" f ghgpf cpv' o q'x'gf " vq" g'z'emf g' y j g' v'guko qp{ " qh J w'p'v'g. " Dt{ cpv' J k'enu. 'cpf " D'gp'v'g{ " qp" y j g' i tqwpf " y j cv' g'cej o'ceeqo r r'leg' l'k'p'qto gtu" y kn' ko r tqrgt' n' ungy " j ku" v'guko qp{ ci k'p'v' y j g' f ghgpf cpv' k'p' q'f gt " vq" q'd'v'k'p' y j g' d'gp'gh'v' qh' cp wpequwo o cv'gf " r r'gc" d'cti k'p' 0' k'p' y j g' c'ngt'p'v'k'xg. " f ghgpf cpv tgs w'g'v'gf " y j cv' y j g' v'kcn' dg" u'c{ gf " w'p'v'k' g'cej " ceeqo r r'leg j cf " dggp" u'gp'v'p'egf " r vtuwcpv' vq" j ku" r r'gc" ci t'ggo gpv' 0' k'p' u'w' r q'v'v' j g' o k'p'v'k'p'gf " y j cv' y j g' v'guko qp{ " qh' cp' ceeqo r r'leg' ku k'p' j gt'g'v'w'f " wptgrkdng" y j gp' k'v' t'g'u'w'u' h'qo " c" r r'gc" ci t'ggo gpv. cpf " eqpvpgf gf " y j cv' u'v'ej " v'guko qp{ " u'j qwf " p'q'v' dg" r gto k'w'gf k'p" c" ecr kcn' ecug" dgecvwg" k' w'p'f gto k'p'gu" y j g' t'g'k'c'k'k'v' " qh y j g' hce'v'k'p' k'pi " r tqeguu' 0J g' t'gr'kgf " w'p'f " q'w' qh' u'v'v'g' c'w'j q'k'v' j q'f k'pi " y j cv' cu' c" o cv'gt" qh' f wg" r tqeguu' qh'rcy . " ceeqo r r'leg v'guko qp{ " u'j qwf " dg" g'z'emf gf " p'q'v' q'p'v' " y j gp" ko o w'p'k'f g'z'r t'g'u'v' " ku" eqp'f k'k'p'gf " w'p'f " ur g'ek'k'v' v'guko qp{ . " dw' cnuq y j gp" y j g' ek'ewo u'c'p'egu" qh' y j g' r r'gc" ci t'ggo gpv' t'g'cu'p'cd'nf y qwf 'ecwug' y j g' c'ngi gf " ceeqo r r'leg" vq' d'gr'g'x'g' j g' o wu'v'guk'v' k'p" c" r ct'v'w'v'w'c' t'rcuj k'p' 0' F ghgpf cpv' t'gr'kgu. " hqt" g'zco r r'g' w'p' qp Franklin v. State" *3; 9; +; 6" P gx'0'442"] 799" R0'f " : 82." : 84_ y j k'ej " j cu" dggp" q'x'gtt'wrgf 0' *Sheriff, Humboldt County v. Acuna" *3; ; 3+329" P gx'0886"] : 3; R0'f "3; 9.'3; : /422. ('hp06_0

F ghgpf cpv'u o qvkqp"eqpvpgf gf "y cv'j g"hwat"y kpguugu"j cf dggp"cfhtqf gf "ko o wplk{ "lp'tgwtp'htq"y gk't'vgnko qp{. "cu'y gm cu'ngpkge{ "kp'r gpf kpi "ecugu'cpf 'r tqdcvkqp'xkqrkvqp"o cwgut0 J g"eqpenmf gf "y cv'lp"o"ecr kcn'tlcn"cp"ceeao r rieg'lkphqto gt o wuv'dg"ugpvpgpf "r tkqt"vq"vgnkh{ kpi "kp"qt fgt"vq"grko kpcvg yj g"eqo r wnikqp"vq"vgnkh{ 'hcnrnf "kp"o'hcuj kqp'hcxqtcdrng"vq"y g r tqugewkqp0Vj g"eqvtf'vfglfg "y g'o qvkqp0

F ghgpf cpv' cr r gctu"vq"tggpy "y g"erko "y cv'y kj"t gur gev vq"y g" hwat" ceeao r rieg. "y g" gzknvpeg" qh' ko o wplk{ ci tgggo gpv'cpf 'r tqo kugu'qhl'hcxqtcdrng'tgcvo gpv'qp'wptgrcvf r gpf kpi "ecugu'tgcvo gpv' y cv'y cu'f gr gpf gpv' *1010 "wr qp yj g" ceeao r rieg)u" vlcni' vgnko qp{/y gtg" ekewo ucpegu" yj cv tgpf gtgf "y g"ceeao r rieg)u'vlcni'vgnko qp{ 'wptgricdrng0

Y g"j cxg"tglevgf "y g"eqpvvkvqp" yj cv'j g" vgnko qp{ "qh"cp ko o wplk{ gf "ceeao r rieg"pgeguactkn{ "ku"vptgricdrng"cpf "uwdlgev vq" gzenwukqp0 *People v. Allen" *3; : 8+ 64" Ecrf5f " 3444. 3473/3474"("lp07"j454"Ecrf0r v0: 6; ."94; "R0f"337 _=ugg cnuq"U.S."v. Singleton"*32y "Ek03; ; ; +387"H5f "34; 9."3523]o")p_q"r tceveg"ku"o qtg"lpi tclpgf "lp"qwt"etko lpcn'lwvleg u{ vgo "y cp'y g'r tceveg"qh'y g'i qxgtpo gpv'ecmkpi "c'y kpguu y j q"ku'cp"ceeguqt{ "vq"y g'etko g'hwat"y j lej "y g'f ghgpf cpv'ku ej cti gf "cpf"j cxkpi "y cv'y kpguu'vgnkh{ "wptgf"o' r rieg"dicti clp yj cv'r tqo kugu'j ko "c'tgf wegf 'ugpvpeg'0_0'Uko krcn{. 'y g'j cxg tglevgf "y g"eqpvvkvqp"y cv'j g"vgnko qp{ "qh"cp"ceeao r rieg y j q'j cu'tgegkxgf "c'hcxqtcdrng'r rieg"ci tgggo gpv'lp'tgwtp'htq"j ku qt"j gt"vgnko qp{ "ku'lpj gtgpv{ 'wptgricdrng0*People v. Andrews *3; ; ; +6; Ecrf5f "422."453"j482"Ecrf0r v07: 5."998"R0f "4: 7 _=ugg"cnuq"People v. Pinholster."supra."3"Ecrf6y "cv'r 0; 5; 0+Y g f genkpg'f ghgpf cpv'u'lpkxkvqp"vq'tgeqpukf gt "y g"ug'r qlpvu0

Ko o wplk{ "qt"r rieg"ci tgggo gpv' o c{ "pqv'r tqr gtn{ "r rieg" yj g ceeao r rieg'wptgf 'c'lvtpi 'eqo r wnikqp"vq"vgnkh{ "lp"o'ctvewrct o cppgt/c'tgs vktgo gpv' y cv'j g"qt"uj g"vgnkh{ "lp"eqphqto kv y kj"cp" gctrigt" ucvgo gpv' vq"y g"r qnleg." hqt" gzco r rieg." qt yj cv' yj g"vgnko qp{ "tguwn"lp" f ghgpf cpv'u"eqpvvkvqp." y qwr r rieg" yj g"y kpguu" wptgf "eqo r wnikqp" kpeqpukvqp" y kj "y g f ghgpf cpv'u"tki j v'vq"hc{ "vlcni" *People v. Allen." supra." 64 Ecrf5f "3444."3473/34740:Cnj qwi j "y g'j cxg'tgeqi pl{ gf "y cv yj gtg"ku"uqo g"eqo r wnikqp"lpj gtgpv'lp"cp{ "r rieg"ci tgggo gpv qt"i tcpv'qh'ko o wplk{." y g'j cxg"eqpenmf gf "y cv'ok'ku"erget yj cv'cp"ci tgggo gpv' tgs vktkpi "qpn{ "y cv' yj g"y kpguu" vgnkh{ hwn{ "cpf" vwj hwn{ "ku" xcnf 0} *Id." cv' r 0' 3474 _=ugg" cnuq People v. Pinholster." supra." 3"Ecrf6y "cv'r 0; 5; ." People v. Sully"*3; ; 3+75"Ecrf5f "33; 7."3439"j4: 5"Ecrf0r v0'366." : 34 R0f "385_0+Uvej "c"r rieg"ci tgggo gpv." gxp"kh'k'ku"erget" yj g r tqugewqt'dgnxgu"y g'y kpguu'u'r tkqt'ucvgo gpv'vq"y g'r qnleg

ku'yj g"vkwj ."cpf "f gxlkvqp"htqo "y cv'ucvgo gpv'lp"vgnko qp{ o c{ "tguwn"lp" yj g"y kj f tcy cni'qh" yj g"r rieg" qhgt." f qgu"pqv r rieg"uwej "eqo r wnikqp"wr qp" yj g"y kpguu"cu"vq"xlkvvq"yj g f ghgpf cpv'u"tki j v'vq"hc{ "vlcni" *People v. Allen." supra." 64 Ecrf5f "cv'r 0' 34740" Kp" cf f kvqp." yj g" vgnko qp{ "qh"r gtuqpu y j q' b c{ "dg'vwdlgev'vq'r tqugewkqp"cu'ceeguqt'kgu'wprguu"y g{ oeqr gtcvgo"y kj "y g"r qnleg"ku"pqv'lpf o kuukdrng"cu'eqtegf wprguu"uqo g'v kpi "o qtg" yj cp" yj g" yj gtcv'qh"r tqugewkqp"ku uj qy p0*People v. Daniels, supra,"74"Ecrf5f "cv'r 0: 84/: 850-

Qwt"ecugu"tgs vktg"y cv'y g"tgxky "y g"tgeqt"cpf"tgej "cp kpf gr gpf gpv'lvf i o gpv'y j g'v gt"y j g"ci tgggo gpv'wptgf"y j lej yj g"y kpguu"vgnkh{gf "y cu'eqtekg"cpf "y j g'v gt" f ghgpf cpv y cu" f gr tkxgf "qh" c" hc{ "vlcni" d{ "y g" kptqf vevqp" qh" yj g vgnko qp{." ngr kpi "lp"o kpf "y cv'i gpctm{ "y g'tguvng'hcwcn eqphkew"lp"hcxqtcdrng"vq"lw i o gpv'dngy 0* *1011 "People v. Badgett." supra." 32"Ecrf6y "cv'r 0572."5740:Wt qp"y ku'tgeqt. y g"ecppqv'eqpenmf"y cv'cp{ "qh"y g"hwat" ceeao r rieg"y cu wptgf"vtpi "eqo r wnikqp"vq"vgnkh{ "eqpvvkvqp" y kj "gctrigt ucvgo gpv'vq'lp"o'ctvewrct"o cppgt."uwej "y cv'y g'kptqf vevqp qh'y gk't'vgnko qp{ "eqpvvkvqp" c'xlkvvqp"qh'f ghgpf cpv'u"tki j v vq"hc{ "vlcni"

Vj g" tgeqt" kpf kcvu" yj cv' dghqtg" yj g" gxlk'gpvct{ "r qt'vqp qh" yj g" i vkn" r j cug" dgi cp." yj g" r tqugewqt" f kvvugf" y j lej r tqugewkqp"y kpguu"j cf "dggp"r tqxkf gf "y kj "ko o wplk{ "qt r rieg"ci tgggo gpv'lp'tgwtp'htq"y gk't'vgnko qp{."cpf "y g'pcwtg'qh yj g'lpf vego gpv'gcej "tgegkxgf "hwat"vgnkh{ kpi 0Y kpguu'Dgpv{ j cf "dggp"r tqo kugf "f kuo kuvcn'qh"y g"ej cti gu"ci clp"j ko "kp yj g"r tguv'ecug"cpf "ko o wplk{ "hwat"j ku"vgnko qp{ 0'Dgecvug qh'ej cti gu'krgf "ci clpv"j ko "kp" yj g"r tguv'ecug." Dgpv{ cnuq"y cu"hcelpi "c"r tqdcvkqp'xlkvvqp"y cv' yj g"r tqugewkqp kpf kcvf "otgo clpv"j cpi kpi "lp"y g'dcncpeg'wvki'cpf "y j gp"j g vgnkh{gu0Y kpguu"J kenu'tgegkxgf "ko o wplk{ "hwat"j ku"vgnko qp{ "lp"y g'r tguv'ecug"cpf "y cu'q'hwat"gf "opq" f gcuo'lp"eqpvvkvqp y kj "c"r gpf kpi "r tqdcvkqp'xlkvvqp"qt" y kj "ugpvpegkpi" qp cpqy gt'eqpvvkvqp0Y kpguu"J wvgt'tgegkxgf "ko o wplk{ "hwat"j ku vgnko qp{ "lp"y g'r tguv'ecug'cpf "j cf "c'r gpf kpi "o kuf go gcpqt o cwtg"lp" y j lej "y g"r tqugewqt" cttepi gf "hwat" yj g"ugpvpeg vq"dg"ugtxgf "lp"r tqvewxg"ewvqf {0'Lghg{ "Dt { cpv'tgegkxgf ko o wplk{ "cu"vq"dqy "y g'Ectr gpv't"uj qv'kpi "cpf" yj g"o wtf gt qh'F gvevwxg"Y knko u0Dt { cpv'tgegkxgf "dgpghku"uwej "cu"y g utknkpi "qh"cp"cto kpi "gpj cpego gpv'lp"y q"ugr ctcv'tqddgt { ecugu'cpf "c'ugpvpeg'vq'eqv'v' lcnrct"y gt "y cp'r tkuq0Kp'q'p'g'qh yj g'ug'ecugu." yj g'ugpvpegkpi "eqv'v'kpf kcvf "kv' qwr' tguv'peg Dt { cpv'vq'r tkuq"kh'j g'hcrgf "vq"vgnkh{ "lp"y g'r tguv'ecug0Vj g r tqugewkqp"r tqv'ugf "cunkpi "y g'eqv'v'k'c'r gpf kpi "r tqdcvkqp o cwtg"pqv'vq"ugpvpeg"Dt { cpv'vq"cf f kvv'p'ko r tkuqo gpv0

Dt { cpv' lphqto gf "vj g'r tqugewkqp" qh'c" pwo dgt" qh'j ku" qvj gt qh'gpgu. "dw'pq' r' tqugewkqp" y' cu' r' r' p' p' g' 0

Eqpvtct { 'q'f ghepf cpv'u' eqpvvkvqp' y' cv'j g'y kpguugut' gegkxgf ko o wplk' "wr qp" eqpf kxqp" y' g { "hmqy "c" r' tqugewkqp" uetkr v qh' y' gk' "vguko qp {." y' g' v'kcn' "vguko qp { "qh' gcej" "qh' y' g hqwt" ceeqo r' r' egu' kpf kcvu' y' cv' y' gk' ko o wplk' "cpf" r' r' gci tggo gpw'y gt' g' p' v' d' cu' g' "wr qp" y' g' eqpf kxqp' y' cv'j g' { "vgukh' k'c' r' ct' v' w' r' t' o' c' p' p' g' t' c' v' t' k' n' i' q' t' y' cv'j g' { "vgukh' { "eqpukngpv' y' kj "r' t' k' t' u' c' v' g' o' g' p' u' v' j' g' r' q' r' e' g' o' k' b' h' c' e' v' f' g' h' e' p' f' c' p' v' y' c' u' c' d' r' g' v' q' "ko r' g' c' e' j' "y' g' y' k' p' g' u' u' y' k' j' "k' p' e' q' p' u' k' n' g' p' e' k' u' d' g' w' y' g' g' p' "y' g' k' t' v' k' n' i' v' g' u' k' o' q' p' { "c' p' f' "y' g' k' r' t' g' t' k' n' i' u' c' v' g' o' g' p' u' . "c' e' k' t' e' w' o' u' c' p' e' g' y' j' c' v' k' p' f' k' e' c' v' u' "y' c' v' p' q' "u' e' t' k' r' v' y' c' u' "h' m' q' y' g' f' o' k' b' "c' f' f' k' x' q' p' . "y' j' g' v' g' u' k' o' q' p' { "q' h' "y' j' g' "ko o wplk' g' f' "y' k' p' g' u' u' y' c' u' "e' q' t' t' d' q' d' t' c' v' e' g' "d' { y' j' g' "v' g' u' k' o' q' p' { "q' h' "q' j' g' t' "y' k' p' g' u' u' u' e' j' "c' u' "I' g' q' t' i' g' "E' c' t' r' g' p' v' e' t' . C' r' k' "Y' q' q' f' u' q' p' . "G' r' k' w' g' "D' t' q' q' o' h' e' g' f' . "c' p' f' "C' t' x' k' g' "E' c' t' t' q' m' "c' p' f' d' { "q' j' g' t' "g' x' k' f' g' p' e' g' "u' e' j' "c' u' "v' g' r' j' p' p' g' "c' p' f' "o' q' v' e' i' d' w' u' k' p' g' u' t' g' e' q' t' f' u' . f' g' h' e' p' f' c' p' v' u' i' r' g' t' u' f' k' u' r' r' e' { k' p' i' "c' e' e' q' o' r' r' e' g' "p' c' o' g' u' c' p' f' v' g' r' j' p' p' g' "p' w' o' d' g' t' u' . "c' p' f' "y' j' g' "v' g' u' k' o' q' p' { "q' h' "c' "d' c' m' k' u' e' u' "g' z' r' g' t' v' 0 *Ugg" *People v. Sully*. *supra.* "75" *Ectf* "cv' r' 03439/343: 0-

F ghepf cpv' eqpvvkvqp' u' k' ecp' dg' uggp' y' cv' y' g' v' g' u' k' o' q' p' { "q' h' g' c' e' j' "c' e' e' q' o' r' r' e' g' "y' c' u' "v' p' t' g' r' k' c' d' r' g' "d' g' e' c' w' u' g' "k' y' c' u' "k' p' v' t' p' c' m' { k' p' e' q' p' u' k' n' g' p' v' "c' p' f' "k' p' e' q' p' u' k' n' g' p' v' "y' k' j' " *1012 "q' j' g' t' "g' x' k' f' g' p' e' g' r' t' g' u' g' p' v' e' g' "k' p' "y' j' g' "e' c' u' g' 0' V' j' g' "f' g' h' e' p' u' g' . "j' q' y' g' x' g' t' . "j' c' f' "c' "h' w' n' c' p' f' "h' c' k' "q' r' r' q' t' w' p' l' v' "h' q' t' "e' t' q' u' /g' z' c' o' k' p' e' v' k' p' "q' h' "y' j' g' "c' e' e' q' o' r' r' e' g' y' k' p' g' u' u' . "y' j' q' o' "y' j' g' "s' v' g' u' k' p' q' p' g' "f' "h' q' t' "u' g' x' g' t' c' n' i' f' c' { u' 0' *Ugg *People v. Sully*. *supra.* "75" *Ectf* "cv' r' 03439/343: =ugg' c' n' u' q' *People v. DeSantis* "3; ; 4+4" *Ectf* "33; . : "3442"; *Ectf* r' v' 04f 84: . : "53" *R0f* "3432_0" *Vj* g' l' w' { "y' w' u' y' c' u' c' d' r' g' "v' q' "g' x' c' n' e' v' g' y' g' k' t' e' t' g' f' k' d' k' v' { 0' Y' g' e' q' p' e' n' f' g' y' c' v' j' g' t' g' e' q' t' f' "f' q' u' b' q' v' g' u' c' d' r' k' u' j' "y' c' v' f' g' h' e' p' f' c' p' v' y' c' u' f' g' p' l' e' g' f' "c' "h' c' k' "v' k' c' i' 0

F ghepf cpv'u' eqpvvkvqp' y' cv'j g' r' tqugewkqp' t' c' k' f' y' g' y' k' p' g' u' u' c' "h' e' g' "h' q' t' "y' j' g' k' t' "v' g' u' k' o' q' p' { "o' k' u' e' j' c' t' c' e' v' t' k' g' u' "y' j' g' t' g' e' q' t' f' 0' V' j' g' y' k' p' g' u' u' "j' c' f' "d' g' g' p' "r' r' e' g' e' f' "k' p' "y' k' p' g' u' u' r' t' q' v' e' v' k' p' "r' t' q' i' t' c' o' u' . c' p' f' "y' j' g' "r' t' q' u' e' g' e' w' k' q' p' "g' z' r' g' p' f' g' f' "y' j' g' "t' g' h' t' g' p' e' g' f' "u' w' o' u' "h' q' t' r' t' q' v' e' v' k' x' g' "j' q' w' u' l' p' i' "c' p' f' "h' q' q' f' "h' q' t' "y' j' g' y' k' p' g' u' u' r' g' p' f' k' p' i' "y' j' g' k' t' v' g' u' k' o' q' p' { 0' F' g' h' e' p' f' c' p' v' u' i' i' g' u' u' "y' c' v' j' g' r' t' q' u' e' g' e' w' k' q' p' "h' c' k' g' f' "v' q' f' k' u' e' n' i' u' g' y' j' g' d' g' p' g' h' k' u' y' j' g' y' k' p' g' u' u' t' g' e' g' k' x' g' f' "v' p' f' g' t' "y' j' g' y' k' p' g' u' u' r' t' q' v' e' v' k' p' "r' t' q' i' t' c' o' . "c' p' f' "y' j' g' "v' j' g' "v' t' k' n' i' e' q' v' t' v' r' t' g' x' g' p' v' e' g' f' "y' j' g' f' g' h' e' p' u' g' "h' t' q' o' "e' t' q' u' /g' z' c' o' k' p' l' p' i' "y' j' g' o' "q' p' "y' j' k' u' r' q' l' p' v' 0' V' j' g' u' g' u' i' i' g' u' k' q' u' c' t' g' d' g' r' k' g' f' "d' { "y' j' g' t' g' e' q' t' f' . "y' j' l' e' j' "k' p' f' k' e' c' v' u' "y' c' v' j' g' e' q' v' t' v' f' g' v' g' t' o' k' p' g' f' "y' j' c' v' j' g' "v' q' c' n' i' u' w' o' u' "g' z' r' g' p' f' g' f' "q' p' "y' k' p' g' u' u' k' p' "y' j' g' y' k' p' g' u' u' r' t' q' v' e' v' k' p' "r' t' q' i' t' c' o' "y' q' w' f' "d' g' "f' k' u' e' n' i' u' g' f' "v' q' "y' j' g' f' g' h' e' p' u' g' . "c' p' f' "c' n' u' q' "t' g' x' g' c' n' i' "y' c' v' f' g' h' e' p' u' g' "e' q' v' p' u' g' n' i' e' q' p' u' k' f' g' t' g' f' e' t' q' u' /g' z' c' o' k' p' l' p' i' "y' j' g' y' k' p' g' u' u' "q' p' "y' j' k' u' r' q' l' p' v' d' w' "h' e' g' f' "y' j' g' v' p' y' g' r' e' q' o' g' "r' t' q' u' r' g' e' v' "q' h' "q' r' g' p' l' p' i' "y' j' g' "f' q' q' t' "v' q' "r' t' q' u' e' g' e' w' k' q' p' g' x' k' f' g' p' e' g' "g' z' r' r' c' l' p' l' p' i' "y' c' v' j' g' y' k' p' g' u' u' y' g' t' g' "k' p' "y' j' g' y' k' p' g' u' u

r' t' q' v' e' v' k' p' "r' t' q' i' t' c' o' "p' q' v' d' g' e' c' w' u' g' "y' j' g' k' t' "v' g' u' k' o' q' p' { "y' c' u' "d' g' l' p' i' r' t' e' j' c' u' g' f' "d' w' "k' p' "q' t' f' g' t' "v' q' "r' t' q' v' e' v' "y' j' g' o' "h' t' q' o' "f' g' h' e' p' f' c' p' v' u' t' g' t' k' d' w' k' x' g' "x' l' q' r' g' p' e' g' 0' F' g' h' e' p' f' c' p' v' u' i' e' q' p' v' g' p' v' k' p' "y' j' c' v' j' g' "e' q' w' t' v' g' t' t' g' f' "k' p' "h' c' k' l' p' i' "v' q' "r' g' t' o' k' v' "k' o' r' g' c' e' j' o' g' p' v' "q' h' "D' t' { c' p' v' "y' k' j' g' x' k' f' g' p' e' g' "q' h' "d' g' p' g' h' k' u' "j' g' "t' g' e' g' k' x' g' f' "k' p' "e' q' p' p' g' e' v' k' p' "y' k' j' "c' "d' c' k' n' h' q' t' h' g' k' w' t' g' "c' p' f' "c' p' "c' f' f' k' k' a' p' c' n' i' f' t' w' i' "q' h' e' p' u' g' "c' t' g' "w' p' c' x' c' k' d' p' i' = y' j' g' "e' q' w' t' v' f' g' v' g' t' o' k' p' g' f' "y' j' g' "d' c' k' n' i' o' c' w' g' t' "y' c' u' "e' q' m' v' g' t' c' n' "c' p' f' "k' p' c' p' { "g' x' g' p' v' "y' j' g' "l' w' t' { "y' c' u' "y' g' m' i' c' y' c' t' g' "y' j' c' v' j' g' r' t' q' u' e' g' e' w' k' q' p' "j' c' f' r' t' q' o' k' u' g' f' "D' t' { c' p' v' "k' o' o' w' p' l' k' "h' q' t' "u' g' t' k' q' u' a' "w' p' e' j' c' t' i' g' f' "x' l' q' r' g' p' v' q' h' e' p' u' g' u' k' p' t' g' w' t' p' "h' q' t' "j' k' u' "v' g' u' k' o' q' p' { "c' i' c' l' p' u' v' f' g' h' e' p' f' c' p' v' 0

F ghepf cpv'u' eqpvvkvqp' y' cv'j g' o' y' k' p' g' u' u' h' m' q' y' g' f' "c' u' e' t' k' r' v' v' q' "u' w' r' q' t' v' 0' h' e' g' t' "Q' u' k' u' 0' c' t' n' y' u' "x' g' t' u' k' p' "q' h' "y' j' g' "e' c' u' g' "y' t' k' w' g' p' f' v' t' k' p' i' "j' k' u' "k' p' v' t' x' l' e' g' y' "y' k' j' "C' n' e' f' t' a' p' "J' w' p' v' e' t' o' "k' u' "v' l' r' k' e' c' n' i' q' h' "y' j' g' d' c' n' f' "c' e' e' w' u' c' v' k' p' u' . "w' p' u' w' r' q' t' v' e' g' f' "d' { "t' g' e' q' t' f' "e' k' c' v' k' p' . "y' j' c' v' "c' t' g' e' q' p' v' k' p' g' f' "k' p' "f' g' h' e' p' f' c' p' v' u' i' d' t' k' e' h' 0' F' g' h' e' p' f' c' p' v' u' i' g' h' q' t' v' u' "v' q' "u' w' r' q' t' v' y' j' k' u' "e' q' p' v' g' p' v' k' p' "c' t' g' "d' c' u' g' f' "q' p' "u' r' g' e' w' u' c' v' k' p' "c' p' f' "k' p' p' w' e' g' p' f' 0' 0' F' g' h' e' p' f' c' p' v' u' i' e' q' p' v' g' p' v' k' p' "y' c' v' j' g' l' c' k' j' q' w' u' g' l' p' h' q' t' o' c' p' v' u' i' u' g' o' "k' p' y' j' g' "N' q' u' C' p' i' g' r' u' u' E' q' w' p' v' l' c' k' i' l' u' q' o' g' j' q' y' "c' h' t' g' e' v' g' f' "y' j' g' y' k' p' g' u' u') v' g' u' k' o' q' p' { "c' p' f' "u' j' q' w' f' "j' c' x' g' "d' g' g' p' "f' k' u' e' n' i' u' g' f' "v' q' "y' j' g' "f' g' h' e' p' u' g' k' u' "g' s' w' c' n' f' "f' g' x' q' k' f' "q' h' "u' w' r' q' t' v' "k' p' "y' j' g' "t' g' e' q' t' f' 0' J' k' u' "e' q' p' v' g' p' v' k' p' y' c' v' j' g' "v' t' k' n' i' e' q' w' t' v' u' j' q' w' f' "j' c' x' g' "j' g' n' f' "c' p' "g' x' k' f' g' p' v' c' t' { "j' g' c' t' k' p' i' k' p' "y' j' l' e' j' "y' j' g' r' t' q' u' e' g' e' w' k' q' p' "y' q' w' f' "j' c' x' g' "y' j' g' "d' w' t' f' g' p' "q' h' "r' t' q' x' l' p' i' y' j' c' v' j' g' y' k' p' g' u' u') v' g' u' k' o' q' p' { "y' q' w' f' "d' g' t' g' r' k' c' d' r' g' "k' u' "k' p' e' q' p' u' k' n' g' p' v' y' k' j' "u' g' w' r' g' f' "n' e' y' "r' n' e' l' p' i' "w' r' q' p' "y' j' g' f' g' h' e' p' f' c' p' v' y' j' g' "q' d' r' i' c' v' k' q' p' q' h' "t' c' l' u' k' p' i' "y' j' g' "k' u' u' g' "q' h' "y' j' g' "t' g' r' k' c' d' k' r' k' v' "q' h' "y' j' g' "v' g' u' k' o' q' p' { "q' h' k' o' o' w' p' l' k' g' f' "y' k' p' g' u' u' "c' p' f' "e' c' t' t' { k' p' i' "y' j' g' "d' w' t' f' g' p' "q' h' "r' t' q' q' h' "c' v' j' g' v' t' k' n' i' " *1013 "r' e' x' g' r' 0' **People v. Badgett*. *supra.* "32" *Ectf* "cv' r' 0' 56: =*People v. Morris* "3; ; 3+75" *Ectf* "0' 374. "3; 2"]49; *Ectf* r' v' 0942. : "29" *R0f* "6; ; 0-

Y' g' t' g' l' e' v' j' g' e' q' p' v' g' p' v' k' p' "y' c' v' j' g' "v' g' u' k' o' q' p' { "q' h' "y' j' g' "c' e' e' q' o' r' r' e' g' u' j' q' w' f' "j' c' x' g' "d' g' g' p' "g' z' e' n' f' g' f' "r' w' u' w' c' p' v' l' q' "G' x' k' f' g' p' e' g' "E' q' f' g' "u' g' e' v' k' p' 574. "d' g' e' c' w' u' g' "p' q' "c' d' w' u' g' "q' h' "f' k' u' e' t' g' v' k' p' "k' u' "c' r' r' c' t' g' p' v' 0' **People v. Cudjo*. *supra.* "8" *Ectf* "cv' r' 0' 82; 0" *Vj* k' u' "v' g' u' k' o' q' p' { "y' c' u' r' t' q' d' c' v' k' x' g' =y' j' g' t' g' y' c' u' b' q' f' c' p' i' g' t' "q' h' "w' p' f' w' e' "e' q' p' u' w' o' r' v' k' p' "q' h' "v' k' o' g' q' t' "q' h' e' q' p' h' w' k' p' "q' h' "y' j' g' "k' u' u' g' u' . "c' p' f' "y' j' g' "v' g' u' k' o' q' p' { "y' c' u' "b' q' v' i' k' n' g' n' f' v' q' "r' t' q' x' q' n' g' "g' o' q' v' k' p' c' n' i' d' k' u' "c' i' c' l' p' u' v' c' "r' c' t' v' { "q' t' "v' q' "e' c' w' u' g' "y' j' g' "l' w' t' { v' q' "r' t' g' l' w' f' i' g' "y' j' g' "k' u' u' g' u' "q' p' "y' j' g' "d' c' u' k' u' "q' h' "g' z' t' c' p' g' q' u' i' h' c' e' v' t' u' 0' *Ugg *People v. Minifie*. *supra.* "35" *Ectf* "cv' r' 0' 3292/3293 =*People v. Zapien*, *supra.* "6" *Ectf* "cv' r' 0' ; 7: 0" F' g' h' e' p' f' c' p' v' u' i' e' r' c' k' o' y' j' c' v' j' g' "g' x' k' f' g' p' e' g' "y' c' u' "r' t' g' l' w' f' k' e' k' n' i' q' t' "m' e' n' g' f' "r' t' q' d' c' v' k' x' g' "x' c' n' e' g' y' c' u' "d' c' u' g' f' "w' r' q' p' "j' k' u' "c' u' u' w' o' r' v' k' p' "y' c' v' k' y' c' u' "v' p' t' g' r' k' c' d' r' g' =y' j' c' v' c' u' u' w' o' r' v' k' p' "y' c' u' "u' r' g' e' w' u' c' v' k' x' g' . "c' p' f' "y' j' g' "v' t' k' n' i' e' q' w' t' v' y' c' u' "g' p' v' k' n' g' f' v' q' "t' g' l' e' v' k' 0' *Ugg *People v. Cudjo*, *supra.* "8" *Ectf* "cv' r' 0' 832]f' q' w' d' u' "t' g' i' c' t' f' k' p' i' "e' t' g' f' k' d' k' v' { "q' h' "c' y' k' p' g' u' u' "f' q' "p' q' v' "c' o' q' w' p' v' "v' q' r' t' g' l' w' f' k' e' g' "w' p' f' g' t' "G' x' k' f' g' p' e' g' "E' q' f' g' "u' g' e' v' k' p' "574 =e' t' g' f' k' d' k' v' { "q' h' y' k' p' g' u' u' "k' u' y' k' j' k' p' "y' j' g' r' t' q' x' l' p' e' g' "q' h' "y' j' g' "l' w' t' { =u' g' g' "c' n' u' q' " *People*

f ghgpf cpv'vq'ectt { "qw'vj g'o wtf gt 'qh'F gvev'xg'Y knkco u.'cpf vj cv'vj g{ "cpf 'qvj gtu'o cf g'cp'cdqtv'xg'gh'qt'v'vq'ectt { "qw'vj g o wtf gt 'uj qv'v' 'dgh'qt'g'vj cv'v'ko g'y cu'v'eqo o kwgf 0K'vj g'eqwtug qh'j ku'v'guko qp{ "g'zr'nc'k'p'pi "vj g'f'g'v'ku'qh'vj g'ctt'cpi go g'pwu o cf g'qp'vj g'f'c { "qh'vj g'cdqtv'xg'c'v'go r v.'Dg'p'v'g { "g'zr' t'gu'g'f' u'qo g'w'p'eg't'v'c'p'v'f "y j g'vj gt "E'q'q'r' g't'j' cf "d'g'g'p' "k'p' "vj g'x'g'j' k'eng D'g'p'v'g { "u'cy "F'g'r' c't'v'g'p' 't'q'w'g' 'v'q' 'v'j g'r' r'p'p'g'f' 'u'j' q'q'v'k'p'i 0'D'g'p'v'g { r'v'g't' 'v'g'u'k'h'g'f' 'v'j' c'v'j' g'd'g'r'g'x'g'f' 'E'q'q'r' g't' 'h'ad' 'd'g'g'p' 'k'p' 'v'j' g'x'g'j' k'eng 0'F' ghgpf cpv'v'q'w'j v'v'j' t'q'w'j j' "e't'q'u'u' g'z'c'o k'p'c'v'k'p' 'q'h' 'D'g'p'v'g { "v'j' g'u'c'd'r'k'uj 'v'j' c'v'j' g't'g'c'u'q'p' 'D'g'p'v'g { 'j' cf 'v'g'u'k'h'g'f' 'v'j' c'v'Eq'q'r' g't'j' cf d'g'g'p' r' t'g'u'g'p'v'v'j' c'u'q'p'n' 'v'q' 'o' c'n'g' 'D'g'p'v'g { 'u'v'g'u'k'o' q'p' { 'e'q'p'u'k'v'g'p'v' y' k'j' "v'j' c'v' 'q'h' 'J' k'emu' 'c'p'f' "v'q' "n'g'r' "u'g'w't'g' "j' k'u' q'y' p' "k'o' o' w'p'k'v' c'tt'c'p'i' go' g'p'v'0'Q'p' 't'g'f' k't'g'v'g'z'c'o' k'p'c'v'k'p' "v'j' g'r' t'q'u'g'w'q't' 'u'q'w'j' v' v'q' 't'g'j' c'd'k'k'c'v'g' 'D'g'p'v'g { 'u' 'e't'g'f' k'l'k'k'v' { 'd' { 'u'j' q'y' k'p'i' "j' q'y' "D'g'p'v'g { j' cf 'd'g'eqo' g' 'e'g't'v'c'p' 'v'j' c'v'Eq'q'r' g't'j' cf 'd'g'g'p' 'k'p' 'v'j' g'x'g'j' k'eng 0'Q'x'g't' f' ghgpf cpv'v'j' g't'c'u'c { "q'd'l'g'v'k'p' "c'p'f' "q'd'l'g'v'k'p' "d'c'ug'f' "w'r' q'p' "v'j' g' e'q'p'h't'q'p'v'c'v'k'p' "e'r'c'w'g' 'q'h' 'v'j' g' 'U'k'z'v'j' "C'o' g'p'f' o' g'p'v'q'h' 'v'j' g' 'W'p'k'g'f' 'U'c'v'g'u' 'E'q'p'u'k'w'k'p' "v'j' g' "e'q'w't'v' r' g't'o' k'w'g'f' "D'g'p'v'g { "v'q' "v'g'u'k'h' 'v'j' c'v'j' g' "d'g'eco' g' "e'g't'v'c'p' 'v'j' c'v'Eq'q'r' g't'j' cf "d'g'g'p' "k'p' "v'j' g'x'g'j' k'eng y' j' g'p' "E'q'q'r' g't' "v'q'f' "j' k'o' . 'y' j' k'g' 'v'j' g' 'y' q' 'o' g'p' 'y' g't'g' 'l'p'ect'eg't'c'v'g'f' v'q'i' g'v'j' g't' < "o'd'c'u'k'ec'm' { "v'j' c'v'j' g' 'y' c'u' 'v'j' g't'g' "k'p' "v'j' g' "e'c't' "c'p'f' "v'j' c'v'j' g' y' c'u' 'v'v'j' g'j' q'w'g'0'V'j' c'v'v'j' c'u' 'd'c'u'k'ec'm' { 'k'0' 'Y' j' g'p' 'c'u'ng'f' 'y' j' g'v'j' g't' Eq'q'r' g't'j' cf 'u'c'k'f' 'y' j' { 'j' g'y' c'u' 'v'j' g't'g' "D'g'p'v'g { 'v'g'u'k'h'g'f' < "o'j' g' 'u'c'k'f' j' g'y' c'u' 'u'w'r' r' q'ug'f' "v'q' "d'g' 'v'j' g' 'u'j' q'q'v't' "00' 'v'j' c'v'j' g'y' c'u' 'n'k'p'f' "q'h' u'ec't'g'f' 0'J' g' 'y' c'u' { 'q'w' 'n'p'q'y' . "j' g' 't'g'c'm' { "f' k'f' p'v' "y' c'p'v'v'q' "f' q' "k'0' V'j' g' 'e'q'w't'v'f' g'v'g't'o' k'p'g'f' 'v'j' c'v'j' g'ug' 'q'w'q'h' 'e'q'w't'v'v'v'c'v'go' g'p'w'v'j' g't'g' c'f' o' k'u'k'q'p' "c'u' 'u'c'v'go' g'p'w'v'j' c'i' c'k'p'u'v' r' g'p'c'n' 'k'p'v'g't' g'u'0' *U'g'g' "G'x'k'f' 0' E'q'f' g' "E'34520+

F ghgpf cpv'v'q'w'v'g'p'f' u'v'j' g'c'f' o' k'u'k'q'p' 'q'h' 'v'j' k'u' g'x'k'f' g'p'eg' 'x'k'q'r'v'g'f' u'c'v'g' 'r'v'y' 'y' k'j' 't'g'ur' g'v'v'q' 'v'j' g'c'f' o' k'u'k'q'p' 'q'h' 'j' g't'c'u'c { "g'x'k'f' g'p'eg' c'p'f' "c'n'q' "v'j' c'v' 'k'u' "c'f' o' k'u'k'q'p' "e'q'p'u'k'w'g'f' "c' "x'k'q'r'v'k'p' "q'h' 'v'j' g' e'q'p'h't'q'p'v'c'v'k'p' "e'r'c'w'g' 'q'h' 'v'j' g' 'U'k'z'v'j' "C'o' g'p'f' o' g'p'v'q'h' 'v'j' g' 'W'p'k'g'f' 'U'c'v'g'u' 'E'q'p'u'k'w'k'p' 0' K' 'k'u' 'p'q'v' 'p'g'g'u'c't' { "v'q' "g'z'c'o' k'p'g' "v'j' g' e'q'o' r' n'g'z' "e'q'p'u'k'w'k'p'c'n' 's' v'g'u'k'q'p' "k'p' "v'j' g'r' t'g'u'g'p'v' 'e'c'ug' "d'g'ec'w'g' y' j' g'v'j' g't' "q't' "p'q'v' 'D'g'p'v'g { 'u' 'v'g'u'k'o' q'p' { "t'g'eq'w'p'v'k'p'i' "E'q'q'r' g't' 'u' u'c'v'go' g'p'w'v'j' t'q'r' g't'n' { "y' c'u' 'c'f' o' k'w'g'f' . 'k' 'k'u' 'e'g't'v'c'p' 'w'p'f' g't' 'g'x'g'p' 'v'j' g' g'z'c'v'k'p'i' "Chapman (Chapman v. California" *3; 89+5: 8" WLU 3: .46"; 9'UE'v'0: 46. "4: .39'NGF'0'f' '927.46'C'NO'f' '3287+ u'c'p'f' c't'f' "q'h' 't'g'x'k'g'y' "v'j' c'v'c'p' { "g't't'q't' "k'p' "c'f' o' k'v'k'p'i' "v'j' k'u' 'v'g'u'k'o' q'p' { y' c'u' "j' c't'o' r'g'u' "d'g' { 'q'p'f' "c' "t'g'c'u'q'p'c'd'g' "f' q'w'd'v'0' *U'g'g' " *1016 Lilly v. Virginia" *3; ; ; +749" WLU 338. "35; /362"]33; "UE'v'0 3: : 9.3; 23.366'NGF'0'f' '339_] Chapman' u'c'p'f' c't'f' "c'r' r' n'k'ec'd'g' y' j' g'p' "p'q'v'v'g'u'k'h' { k'p'i' "c'ee'q'o' r' n'k'eg'u' "q'w'q'h' 'e'q'w't'v' "e'q'p'h'g'u'k'q'p' g't't'q'p'g'q'w'u'v' { 'k'u' 'c'f' o' k'w'g'f' 'c'v'v'c' 'f' ghgpf cpv'v'v'k'c'n' 0'v'j' g' 'u'c'v'go' g'p'w'v'j' y' g't'g' "c'f' o' k'w'g'f' "o' g't'g'n' "v'q' "t'g'j' c'd'k'k'c'v'g' "v'j' g' "e't'g'f' k'l'k'k'v' { "q'h' "c' y' k'p'g'u'u' "q'p' "c' "c'p'i' g'p'v'c'n' r' q'k'p'0' P' q'v'j' k'p'i' "k'p' "v'j' g' "u'c'v'go' g'p'w'v'j' f' k't'g'ev'v' { "k'p'ew'r' c'v'g'f' "f' ghgpf cpv'v' "q't' "g'x'g'p' "o' g'p'v'k'q'p'g'f' "j' k'o' 0' V'q' v'j' g' "g'z'v'g'p'v'j' g' "l'w't' { "o' c' { "j' c'x'g' "e'q'p'u'k'f' g't'g'f' "v'j' g' "u'c'v'go' g'p'w'v'j' c'u'

g'x'k'f' g'p'eg' 'q'h' 'c'p' 'c'd'q't'v'x'g' 'c'v'go' r' v'v'q' 'b' w't'f' g't' 'F' g'v'g'v'x'g' 'Y' k'n'k'c'o' u' . v'j' g' "u'c'o' g' "g'x'k'f' g'p'eg' "e'c'o' g' "d'g'h'q't'g' 'v'j' g' "l'w't' { "k'p' 'h'c't' "i' t'g'c'v'g't' "f' g'v'c'k'n' v'j' t'q'w'j' j' "v'j' g' "v'g'u'k'o' q'p' { "q'h' 'J' k'emu' 'c'p'f' "D'g'p'v'g' { . "c'p'f' "g'x'k'f' g'p'eg' h't'q'o' "q'v'j' g't' 'y' k'p'g'u'g'u' 'c'n'q' "g'u'c'd'r'k'uj' g'f' "f' ghgpf cpv'v'j' q'v'j' g't' "g'c't'r' { g'h'q't'w'v' "v'q' "c'tt'c'p'i' g' "h'q't' "v'j' g' "n'k'k'p'i' "q'h' 'F' g'v'g'v'x'g' "Y' k'n'k'c'o' u'0' V'q' "v'j' g' "g'z'v'g'p'v'j' g' "g'x'k'f' g'p'eg' "o' c' { "j' c'x'g' "d'g'g'p' "w'ug'f' "v'q' "d'q'u'v'g't' v'j' g' "e't'g'f' k'l'k'k'v' { "q'h' "D'g'p'v'g' { . "v'j' c'v' "g'x'k'f' g'p'eg' "y' c'u' "q'h' "c'p'i' g'p'v'c'n' k'o' r' q't'v'c'p'eg' "c'u' "h'c't' "c'u' "g'u'c'd'r'k'uj' k'p'i' "v'j' g' "i' v'k'n' "q'h' "f' ghgpf cpv'v' "k'u' e'q'p'eg't'p'g'f' /k'y' c'u' "D'g'p'v'g' { 'u' "e'q'p'h'w'ug'f' "t'g'eq'ng'v'k'q'p' "t'g'i' c't'f' k'p'i' v'j' g'r' t'g'u'g'p'eg' 'q'h' 'E'q'q'r' g't' "k'p' "v'j' g' "c'w'q'o' q'd'k'g'f' 'v'j' c'v'f' ghgpf cpv'v'w'ug'f' v'q' 'k'o' r' g'c'ej' "D'g'p'v'g' { 'u' 'e't'g'f' k'l'k'k'v' { 0'J' k'emu' . "j' q'y' g'x'g't' . "c'r't'g'c'f' { 'j' c'f' v'g'u'k'h'g'f' 'v'j' c'v'Eq'q'r' g't'j' cf "d'g'g'p' r' t'g'u'g'p'v'q'p' "v'j' c'v'q'ec'c'k'q'p' . "c'p'f' k'p' "c'p' { "g'x'g'p'v'j' g' "E'q'q'r' g't' "u'c'v'go' g'p'v'j' c'u' "p'q'v'x'g't' { "g'h'g'v'x'g' "k'p' f' k'ur' g'n'k'p'i' "v'j' g' "k'o' r' t'g'u'k'q'p' "v'j' c'v' "D'g'p'v'g' { "j' k'o' u'g'h' 'r'c'v'ng'f' "c' "i' q'q'f' k'p'f' g'r' g'p'f' g'p'v'v'g'eq'ng'v'k'q'p' "q'h' "v'j' g' "g'x'g'p'w'v' "q'h' "v'j' c'v'f' c' { 0'K'p' "u'w'o' . v'j' g' 'e'j' c'n'g'p'i' g'f' "g'x'k'f' g'p'eg' "y' c'u' 'e'w'o' w'v'c'v'x'g' . "c'p'f' "c'p' { "g't't'q't' "k'p' "k'u' c'f' o' k'u'k'q'p' "y' c'u'j' c't'o' r'g'u' "d'g' { 'q'p'f' "c' "t'g'c'u'q'p'c'd'g' "f' q'w'd'v'0

19. Testimony of Michael T.

*5: +F ghgpf cpv'v'q'w'v'g'p'f' u'v'j' g' "t'k'c'n' 'e'q'w't'v'g't't'g'f' "k'p' "c'f' o' k'v'k'p'i' "k'p'v'j' g'x'k'f' g'p'eg' "e'g't'v'c'p' "v'g'u'k'o' q'p' { "q'h' "r' t'q'u'g'ew'k'q'p' "y' k'p'g'u'u' "O' l'ej' c'g'n' V'0' "c' "e'j' k'f' "y' j' q' "q'd'ug't'x'g'f' "v'j' g' "o' w't'f' g't' "q'h' 'F' g'v'g'v'x'g' "Y' k'n'k'c'o' u'0' F' ghgpf cpv'v' e'q'p'v'g'p'f' u' "O' l'ej' c'g'n' V'0' v'g'u'k'h'g'f' "h'c'n'g'n' { "y' j' g'p' "j' g' u'c'v'g'f' "j' g' "q'd'ug't'x'g'f' "d'n'q'q'f' "t'w'p'p'k'p'i' "h't'q'o' "v'j' g' "r'k' "q'h' 'F' g'v'g'v'x'g' "Y' k'n'k'c'o' u'j' "u'q'p' "c'h'g't' "v'j' g' "u'j' q'q'v'k'p'i' 0'F' ghgpf cpv'v' e'q'p'v'g'p'f' u' "v'j' c'v' v'j' g' "v'g'u'k'o' q'p' { "y' c'u' "k't'g'r'g'x'c'p'v' "c'p'f' "k'p'h'c'o' o' c'v'q't' { . "v'j' c'v'k'y' c'u' g'r'k'ek'g'f' "k'p' "d'c'f' "h'c'k'j' "d' { "v'j' g'r' t'q'u'g'ew'k'q'p' . "c'p'f' "v'j' c'v'k'u' 'c'f' o' k'u'k'q'p' e'q'p'u'k'w'g'f' "c' "x'k'q'r'v'k'p' "q'h'j' k'u' 'k'i' j' v'v'q' "f' w'g'r' t'q'eg'u'u' "q'h' 'r'c'y' 0

F ghgpf cpv'v'q'd'l'g'v'g'f' "q'p' 't'g'r'g'x'c'p'eg' 'i' t'q'w'p'f' u'c'h'g't' "v'j' g'r' t'q'u'g'ew'q't' c'r't'g'c'f' { "j' c'f' "c'u'ng'f' "v'j' g'y' k'p'g'u'u' "u'g'x'g't'c'n' 's' v'g'u'k'q'p'u' "e'q'p'eg't'p'k'p'i' j' k'u' "q'd'ug't'x'c'v'k'p' "v'j' c'v'v'j' g' "x'k'v'k'o' "u' "u'q'p' "c'r' r' g'c't'g'f' "v'q' "j' c'x'g' "d'g'g'p' k'p'l'w't'g'f' "k'p' "v'j' g' "u'j' q'q'v'k'p'i' 0' V'j' g' "q'd'l'g'v'k'p' "y' c'u' "u'w'v'c'k'p'g'f' 0' K' r'v'g't' "y' c'u' 'u'w'r' w'v'c'v'g'f' "v'j' c'v'F' g'v'g'v'x'g' "Y' k'n'k'c'o' u'j' 'y' k'f' q'y' "j' c'f' "p'q'v' q'd'ug't'x'g'f' "c'p' { "k'p'l'w't' { "v'q' "j' g't' "u'q'p' "c'h'g't' "v'j' g' "o' w't'f' g't' "c'p'f' "v'j' c'v'v'j' g' e'j' k'f' "j' c'f' "t'g'eg'k'g'f' "p'q' "o' g'f' k'ec'n' "t'g'c'v'o' g'p'v'0' Y' j' g'p' "f' ghgpf cpv'v' o' c'f' g' "c' "o' q'v'k'p' "h'q't' "o' k'u'k'c'n' "v'y' q' "y' g'g'm'u' "c'h'g't' "O' l'ej' c'g'n' V'0' u'v'g'u'k'o' q'p' { "q'p' "v'j' g' "i' t'q'w'p'f' "v'j' g'r' t'q'u'g'ew'q't' "n'p'q'y' k'p'i' n' { "g'r'k'ek'g'f' h'c'n'g'v'g'u'k'o' q'p' { "h't'q'o' "O' l'ej' c'g'n' V'0' t'g'i' c't'f' k'p'i' "c'p' "c'r' r' c't'g'p'v'k'p'l'w't' { v'q' "v'j' g' "x'k'v'k'o' "u' "u'q'p' . "v'j' g' "e'q'w't'v'p'q'v'g'f' "v'j' c'v'f' ghg'p'ug' "e'q'w'p'ug'n'j' c'f' p'q'v'q'd'l'g'v'g'f' "y' j' g'p' "v'j' g'y' k'p'g'u'u' "h'k'u'v'x'q'n'p'v'g't'g'f' "v'j' c'v'F' g'v'g'v'x'g' "Y' k'n'k'c'o' u'j' "u'q'p' "c'r' r' g'c't'g'f' "v'q' "j' c'x'g' "d'g'g'p' "k'p'l'w't'g'f' . "c'p'f' "v'j' c'v'k'y' c'u' v'q'q' 'h'c'v'g' "v'q' "v'g'm'v'j' g' "l'w't' { "v'q' " *1017 "F' k'ut'g'i' c't'f' "v'j' g' "g'x'k'f' g'p'eg' 0'V'j' g' r' t'q'u'g'ew'q't' "g'z'r' n'c'k'p'g'f' "v'j' c'v'j' g'j' c'f' "p'q'v'g'z'r' g'ev'g'f' "v'j' g'y' k'p'g'u'u' "v'q' v'g'u'k'h' { "c'u'j' g'f' k'f' "c'p'f' "v'j' c'v'k'y' c'u' "p'q'v'eng't' "v'j' c'v'v'j' k'u' "v'g'u'k'o' q'p' { y' c'u' 'b' k'u'c'n'g'p' "w'p'v'k'i' 0' t'u'0'Y' k'n'k'c'o' u' 'h'c'v'g't' "e'q'p'h'k't'o' g'f' "v'j' c'v'v'j' g'j' c'f' q'd'ug't'x'g'f' "p'q' "k'p'l'w't' { 0'V'j' g' "e'q'w't'v'f' g'v'g't'o' k'p'g'f' "v'j' c'v'v'j' g'r' t'q'u'g'ew'q't' j' c'f' "p'q'v' 'n'p'q'y' k'p'i' n' { "g'r'k'ek'g'f' "h'c'n'g'v'g'u'k'o' q'p' { . "d'w'v'j' c'v'r' t'q'd'c'd'n' v'j' g'y' k'p'g'u'u' "u'k'o' r' n' { "j' c'f' "d'g'g'p' "o' k'u'c'n'g'p' /c' "e'k't'ew'o' u'c'p'eg' "v'j' c'v'

kp'tgvrckvqp'hqt'vj cv' *1019 "qHhlegt'u'gzgtekug'qh'j ku'qHhlekcn f wkgu'J g'eqpvpgf u'hktu'vj cv'vj g'v'krci'eqwtv'o kulpwtwevgf vj g'lwt {"tgi ctf lpi "vj g'grgo gpw'qh'vj g'ur gekrci'ekewo ucpeg' J g'eqpvpgf u'vj g'eqwtv'o kurgf "vj g'lwt {"d {"eqpxg{lpi "vj g ko r tguakqp "vj cv' f ghgpf cpv'u' uwdlgevkg" xkgy "tgi ctf lpi "vj g rcy hwpguu'qh'F gvevkg'Y knko u'u'eqpf wevy cu'ktgrxcpv'0

Ugevqpp' 3; 20f. " uwdf kxkukqp " *c-#9+ " f ghkgu' vj g' cr r rkecdrg ur gekrci'ekewo ucpeg'cu'hqny u<δVj g'xlevo "y cu'c'r gceg qHhlegt'cu'f ghkgf ("00)y j q. "y j kg'gpi ci gf 'lp'vj g'eqwtug'qh'vj g r gthqto cpeg'qh'j ku'qt'j gt'f wkgu.'y cu'kpvpgv'kpcmf 'nkmgf . 'cpf vj g'f ghgpf cpv'npqy . "qt'tgcuqpcdn' "uj qwf "j cxg'npqy p. "vj cv vj g'xlevo "y cu'c'r gceg'qHhlegt'gpi ci gf 'lp'vj g'r gthqto cpeg'qh j ku'qt'j gt'f wkgu'qt'vj g'xlevo "y cu'c'r gceg'qHhlegt'cu'f ghkgf ("00 cpf "y cu'kpvpgv'kpcmf 'nkmgf 'lp'tgvrckvqp'hqt'vj g'r gthqto cpeg qh'j ku'qt'j gt'qHhlekcn'f wkgu'0

Kl'y cu'cmgi gf "vj cv'f ghgpf cpv'kpvpgv'kpcmf "nkmgf "F gvevkg Y knko u' lp' tgvrcv'kqp' hqt' vj g' qHhlegt'u' r gthqto cpeg' qh j ku' qHhlekcn' f wkgu' y kj lp' vj g' o gcplpi " qh' ugevqpp' 3; 20f. uwdf kxkukqp " *c-#9+δVj g'eqwtv'kpwv'kpcmf "vj g'lwt {"cu'hqny u<δVq' hpf "vj cv'vj g'ur gekrci'ekewo ucpeg'tghgtgf "v'lp'vj g'ug kpwv'kpcmf'cu' o wtf gt'qh'c'r gceg'qHhlegt'ku'twg'gcej "qh'vj g hqny lpi "hew' o wu' dg' r txxgf <"] _ " Qpg. "vj cv'vj g' r gtuqp o wtf gtgf "y cu'c'r gceg' qHhlegt'0"] _ " Cpf. "w q. "vj cv'vj g'y cu kpvpgv'kpcmf "nkmgf 'lp'tgvrckvqp'hqt'vj g'r gthqto cpeg'qh'j ku qHhlekcn' f wkgu'0"] _ " Cpf. "vj tgg. "vj cv'vj g'f ghgpf cpv'npqy "qt tgcucp'cdn' "uj qwf "j cxg'npqy p"vj cv'vj g'r gtuqp'nkmgf "y cu'c r gceg'qHhlegt'gpi ci gf 'lp'vj g'r gthqto cpeg'qh'j ku'f wkgu'0"Ugg ECNLE'P q0: 0 300'K'cf f kxkqp. 'vj g'eqwtv'kpwv'kpcmf "vj g'lwt {" <δHqt'vj g'r wtr qug'qh'vj g'ug'kpwv'kpcmf'cu'Nqu'cpi grgu'Rqkleg F gvevkg'ku'c'r gceg'qHhlegt'0"] _ Vj g'r j tcug'lp'vj g'r gthqto cpeg qh'j ku'f wkgu'cu'wug'lp'vj g'ug'kpwv'kpcmf'cu' gcpu'cp {"rcy hwn cev'qt'eqpf wevy j kg'gpi ci gf 'lp'vj g'b' kpvpgcpeg'qh'vj g'r gceg cpf "ugewk' qh'vj g'eqo o wpk {"qt"lp'vj g'kpxguk' cvkqp'qt r txxgpv'kqp'qh'etko g0"Ugg'ECNLE'P q0: 0 30 0-

F ghgpf cpv'eqpvpgf u'vj g'eqwtv'krcgf "v'kpwv'kpcmf'vj g'lwt {"vj cv lp'qt'f gt'v'k'lp'vj g'cmgi cvkqp'twg. 'k'o wu'hkpf 'vj cv'f ghgpf cpv tgvrcv'kqp' "ci kpwv' vj g' qHhlegt' y kj "vj g' uwdlgevkg' kpvpgv' vj g'zcev' txxgpi g' hqt' vj g' qHhlegt'u' lawful" r gthqto cpeg' qh' j ku f wkgu'J g'eqpvpgf u'vj cv'lp'hcev'vj g'ōmpgy "qt'uj qwf "j cxg npqy pō'kpi wci g'f guetk'kpi "vj g'vj kf 'hcewrcikuug'r tguvgf d {"vj g'kpwv'kpcmf'cev'kgn' o kurgf "vj g'lwt {"qp'vj ku'r kpv'0Cp kpvpgv'v'k' tgvrcv'kqp'hqt'vj g' qHhlegt'u'eqpf wevy vj cv'vj g'f ghgpf cpv uwdlgevkg'gn' "dgrkxgf "y cu' unlawful" y qwf "pqv' ceeqtf lpi v'q'f ghgpf cpv'eqpvkwwg'vj g'kpvpgv'pgeguuct {"v'uw' r qt'v'j ku ur gekrci'ekewo ucpeg'hkpf lpi 0'F ghgpf cpv'eqpvpgf u'vj cv'vj ku cmgi gf "o kulpwtwevgf/qt'cv'krcv'vj g'eqwtv'krcgf'v'k'f'g'ertkh'

k/v' cu' r tglwf lekcn' dgecvug' vj g'tg' y cu' uwdlgevkg' g'k'f gpeg vj cv'f ghgpf cpv'nkmgf "F gvevkg'Y knko u'lp' tgvrcv'kqp' hqt y j cv'f ghgpf cpv'dgrkxgf "y cu'vj g' qHhlegt'u'wprcy hwi' *1020 eqpf wev'k'k'co lpi 'j ko 'hqt'vj g'Ecrr gpvgt'qddgt {0K'cf f kxkqp. j g'cr r ctgpv' "eqpvpgf u'vj cv'gxgp'k'cp' qdlgevkg' ucpf ctf y g'tg'cr r rkecdrg. "vj g'eqwtv'krcgf "v'q'f ghkg'cf gs wev' {"y j cv eqpvkwwg' "cp' qHhlegt'u' rcy hwi' r gthqto cpeg' qh' j ku' qt' j gt f wkgu'0' k' f ghgpf cpv'u' xkgy . "vj g' lwt {"uj qwf "j cxg' dggp kpwv'kpcmf "vj cv'vj g'qHhlegt'y qwf 'pqv'dgr' gthqto lpi 'j ku'qHhlekcn f wkgu'k'j' g'y g'tg'o cpw'cewv'kpi "c'ecug'ci kpwv'f ghgpf cpv'lp vj g'tqddgt {"r tqugewkqp'0

Ur gekhlecnc' . " f ghgpf cpv' eqpvpgf u' qp' cr r gcn' vj cv' vj g' v'kcn eqwtv' uj qwf " j cxg' kpwv'kpcmf " vj g' lwt {" uwc' ur qpv'g' δK' f gvgto k'kpi " y j g'v' g't " vj g' xlevo " y cu' nkmgf " lp' tgvrcv'kqp hqt' vj g' r gthqto cpeg' qh' j ku' qHhlekcn' f wkgu. " {qw' o wu' xkgy vj g' tgvrcv'kqp' /ci kpwv'eqpf wev'cu'k'v' cu' w'f gtuqqf "d {"vj g' f ghgpf cpv'0K'v' g'f ghgpf cpv'dgrkxgf "vj g'xlevo "o cpw'cewv'g' g'k'f gpeg' "ci kpwv' j ko . " cpf " tgvrcv'kqp' hqt' vj cv' r gtekg'f eqpf wev' vj g' xlevo " y cu' pqv' nkmgf " lp' tgvrcv'kqp' hqt' vj g' r gthqto cpeg'qh'j ku'qHhlekcn' f wkgu'0'F ghgpf cpv'eqpvpgf u'vj g eqwtv'u' h'w' "qt' k'peqo r rvg'kpwv'kpcmf'xk'v'g' "j ku'tki j v'v'q f w'r t'qegu'qh'rcy . "v'k'k' 'pqv'g' . "v'k'k'cn' {" lwt {" . " cpf "v'q'k'k' cpf "tgrkcdrg'F gvgto k'v'kqp'qh'j ku' w'k'q'hc'rc' k'cn' o w'f g't0

Vq'vj g'gzv'p'f ghgpf cpv'u'erc'ko "ku'vj cv'vj g'eqwtv'krcgf "v'q i k'g'ertkh'k' lpi 'qt'co r rkh' lpi 'kpwv'kpcmf'vj g'erc'ko 'ku'y c'k'g'f dgecvug'f ghgpf cpv'f k' "pqv'tgs wgu'uwej "ertk'k'v'kqp'dgrny 0 *People'v. Sully. 'supra.'75'Ecrr'f'cv'r 0343: 0'Vq'vj g'gzv'p'v j ku'erc'ko 'ku'vj cv'vj g'eqwtv' kurgf "vj g'lwt {"tgi ctf lpi "vj g'ur gekcn ekewo ucpeg'cmgi cvkqp. "qt'k'k'k'g' "v'q'kpwv'kpcmf'cu'c'f ghgpf uwr r qt'v'g' "d {"vj g'g'k'f gpeg. "vj g'erc'ko 'ku'tglgev'g' . "cu'y g'uj cm g'zr r'k'p'0

K' o cnkpi " j ku' erko . " f ghgpf cpv' tgrku' w'qp' vj g' y gm' gucdnkj gf 'twg'vj cv'j j gp'c'bcw'g'o cnguk'c'etko g'v'eqo o kv cp {"cev'ci kpwv'c'r gceg'qHhlegt'gpi ci gf 'lp'vj g'r gthqto cpeg'qh j ku'qt'j gt'f wkgu.'r ctv'qh'vj g'eqtr wu'f g'k'v'k'qh'vj g'qHhleg'ku vj cv'vj g'qHhlegt'y cu'cev'kpi 'rcy hwn' 'cv'vj g'v'ko g'vj g'qHhleg' y cu eqo o kv'g' 0'In re Manuel G. *3; ; 9+38'Ecrr'v'j : 27. : 37'J88 Ecrr'v'v'0'f "923. : 63'RC'f : : 2 _=People'v. Gonzalez' *3; ; 2+ 73'Ecrr'f "339; . "3439"J497'Ecrr'v'v'0'94; . : 22'RC'f "337; _]cr r n' lpi 'twg'v'q'ugevqpp' 3; 20f. uwdf kxkukqp " *c-#9+0'F kur w'g'f hcew'tg'rcv'kpi "v'q'vj g's w'k'v'k'p' y j g'v' g't "vj g'qHhlegt'y cu'cev'kpi rcy hwn' {"ctg'hqt'vj g'lwt {"v'f gvgto k'p'g' y j gp'uwej 'cp'qHhleg'ku ej cti gf 0'People'v. Gonzalez. 'supra.'73'Ecrr'f'cv'r 034390-

Vj g' twg' f ghgpf cpv' tgrku' w'qp' tgs w'k'gu' vj cv'vj g' qHhlegt'u rcy hwi'eqpf wev' dg' gucdnkj gf "cu'cp' qdlgevkg' hcev'k'f' g'qu

cr r gcrf *People v. Smithey* 3; ; +42" Ecrf6j "; 58." ; : 8"] : 8 EcrfTr r0f "465."; 9: "R0f "3393_0

Vj gtg" cnuq" ku" pq" o gtkv" kp" f ghgpf cpvu" hpcn' eqpvvkvqp vj cv' kpuwhtekgpv' gxf gpeg" uwr r qtvgf " vj g" lwt { u' hpf kpi " vj cv f ghgpf cpv' nkrngf " F gvgevxg" Y knko u" kp" tgvrcvkvqp" hqt" j ku rcy hmf gthqto cpeg'qhj ku' qhtekcrif wkuu0Uwduvpcvkn' gxf gpeg uwr r qtvgf " vj ku' hpf kpi 0' *Ugg" People" v. Mayfield, supra, 36" Ecrf6j " cv" r r 0' 9; 2/9; 3"] cr r n' kpi " uwdvpcvkn' gxf gpeg vguv' vq" r tqqh" qh' vj ku" ur gekcn' ekewo ucpeg 0" Vj gtg" y cu uwdvpcvkn' gxf gpeg" vj cv' vj g" qhteg" y cu" gpi ci gf" kp" vj g lawful" r gthqto cpeg'qhj ku' f wkuu' kp' lpxguki cvkpi 'cpf' 'cuukvki kp" vj g" r tqugewkqp" qh' f ghgpf cpv' hqt" vj g" Ectr gpvgt" tqddgt { . ukpeg" vj g" xlvko " i cxg" vj g" r qnleg" c" xgj keng" nkgpug" pwo dgt qh' vj g" xgj keng" wugf " kp" vj g" tqddgt { . y j lej " y cu" tcegf " vq f ghgpf cpv" cpf " vj gtg" y cu" gxf gpeg" vj g" xlvko " r qukkxgn' kf gpvktkgf " f ghgpf cpv' cv' vj g" r tgrko kpct { " j gctkpi " cu" qpg" qh' vj g tqddgtu0Vj gtg' y cu' uwdvpcvkn' gxf gpeg" vj cv' f ghgpf cpv' nkrngf F gvgevxg" Y knko u" kp" tgvrcvkvqp" hqt" vj g" f gvgevxg" u" r ctv' kp vj g" Ectr gpvgt" r tqugewkqp. " dgecwug" vj gtg' y cu" gxf gpeg" vj cv f ghgpf cpv' vqr' Ctxkg' Ecttqm' cpf " Gkj v' Dtaqo hgrf " cu' 0 vej 0 *1023

22. Prosecutorial misconduct

*63+ F ghgpf cpv' eqpvvkvqp" vj g" r tqugewqt" eqo o kwgf o kaeqpf wev' tgs vktkpi ' t' gxtucn' l' h' k' k' pi ' v' q' k' h' q' to ' vj g' f ghgpg. dgthqg" vj g" r tgrko kpct { " j gctkpi . " qh' Ctxkg' Ecttqm' u" ucvgv gpv vq" vj g" r qnleg. " cpf " kp" h' k' k' pi " v' q' k' h' q' to " vj g' f ghgpg" qh' vj g u' vgo " wugf " kp" vj g" Nqu' Cpi g' rnu' Eqwpv' l' c' k' i' v' g' o r m' { ' k' p' o cvgu vq" ugewtg" v' p' t' g' r' i' c' d' r' g' ucvgv gpw' h' t' q' o " p' q' v' t' k' q' u' " f ghgpf cpv' u0 Vj gug" eqpvvkvqp" ctg" t' g' u' c' v' g' o gpw' qh' c' ti wo gpw' t' g' l' g' e' g' f' cdq' x' g' c' p' f' c' t' g' p' q' " o q' t' g' r' g' t' u' c' u' k' x' g' " kp" vj ku' p' g' y " h' q' to cv' Vj g f g' r' { ' kp" r' t' q' x' k' f' k' pi " vj g' f ghgpg" y k' j " Ctxkg' Ecttqm' u" ucvgv gpv y cu' p' q' v' r' t' g' l' w' f' l' e' k' c' n' " c' p' f' " vj g' t' g' k' u' p' q' " g' x' k' f' g' p' e' g' " kp" vj g' r' g' r' g' m' e' v' g' t' g' e' q' t' f' " u' w' r' r' q' t' v' k' pi " vj g' " u' g' e' q' p' f' " e' q' p' v' v' k' q' p' 0' K' " c' f' f' u' " p' q' v' k' pi qh' u' w' d' u' c' p' e' g' " v' q' " f ghgpf cpv' u" erko " v' q' " t' g' h' g' t' " v' q' " Ecttqm' u" v' t' c' n' v' g' u' k' o q' p' { " vj cv' Ecttqm' y cu' y gm' x' g' t' u' g' f' " o' k' p' " vj g' k' p' t' l' e' c' e' l' g' u' qh' h' k' x' pi " k' p' u' k' f' g' " l' c' k' u' . o' " vj cv' Ecttqm' n' p' g' y " q' vj g' t' " k' p' o cv' g' u' y j q y g' t' g' " k' p' h' q' to c' p' u' " vj cv' j' g' y cu' c' " v' t' u' w' f' " y j q' " u' r' g' p' v' u' w' d' u' c' p' v' c' n' v' k' o g' y k' j " f ghgpf cpv' c' p' f' " c' e' v' g' f' " cu' f ghgpf cpv' u" e' q' p' v' e' v' y k' j vj g' q' w' u' k' f' g' y q' t' r' f' . " c' p' f' " vj cv' Ecttqm' q' h' g' t' g' f' " k' p' h' q' to c' v' k' q' p' " v' q' vj g' c' w' j' q' t' k' k' e' u' . " c' p' f' " q' h' g' t' g' f' " v' q' " k' p' h' q' to " vj go " qh' c' p' { " t' g' e' q' m' g' e' v' k' q' p' u' vj cv' q' e' e' w' t' t' g' f' " v' q' j' k' o " t' g' i' c' t' f' k' pi " f ghgpf cpv' u" ucvgv gpv' v' q' j' k' o 0

F ghgpf cpv' cnuq" eqpvvkvqp" vj g" r tqugewqt" eqo o kwgf o kaeqpf wev' kp" ucvki " kp" emuki " cti wo gpv' vj cv' o' vj g r tqugewkqp" j cu' i kxgp'] Ctxkg' Ecttqm' p' q' v' k' pi " c' p' f' " j' g' c' u' n' g' f' h' q' t' " p' q' v' k' pi 0' F ghgpf cpv' cnuq" eqo r r' k' p' u' v' j' cv' vj g' r tqugewqt k' p' h' q' to g' f' " vj g" lwt { " vj cv' Ecttqm' u" v' g' u' k' o q' p' { " e' q' p' u' k' w' g' f

eqttqddt' c' v' k' q' p' " qh' vj g' v' g' u' k' o q' p' { " qh' f' ghgpf cpv' u" c' e' e' q' o r' n' e' g' u' 0 P' q' " q' d' l' g' e' v' k' q' p' " c' r' r' g' c' t' u' " k' p' " vj g' t' g' e' q' t' f' . " j' q' y' g' x' g' t' . " c' p' f' " vj w' u' v' j' g' e' r' k' o " k' u' y' c' k' x' g' f' 0' *Ugg" People" v. Millwee, supra, "3: " Ecrf6j cv' r 0' 36; = " People" v. Benson" *3; ; 2+ 74" Ecrf6f " 976." 9; 6] 498" EcrfTr r0f " 49." : 24" R0f " 552_0" Y g' t' g' l' g' e' v' f' ghgpf cpv' u' eqpvvkvqp" vj cv' j' ku' h' c' k' n' w' g' " v' q' d' l' g' e' v' j' q' w' f' " d' g' " g' z' e' w' u' g' f' " d' g' e' c' w' u' g' j' g' j' c' f' " d' g' g' p' r' t' g' e' n' w' f' g' f' " c' v' v' t' c' n' i' h' t' q' o " g' u' c' d' r' i' k' u' j' k' pi " vj g' g' z' k' u' g' p' e' g' qh' vj g' l' c' k' j' q' w' u' g' " k' p' h' q' to c' p' v' u' { v' g' o . " d' g' e' c' w' u' g' " vj ku" e' r' k' o " k' u' p' q' v' u' w' r' r' q' t' v' g' f' " d' { " vj g' t' g' e' q' t' f' 0' k' p' " c' p' { " g' x' g' p' v' p' q' " o k' a' e' q' p' f' w' e' v' c' r' r' g' c' t' u' " d' g' e' c' w' u' g' " vj g' r' t' q' u' g' e' w' q' t' u' " u' c' v' g' o g' p' u' c' t' g' " e' q' p' u' k' u' g' p' v' y k' j " v' g' u' k' o q' p' { " q' h' g' t' g' f' " c' v' v' t' c' n' i' 0' F ghgpf cpv' u" e' q' p' v' v' k' q' p' " vj cv vj g' e' w' o w' r' c' v' x' g' " g' h' g' e' v' " qh' x' c' t' k' q' u' " k' p' u' c' p' e' g' u' " qh' r' t' q' u' g' e' w' q' t' c' n' o k' a' e' q' p' f' w' e' v' f' g' r' t' k' x' g' f' " j' k' o " qh' f' w' g' r' t' q' e' g' u' u' q' h' i' r' e' y " h' c' k' u' " d' g' e' c' w' u' g' j' g' j' c' u' p' q' v' g' u' c' d' r' i' k' u' j' g' f' " vj cv' t' t' q' u' g' e' w' q' t' c' n' o k' a' e' q' p' f' w' e' v' q' e' e' w' t' t' g' f' q' t' " *k' p' " vj g' e' c' u' g' " qh' vj g' e' r' k' o " qh' f' g' r' c' { g' f' " f' k' a' e' q' x' g' t' { + " vj cv' c' p' { o k' a' e' q' p' f' w' e' v' y cu' r' t' g' l' w' f' l' e' k' c' r' 0

23. Jury instructions

a. Instruction on liability as an aider and abettor

*64+ F ghgpf cpv' eqpvvkvqp" vj g" eqwtv' gttgf" kp" kputwekpi vj g" lwt { " vj cv' f ghgpf cpv' eqwv" dg" h' q' w' p' f' " i wkn' { " qh' o w' t' f' g' t' g' k' j' g' t' " cu" c' " f' k' t' g' e' v' r' g' t' r' g' v' c' v' t' " q' t' " cu" *1024 " c' p' " c' k' f' g' t' " c' p' f' c' d' g' w' q' t' . " d' g' e' c' w' u' g' " vj g' r' t' q' u' g' e' w' q' t' " j' c' f' " e' q' p' v' g' p' f' g' f' " vj t' q' w' i' j' q' w' v' j' g' r' t' q' e' g' g' f' k' pi u' v' j' c' v' f' ghgpf cpv' y cu' v' j' g' t' u' a' p' y' j' q' u' j' q' v' f' g' v' e' v' x' g' Y knko u0Cm' j' q' w' i' j' f' ghgpf cpv' f' q' u' b' p' v' e' q' p' v' g' p' f' " vj cv' j' g' t' g' y' cu' k' p' u' w' h' t' e' k' g' p' v' g' x' k' f' g' p' e' g' " w' r' q' p' " y' j' l' e' j' " vj g' l' w' t' { " e' q' w' f' " j' c' x' g' " h' q' w' p' f' j' k' o " i' w' k' n' { " c' u' c' p' " c' k' f' g' t' " c' p' f' " c' d' g' w' q' t' . " j' g' e' q' p' v' g' p' f' u' v' j' g' k' p' u' t' w' e' v' k' q' p' x' l' q' r' e' v' g' f' " j' k' u' t' k' i' j' v' v' q' " p' q' v' e' g' " qh' vj g' f' ghgpgu" j' g' u' j' q' w' f' " r' t' g' u' g' p' v' k' p' " x' l' q' r' e' v' k' q' p' " qh' vj g' e' q' p' u' k' w' k' q' p' c' n' i' w' c' t' c' p' v' g' g' " qh' f' w' g' r' t' q' e' g' u' u' " qh' n' e' y 0

Cu" y g" j cxg" g' z' r' k' l' p' g' f' " kp" g' c' t' r' i' g' t' " e' c' u' g' u' " o' c' p' " c' e' e' w' u' c' v' t' { r' n' e' g' f' k' pi " e' j' c' t' i' k' pi " c' f' ghgpf cpv' y k' j' " o' w' t' f' g' t' " p' g' g' f' " p' q' v' u' r' g' e' k' h' { vj g' " vj g' q' t' { " qh' o' w' t' f' g' t' " q' p' " y' j' l' e' j' " vj g' r' t' q' u' g' e' w' k' q' p' " k' p' v' g' p' f' u' v' q' " t' g' n' 0 " *People" v. Diaz" *3; ; 4+ 5" Ecrf6j " 6; 7. " 779"] 33 EcrfTr r0f " 575." : 56" R0f " 3393_ " c' p' f' " e' c' u' g' u' " e' k' s' g' f' 0' P' q' t' o' c' m' f' . o' v' j' g' c' e' e' w' u' g' f' " y' k' n' i' t' g' e' g' k' x' g' " c' f' g' s' w' c' v' g' " p' q' v' e' g' " qh' vj g' r' t' q' u' g' e' w' k' q' p' u' vj g' q' t' { " qh' vj g' e' c' u' g' " h' t' q' o " vj g' v' g' u' k' o q' p' { " r' t' g' u' g' p' v' g' f' " c' v' " vj g' r' t' g' r' i' k' o k' p' c' t' { " j' g' c' t' k' pi 0000 " Ibid. + k' p' " vj g' r' t' g' u' g' p' v' e' c' u' g' . " y' d' g' r' i' g' x' g' vj cv' f' ghgpf cpv' y cu' t' w' l' q' p' " c' e' w' c' i' l' p' q' v' e' g' " vj t' q' w' i' j' " vj g' e' q' p' u' r' k' e' c' { e' j' c' t' i' g' v' j' cv' j' g' e' q' w' f' " d' g' " u' w' d' l' g' e' v' q' " c' e' e' q' o r' n' e' g' " i' c' d' k' k' v' { " h' q' t' " vj g' o' w' t' f' g' t' " qh' f' g' v' e' v' x' g' " Y knko u0 " Ugg " People" v. Garceau" *3; ; 5+ 8" Ecrf6j " 362. " 3: 5"] 46" EcrfTr r0f " 886." : 84" R0f " 886_ "] c' p' c' e' e' q' o r' n' e' g' " k' u' i' p' g' y' j' q' g' k' j' g' t' " c' k' u' c' p' f' " c' d' g' u' l' k' p' " vj g' e' q' o o' k' u' k' q' p' qh' vj g' " q' h' t' g' p' u' g' " q' t' " e' q' p' u' r' k' t' g' u' " v' q' " e' q' o o' k' v' j' g' " q' h' t' g' p' u' g' = " 3" Y knkp (" G' r' u' g' k' p' . " Ecrf0' Etko k' p' c' n' N' e' y " *4f " g' f' 0' 3; : : + " k' p' w' q' f' w' e' v' k' q' p' " v' q' Etko g' u' " E' : 7. " r' r' 0' 322/323"] c' k' f' k' pi " c' p' f' " c' d' g' w' k' pi " i' c' d' k' k' v' { " o' c' { d' g' " d' c' u' g' f' " w' r' q' p' " g' x' k' f' g' p' e' g' " qh' e' q' p' u' r' k' e' c' { _0

b. Unanimity instruction

*65+ F ghgpf cpv' cnuq' eqpvpgf u' vj cv' dgecwug' vj g' lwt { " y cu kputwevgf "qp'ceeao r nleg'ncdkrkv' cu'y gmi'cu'qp'r tgo gf kcvgf o wtf gt. "ucvg' cpf " hgf gtcn' eqpukwkwqpcn' r tlpekr ngu' qh' f wg r tqegu' qh' nry " cpf " vj g' tki j v' vq' c' " wpcplo qwu' lwt { " xgtf lev tgs wktgf " vj g' vlcni' eqwtv' v' kputwev' vj g' lwt { " qp' vj g' pggf " hqt wpcplo k' " cu' vq' vj g' hcevu' vr qp' y j lej " cp { " eqpxkewqp' hqt vj g' etlo g' qh' o wtf gt' y cu' dcugf 0J g' cempqy ngf i gu' y g' j c xg j grf " vj cv' vj g' ku' pq' tgs wktgo gpv' vj cv' vj g' lwt { " wpcplo qwu' ci tgg' wr qp' vj g' vj g' qat { " qh' vj g' f ghgpf cpv' u' ewr cdkrkv' . " cpf " vj cv vj ku' twg' j cu' dggp' cr r nleg' " vj g' qatku' qh' i vkn' r tgo kugf " wr qp ckl kpi " cpf " cdgwki " cpf " f k gev' ewr cdkrkv' (0' P qpvj gruu. " j g eqpvpgf u' vj cv' k' vj g' wpuwcn' ftekewo ucpegu' qh' j ku' ecug. lwtqtu y j q' hqwpf " j ko " i vkn' " cu' cp' ckl gt " cpf " cdgwqt " y qwf " j c xg' vq hpf " c' ugv' qh' hcew' vq' dg' gucdnkuj gf " gpv' tgn' " f hhtgtpv' lhtgo vj g' hcew' vj cv' lwtqtu' y qwf " tgn' " wr qp' vq' hpf " j ko " i vkn' " cu' c f k gev' r gtr gtcvqt 0' Wpf gt " vj g' u' g' " ektewo ucpegu. " j g' ercko u' " vj g ej qlg' dgw ggp' ckl kpi " cpf " cdgwki " cpf " f k gev' ewr cdkrkv' " y cu guugpvkm' " hcewcn' lwtqtu' ctg' tgs wktgf . " j g' eqpvpgf u' " vq' tgej c' wpcplo qwu' xgtf lev' cu' vq' vj g' hcewcn' dcuku' hqt " vj g' k' xgtf lev' 0' Wpf gt " vj g' r' gewrct " ektewo ucpegu' qh' j ku' ecug. " j g' eqpenf gu. vj g' wpcplo k' " kputwev' qp' vj qwf " j c xg' dggp' i kxgp 0

Y g' f kuci tgg' 0' Y g' j c xg' ucvgf < 0' k' ku' ugwrgf " vj cv' cu' npi cu' gcej " lwtqt " ku' eqpxkpegf " dg { qpf " c' tgcupcdrg " f qwdv' vj cv f ghgpf cpv' ku' i vkn' " qh' o wtf gt " cu' * 1025 " vj cv' qh' hpug' ku f ghgpf " d { " ucwug. " k' pggf " pqv' f gekf g' wpcplo qwu' " d { " y j lej vj g' qat { " j g' ku' i vkn' (0') Ekcw' qp' u' " 0' qtg' ur gek' h' ecn' . " vj g' lwt { pggf " pqv' f gekf g' wpcplo qwu' " y j g' vj g' f ghgpf cpv' y cu' i vkn' cu' vj g' ckl gt " cpf " cdgwqt " qt " cu' vj g' f k gev' r gtr gtcvqt (000)] " _ (00)] " _ P qv' qpn' " ku' vj g' g' pq' wpcplo k' " tgs wktgo gpv' cu' vq' vj g vj g' qat { " qh' i vkn' " vj g' k' pf k' k' wcn' lwtqtu' vj go ugrku' pggf " pqv ej qqug' co qpi " vj g' vj g' qatku' " uq' npi " cu' gcej " ku' eqpxkpegf " qh i vkn' 0' uqo gko gu. cu' r' tqdcn' " qeewtgf " j g' g' " vj g' lwt { " uko r n' ecppqv' f gekf g' dg { qpf " c' tgcupcdrg " f qwdv' gzcwv' " y j q' f k' y j cv' 0' vj g' g' o c { " dg " c' tgcupcdrg " f qwdv' vj cv' vj g' f ghgpf cpv y cu' vj g' f k gev' r gtr gtcvqt. " cpf " c' uko kct " f qwdv' vj cv' j g' y cu vj g' ckl gt " cpf " cdgwqt. " dw' pq' uwej " f qwdv' vj cv' j g' y cu' qpg qt " vj g' qv' g' t 0' * People v. Santamaria " * 3 ; ; 6+ : " Ecn' 0' vj " ; 25 ; ; 3 / ; 3 ; " j 57 " Ecn' 0' r v' 0' f " 846. " : ; 6 " R0' f " : 3 = ugg' cnuq " People v. Beardslee " * 3 ; ; 3 + 75 " Ecn' 0' f " 8 : . ; 4 " j 49 ; " Ecn' 0' r v' 0' 498. " : 28 R0' f " 3533 _ 0' F ghgpf cpv' eqpvpgf u' vj cv' f hhtgtpv' hcew' y qwf uwr r qt v' ckl kpi " cpf " cdgwki " hcdkrlk' " cpf " hcdkrlk' " cu' c' f k gev r gtr gtcvqt. " dw' " cu' y g' j c xg' g' zr n' k' p' g' f . " vj g' lwt { " pggf " pqv wpcplo qwu' " ci tgg' " 0' qp' vj g' r' tgekg' hcewcn' f gvcku' qh' j qy " c n' k' kpi " vpf gt " qpg' qt " vj g' qv' g' vj g' qat { " qeewtgf " k' " q' f gt " vq eqpxk' v' f ghgpf cpv' qh' h' k' u' v' f gi tgg' o wtf gt (0' * People v. Pride, supra, " 5 " Ecn' 0' vj " cv' r' 0' 4720 " P cw' tcm' . " k' " q' f gt " vq' " t' gw' t' p' c

i vkn' " xgtf lev' " vj g' lwt { " o wuv' ci tgg' " wpcplo qwu' " vj cv' gcej grgo gpv' qh' vj g' e' j cti gf ' etko g' j cu' dggp' r' tqxgf . ' dw' vj g' hcew' vj cv' gucdnkuj ' ckl kpi ' cpf " cdgwki " hcdkrlk' " ctg' p' qv' lpenf gf " cu grgo gpw' qh' vj g' etko g' qh' o wtf gt (0' * People v. Prettyman " * 3 ; ; 8 + 36 " Ecn' 0' vj " 46 : . ' 493 " j 7 : " Ecn' 0' r v' 0' f " : 49. ; ; 48 " R0' f " 3235 _ 0+

Vj g' Wp' k' g' " Ucv' u' Uwr tgo g' Eqw' v' cnuq' j cu' g' zr n' k' p' g' f " vj cv' vj g lwt { " pggf " pqv' ci tgg' qp' vj g' o g' cu' d' { " y j lej " c' etko g' j cu' dggp eqo o kvgf . " ucw' v' i " vj cv' k' u' c' r r' tqr t' k' v' g' v' c' v' 0' f " hhtgtpv' lwtqtu o c { " dg' r' g' tuwcf gf " d { " f hhtgtpv' r' k' e' gu' qh' g' x' k' f' g' p' e' g' . " gx' gp' y j gp vj g' " ci tgg' wr qp' vj g' d' q' w' o " n' k' p' 0' R' c' k' p' n' " vj g' t' g' " ku' " pq' " i' gp' g' t' c' n' tgs wktgo gpv' vj cv' vj g' lwt { " tgej " ci tgg' gpv' qp' vj g' r' t' g' r' ko k' p' c' t { hcewcn' ku' w' u' y j lej " vpf g' r' k' v' j' g' x' g' t' f' lev' 0' * Schad v. Arizona * 3 ; ; 3 + 723 " W0' 0' 846. " 853 / 854 " j 333 " Ue' 0' 46 ; 3. " 46 ; 9. " 337 N0' g' 0' f " 777 _ 0+

F ghgpf cpv' eqpvpgf u' vj cv' vj g' ektewo ucpegu' k' uwr r qt v' qh' j ku r qv' p' v' c' n' c' eeao r nleg' hcdkrlk' / vj cv' j g' y cu' h' t' h' t' qo " vj g' u' e' g' p' g' y j gp' vj g' o wtf gt ' qeewtgf ' dw' j cf ' ckl gf ' cpf ' cdgwgf ' k' k' v' y g' g' uq' f' k' k' p' ev' h' t' qo " vj g' ektewo ucpegu' k' uwr r qt v' qh' j ku' r' qv' p' v' c' n' f' k' gev' hcdkrlk' / vj cv' j g' j cf " dggp' " cv' vj g' u' e' g' p' g' " cpf " j cf " r' wngf " vj g' " vki i g' t' / cu' vq' " eqpukwug' " y q' " 0' f' k' u' e' t' g' v' g' " etko k' p' c' n' g' x' gp' w' o tgs wktkpi " vj g' wpcplo k' " kputwev' qp' 0' J g' t' g' r' ku' w' r' qp' " cwj q' t' k' k' p' f' lec' v' k' pi " vj cv' vj g' wpcplo k' " kputwev' qp' " ku' t' g' s' wktgf " kh' vj g' t' g' ctg' " o wnr' ng' " ceu' " u' j' qy p' " vj cv' eqw' f " j c xg' dggp' " ej cti gf " cu ugr ctevg' qh' hpug' u' 0' * Ugg' People v. Beardslee. supra. " 75 " Ecn' 0' f cv' 0 ; 4 " j 0' C' tgs wktgo gpv' qh' lwt { " wpcplo k' " v' r' k' e' c' n' " c' r' r' k' u' v' v' q' ceu' vj cv' eqw' f " j c xg' dggp' " ej cti gf " cu' ugr ctevg' qh' hpug' u' 0' * k' p' vj g' r' t' g' gpv' ecug. " f ghgpf cpv' u' eqpf wev' cu' cp' ckl gt " cpf " cdgwqt qt " cu' c' f' k' gev' r' gtr gtcvqt " eqw' f' t' guw' n' q' p' n' " k' p' " q' p' g' etko k' p' c' n' e' v' cpf " q' p' g' e' j' cti g' 0' Wpf gt " vj g' u' g' " * 1026 " ektewo ucpegu. " 0'] lwtqtu pggf " pqv' wpcplo qwu' " ci tgg' qp' vj g' vj g' vj g' g' f' ghgpf cpv' ku' cp' ckl gt " cpf " cdgwqt " qt " c' r' tlpekr c' r' i' g' x' p' y j gp' f' hhtgtpv' g' x' k' f' g' p' e' g' cpf " hcew' uwr r qt v' g' e' j' " eqpenw' k' p' 0' * People v. Davis " * 3 ; ; 4 + : " Ecn' 0' r' 0' vj " 4 : . ' 67 " j 32 " Ecn' 0' r' v' 0' f " 5 : 3 = ugg' cnuq " People v. Santamaria. supra. " : " Ecn' 0' vj " cv' 0 ; 3 ; 0-

24. Deliberations-reading of transcripts to the jury

*66+ F ghgpf cpv' eqpvpgf u' vj g' vlcni' eqwtv' gttgf " k' r' gto k' k' p' i' egt' v' k' p' v' g' u' k' o' q' p' { " vq' dg' t' g' c' f' " vq' vj g' lwt { " f' w' k' p' i' " ku' f' g' r' i' d' g' t' v' k' p' u' y k' j' q' w' b' q' v' k' h' k' p' i' " eqv' p' u' g' n' q' h' v' j' g' lwt { " u' t' g' s' w' g' u' h' q' t' " vj g' t' g' c' f' k' p' i' qh' vj ku' v' g' u' k' o' q' p' { 0' C' n' j' q' w' i' j' " f' ghgpf cpv' b' q' v' u' v' j' cv' vj ku' q' o' k' u' k' q' p' qeewtgf " qp' o' qtg' vj cp' q' p' g' qe' e' c' u' k' q' p' . " j g' eqpvpgf u' vj g' eqw' v' gttgf " r' t' g' l' w' f' l' e' k' e' m' " k' p' " t' g' c' f' k' p' i' " vj g' v' g' u' k' o' q' p' { " qh' r' t' q' u' e' w' k' q' p' y k' p' g' u' u' g' u' D' t' q' q' o' h' g' r' f' " cpf " D' g' p' v' g' { 0

Ugev' k' p' 335 : " r' t' q' x' k' f' g' u' v' j' cv' c' f' g' r' i' d' g' t' v' k' p' i' " lwt { " g' z' r' g' t' k' p' e' k' p' i' f' k' u' c' i' t' g' g' o' g' p' v' t' g' i' c' t' f' k' p' i' " v' g' u' k' o' q' p' { " q' t' f' g' u' k' t' k' p' i' " vq' dg' k' p' h' q' t' o' g' f' q' p' " cp { " r' q' l' p' v' qh' n' r' y " o' c { " r' q' u' g' " s' w' g' u' k' p' u' " vq' vj g' eqw' v' " cpf

ō|wᵣ qp"dgkpi "dtqwi j v'kpvq"eqwtv."yj g"lphqto cvkqp"tgs vktgf o wuv"dg"i kxgp"kp"vj g"r tgupeg"qh"qt"chgt"pqvkg"vq."yj g r tqugewkpi 'čvqtpgf. 'čpf "vj g'f ghgp cpvqt'j ku'eqwupgn'qt'čhgt vj g{ 'j cxg'dggp'ecmgf ō

Kp"vj g"r tgupeg'ecug."f wtkpi "i wkn'r j cug'f grkdgcvkpu."cpf "kp vj g'wkr wcvf "cdugpeg'qh'eqwupgn"vj g'lw{ 'tgs wguvf "vq"j cxg tgcf "dceni'kv'j g'vgnko qp{ 'qh'Dtqo hgrf "cpf "Dgpvrg{ 'htqo r ctvewt' f cvgu'qh'vj g'vkn"cpf "vj ku'tgs wguv' y cu"i tcvpf 0 Y j gp" f ghgpug"eqwupgn'ngctpgf "qh'vj ku'qeewtgpeg"vy q'f c{ u r vgt."j g'qdlgev'vq"vj g'tgcf kpi "qh'vgnko qp{ 'y kj qw'pqvkg vq'j ko "cpf"o qxgf "hqt"o kntkcn'J g'pqv'vj cv'vj g'vgnko qp{ tgs wguvf "kpenf gf "qpn' f kgev'gzco kpcvqp."cpf "eqv'pf gf vj cv'vj g'lw{ "o c{ "j cxg"y cpv'vq"j gct" f kgev'gzco kpcvqp cpf "etquw/gzco kpcvqp"cu"vq" c" r ctvewt" r qlpv."dw"pq'vj g gpv'g' f kgev'gzco kpcvqp"ht"cp" gpv'g' f c{ '0'J g'vni gf "vj cv y j gp" f kgev'vgnko qp{ "ku'tgcf "vq" c"lw{."etquw/gzco kpcvqp pqto cm{ "uj qwf "dg'tgcf "cu'y gm'J g'cnuq"eqv'p'gf "vj cv'vj g tgr qtvt"o ki j v'j cxg'tgcf "ukf gdct" f kuewukpu"d{ "o kvcng"kp eqwupgn'u"cdugpeg'0'V'c"j gctkpi "qp"vj g"o qvqp"ht"o kntkcn j grf "ppg" y ggn' chgt "vj g" vgnko qp{ "y cu'tgcf "vq" vj g'lw{. k'cr r gctgf "vj cv'vj g" eqwt' cpf "f ghgpug"eqwupgn'j cf "y kf gr' f hgtkpi "kpvtr tgv'kpu'qh'cp" gctrtg' ukf gdct" f kuewukpu"cv y j k'j "k'y cu'ci tggf "vj cv'eqwupgn'cpf "vj g'eqwt'v'j qwf "pqv'dg r tgupeg'v' wtkpi "vj g'tgr qtvt'v' tgc'f kpi "qh'vgnko qp{ "vq"vj g'lw{ 0 Vj g'eqwt'v'cr r ctgvn' "vj qwi j v'eqwupgn'j cf "y ckg'f "pqv'k'cvkqp qh'lw{ "tgs wguv'ht"vj g'tgcf kpi "qh'vgnko qp{."y j kg'eqwupgn dgrkxgf "j g'j cf "y ckg'f "qpn' "j ku'r tgupeg'kp"vj g'eqwt'v'qo y j kg'ci tggf/wr qp"vgnko qp{ "y cu'tgcf 0'Vj g'eqwt'v'eqpegf gf vj cv'eqwupgn'j cf "tgegkxgf "pq'pqv'k'cvkqp'qh'vj g'lw{ }u'tgs wguv y kj "tgr ge'v'vq"vj g'tgcf kpi "qh'vj g'vgnko qp{ "qh'Dtqo hgrf cpf "Dgpvrg{0'V'c'j qwi j "k'f gpl'gf "vj g"o qvqp"ht"o kntkcn"kv ugp'v'cp"lps vkt { "vq"vj g'lw{ "vq" f gvto kpg" *1027 "y j gvj gt"vj g tgc'f kpi "qh'cf f k'kpcn'rt'v'kpu'qh'vj g'vgnko qp{ 'qh'Dgpvrg{ 'cpf Dtqo hgrf .kpenf kpi "etquw/gzco kpcvqp."y qwf "dg'wughwn'v k'0'K'cnuq"lps vkt gf "y j gvj gt"vj g'lw{ "y kuj gf "vq"j cxg'tgcf "vq k'cf f k'kpcn'vgnko qp{ 'qh'cp{ "q'j gt"y kpguu'y j qug'vgnko qp{ r t'gk'qum' "j cf "dggp'tgcf "dceni'vq" k'0'Vj g'lw{ "f ger'k'p'gf "dq'j qh'gtu'0'Vj g'eqwt'v'cnuq"qh'gt gf "vq"eqwupgn'vq"j cxg'Dgpvrg{ }u cpf "Dtqo hgrf }u'vgnko qp{ 'tgc'f "vq"vj g'lw{ 'ci c'k'p'eqwupgn'u r tgupeg."u"j g'eqwf "dg'egt'v'k'p'vj g'tgr qtvt" f k' "pqv'wpf w' go r j c'k' g'egt'v'k'p'vgnko qp{ "qt'tgcf "vj g'ukf gdct" f kuewukpu'0 Vj ku'qh'gt "y cu'f ger'k'p'gf "d{ "eqwupgn'}

K'f qgu'pq'v'cr r gct"qp"vj ku'tgeqt'f "vj cv'vkn'eqwupgn'y ckg'f vj g'ucwvqt { "tki j v'vq" dg"pqv'k'gf "qh'lw{ "tgs wguv'ht" vj g tgc'f kpi "qh'vgnko qp{ "Ugg'Ē335: ßgg'cnuq" *People v. Jennings, supra.* "75" Ecrf'f "cv'r 0'5; 3+ "u" y g"j cxg"pq" qeecukqp" vq eqpuk'gt" y j gvj gt" uwe"j "pqv'k'cvkqp" o c{ "dg" y ckg'f "wpf gt

vj gug'ektewo ucpegu'0P ppg'j gruu."ō|c_'eqpx'evkqp'y kn'p'q'v'dg t'gxt'ugf "hqt" c"xk'p'cvkqp"qh'uge'v'k'p"335: "wpguu"r tglw'leg"ku uj qy p'ō"**People v. Frye*"*3; ; : +3: "Ecrf'j " : ; 6."3229"J99 Ecrf'v'v'f "47."; 7; "R'f "3: 5_0"Vj g'eqwt'v'gttqt"kp'h'k'k'k'p' vq"pqv'k'f "eqwupgn'vj cv'vj g'lw{ "j cf "tgs wguvf "vj g'tgcf kpi qh'egt'v'k'p" vgnko qp{ "qh'Dgpvrg{ "cpf "Dtqo hgrf ."vj gtd{ f gr t'k'k'p' "eqwupgn'qh'cp"qr r qt'w'p'k'f "vq"qdl'gev'qt"dg"r tgupegv. y cu'j cto r'uu'0'Ugg'"k'0'cv'r r 0'3229/322: "Jpq'k'p' "vj cv'ecugu j cxg'cr r r'k'f "xct{ kpi "ucpf ctf u'qh't'g'k'g'y "vq"en'ko u'qh'gttqt w'p'gt "uge'v'k'p"335: .uqo g'cr r n'f kpi "vj g'ucpf ctf "qh't'g'k'g'y "hqt h'f g'c'n'eqp'uk'w'k'p'c'n'gttqt"l'p'x'q'k'k'p' "f g'p'k'n'qh'eqwupgn'cv'c et'k'k'c'n'v'c' g'čpf "uqo g'c'k'qy g't'ucpf ctf "hqt"p'q'p'eq'p'uk'w'k'p'c'n' gttqt ßgg'cnuq"*People v. Jennings, supra.*"75" Ecrf'f "cv'r 05: 60- Eqwupgn'uj qwf "dg'p'q'v'k'gf "kp'qt'f g't'vq'gp'uw'g'vj cv'eqwupgn'j cu cp'qr r qt'w'p'k'f "vq"qdl'gev'vq"vj g'eqwt'v'qh'č'ev'k'p'w'p'gt'v'c'ng'p'd{ vj g'eqwt'v'qt'lw' i g'uv'č'p'c'ng't'p'c'v'g'eqwt'v'ug'g"*People v. Wright* *3; ; 2+74" Ecrf'f "589."624"J498" Ecrf'v'v'f "0953:." 24"R'f "443 ± dw'vj g'r t'ko ct { "i q'c'n'ug't'x'gf "d{ "uge'v'k'p"335: "ku'v' r t'q'k'f g'vj g lw{ "y kj "vj g'g'x'k'f g'peg'k'p'gg'f u'ht"ku'f gr'k'g't'cv'k'p'u'0"*People v. Frye, supra.*"3: "Ecrf'j "cv'r 032290-

Kp"vj g"r tgupeg'ecug."vj g'lw{ "o cf g'k' er'gt "kp"ku" qtki kpcn tgs wguv'vj cv'k'y cu'k'p'v'g'v'gf "kp"j gctkpi "qpn' "vj g'vgnko qp{ qh' Dtqo hgrf " cpf " Dgpvrg{ " htqo " ur gek'k'gf " f cvgu" y j gp i kxgp"cp"qr r qt'w'p'k'f "vq"j gct"vj g'etquw/gzco kpcvqp"qh'vj gug y kpguuu."k'f ger'k'p'gf "vj g'eqwt'v'v' l'p'x'k'v'k'p'0'Vj g'vkn'eqwt'v' qdugt'x'gf "vj cv'vj g'eqwt'v'v' tgr qtvt"ewuqo ctkn{ "f qgu"pqv'tgcf ukf gdct" eqo o gpvct{ " y j gp" tgc'f kpi " dceni' vgnko qp{ " vq" c lw{ 0' *Ugg' "*People v. Wader*" *3; ; 5+ 7" Ecrf'j " 832." 883 J42" Ecrf'v'v'f "9: . ." : 76"R'f " : 2_"Jcr r n'f kpi " r t'guo r v'k'p vj cv' qh'k'k'c'n' f w' " j cu' dggp" tgi w'rt'n' " r gth'qto gf " vq" eqwt'v' tgr qtvt'v' tgc'f kpi "qh'vgnko qp{ "cu'tgs wguvf "d{ "lw{ _0"Y g pq'v' "vj cv'vj g'lw{ " cun'gf "hqt" vj g'tgcf kpi "qh'vgnko qp{ "qp o w'k' r g'q'ecuk'p'u'vj tqwi j qw'ku'ngpi vj { "f gr'k'g't'cv'k'p'u."cpf cr r gct'v'v'j cxg'dggp'x'gt { "o g'k'ew'w'w'k'p't'gs wguv'k'p' "vj cv'qpn' ur gek'k'le" r qt'v'k'p'u' qh'vgnko qp{ /uqo g'vko gu" kpenf kpi "etquw/gzco kpcvqp/dg'tgcf 0'Vj g'eqwt'v'v' l'ps vkt { "y j gvj gt"vj g'tgcf kpi qh'cf f k'k'p'c'n'vgnko qp{ "y cu'p'gg'f gf "q'ee'wt'g'f " *1028 "y j gp vj g'lw{ "j cf "pqv' { g'v'eqpenf gf "ku'f gr'k'g't'cv'k'p'u'cpf "vj w'v'cv c"v'ko g'y j gp"er'ct'k'k'c'v'k'p'u'v'k'n'y qwf "j cxg'dggp" wughwn"j cf vj g'lw{ "h'gn'k'y cu'p'gg'f gf 0'Ugg'"*People v. Jennings. supra.* "75" Ecrf'f "cv'r 05: 7"eqwt'v'v'gz' r ct'v'g'eqo o w'p'k'c'v'k'p'y kj "lw{ h'q'w'p' "j cto r'uu'k'p' r ct'v'dge'cw'g'vj g'eqwt'v'q'ht'gt gf "vq"i kxg'vj g lw{ "cf f k'k'p'c'n'ew'c'v'k'x'g'cf o q'p'k'k'p'u'0"K'f'k'i j v'q'h'vj g'eqwt'v' ur gek'k'le" l'ps vkt { "y j gvj gt"vj g'lw{ "y kuj gf "vq"j gct"cf f k'k'p'c'n r qt'v'k'p'u'qh'vj g'vgnko qp{ "qh'Dgpvrg{ "cpf "Dtqo hgrf "cpf "vj g lw{ }u't'gr qpug."cpf "vj g'ektewo ucpeg'vj cv'vj g'vgnko qp{ "vj cv y cu'tgcf "vq"vj g'lw{ "er'g'c'n' "y cu'cf o ku'k'k'g'č'p'f "o g'v'j g'lw{ }u r t'gek'ug'tgs wguv'vj g'v'ctf { "p'q'v'k'c'v'k'p'qh'eqwupgn'cpf "eqwupgn'u

uncvgf 'vj cv'qpnf 'f ghgpf cpv'cpf 'j ku'cee qo r nleg'Crk'Dt { cpvj cf dggp'lpqxqk'gf O'P qt'eqwrf 'rcvg'pqv'kg'qh'vj g'ugeqpf 'cuucwv j cxg'ch'gevgf 'vj g'f ghgpug'utcvgi { "cf xgtugr{."dgecwug"vj ku utcvgi { "ctt'gcf { "y qwrf "j cxg'vcn'gp'kp'q'cee'qwpv'vj g'emugrf tgrv'gf "cuucwv'eqpx'lev'kpp'O'Kp" hcev."eqwpugr'uncvgf "vj cv'vj g f ghgpug'v'gco "j cf "dggp'ect'ghw'lp"eqp'ut'w'kpi "vj g'r gpcn' r j cug'f ghgpug'p'qv'v'q'g'lek'g'x'k'f gpeg'q'h'f ghgpf cp'v'u'r g'cegcdr'g pcw'w'g'qt'rcen'q'h'j qu'w'k'f. 'lp'q'f'g'v'q'cx'q'k'f 'qr g'p'kpi "vj g'f'q'q'v'q' h'w'v'j g't'g'x'k'f gpeg'q'h'r' t'k'q't'o' k'ue'q'p'f'w'e'v'Ugg E3; 260+

2. Allegation that the penalty phase was a "sham"

F ghgpf cpv'eqp'v'p'f u'vj cv'v'q'v'g'x'g'c'nt'g'cu'q'p'u'vj g'r gpcn'f 'r j cug qh'vj g'v'k'cn'y cu'c'ou'j co o'c'p'f 'vj cv'vj g'r gpcn'f 'x'g'f'lev'v'j q'w'f dg't'g'x'g'ug'f O'J g'cu'ug'w'v'j cv'vj g'v'k'cn'le'q'w't'p'q'v'q'p'n'f 'c'd'w'ug'f 'ku f'k'ue't'g'v'k'p'p'k'x'c't'k'w'u't'g'ur'g'eu."dw'c'n'q'vj cv'vj g'r t'q'eg'g'f'k'pi u'x'k'q'v'g'f'j' k'u't'k'i j'v'q'f'w'r' t'q'eg'u'u'q'h'v'j .j' k'u'U'k'v'j 'C'o'g'p'f'o'g'p'v' t'k'i j'w'u'v'q' t'g'r' t'g'ug'p'v'j' k'o' u'g'h'v'q' "eq'w'p'ug'n" c'p'f "v'q"r' t'g'ug'p'v' c' f'gh'g'p'ug.'c'p'f'j' k'u'G'k'i j'v'j 'C'o'g'p'f'o'g'p'v't'k'i j'v'q'c'h'c'k'c'p'f' t'g'k'c'd'r'g r'g'p'c'n'f'f'g'v't'o' k'p'c'v'k'p'o

F ghgpf cpv' p'q'v'u' vj cv'vj g'r gpcn'f "r j cug" qh' c' ecr k'cn' v'k'cn p'g'e'g'u'c't'k'n'f "t'g's'w'k't'g'u'v'k'o' g'h'q't'r' t'g'r'c't'c'v'k'p'o'J' g'q'd'ug't'x'g'u"vj cv' k'p' j'k'u' ecug." vj g' v'k'cn' eqw't'v' k'ug'h' cu'w't'g'f' j'k'o' "c'v' vj g' eqo o'g'p'eg'o'g'p'v' q'h' vj g' v'k'cn' vj cv'vj g't'g'y' q'w'f "dg' v'k'o' g'h'q't' r'g'p'c'n'f "r j cug"r' t'g'r'c't'c'v'k'p'o' dg'v' g'g'p'v'j g'i'v'k'n'r'j' cug'c'p'f "vj g' r'g'p'c'n'f "r j cug."c'p'f'p'q'v'g'f' vj cv'vj g'p'q't'o' c'n'r'g't'k'q'f "dg'v' g'g'p'v'j g' y'q'r'j' c'ug'u'y' cu'v'q'y' g'm'o'F'gh'g'p'f'c'p'v't'g'r' t'g'ug'p'v'g'f'j' k'o' u'g'h'c'v' vj g'r'g'p'c'n'f "r j cug'c'p'f'eq'p'v'p'f'u'vj cv'c'n'j' q'w'i'j' j'g'eq'p'eg'f'g'f' n'f' k'o' r'g'f'g'f'j' k'u'eq'w'p'ug'n'u'r'g'p'c'n'f "r j cug'r' t'g'r'c't'c'v'k'p'o'f'w't'k'p'i "vj g' i'v'k'n'r'j' cug."j'g'f'k'k'i'g'p'v'k'f' "r' t'g'r'c't'g'f' "h'q't" vj g'r'g'p'c'n'f "r j cug' cu'v'q'p'p' "cu'j' g' cej' k'g'x'g'f' "eq'eq'w'p'ug'n' unc'w'u'o'J' g' eqo r'nc'k'p'u' vj cv'eq'w'p'ug'n'f'gh'g'v'k'x'g'n'f' "y'k'j'f't'g'y' "cv'vj'k'u'r'q'k'p'v'ng'c'x'k'p'i "j'k'o' eqo r'ng'v'g'n' "q'p'j' k'u'q'y'p'v'q'r' t'g'r'c't'g'o'J' g'eq'p'v'p'f'u'vj cv'vj g'eq'w't'v' v'g'c'v'g'f' "j'k'o' "o'q't'g'j'c't'uj' n'f' "vj'c'p'k'v'y'q'w'f "j'c'x'g'v'g'c'v'g'f' "c'p'f' eq'w'p'ug'n'q't'c'p'f' "q'v'j'g't'r' t'q'ug'f' ghgpf cpv'v'c't'v'w'c't'n'f' 'lp'f'g'p'f'k'p'i' t'g's'w'g'u'u' "h'q't" u'j'q't'v'eq'p'v'k'p'c'p'eg'u"v'q'r' t'g'r'c't'g'f'j' k'u'f' ghgpug'c'p'f' v'q'r' t'g'r'c't'g'f'v'q'o' g'g'v'w'p'g'z'r'g'ev'g'f' "g'x'k'f'g'peg'r' t'g'ug'p'v'g'f' "d'f' "vj g'r' t'q'ug'ew'k'p'o'J' g'c'n'q'eq'p'v'p'f'u'vj cv'c'h'g't"j'g'y' cu'v' t'c'p'v'g'f' "h'w'n' r' t'q'ug' "unc'w'u." vj g'eq'w't'v'q'q'o' "d'c'k'k'h'h'k'p'h'q't'o'g'f' "j'k'o' "vj'cv'vj'g' y'q'w'f'p'q'v'd'g'r'g't'o'k'w'g'f'v'q'ur'g'eni'y'k'j' "c'p'f' "r'q'v'p'v'c'n'y'k'p'g'u'u'k'p' vj g'eq'w't'v'j'q'w'g'o'f' g'y' cu'v'p'c'd'ng'j' g'g'v'c'k'o' u'v'q'eq'p'v'c'ev'y'k'p'g'u'g'u' h'q'o' "vj'g'l'c'k'n'c'h'g't"eq'w't'v'g'u'k'q'p'u."d'g'ec'w'g'v'j'k'u'v'c'p'ur'q't'v'y'cu' u'q'f'g'r'c'f' "vj'cv'vj'g'c't't'k'x'g'f' "cv'vj'g'l'c'k'n'c'h'g't" vj g'c'v'q't'p'g'f' x'k'k'k'p'i' t'q'q'o' 'y'cu'len'q'ug'f' "c'p'f'v'j'g'v'g'r'j'q'p'g'y'cu'q'h'h'k'o'k'u'o'J' g' eq'p'v'p'f'u'vj cv'vj g'y' cu'p'q'v't'g't'o'k'w'g'f'v'q'b'g'g'v'y'k'j' "k'u'g'p'v'g'p'el'p'i' eq'p'u'u'w'c'p'v'k'p'eq'w't'v'c'p'f'v'j'cv'vj'g'y'cu'ew'v'q'h'h'q'o' "c'p'f' "eq'p'v'c'ev' y'k'j' "j'k'u'k'p'x'g'u'k'i'c'v'q't'o'J' g' *1031 "c'n'q'c'm'g'i'g'u'j'g'y'cu'v'q'ht'eg'f' v'q'o'c'n'g'v'g'r'j'q'p'g'ec'm'u'cv'vj'k'u'q'y'p'g'z'r'g'p'ug'v'j'cv'vj'g'y'cu' h'q't'eg'f'v'q'r' t'q'eg'g'f'y'k'j' "vj'g'ec'ug'y'j'k'g'k'm'c'p'f'v'j'cv'vj'g'y'cu'p'q'v'

cm'q'y'g'f'v'q'r'nc'eg'g'z'j'k'd'k'u'q'p'v'j'g'd'm'end'q'c't'f' "q't'c'r'r' t'q'c'ej' "v'j'g' l'w't'f' "f'w't'k'p'i' "em'q'k'p'i' "c't'i'w'o'g'p'v'o'J' g'c'm'g'i'g'u'v'j'cv'vj'g'v'k'cn'le'q'w't'v' f'g'r'g'i'c'v'g'f'v'q'v'j'g'v'j'g't'k'h'u'f'g'r'c't'w'o'g'p'v'k'u'c'w'j'q't'k'f'v'q'x'g't'g'ew'g't'k'f' cv'vj'g'r'g'p'c'n'f' "r'j'c'ug'."c'p'f' "c'd'c'p'f'q'p'g'f' "k'u'f'w'w'f' "v'q'r' t'g'u'k'f'g'q'x'g't' c'p'k'o'r'c't'v'c'n'r' t'q'eg'g'f'k'p'i' O'J' g'h'w'v'j'g't'c'm'g'i'g'u'v'j'cv'v' t'q'ug'ew'q't'k'cn' o'k'ue'q'p'f'w'e'v'q'ee'w't'g'f' "f'w't'k'p'i' "em'q'k'p'i' "c't'i'w'o'g'p'v'c'p'f'v'j'cv'vj'g' eq'w't'v'k'o'r' t'q'r'g't'n'f' "r'k'o'k'g'f' "j'k'u'q'y'p' "em'q'k'p'i' "c't'i'w'o'g'p'v'o'V'j'g'ug' eq'p'ut'c'k'p'u'c'p'f' 'x'k'q'v'k'p'u'."j'g'eq'p'v'p'f'u'k'o'r'c'k't'g'f' "q't'f'g'w't'q'f'g'f' j'k'u'c'd'k'k'k'f'v'q'r' t'g'ug'p'v'c'f' ghgpug'o

F ghgpf cpv'r' c'k'p'u'c' "r'k'ew't'g'q'h'c' "eq'w't'v'v'j'cv'v'c'p' "t'q'w'i'j' u'j'q'f' q'x'g't' "j'k'o' ."h'q't'el'k'p'i' "j'k'o' "v'q"r' t'q'eg'g'f' "r' t'q'ug'v'q' "v'j'g'r'g'p'c'n'f' r'j'c'ug' "k'o' o'g'f'k'c'v'g'n'f' "c'h'g't"v'j'g'i'v'k'n'x'g't'f'lev'c'n'j'q'w'i'j' "j'g'y'cu' eqo r'ng'v'g'n'f' "w'p'r' t'g'r'c't'g'f'o'J' g'cu'ug't'v'v'j'cv'vj'g'eq'w't'v' t'g'h'w'ug'f' v'q'cm'q'y' "j'k'o' "c'p'f' "v'k'o'g' "h'q't"r' t'g'r'c't'c'v'k'p'o'c'p'f' "eq'w'p'v'g'p'c'p'eg'f' u'g'ew't'k'f' "o'g'cu'w'g'u'v'j'cv'v'c'f'g'k'v'k'o'r'q'u'k'c'd'r'g'h'q't' "j'k'o' "v'q'eq'p'v'c'ev' j'k'u'y'k'p'g'u'g'u."r' t'g'r'c't'g'f'v'j'g'o' "v'q'v'g'u'k'h'f'."q't'."k'p'f'g'g'f'."f'g'v't'o'k'p'g' y'j'cv'vj'g'f' "y'q'w'f' "uc'f'o'Q'w't'ect'gh'w'v'g'z'co'k'p'c'v'k'p'p'q'h'v'j'g't'g'eq't'f' r'g'c'f'u'w'u'v'q' "eq'p'en'f'g'v'j'cv'v'c'p'f' "q'h'f'gh'g'p'f'c'p'v'u'eq'p'v'p'v'k'p'u' c't'g'p'q'v'w'ur' r'q't'v'g'f' "d'f' "v'j'g't'g'eq't'f'."c'p'f' "v'j'cv'vj'g'v'k'cn'le'q'w't'v'f'k'f' p'q'v'c'd'w'ug'k'u'f'k'ue't'g'v'k'p'q't' "x'k'q'v'g'f' ghgpf cp'v'u'eq'p'v'k'w'k'q'p'c'n' t'k'i'j'w'u'k'p' "t'w'k'p'i' "q'p' "f'gh'g'p'f'c'p'v'u' "o'q'v'k'p'u'q't' "k'p'k'u'eq'p'f'w'ev' q'h'v'j'g'r'g'p'c'n'f' "r'j'c'ug'o'k'p'v'j'g' "r'k'o'k'g'f' "k'p'v'c'p'eg'u'k'p' "y'j'k'ej' "v'j'g'r' t'q'eg'f'w'g'u'v'q'w'g'g'f' "d'f' "v'j'g'v'k'cn'le'q'w't'v'c'r'g'c't'v'g'w'g'u'k'p'c'd'r'g'p'q' r' t'g'l'w'f'k'eg'c'r'r'g'c't'u'o

a. Factual background

Vj g' t'g'eq't'f' "f'k'ue'n'q'ug'u' vj cv' l'w't'f' "u'g'r'g'ev'k'p'p' "eqo o'g'p'eg'f' "k'p' Q'ev'q'd'g't'3; : 9."c'p'f' "v'j'cv'vj'g'l'w't'f' "t'g'w't'p'g'f' "c'x'g't'f'lev'q'h'i'v'k'n'v' q'p'L'w'v' "49."3; : : O'Q'p'v'j'g'nc'w'g't'f'c'v'g'v'j'g'r'c't'v'k'u'c'i' t'g'g'f' "v'j'cv' v'j'g'r'g'p'c'n'f' "r'j'c'ug'q'h'v'j'g'v'k'cn'y'q'w'f' "eqo o'g'p'eg'q'p' "C'w'i'w'w'v' : . 3; : : O'V'j'k'u'c'h'q'f'g'f' "f'gh'g'p'f'c'p'v'y'j'q'v'k'n'k'y'cu'v'g'r' t'g'ug'p'v'g'f' "d'f' eq'w'p'ug'n' "34'f'c'f' "u'v'q'v'v'j'g't'r' t'g'r'c't'c'v'k'p'o

Q'p' "C'w'i'w'w'v'3."3; : : . "f'gh'g'p'f'c'p'v't'g's'w'g'u'v'g'f' "v'q'r' t'q'eg'g'f' "r' t'q'ug'f' O'Eq'w'p'ug'n'k'p'h'q't'o'g'f' "v'j'g'eq'w't'v'v'j'cv'v'g'c't'n'f' "k'p'eq'w'p'ug'n'u'r' t'g'r'c't'c'v'k'p' h'q't' "f'gh'g'p'f'c'p'v'u'v'k'cn' "f'gh'g'p'f'c'p'v'j'c'f' "k'p'ut'w'ev'g'f' "h'c'o'k'k'f' "c'p'f' h'k'g'p'f'u'p'q'v'v'q'ur'g'c'm'v'q' "eq'w'p'ug'n'q't'v'j'g'f' ghgpug'k'p'x'g'u'k'i'c'v'q't' t'g'i'c't'f'k'p'i' "r'g'p'c'n'f' "r'j'c'ug'k'u'w'g'u."c'p'f' "v'j'cv'v'f'gh'g'p'f'c'p'v't'g'h'w'ug'f' v'q'ec'm'lu'w'ej' "r'g't'u'q'p'u'cu'y'k'p'g'u'g'u'cv'vj'g'r'g'p'c'n'f' "r'j'c'ug'v'p'ng'u' j'g' "t'g'r' t'g'ug'p'v'g'f' "j'k'o' u'g'h'f'F'gh'g'p'f'c'p'v'j'k'o' u'g'h'v'g'z'r'nc'k'p'g'f' "v'j'cv' c'n'j'q'w'i'j' "k'p' "v'j'g'g'c't'n'f' "u'nc'i'g'u'q'h'v'j'g'ec'ug' "j'g' "j'c'f' "ur'q'n'g'p' t'g'r'g'ev'g'f' n'f' "v'q'y'k'p'g'u'g'u' "y'j'q'y'q'w'f' "dg'v'w'ug'h'w'v'q' "j'k'o' "cv'vj'g'r'g'p'c'n'f' "r'j'c'ug'v'j'g'ug' "r'g't'u'q'p'u' "y'k'j'g'f' "q'p'n'f' "v'q'ur'g'c'm'v'q' "j'k'o' c'p'f' "y'g't'g'g'z'v'g'o'g'n'f' "t'g'n'v'c'p'v'q'ur'g'c'm'v'q' "j'k'u'c'v'q't'p'g'f' "q't'v'q' j'k'u'k'p'x'g'u'k'i'c'v'q't'."d'q'y' "q'h'y'j'q'o' "v'j'g'f' "h'q'w'p'f' "k'p'o'k'f'c'v'k'p'i' O'J' g'g'z'r'nc'k'p'g'f' "v'j'cv'vj'g'y'k'p'g'u'g'u' "y'q'w'f' "r'g't'q't'o' "dg'w'g't'w'p'f'g't' "j'k'u' f'k't'g'ev'g'z'co'k'p'c'v'k'p'v'j'c'p'w'p'f'g't' "eq'w'p'ug'n'u' "E'q'w'p'ug'n'g'z'r'nc'k'p'g'f' v'j'cv'vj'g'ug'y'k'p'g'u'g'u' "q'h'y'j'q'ug' "k'f'g'p'v'k'f' "c'p'f' "r'q'v'p'v'k'cn' " *1032

vguko qp{ 'eqwpugn'uggo gf 'y gmi'cy ctg.'y qwf 'qwe'j 'qp'ho kñ o cvgtu'cpf 'go qv'kpcn'kuu'gu.'cpf 'y qwf 'r gthqto 'dgu'w'p'f gt f ghgpf cpv'u'g'zco kpcv'kq'0Vj g'eqwv'uwi i guvgf 'y cv'f ghgpf cpv uj qwf 'cev'cu'eqeqwpugn'cpf 'eqpf wev'y'j g'f k'gev'g'zco kpcv'kq qh'j ku'y kpguugu'0Vj g'o cvgt 'y cu'pqv'tgu'x'g'f 0

Qp" Cwi wuv' 6." 3; : . ." f ghgpf cpv' r tqr qugf " vq" ceegr v' yj g eqwt'u'eqo r tqo kug'ctt'cpi go gpv'y kj 't'gur gev'q'j ku'ucwu'cu eqeqwpugn'dw'eqwpugn'o qxgf "hqt" c" y q/y ggn'eqv'k'p'w'c'p'eg vq'eqp'cev'y kpguugu'cpf 'eqpf wev'k'p'x'g'uni cv'k'p'0K'f'eqpp'ge'v'k'p' y kj " yj g' t'g'w'g'uv' hqt" c" eqp'v'k'p'w'c'p'eg." yj g' eqwt'v' j gctf " yj g v'g'uko qp{ 'qh'f t'0D'cm'p.'y j q'j cf 'cev'f 'cu'f ghgpf cpv'u'f g'p'cm' r j cug'eqpu'w'nc'p'v'uk'peg'nc'g'k'p'3; : 80'Uj g'uc'v'g'f 'y cv'k'p'y cu j gt'f w'f "v'q'q'd'v'k'p'c" h'm'm'j k'k'q't { "qh'f ghgpf cpv.'v'q'k'p'v'g'x'k'g'y h'co k'ñ." h't'k'p'f u."go r m'q' {gtu."eqy q't'ng'tu."cpf "k'p'f k'k'f w'cu'y j q j cf "np'qy p" f ghgpf cpv'k'p'uej qqn'dw'y cv'f ghgpf cpv'j cf "pqv' eqqr g't'c'v'g'f "y kj " j gt'0' Y j gp' g'ct'r'k'g't" k'p" v'j g'r t'q'eg'g'f k'p'i u'uj g' cv'go r v'g'f "v'q" eqp'v'cev' h'co k'ñ "cpf "h't'k'p'f u" qp" j gt'qy p." yj g'f t'g'hw'g'f "v'q" f k'ue'w'u" f ghgpf cpv'u" j k'k'q't { ." uc'v'k'p'i " yj g'f " y g't'g' cev'k'p'i "qp" j ku'k'p'ut'w'v'k'p'u'0F ghgpf cpv'eq'p'h'ko gf "yj cv'j g'j cf k'p'ut'w'v'g'f " j ku' h'co k'ñ "cpf "h't'k'p'f u" pqv'v'q" ur g'cni'v'q" eq'w'p'ugn yj g' f ghg'p'ug' k'p'x'g'uni cv'q't. "qt" v'j g'r g'p'cm' { " r j cug' eqpu'w'nc'p'v'0 F ghgpf cpv't'g'eg'p'w'f " j cf 'ej cpi gf " j ku' b' k'p'f 'c'p'f 'r t'q'f we'g'f "c'k'it'uv qh'33"qt'34" h't'k'p'f u'cpf "t'g'w'x'g'u'y j q'uj qwf "dg'k'p'v'g'x'k'g'y gf . k'p'nc'f k'p'i "y q'd't'q'y g'tu." c' h't'k'p'f "y j q'j cf "q'd'ug't'x'g'f " j ku'g'h'q't'u v'q'uc'x'g'v'j g' r'k'g'q'h'c" ut'cpi gt." cpf " j ku'c'w'p'0J g'j cf "ej cpi gf j ku' b' k'p'f 'd'g'ec'w'g'v'j g'eqwv't' t'q'r qugf "v'q' r' g'to k'j' ko "v'q'eq'p'f wev f k'gev'g'zco kpcv'kq'q'h'j ku'y kpguugu'0J g'zr r'k'p'g'f "v'j cv'j g'j cf np'qy p'cm'c'p'i "v'j cv'k'h'y g't'g'y g't'g'c'r' g'p'cm' { " r j cug." j g'y qwf r t'g'ug'p'v'j ku'qy p'ecug'0

Vj g'eqwt'v'f g'p'g'f "v'j g'o q'v'k'p' "hqt" c" y q/y ggn'eqv'k'p'w'c'p'eg. q'd'ug't'x'k'p'i " yj cv' v'j g' ecug' k'p" o k'ki cv'k'p' " y qwf " pqv' v'c'ng' c i t'g'c'v'f g'cni'q'h'r t'g'r c't'c'v'k'p' d'g'ec'w'g'q'h'f ghgpf cpv'u' h'co k'k'c't'k'f y kj " y j cv' j ku' y kpguugu" y qwf " v'g'uk'h' { " v'q" eq'p'eg't'p'k'i " j ku d'ceni t'q'w'p'0' Vj g' eqwt'v' uc'v'g'f < ð " g' cf o ku' j g' np'qy u" yj g y kpguugu'cpf "v'j g'cur g'ew'q'h'j ku'ej c't'cev't'g'cpf " j k'k'q't { "v'j cv v'j g'f "y qwf "v'g'uk'h' { "v'q'0' Vj g'eqwt'v'c'emp'qy ng'f i gf "v'j cv'v'j g'ecug y cu" c" x'g't { " u'g't'k'q'w'u" q'p'g." dw' q'd'ug't'x'g'f " v'j cv' l'w't { " u'g'r'g'v'k'p' j cf "eqo o g'p'eg'f "v'j g'r t'g'x'k'q'w'u" Q'ev'q'd'g't." yj cv'f ghgpf cpv'j cf h'c'k'g'f "v'q" eq'q'r g't'c'v'g'f "k'p" r t'g'r c't'k'p'i "hqt" v'j g'r g'p'cm' { " r j cug." yj cv c" eqp'v'k'p'w'c'p'eg" y qwf "dg" cp' "k'p'eq'p'x'g'p'k'g'p'eg" hqt" v'j g' "R'g'q'r ng'u y kpguugu" y j q' y g't'g' c'it'g'c'f { " w'p'f gt" u'w'd'r q'g'p'c" r w'tu'w'c'p'v' v'q eq'w'p'ugn'u" g'ct'r'k'g't" ci t'g'go gpv' v'j cv' v'j g'r g'p'cm' { " r j cug" y qwf eqo o g'p'eg" qp" Cwi wuv' : . ." 3; : . ." cpf " v'j cv' c" eqp'v'k'p'w'c'p'eg y qwf "r t'g'ug'p'v'c" i t'g'c'v'k'p'eq'p'x'g'p'k'g'p'eg"v'q" v'j g' l'w't'q'tu'0Vj g'eqwt'v' eq'p'nc'f gf "v'j cv'v'j g'ug' eq'p'uk'f g't'c'v'k'p'u" q'w'y g'k'i j gf "v'j g'd'g'p'g'h'v v'q" dg" i c'k'p'g'f "d" { "c" eqp'v'k'p'w'c'p'eg" cpf "v'j g' p'g'g'f "f ghgpf cpv'j cf cv'go r v'g'f "v'q" gu'c'd'r'k'j "k'p" u'w'r r q't'v' q'h'j ku'o q'v'k'p'0' Vj g'eqwt'v

r q'k'p'v'g'f "q'w'v'j cv'v'j g' "R'g'q'r ng'u'ecug" y qwf "v'c'ng'v'ko g." cpf "v'j cv f ghgpf cpv'eq'w'f "eqo o g'p'eg" y kj " j ku' m'ec'n'y k'p'g'u'gu." i k'k'k'p'i v'ko g' "hqt" q'w'q'h'v'qy p" y kpguugu" v'q" h'c' { "k'p'0'E'q'w'p'ugn'q'd'l'g'ev'g'f . uc'v'k'p'i "v'j cv'k'p'v'g't'x'k'g'y u'y kj "g'z'k'k'p'i "y kpguugu'o k'i j v'r t'q'f we'g q'v'j gt" g'x'k'f g'p'eg" v'j cv'v'j q'w'f "p'g'eg'u'k'c'v'g" h'w't'v'j gt" k'p'x'g'uni cv'k'p'0 J g" *1033 "t'g'k'g't'c'v'g'f " j ku't'g's w'g'uv'ht' c'v' y q/y g'gn'eq'v'k'p'w'c'p'eg cpf "v'j gp" c'ung'f "hqt" q'p'g' y g'gn'0' Vj g'eqwt'v't'g'hw'g'f . "uwi i g'uk'p'i v'j g'f ghg'p'ug' u'c't'v'y kj "m'ec'n'y k'p'g'u'gu." v'j gp" o c'ng' cp" q'h'g't" q'h r t'q'q'h'cu"v'q" y j gp" q'v'j gt" y kpguugu'eq'w'f "dg" o cf g'c'x'c'k'c'd'ng'0 E'q'w'p'ugn'eqo r r'k'p'g'f "ci c'k'p." uc'v'k'p'i "v'j cv'j ku'k'p'x'g'uni cv'q't" y cu q'w'q'h'v'qy p." v'j cv'eq'w'p'ugn'y cu" q'ee'w' k'g'f "y kj " cp'q'v'j gt" ecug qp" v'j g' h'q'm'y k'p'i "f c { ." cpf "v'j cv'v'j g'f "p'g'g'f gf "v'ko g'v'q" k'p'v'g't'x'k'g'y y kpguugu'cpf "h'q'm'y "w" r'g'c'f u'0' Vj g'eqwt'v'k'p'ut'w'v'g'f "eq'w'p'ugn v'j cv'k'h'j g' p'g'g'f gf "d't'g'c'm'i" k'p" v'j g'r t'g'ug'p'v'k'p' "q'h' g'x'k'f g'p'eg" v'q q'd'v'k'p'v'j g'r t'g'ug'p'eg' q'h'y kpguugu." j g'uj qwf "k'p'q'to "v'j g'eqwt'v'0

Qp" Cwi wuv' : . ." 3; : . ." eq'w'p'ugn' g'z'r r'k'p'g'f "v'j cv'v'j g't'g'j cf "d'g'gp cp'k't'g'o gf k'c'd'ng' d't'g'c'nf qy p'k'p'v'j g'c'v'w'q't'p'g'f /e'k'g'p'v't'g'w'k'p'q'uj k' . cpf "v'j cv'f ghgpf cpv'k'p'uk'v'g'f "qp" t'g'r'k'k'i cv'k'p'i " i w'k'n'r j cug' ku'w'gu cpf " j cf "v'q'f "eq'w'p'ugn' v'j cv'k'h'f ghgpf cpv'y g't'g' p'q'v' r g'to k'w'g'f v'q" eq'p'f wev'v'j g'ecug" j ku" q'y p" y c { ." j g'y q'w'f "pqv' r c't'v'k'c' cv'g cpf "y q'w'f "f k'gev'j ku'y kpguugu'pq'v'v'q" j qp'q't' cp { "u'w'd'r q'g'p'cu'0 F ghgpf cpv't'g's w'g'v'g'f "v'q" r t'q'eg'g'f "r t'q'ug." uc'v'k'p'i "v'j cv'eq'w'p'ugn j cf "t'k'eng'f " j ko 0J g' l'c'k'f < ð I am prepared and I know the issues of what to ask the witnesses, my witnesses that I will call. I am prepared for that. I worked all weekend on this "]T_o hear"]counsel_ "tell me that I am not prepared to do the direct examination on my own witnesses ... that is absurd00

E'q'w'p'ugn' t'g'p'g'y gf "v'j g'o q'v'k'p' "hqt" eq'p'v'k'p'w'c'p'eg." uc'v'k'p'i "v'j g't'g y cu" eqo r g'ni'k'p'i " o k'ki cv'k'p'i " g'x'k'f g'p'eg" v'j cv'v'j cu" p'q'v' t'g'c'f k'ñ c'x'c'k'c'd'ng'0J g'r t'q'f we'g'f "v'j g'eq'p'w'nc'p'v' F t'0D'c'm'p.'y j q' u'c'k'f v'j cv'uj g'j cf "d'g'gp'w'p'c'd'ng" v'q' t'g'c'ej "e't'w'k'c'n'y k'p'g'u'gu'cpf "v'j cv h'co k'ñ " y kpguugu" u'j q'w'f " dg" r t'q'f we'g'f "v'q" v'g'uk'h' { " t'g'i c't'f k'p'i f ghgpf cpv'u' d'ceni t'q'w'p'f "cpf "v'j g't'k'q'x'g' "hqt" j ko . " j ku'o q'v'j g't'u o g'p'w'c'j g'c'nj " r t'q'd'ng'o u." cpf " j ku' g'z'r g't'k'p'eg" k'p" h'q'v'g't" e'c't'g'0 Uj g'uc'v'g'f f ghgpf cpv'j cf "y q'd't'q'y g'tu" k'p" M'c'p'uc'u' E'k'f " y j q y g't'g' l'c'd'ng' c'p'f "h'y "c'd'k'f k'p'i "c'p'f "h'y q'w'f "dg' e'c'm'g'f "cu'y kpguugu'0 E'q'w'p'ugn' r'k'v'g'f " 35" ng'f " y kpguugu'o qu'v' q'h' y j q'o " c'ew'c'm' { v'g'uk'h'g'f "cv' v'j g'r g'p'cm' { " r j cug." cu" k'v' w't'p'g'f "q'w'0' Vj g'eqwt'v r q'k'p'v'g'f "q'w'v'j cv'v'j cp { " q'h'v'j g' y kpguugu" r'k'x'g'f " m'ec'ni'f . " cpf v'j cv'v'j g'r t'q'ug'ew'q't'u' ecug' cpf "v'j g' m'ec'n'y k'p'g'u'gu" v'g'uko qp { y q'w'f "v'c'ng' h'q'p'i "g'p'q'w'i j "v'q' r t'q'x'k'f g'v'ko g'v'q' eq'p'v'cev'c'p'f "u'g'ew't'g v'j g'r t'g'ug'p'eg" q'h' q'w'q'h'v'qy p" y kpguugu'0 Vj g'eqwt'v' cu'w't'g'f eq'w'p'ugn' v'j cv'v'j g'r g'p'cm' { " r j cug" y q'w'f "r t'q'eg'g'f "cv'c" r'g'k'w't'g'nf r c'eg." r q'k'p'v'g'f "q'w'f c { u'q'p" y j k'ej "v'j g'eqwt'v' y q'w'f "pq'v' dg" k'p u'gu'k'q'p." cpf "u'c'k'f "v'j g't'g'y cu'p'q'f "g'c'f r'k'p'g' d' { " y j k'ej "f ghgpf cpv y q'w'f "j c'x'g'v'q" eqo r r'g'v'g'v'j g'f ghg'p'ug' ecug'0' K'f' eqo o g'p'v'g'f "v'j cv f k'h'le'w'k'g'u" f ghgpf cpv'o k'i j v'z'r g't'k'p'eg" k'p" k'p'v'g't'x'k'g'y k'p'i "v'j g

y kpguugu'y gtg'r ctv'qh'y g'f kgo o c"qh'r tgegff kpi 'r tq'ug'0K
cnuq' r klpv'f 'q'w'v' cv'khi tcpv'kpi 'f ghgpf cpv'u' b qv'kp'v'q'f tgegff
r tq'ug' tgs vktgf "c'eqp'v'p'w'c'peg."y' cv'y qwf "dg'qpg'i' tqwpf "pqv
v'q'i' tcpv'y' g'o qv'kp'0

Vj g'eqwv'y' gp'gzco kpgf "f ghgpf cpv'y' j q'c'empqy ngf i gf "y' cv
j g'y qwf "tgegkx'p'q'cf f kkp'c'ri'v'ko g'qt'ugt'x'legu'dg'f qpf "y' j cv
y gtg'ch'ht'f gf "v'eqw'p'ugn'cpf "i' tcp'v'f "y' g'o qv'kp'v'q'f tgegff
r tq'ug'0Eqw'p'ugn'it'go klp'gf "cu'bf'x'kuqt { " *1034 "eqw'p'ugn'ucv'kpi
y' cv'j' g'y cu' y k'k'pi "v'q' j' cpf ng' ngi' c'n' o' cv'gtu' uwe'j "cu' lwt {
k'p'ut'v'ek'p'u. 'dw'v'j' cv'j' g'y qwf "dg'v'p'cd'ng'v'q'j' cpf ng'g'x'k'f' gp'v'ct {
o' cv'gtu'⁴⁷ 'Eqw'p'ugn'ici' clp'c'ung'f 'h'qt'c'eqp'v'p'w'c'peg.'ucv'kpi 'y' cv
f ghgpf cpv'y' cu'p'q'v'r' tgr'ct'gf "v'q' r' tgegff 0Vj' g'eqw'v't'g'k'v'c'v'gf
y' cv'f' ghgpf cpv'y' qwf "pq'v'p'ggf "v'q' r' tqf' w'eg'c"y' k'p'guu'w'p'v'k'n
C'wi' w'w'v'37."cpf "y' cv'f' ghgpf cpv'y' cf "np'qy' p'y' j' q' j' k'u'r' g'p'c'm'f
r' j' cu'g'y' k'p'guugu'y' qwf "dg'c'm'c'm'p'pi' 0

47 F ghgpf cpv'u' ugeqpf " eqw'p'ugn' cnuq' ugt'x'gf " k'p' cp
cf' x'kuqt { "ecr'cek'f'0

Vj g'r' t'q'ug'ew'k'p' r' t'g'ug'p'v'f "k'u' g'x'k'f' g'p'eg' "k'p' c'i' i' t'c'x'c'v'k'p' q'p
C'wi' w'w'v': "cpf"; .3; : : 0'Q'p' C'wi' w'w'v'; .3; : : .f' ghg'p'ug'eqw'p'ugn
u'k'n'ugt'x'k'p' "k'p'c'p'cf' x'kuqt { "ecr'cek'f.'t'gs' w'g'v'gf "y' cv'y' g'eqw'v'
c'm'qy' F't'0'D'c'm'ep'v'q' b' c'ng'c'uc'v'go' g'p'0U'j' g'uc'v'gf "y' cv'v'j' g'y' cu
w'p'cd'ng'v'q' r' g'ht'q'to "j' g't'f' w'k'u'y' k'j' q'w'v'j' g'k'p'x'q'k'go' g'p'v'q'h'c'
n'cy' { g't'c'p'f "y' k'j' q'w'b' q't'g'v'ko' g'v'q'f' t'g'r'ct'g'0V'j' g'eqw'v't'go' k'p'f' g'f
j' g't'v'j' cv'f' ghgpf cpv'y' cf "g'ng'v'gf "v'q' r' t'q'eg'gf "y' k'j' q'w'v'eqw'p'ugn'0
F't'0'D'c'm'ep'eqo' r' k'p'g'f "y' cv'v'j' g'y' cu'w'p'cd'ng'v'q'eq'p'ht' "y' k'j'
f' ghgpf cpv'y' j' k'ng'eqw'v'y' cu'k'p'ug'uk'p' d'g'ec'w'ug'p'q' "h'c'ek'k'k'g'u
g'z'k'v'gf "k'p'v'j' g'eqw'v'y' q'w'g'v'q'f' g'to' k'v'j' k'u.'cpf "y' g'eqw'v'c'f' x'k'ug'f
j' g't'v'q'eq'p'uw'v'y' k'j' "j' ko' "cv'v'j' g'eqw'v'f' "l'c'k'v'j' g'g'p'p'v'j' k'p'i' "f'c'0
U'j' g't'g'r'k'g'f "u'j' g'y' cu'd'w'u' { "q'p'c'p'q'y' g't' o' c'w'gt' "y' g'g'p'p'v'j' k'p'i'
f'c'0V'j' g'eqw'v'uc'v'gf "u'j' g'eqw'f' "eq'p'ht' "y' k'j' "j' ko' "d't'k'g'n'f' "k'p'v'j' g'
eqw'v't'q'qo' 0U'j' g'uc'v'gf "u'j' g'p'gg'f' g'f' "v'q'ur' g'c'n'y' k'j' "j' ko' "h'qt' b' c'p'f'
j' q'w'tu.'y' cv'v'j' g't'g'y' g't'g'47/62'y' k'p'guugu'v'q'eq'x'g't.'y' cv'v'j' g'j' c'f'
v'q'k'p'v't'x'k'g'y' "y' g'ug'f' g'tu'q'p'u.'cpf "y' cv'f' ghgpf cpv'p'gg'f' g'f' "v'q' h'p'q'y'
y' j' cv'v'q'c'um'f'y' go' 0C'f' x'kuqt { "eqw'p'ugn'ici' t'gg'f' "y' cv'v'j' g't'g'j' c'f' "d'gg'p'
k'p'uw'h'k'ep'v'v'ko' g'v'q'f' r' t'g'r'ct'g'0

Y' j' g'p'v'j' g'r' t'q'ug'ew'k'p' t'g'v'gf "q'p' C'wi' w'w'v'; .3; : : .y' g'eqw'v'
k'p's'v'k'g'f' "y' j' g'y' g't'f' ghgpf cpv'y' c'f' "y' k'p'guugu't'g'c'f' { "h'qt' V'j' w't'uf' c'f'.
C'wi' w'w'v'33."3; : : 0'F' ghgpf cpv' u'c'v'gf "j' g'p'gg'f' g'f' "v'q' eq'p'uw'v'
c'f' x'kuqt { "eqw'p'ugn' d'w'eqw'p'ugn'q'd'lg'ev'gf "y' cv'j' g'f' k'f' "p'q'v'np'q'y'
y' j' cv'v'j' cu' "i' q'k'p'i' "q'p'c'p'f' "j' c'f' "p'q' t'g'ur' q'p'uk'd'k'k'f' { "h'qt' u'g'ew'k'p'i'
y' k'p'guugu'0

Q'p' V'j' w't'uf' c'f' "C'wi' w'w'v'33."3; : : .f' ghgpf cpv' t'gs' w'g'v'gf "c'
eq'p'v'p'w'c'peg'v'q' "n'ec'v'g' q'y' g't' u'w'ur' g'ew'v' y' j' q'c' r' q'r'k'eg' t'g'r'q't'v'
k'p'f'k'ec'v'gf "o' k'j' v'j' c'x'g' d'gg'p' k'p'x'q'k'g'f' "k'p' q'p'g' q'h' "y' g' r' t'k'q't

et'ko' k'p'c'n'c'ev'u't'g'k'g'f' "w' q'p'd' { "y' g'r' t'q'ug'ew'k'p' "k'p'c'i' i' t'c'x'c'v'k'p'0
V'j' g'eqw'v'f' g'p'k'g'f' "y' g'o' q'v'k'p'."ucv'k'p'i' "y' cv'v'j' g'r' q'r'k'eg'q'h'k'eg't
y' j' q'j' c'f' "r' t'g'r'ct'gf' "y' g't'g'r'q't'v'y' cu'r' t'g'ug'p'v'c'p'f' "c'x'c'k'c'd'ng'v'q'
v'g'u'k'h'f'."c'p'f' "r' q'k'p'v'k'p'i' "q'w'v'j' cv'f' g'ghgpf cpv'j' c'f' "t'geg'k'x'g'f' "y' g'
r' q'r'k'eg' t'g'r'q't'v' k'p'f' k'ue'q'x'g't' { "c' " { g'c't' d'g'h'q't'g'0'F' ghgpf cpv'j' g'p'
u'c'v'gf' "j' k'u'g'z'r' g't'v'y' k'p'guu'ht'q'o' "H'q't'k'f' c'y' q'w'f' "p'q'v'eq'o' g'w'p'g'u'u'
eq'w'p'ugn' eq'p'v'c'v'gf' "j' ko' . "y' j' k'ej' "eq'w'p'ugn' c'i' t'gg'f' "v'q'f' q'0' V'j' g'
eqw'v' u'c'v'gf' "y' cv'f' g'ghgpf cpv'y' cu' p'q'v' t'gs' v'k't'g'f' "v'q' eq'o' r' n'g'v'
y' j' g'f' ghg'p'ug'ec'ug'd' { "g'c't'n' { "y' g'g'p'p'v'j' k'p'i' "y' g'g'm' d'w'k'p'ug'c'f'
y' cv'v'j' g't'g'y' cu'oc'd'uc'q'n'w'g'n' "p'q'v'ko' k'v'q'p' { "q'w'v'g'x'k'f' g'p'eg'
k'p' o' k'k'i' c'v'k'p'0'Eq'w'p'ugn' u'c'v'gf' "j' g'y' q'w'f' "p'q'v'j' g'r' "eq'p'v'c'ev'
y' k'p'guugu' "c'r'c't'v' h'q'o' "y' g't'g'ec'r'ek't'c'p'v' g'z'r' g't'v'."d'w'v'j' cv'v'j' g'
f' ghg'p'ug'k'p'x'g'u'k'i' c'v'q't'."T'q'j' o' c'p'."y' q'w'f' "f' q'v'q'0V'j' g'eqw'v'c'f' x'k'ug'f'
f' ghgpf cpv'v'q' o' c'ng'v'w'g'q'h'v'j' g'f' ghg'p'ug' " *1035 "k'p'x'g'u'k'i' c'v'q't' k'p'
eq'p'v'c'v'k'p'i' c'p'f' "k'p'v'g't'x'k'g'y' k'p'i' "y' k'p'guugu'."c'p'f' "r' q'k'p'v'f' "q'w'v'j' cv'
f' ghgpf cpv'j' ko' u'g'h'y' q'w'f' "dg'c'd'ng'v'q' eq'p'v'c'ev'y' k'p'guugu'v'x'g't'v'j' g'
y' g'ng'p'f' 0V'j' g'eqw'v'q't'f' g't'g'f' "y' cv'f' ghgpf cpv'd'g'f' k'g'p'c'ee'g'u'v'q'
y' g'v'g'r'j' q'p'g'c'v'v'j' g'l'c'k'0V'j' g'd'c'k'k'h'i'c'p'p'q'w'p'eg'f' "y' cv'f' ghgpf cpv'
y' q'w'f' "dg'v'p'cd'ng'v'q'k'p'v'g't'x'k'g'y' "y' k'p'guugu'c'v'v'j' g'eqw'v'y' q'w'g'c'p'f'
y' q'w'f' "j' c'x'g'v'q'k'p'v'g't'x'k'g'y' "y' go' "cv'v'j' g'l'c'k'0

Eq'w'p'ugn'y' g'p'c'p'p'q'w'p'eg'f' "y' cv'F't'0'D'c'm'ep'y' cu'y' k'j' f' t'cy' k'p'i'
h'q'o' "j' g't' f' w'k'u'0' J' g' h'k'g'f' "c' o' q'v'k'p' "h'q't' c' " eq'p'v'p'w'c'peg'
d'c'ug'f' "w' q'p'D'c'm'ep'u'f' g'ec'r'c'v'k'p'v'j' cv'v'j' g'p'gg'f' g'f' "o' q't'g'v'ko' g'
h'q't' "k'p'x'g'u'k'i' c'v'k'p' "q'h' g'z'k'v'k'p'i' "y' k'p'guugu'c'p'f' "r' q'v'g'p'v'c'n' q'y' g't'
y' k'p'guugu'0Eq'w'p'ugn'uc'v'gf' "y' g'eq'p'uw'nc'p'v'y' cu'w'p'cd'ng'v'q'ur' g'c'm'
v'q'f' ghgpf cpv'v'j' g'l'c'k'v'j' g'g'c'w'ug'v'j' g'c'w'q't'p'g' { "x'k'uk'k'p'i' "t'q'q'o'
y' cu'eq'ug'f' "q'p'v'j' g'y' g'ng'p'f' . "f' ghgpf cpv't'g'w't'p'g'f' "v'q'v'j' g'l'c'k'
u'q'v'c'g'q'p'eqw'v'f' c' { u'v'j' c'v'x'k'uk'k'p'i' "j' q'w't'u'y' g't'g'q'x'g't'."c'p'f' "u'j' g'
y' cu'p'q'v'r' g'to' k'w'g'f' "v'q'ur' g'c'n'y' k'j' "f' ghgpf cpv'c'v'v'j' g'eqw'v'y' q'w'g'0
Y' j' g'p'v'j' g'r' t'q'ug'ew'q't'f' q'k'p'v'f' "q'w'v'j' cv'v'j' g't'g'j' c'f' "d'gg'p'p'q'eqw'v'
u'g'u'k'p'v'j' g'f' c' { "d'g'h'q't'g'c'p'f' "y' cv'v'j' g't'g'y' q'w'f' "dg'p'p'g'v'j' g'
h'q'm'y' k'p'i' "f'c' { .c' "H'k'f' c' { .k'v'c'r' r' g'c't'g'f' "y' cv'v'j' g'eq'p'uw'nc'p'v'y' cu'p'q'v'
c'x'c'k'c'd'ng'v'q'p'g'k'j' g't'q'h'v'j' q'ug'f' c' { u'0V'j' g'eqw'v'q'd'ug't'x'g'f' "y' cv'v'j' g'
eq'p'uw'nc'p'v'j' c'f' "p'q'v'uc'v'gf' "j' q'y' "o' w'ej' "o' q't'g'v'ko' g'y' cu'p'gg'f' g'f' .
y' cv'f' ghgpf cpv'j' c'f' "c'i' t'gg'f' "cv'v'j' g'v'ko' g'q'h'v'j' g'i' v'k'n'x'g't'f' l'ev'
y' cv'v'j' g'r' g'p'c'm'f' "r' j' cu'g'y' q'w'f' "eq'o' o' g'p'eg'q'p' C'wi' w'w'v': . "y' cv'
f' ghgpf cpv'v'j' g'p'c'ung'f' "h'qt'eq'p'v'p'w'c'peg'v'p'v'k'i' C'wi' w'w'v'44."q't'c'v'
n'g'c'v' C'wi' w'w'v'37."c'p'f' "y' c'v'p'q'y' "y' cv'f' ghgpf cpv'eq'w'f' "eq'o' o' g'p'eg'
y' j' o' c'k'p' r' c't'v'q'h'j' k'u'ec'ug'q'p' C'wi' w'w'v'37."j' g' u'c'v'gf' "y' cv'v'j' g'
p'gg'f' g'f' "w'p'ur' g'ek'h'g'f' "c'f' f' k'k'p'c'ri'v'ko' g'k'p'q't'f' g't'v'q' r' t'g'r'ct'g'0V'j' g'
eqw'v'q't'f' g't'g'f' "y' cv'f' ghgpf cpv'd'g'c'h'ht'f' gf' "w'p'ri'ko' k'g'f' "x'k'uk'k'p'i'
v'ko' g'cv'v'j' g'l'c'k'v'c'p'f' "y' cv'v'j' g'c'w'q't'p'g'f' "x'k'uk'k'p'i' "t'q'q'o' "dg'o' c'f' g'
c'x'c'k'c'd'ng'v'q'v'j' g'eq'p'uw'nc'p'v'k'p'c'm'f' k'p'i' "f' w'k'p'i' "y' g'ng'p'f' "j' q'w'tu'0

F' ghgpf cpv'v'j' g'p' r' t'q'eg'gf' g'f' "y' k'j' "y' g'f' ghg'p'ug'ec'ug'."ec'm'k'p'i'
y' q'y' k'p'guugu'0V'j' g'o' c'w'gt' "y' cu'c'f' l'q'w't'p'g'f' "w'p'v'k'v'j' g'h'q'm'y' k'p'i'
0' q'p'f' c'f' .C'wi' w'w'v'37."3; : : 0

*69d+ "Kp" yj g'r tguv'ecug. "lp" twkpi "qp" f ghgpf cpv'u" o kf vlcen o qvqpp "vq" tgr tguv'v'j ko ugrh "vj" g" eqwtv' eqtgevm "pqvgf" "vj" cv k'j cf "cwj qtkf" "vq" f gp { "vj" g" o qvqpp "kh" ugrh' tgr tguv'v'kqpp tgs vktgf "c" eqpvkpcpeg. "cpf." "kp" cf xkukpi "vj" g" f ghgpf cpv' qh vj g'r g'ku' qh' ugrh' tgr tguv'v'kqpp. "k'cungf" f ghgpf cpv' y j g'v' gt j g' w'p'f gtuwqf. "co qpi "qy' gt "vj" kpi u. "vj" cv' j g' y qwf "tgegkxg opq" gztc" vko g' hqt" r tgr ctv'kqpp" F ghgpf cpv' kpf kcvgf "j g w'p'f gtuwqf 0'k' cf f kkkpp. "y j gp" f ghgpf cpv' ugewgf "r gto kuukpp vq" r tqeggf "r tq" ug. "vj" g" eqwtv' c'itgcf { "j" cf "f gplgf" eqwpugn' tgs wguv' hqt" c" eqpvkpcpeg" hqt" hwt' vj' gt " kpxguki cvkpp" cpf r tgr ctv'kqpp' hqt" vj' g'r gpcn' "r j" cug' qh' vj' g' vlcen' F ghgpf cpv' y cu pq" o qtg' gpv'kxgf "vq" c" eqpvkpcpeg' y j gp' j g' dgeco g' j' ku' qy p eqwpugn' vj' cp' j g' y cu' gpv'kxgf "vq" c" eqpvkpcpeg' cv' hqto gt eqwpugn' tgs wguv' Vj' ku' y cu' gur gekm' "v'w'g" y j gp. "cu" kp' vj' g r tguv'v'ecug. f ghgpf cpv' o'j cf "dggp' chqtf gf 't' guctej 'hceklkku hqt' b' cp' "b' qpv' u. "uq' vj' cv' j g' j' cf "b' hwn' q' r q' twp' k' "vq' r tgr ctg kpf gr g'p'f gpv' "hqt" vlcen' g'xgp" y j k'g' j g' y cu' tgr tguv'v'gf "d' eqwpugn' *People v. Clark, supra." 5" Ecn' 6j' cv' r' 0332/3330+ Kp' g'gf. "f ghgpf cpv' p'q'v' q'pn' "j" cf "ceeguu" vq' t' guctej 'hceklkku. dw' cuugt' v'f "vj" cv' j g' j' cf "npqy p' cni' c' r' p' i" vj' cv' h' vj' g' t' g' y g' t' g' c' r gpcn' "r j" cug' qh' vj' g' vlcen' j' g' y qwf 'eqpf vev' k' v' cp' vj' cv' j g' j' cf eqpvcev'f "j" ku' y kpguugu' cp' f "y" cu' t' g'cf { "vq" r tqeggf 0

P q' f g'p'k'cn' qh' f' w'g' r tqeguu' cr r gctu' k'p' vj' g' eqwt' v' u' t' ghw'cn' vq i t'cp'v'f ghgpf cpv' u' o qv'qpp' hqt' eqpvkpcpeg' 0*6: d+o' K'v' ku' p'q'v g'xgt { "f g'p'k'cn' qh' c" tgs wguv' hqt" o qtg' vko g" vj' cv' xk'q'v'g'u" f w'g r tqeguu' g'xgp' h'v'j' g' r' ctv'f 'h'c'ku' v'q' q' h'gt' g'xk'f g'peg' q' t' ku' b'qo r g'ngf vq" f ghgpf "y" k'j qw' eqwpugn' *Ungar" v. Sarafite" *3; 86+598 WLU0797. 7; ; j: 6' UE v0: 63. 6; . 33' NCGf 04f; 43_0' K'p' u'g'cf. o'j vj' g' cpuy gt" o wu' dg' h'q'w'p'f "kp" vj' g' ekewo ucpegu" r tguv'v' k'p' g'xgt { "ecug. "r ctv'w'ctn' "kp" vj' g' t'gcu'p'u" r tguv'v'gf "vq" vj' g' vlcen' l'w'f i g' 0006" *Ibid." j: 6' UE v0' cv' r' 0: 72_0' G'xgp' k'p' c' ecr k'cn ecug. "kh" vj' g' f ghgpf cpv' ecppq' v' u'j qy "j" g' q' t' u'j g' j' cu' *1040 dggp' f k'ki gpv' k'p' ugew' k'pi "vj" g' cwgp'f c'peg' qh' y kpguugu. "qt" vj' cv ur gek'le' y kpguugu' g'z' k'v' y j q' y qwf "r tguv'v' b' cv' t' k'cn' g' xk'f g'peg. o'j i k'xgp" vj' g' f ghg' t' g'peg' p' g' e'gu' ct' k'f "f w'g" c' uc'v'g' vlcen' l'w'f i g' k'p t'gi ct'f "vq" vj' g' f g'p'k'cn' q' t' i t'cp'v' k'pi "q' h' eqpvkpcpegu. o'v' j' g' eqwt' v' u' t' w'k'pi "f gp' { k'pi 'c' eqpvkpcpeg' f q' u' p' q' v' l'w' r q' t' v' c' e' r' c' k' o' q' h' i' g' t' t' q' w'p' f' g' t' v' j' g' h' g' f' g' t' c' n' E' q' p' u' k' w' k' p' 0' *Id. "cv' r' 07; 3 j: 6' UE v0' cv' r' 0: 72_ ugg' People v. Howard. supra." 3' Ecn' 6j' cv' r' 033940-

c. Limitation on resources available to defendant

*6; c+ F ghgpf cpv' p'gzv' eqpv'p'f u' vj' cv' j g' y cu' r'gh' dgt' gh' qh cni' cuuk'v'c'peg' cp'f "w'p'cd'ng" vq' eqpv'cev' cp'f "k'p'v'g'x'k'g' y kpguugu f w'g" vq' t' g' u' t' v' k' x' g' eqpf k'k'q'p'u' qh' eq'p' h' k'p'go gpv' cv' vj' g' eqw'p'v' l'c'k' i' cp'f "t' g' u' t' v' k' x' g' ugew' k'f" o g'cuw' t' g' u' k'p' vj' g' eqwt' v' t' q' q' o . r k'p'v'k'pi "vq" h' g' f' g' t' c' n' ecugu' g' u' c' d' r' u' j' k'pi "vj" cv' k' v' k' u' c' x' k' r' v' k' q' p' qh' vj' g' eqp' u' k' w' k' p' c' n' t' k' i' v' q' h' u' g' r' h' t' g' r' t' g' u' v' v' k' q' p' v' q' f' g' r' t' k' x' g' c' f' ghgpf cpv' qh' cni' o g'cpu' qh' r tguv'v'k'pi "c" f ghg'p'ug' 0' *72+

K' ku' egt' v' c' p' n' "v' w'g" vj' cv' c' f ghgpf cpv' y j q' ku' t' g' r' t' g' u' v' v' k' p' i j ko ugrh' q' t' "j" g' t' u' g' r' h' o c { "p' q' v' d' g' r' r' e' e' g' f' k' p' v' j' g' r' q' u' k' k' q' p' q' h r t' g' u' v' v' k' p' i "c" f ghg'p'ug" y k'j qw' ceeguu' vq' c' v' g' r' j' q' p' g' . "r' e' y' r' d' t' c' t' { . "t' w' p' p' g' t' . "l' p' x' g' u' k' i' c' v' q' t' . "c' f' x' l' u' q' t' { "e' q' w' p' u' g' n' "q' t' "c' p' { "q' v' g' t' o' g' c' p' u' q' h' f' g' x' g' n' r' k' p' i 'c' f' ghg'p'ug' *Milton. supra. 989 H4f' cv' r' 0 3667/3668+ . "d' w' v' j' k' u' i' g' p' g' t' c' n' r' t' q' r' q' u' k' k' q' p' f' q' u' p' q' v' f' l' e' v' e' g' v' j' g' t' g' u' w' t' e' g' u' v' j' c' v' o' w' u' v' d' g' c' x' c' k' r' d' r' g' v' q' f' ghg'p'f' c' p' u' o' k' p' u' k' w' k' q' p' c' n' c' p' f' "u' g' e' w' t' k' f' "e' q' p' e' g' t' p' u' q' h' r' t' g' t' k' c' n' i' f' g' v' g' p' v' k' q' p' "h' c' e' k' k' k' u' g' u' o' c' { "d' g' e' q' p' u' k' f' g' t' g' f' k' p' f' g' v' g' t' o' k' p' k' p' i' "y' j' c' v' b' o' g' c' p' u' y' k' n' i' d' g' c' e' e' q' t' f' g' f' "v' q' v' j' g' f' ghg'p'f' c' p' v' q' r' t' g' r' c' t' g' j' k' u' q' t' j' g' t' f' ghg'p'ug' 0' *Id. "cv' r' 03668=U.S. v. Sarno, supra." 95" H5f' cv' r' 036; 3=U.S. v. Robinson, supra. ; 35" H4f' cv' r' 0939=State v. Drobel, supra." : 37" R4f' cv' r' 0958. h'p'0450+ Y j gp' vj' g' f' ghgpf cpv' j' cu' c' r' e' y { g' t' c' e' v' k' p' i' "c' u' c' f' x' l' u' q' t' { e' q' w' p' u' g' n' "j' k' u' q' t' j' g' t' t' k' i' j' u' t' c' t' g' c' f' g' s' w' e' v' g' n' "r' t' q' v' e' v' g' f' 0' *Milton, supra. 989 H4f' cv' r' 03668=United States' v. Wilson, supra, "8; 2 H4f' cv' r' 03493/3494=State' v. Henry, supra, " : 85" R4f' cv' r' 0 : 980+

*6; d+ Vj' g' t' g' e' q' t' f' "f' g' o' q' p' u' t' c' v' u' v' j' c' v' f' ghgpf cpv' u' k' p' x' g' u' k' i' c' v' q' t' c' p' f' "j' k' u' u' g' p' v' g' e' l' p' i' "e' q' p' u' w' n' c' p' v' u' q' o' g' k' o' g' u' j' c' f' "f' h' h' l' e' w' n' { "k' p' u' g' e' w' t' k' p' i' "c' f' g' s' w' e' v' g' r' r' q' t' w' p' k' k' u' g' u' v' q' r' u' g' c' n' i' y' k' j' "f' ghgpf cpv' vj' cv vj' g' eqwt' v' t' q' q' o' "d' c' k' k' h' r' t' q' j' k' k' g' f' f' ghgpf cpv' h' t' q' o' "u' r' g' e' n' k' p' i' "v' q' j' k' u' c' u' k' u' c' p' w' a' q' t' "j' k' u' y' k' p' g' u' u' g' u' c' v' v' j' g' e' q' w' t' v' j' q' w' g' . "c' p' f' "v' j' c' v' f' ghgpf cpv' t' g' w' t' p' g' f' "v' q' v' j' g' e' q' w' p' v' f' "l' c' k' i' v' q' q' r' e' v' g' q' p' u' q' o' g' e' q' w' t' v' f' c' { u' v' q' v' g' r' j' q' p' g' y' k' p' g' u' u' g' u' q' t' o' g' g' v' y' k' j' "j' k' u' k' p' x' g' u' k' i' c' v' q' t' "q' t' j' k' u' e' q' p' u' w' n' c' p' v' 0' Y' g' f' q' p' q' v' d' g' r' k' e' x' g' f' ghgpf cpv' y' c' u' f' g' r' t' k' x' g' f' "q' h' vj' g' c' d' l' k' k' v' { "v' q' c' e' v' c' u' j' k' u' q' y' p' e' q' w' p' u' g' n' i' c' p' f' "v' q' r' t' g' u' g' p' v' c' f' ghg'p'ug' 0' Vj' g' eqwt' v' q' t' f' g' t' g' f' "v' j' c' v' f' ghgpf cpv' dg' i' k' x' g' p' w' r' k' o' k' e' f' "c' e' e' g' u' u' v' q' v' j' g' v' g' r' j' q' p' g' q' p' e' g' f' ghgpf cpv' u' f' h' h' l' e' w' n' k' u' g' u' y' g' t' g' d' t' q' w' i' j' v' v' q' v' j' g' e' q' w' t' v' u' c' w' e' p' v' k' q' p' . "c' p' f' "u' k' o' k' r' t' n' { "q' t' f' g' t' g' f' "v' j' c' v' j' g' e' q' w' p' v' f' l' c' k' i' o' c' n' e' g' v' j' g' c' w' q' t' p' g' { "x' l' u' k' k' p' i' "t' q' q' o' "c' x' c' k' r' d' r' g' v' q' f' ghgpf cpv' q' x' g' t' "v' j' g' y' g' g' n' g' p' f' "v' q' r' g' t' o' k' v' h' w' t' v' j' g' t' e' q' p' u' w' n' c' v' k' p' p' y' k' j' "j' k' u' c' u' k' u' c' p' v' u' 0' Vj' g' t' g' e' q' t' f' "c' n' i' q' g' u' c' d' r' u' j' g' u' v' j' c' v' f' ghgpf cpv' y' q' t' n' g' f' c' u' k' f' v' q' w' u' n' { "k' p' v' j' g' e' q' w' p' v' f' "l' c' k' i' r' e' y' "h' d' t' c' t' { "c' p' f' "y' q' t' n' g' f' "e' m' u' g' n' { y' k' j' "e' q' w' p' u' g' n' i' f' w' k' p' i' "v' j' g' z' v' g' p' f' g' f' "i' w' n' r' j' c' u' g' q' h' v' j' g' v' l' c' n' c' p' f' v' j' c' v' e' q' w' p' u' g' n' i' c' u' g' t' v' g' f' " *1041 "v' j' c' v' f' ghgpf cpv' n' p' g' y' "v' j' g' h' e' v' u' c' p' f' "k' u' u' g' u' k' p' v' j' g' e' c' u' g' d' g' w' g' t' v' j' c' p' o' q' u' v' c' w' q' t' p' g' { u' y' q' w' f' 0' Vj' g' c' f' g' s' w' c' e' { "q' h' v' j' g' t' g' u' q' w' t' e' g' u' b' o' c' f' g' c' x' c' k' r' d' r' g' v' q' f' ghgpf cpv' c' n' i' q' k' u' f' o' g' o' q' p' u' t' c' v' g' f' "d' { "v' j' g' e' k' e' w' o' u' c' p' e' g' v' j' c' v' d' g' h' q' t' g' w' p' f' g' t' v' c' n' k' p' i' "r' t' q' u' g' u' c' w' u' . "f' ghgpf cpv' u' c' v' g' f' "j' g' j' c' f' "e' q' p' c' e' v' g' f' "j' k' u' r' t' q' u' r' g' e' v' k' x' g' r' g' p' c' n' { "r' j' c' u' g' y' k' p' g' u' u' g' u' t' g' r' g' e' v' g' n' "f' w' k' p' i' "v' j' g' i' w' n' r' j' c' u' g' 0' Y' j' gp' j' g' u' q' w' i' v' r' t' q' u' g' u' c' w' u' . "j' g' t' g' k' g' t' c' v' g' f' "v' j' c' v' j' g' j' c' f' e' q' p' c' e' v' g' f' "j' k' u' y' k' p' g' u' u' g' u' . "n' p' g' y' "y' j' c' v' v' j' g' l' "y' q' w' f' "u' c' . "c' p' f' y' c' u' r' t' g' r' c' t' g' f' "v' q' i' q' h' q' t' y' c' t' f' 0' J' g' v' j' g' t' g' c' h' g' t' y' c' u' c' d' r' g' r' g' t' j' c' r' u' q' p' "c' r' k' o' k' e' f' "d' c' u' k' u' v' q' "o' g' g' v' y' k' j' "j' k' u' k' p' x' g' u' k' i' c' v' q' t' "c' p' f' "j' k' u' e' q' p' u' w' n' c' p' v' . "c' p' f' "k' v' e' r' r' g' e' t' u' v' j' c' v' e' q' w' p' u' g' n' i' c' p' f' "v' j' g' k' p' x' g' u' k' i' c' v' q' t' f' k' f' "e' q' p' c' e' v' u' q' o' g' y' k' p' g' u' u' g' u' 0' K' c' n' i' q' c' r' r' g' e' t' u' v' j' c' v' f' ghgpf cpv' r' t' g' h' g' t' g' f' "v' q' u' r' g' e' n' i' v' y' k' p' g' u' u' g' u' j' k' o' u' g' r' h' c' p' f' "j' c' f' "c' e' e' g' u' u' v' q' c' v' g' r' j' q' p' g' k' p' v' j' g' e' q' w' p' v' f' "l' c' k' i' v' j' c' v' u' g' x' g' t' c' n' i' q' h' v' j' g' f' c' { u' d' g' w' y' g' g' p

vj cv'f ghgpf cpv'uj qwf "pqv'dg'r gto kwgf "vq"o qxg"cdqw'vj g eqwtvqqo " f wtkpi " vj g" r gpcn{ " r j cug" qh' vj g" vtkrf' Cu' hqt f ghgpf cpv'u' wug" qh' gzj kdku" qp" vj g" drcndqctf . " vj g" eqwtv qdugt xgf 'vj cv'cf xluqt { 'eqwpugnleqwf 't rceg'vj g'gzj kdku'qp'vj g drcndqctf . kh'f ghgpf cpv'y kuj gf 0

f. Defendant's illness during the penalty phase

*75+ "F ghgpf cpv'eqpvpgf u'vj cv'j g" y cu' hqtegf " vq" r tqeggf " cv vj g" r gpcn{ " r j cug" cmj qwi j " j g" y cu' ugtkqwn{ " km" dw" vj g tgeqt f " f qgu'pqv'wv r qt v'vj ku'eqpvpgvqp0'Vj g" tgeqt f " tghgeu vj cv' vj g" eqwtv' pqvlegf " qp" Cwi wuv'33. "3; : : . " vj cv'f ghgpf cpv j cf " rct { pi kku0C v'f ghgpf cpv'u' tgs wguv' vj g" eqwtv' qtf gtgf " vj cv f ghgpf cpv' tgegxg" o gf lecn' cvgpkqp0' Cr r ctgpn{ . " f ghgpf cpv tgegkxgf " v' tgcvo gpv" cpf " j g" cr r gctgf " vj g" hqny kpi " f c { " cpf eqpvkpwgf " vq" tgr tguv'vj ko ugrh'y kj qw'cp { ' kpf lecvkqp' vj cv'j g y cu' vq' km' vq' r tqeggf 0

g. Prosecutorial misconduct

*76+ "F ghgpf cpv'cmj " eqpvpgf u'vj cv'v'j g" r tqegwqt " eqo o kwgf o kaeqpf wev'lp" enjukpi " cti wo gpv" dw" vj ku' erko " ku" y ckgf dgecwug " f ghgpf cpv' f kf " pqv' qdlgev' dgrny " vq" cp { " qh' vj g" vj tgg cuugt vgf " kpucpegu" qh' r tqegwqt kcn' o kaeqpf wev' 0 " Ugg " *People v. Millwee.* " *supra.* " 3: " Ecnf6j " cv' r 0'36; 0- " k" cp { " gxgpv" pq gttqt " cr r gtu0' k' vj g' hkuveqo o gpv' vj g' r tqegwqt " uwi i guv' vj cv' f ghgpf cpv' j cf " f gvt q { gf " ugxgtcn' r kxgu. " kpenf kpi " vj qug qh' vj g" eqf ghgpf cpv. " vj cv' j g" pqy " y cpv' f " hqt i kxgpv. " dw vj cv' j g" pvgxg " j cf " cf o kwgf " j g" j cf " f ppg" cp { vj kpi " vgttkdrg cpf " vj cv' 0' j _ g' j cu' pq" eqo r cuukqp" cpf " j g' j cu' pq" uqwn' 000 Ncen' qh' g' xkf gpeg" qh' tgo qtug. " j qy gxgt. " ku" c" r tqr gt " uwdlgev hqt " eqpukf gtcv'kqp" cv' vj g" r gpcn{ " r j cug 0 " Ugg " *People v. Ervin* *422+ " 44" Ecnf6j " 6: " 325"] ; 3" Ecnf0' r v0' f " 845. " ; ; 2" R0' f 728 = " *People* " v. *Carrera* " *3; ; + " 6; " Ecnf5' " 4; 3. " 55; "] 483 Ecnf0' r v0' 56: " 999' R0' f " 343_ 0- " Vj g' r tqegwqt u' eqo o gpv' vj cv f ghgpf cpv' j cf " ej kf tgp' d { ' f khtgtpv' y qo gp. " ppg' qh' vj j qo ' j g j cf " o cttkgf . " y cu' dcugf " wv qp" vj g" g' xkf gpeg" cpf " y cu' c" r tqr gt tguv' qpug' vq" f ghgpf cpv' u' g' xkf gpeg" lp" o kki cvkqp' vj cv' j g" y cu' c i qaf ' hco k { ' o cp' cpf ' g' zegngpv' hcvj g t0' hpcn{ . " vj g' r tqegwqt u eqo o gpv' vj cv' j g' j cf " j gctf ' uqo gpgg' vcmkpi ' cdqwn' vj g' t' tguv' ecug' cpf " uc { kpi " vj cv' 0' vj g' " wugf " c" o cej kpg' i wp' lp' vj g' u' j cf qy qh' c" etquu. 0 " *1044 " y j kg" r gtj cr u" v' v' w { " o gmf tco cvk. r tqr gtn { " tghgtgf " vq" g' xkf gpeg" guv' d' k' vj kpi " vj cv' vj g" o wtf gt qh' f g' v' kxg " Y knko u' qeewt' gf " kp' h' qp' v' qh' c' ej wtej " f c { ectg epgv' 0

h. Limitations on closing argument

*77+ "F ghgpf cpv' eqpvpgf u'vj g" eqwtv' ko r tqr gtn { " nko kgf " j ku enjukpi " cti wo gpv' vj vj g' lwt { ' y j gp' k' v' wv' k' p' gf " vj g' r tqegwqt u

qdlgev' kqp" vq" j ku' ucvg' gpv' vj cv' vj g" r qrl' eg" cpf " vj g" f kvt' lev cvwt' pg { " j cf " eqphgtt' gf " cpf " f gvt' o k' p' gf " vj cv' vj g' l' y g' g' p' qv r r' gcugf " y kj " V { t' qpg" J lem' u' ucvg' gpv' vq" vj g" r qrl' eg' 0' k' p' u' wv' k' p' k' pi " vj g' qdlgev' kqp. " vj g' eqwtv' ucvgf " 0' k' y qwf " cum' { qw' vq r r' gcug' p' qv' ej ctcev' g' k' g' 0' l' wv' u' w' o c' k' k' g' vj g' g' xkf gpeg' 0

K' y cu' r tqr gt " vq" u' wv' k' p' " vj g" r tqegwqt u' qdlgev' kqp" y j gp f ghgpf cpv' dgi cp" eqo o gpv' kpi " qp" o cvwtu' pqv' y kj k' p' vj g g' xkf gpeg. " uwej " cu' vj g" o q' v' k' cv' k' p' qh' vj g" r tqegwqt " cpf vj g" r qrl' eg" f wtkpi " k' p' v' t' x' l' gy u' qh' V { t' qpg" J lem' 0' C' m' j qwi j f ghgpf cpv' egt' v' k' p' n' " y cu' g' p' v' k' p' g' f " vq" v' ti g' j' ku' k' p' v' t' r' g' v' k' p' qh' vj g" g' xkf gpeg. " j g' y cu' pqv' g' p' v' k' p' g' f " vq" cuugt' v' cu' h' ev' o cvwtu cu' vq" y j lej " pq" g' xkf gpeg" j cf " dggp" r t' g' u' g' p' v' g' 0' k' p' vj g' eqpv' g' z' v qh' f ghgpf cpv' u' cti wo gpv. " vj g' eqwtv' u' cf o q' p' k' k' p' " cf g' s' w' v' g' n' { eqpv' x' g' f " vj ku' r' q' k' p' v' cpf " k' v' e' g' t' v' k' p' n' { f' k' f " p' q' v' t' g' x' g' p' v' f ghgpf cpv h' qo " eqpv' k' p' k' pi " vq" v' ti g' j' ku' k' p' v' t' r' g' v' k' p' qh' g' x' g' p' v' w' v' qp" vj g lwt { 0

i. Alleged Eighth Amendment violation

*78+ " F ghgpf cpv' j cu' h' k' r' gf " vq" f go qp' ut' cvg" vj cv' vj g ekewo ucpegu' w' p' f gt' y j lej " vj g' r gpcn{ " r j cug' y cu' eqpf wev' f x' k' r' v' g' f " j ku' t' k' j v' v' p' f gt " vj g" Gki j vj " Co gpf o gpv' vq" c" h' k' t cpf " t' r' i' c' d' r' g' r gpcn{ " f gvt' o k' p' v' k' p' 0' C' u' y g' j' cxg' g' z' r' k' p' g' f < 0') j g' t' g' s' w' k' t' g' f " t' r' i' c' d' k' k' v' { " ku' c' w' k' p' g' f " y j gp" vj g' r tqegwqt u' j cu f k' e' j cti gf " ku' d' w' f gp' qh' r' t' q' h' l' c' v' vj g' i' w' k' v' cpf " r gpcn{ " r j cugu r w' u' v' cp' v' vq" vj g' t' w' g' u' qh' g' x' k' f gpeg" cpf " y kj k' p' vj g" i' w' k' g' r' k' p' g' u qh' c' " eqp' u' w' k' p' c' n' f g' c' vj " r gpcn{ " u' c' w' w' g. " vj g' f g' c' vj " x' g' t' f' l' e' v' j' cu dggp" t' g' w' t' p' g' f " w' p' f gt " r tqr gt " k' p' u' t' w' e' k' p' u' cpf " r tqegf w' g' u. " cpf vj g' v' t' g' t' qh' f gpcn{ j cu' f' w' k' " eqp' u' k' f' g' t' g' f " vj g' t' g' n' g' c' p' v' 0' k' k' i' cv' k' p' i g' x' k' f gpeg. " kh' c' p { . " y j lej " vj g' f ghgpf cpv' j cu' e' j q' u' g' p' v' q' r' t' g' u' g' p' 0' C l' w' i o g' p' v' qh' f g' c' vj " g' p' v' t' g' f " k' p' " eqp' h' q' t' o k' f " y kj " vj g' u' g' t' k' i' q' t' q' w' u u' c' p' f' c' t' f' u' f' q' u' " p' q' v' x' k' r' v' g' vj g' Gki j vj " Co gpf o gpv' t' g' r' i' c' d' k' k' v' { t' g' s' w' k' t' go g' p' u' 0' o " * *People* " v. *Clark.* " *supra.* " 5' Ecnf6j " cv' r 0'32; 0- Qw' " eqp' u' k' f' g' t' c' v' k' p' qh' vj g' e' r' k' o u' t' g' x' l' gy gf " c' d' q' x' g' f' go qp' ut' cv' gu vj cv' f ghgpf cpv' j cu' h' k' r' gf " vq" guv' d' k' vj " cp { " k' i' p' k' t' e' c' p' v' x' k' r' v' k' p' u' qh' r' tqr gt " r tqegf w' g' v' vj g' r gpcn{ " r j cug' qh' vj g' v' t' k' n' " cpf " vj g r gpcn{ " x' g' t' f' l' e' v' eqp' h' q' t' o u' y kj " vj g' u' c' p' f' c' t' f' u' t' g' s' w' k' t' g' f " d { " vj g Gki j vj " Co gpf o gpv 0

3. Asserted jury misconduct during penalty phase deliberations

F ghgpf cpv' eqpvpgf u'vj cv' ekewo ucpegu' vj cv' qeewt' gf " f wtkpi r gpcn{ " r j cug" f g' r' i' c' d' k' v' k' p' u' t' g' s' w' k' t' g' t' g' x' g' t' u' c' r' i' d' q' vj " qh' vj g' i' w' k' v cpf " vj g' r gpcn{ " x' g' t' f' l' e' w' 0' J g" *1045 " eqpvpgf u' h' k' u' v' vj cv' vj g' t' g' y g' t' g' k' p' f' l' e' c' v' k' p' u' f' wtkpi " r gpcn{ " r j cug" f' g' r' i' c' d' k' v' k' p' u' vj cv' vj g' qh' vj g' l' w' t' u' t' j cf " p' q' v' t' g' e' j' g' f " cp" k' p' f' g' r' p' g' p' v' x' g' t' f' l' e' v' cv' vj g i w' k' v' r' j cug. " cpf " vj cv' vj g' eqwtv' eqo o kwgf " t' g' x' g' t' u' k' d' r' g' t' t' q' t' " k' p' h' k' i' k' p' i " vq" l' p' s' w' k' t' g' l' p' vq" vj ku' l' w' t' q' t' u' u' c' v' g' qh' o k' p' f " vq" f' g' v' t' o k' p' g

y j gj gt "f ghgpf cpv" eqpukwkwqpcn/cpf "ucwwqt { "tki j v"v"cp kpf gr gpf gpvf gekukqp/d { "gcej "lwtqt" j cf "dggp"xlkrcvfg 0

F ghgpf cpv" cuuq" cuugt u" vj cv' ocu" k' pqy "ucpf u." vj g" tgeqtf tghgevu" cp" grgxp/r gtuqp" xgtf lev' cv' vj g" i wkn" r j cug" J g eqpvgpf u"vj cv' dgecwag" vj gt g" ku" pq" xcrlf "i wkn" lwf i o gpv." cpf dgecwag" vj g' ekte wo ucpegu' f go qput cvg" vj g' lwt { u' wphkspguu' vq ugtxg. "vj g' r gpcn { "xgtf lev' o wu' dg' t g xgtugf 0

Hkpcn { " f ghgpf cpv" cuugt u" vj cv' kphco o cvqt { " r wdrlekf r tglwf kekcn { "chgevgf "vj g' r gpcn { "r j cug" f grkdgtcvkpu0

a. Claims relating to the guilt verdict

*79+Qw "gzco kpcvqp" qh' vj g' tgeqtf f kuenugu' vj cv' qpg' o qtpkpi f wtkpi "r gpcn { "r j cug" f grkdgtcvkpu. "vj g' eqwt v' tgegxgf "c" pqvg htqo "vj g' lwt { "hqtgr gtuqp" cunhpi "y j gj gt "vj g' lwt { "o wu' dg wpcpk o qwu" k' qtf gt "v" t g w t p "c" xgtf lev' qh' r k h g "ko r tkuqpo gpv y kj qw" vj g' r quukdkk { "qh' r ctqrq' Vj g' eqwt v' tgr r k g f "lp" vj g chht o cvkxg' l' k' vj g' chgtppqp" qh' vj g' uco g' f c { " vj g' eqwt v tgegxgf "cpqv j gt "pqvg" htqo "vj g' hqtgr gtuqp" ucwki < o Qpg' lwtqt j cu' lphqto gf "wu" vj cv' j g h j g' xqvgf "y kj " vj g' o clqtk { "lp" vj g r tkt r' t qeeggf kpi "kpuvcf "qh' t gcej kpi "cp' kpf gr gpf gpvf gekukqp qh' i wkn' q' t lppqegpeg"] _ O vej " f k u e w u k q p " j c u l j q y p " v j k u l w t q t f q g u ' p q v ' q t ' k u ' p q v ' e c r c d n g ' q h ' w p f g t u c p f k p i " v j g ' t g s w k t g o g p w u q h ' v j g ' l w f k e k c n i t t q e g u u 0] _ " Y j c v f q ' y g ' f q A 6

F wtkpi " vj g' lp" eco gtc " j gctkpi " vj cv' gpuwgf . " vj g' vtkn' eqwtv f ktgevgf " vj cv' cp { " o qvqp " vq " ko r gcej " vj g' i wkn' xgtf lev' vj qwf dg" o cf g" k' vj g' eqpvzv' qh' c" o qvqp" hqt" pgy " vtkn" pqv f wtkpi "r gpcn { "r j cug" f grkdgtcvkpu0 *Ugg' E' 33: 3 "lugwki "qww cr r tqr tkcvg" i tqwpf u' hqt" o qvqp" hqt" pgy " vtkn" = ugg' cuuq " *In re Stankewitz* " *3; ; 7+ 62" Ecrf" 5; 3. " 5; 5"] 442" Ecrf" r u0 5: 4. " 92: " R0f " 3482_] o qvqp" hqt" pgy " vtkn' ku" vj g' wuwn o gjv qf " hqt" tckkpi " vj g' kuwg" qh' o kueqpf wev' d { " c" lwtqt f wtkpi " f grkdgtcvkpu_0 " Chgt" j gctkpi "gzvgpf gf "cti wo gpv' htqo eqwpugn" vj g' eqwt v' gzco kpgf " vj g' hqtgr gtuqp" cv' uqo g' r epi vj . rko k kpi "ku" lps wkt { "v" vj g' lwt { u' r gpcn { "r j cug" f grkdgtcvkpu. k' qtf gt " vq" f gvgto kpg" vj g' dcuku" hqt" j ku" cuugt vqp" vj cv vj g' wpkf gpv' h h g f " l w t q t " y c u " k p e c r c d n g " q h ' f g r k d g t c v k p o ' V j g h q t g r g t u q p ' r t q x k f g f ' x c i w g ' e p u y g t u l g i c t f k p i " v j g ' d c u k u ' h q t ' j k u q r k p k p " v j c v ' v j g ' l w t q t " y c u ' w p c d n g " v q " w p f g t u c p f " v j g ' l w f k e k n r t q e g u u = k ' c r r g c t g f " v j c v ' v j g ' h q t g r g t u q p " h c t i g n ' y c u ' e q p e g t p g f v j c v ' v j g' w p k f g p v ' h h g f " l w t q t " t g e c m g f " v j g' g x k f g p e g " f k h g t g p v l h t q o " v j g' t g u v ' q h ' v j g' l w t { 0 " Chgt " vj cv' *1046 " gzco kpcvqp. f ghgpg " eqwpugn " 48 " eqpenf gf " vj g' w p k f g p v ' h h g f " l w t q t " y c u " v j g u q r g ' q n f q w l p ' h c x q t ' q h ' c ' l g p v g e g ' h g u ' v j c p ' f g c v ' 0 k p ' t g u r q p u g v q ' v j g' t t q u e w q t u' e q p v g p v k p " v j c v ' v j g' l w t q t ' l j q w f ' d g ' g z e w u g f . f ghgpg " eqwpugn " cti wgf " vj cv' vj g' t g y c u ' p q ' g x k f g p e g " k p f k e c v k p i

vj g' lwtqt "y cu" tghwulpi "v" qdg { "vj g' rny . "cpf "lp" j gcvf "vgt o u ceewugf "vj g' eqwt v' cpf "vj g' r tqugewqt "qh' cwgo r vki "v" gpwug c "xgtf lev' qh' f gcv "d { "tgo qxkpi "vj g' lwtqt 0 Vj g' lwtqt "y cu" p q v g z e w u g f 0

48 Cmj qwi j " f ghgpf cpv" y cu" i tcpvgf " vj g' tki j v' vq tgr tguqv' j ko ugrh' cv' vj g' r gpcn { " r j cug" qh' vj g vtkn " j ku" eqwpugn' ukn' ugtxgf " cu" eqeqwpugn' cpf cf xkuqt { " eqwpugn' cpf " tgr tguqv' vj " j ko " qp" rgi cn o cvgtu. " l p e n f k p i " s w u k u p u ' h t q o " v j g' l w t { " f w t k p i f g r k d g t c v k p u 0

F ghgpg " eqwpugn " ucvgf " vj cv' j g' y c u ' p q v ' c w g o r v k p i " v q ' k o r g c e j v j g' i wkn' xgtf lev' f wtkpi " vj g' o k / r g p c n { " f g r k d g t c v k p j " g c t k p i j g f " vq " eqpukf gt " vj g' lwt { " hqtgr gtuqp " u' p q v g ' Y g' p q v g ' vj cv cnj qwi j " f ghgpg " eqwpugn' f k f " t g s w g u v ' h w t v j g t " k p s w k t { " k p v q v j g' w p k f g p v ' h h g f " l w t q t u' e q p f w e v ' f w t k p i " v j g' i w k n " r j c u g f g r k d g t c v k p u . " j g' u c v g f " j g' y c u " p q v ' o c n k p i " c " o q v k p " v q k o r g c e j " v j g' i w k n " x g t f l e v ' d w ' y k u j g f " v q " u g e w t g " c " d g w e t w p f g t u c p f k p i " q h ' v j g' l w t q t u' c d k k k { " v q ' u g t x g f ' w t k p i " v j g' r g p c n { r j c u g ' f g r k d g t c v k p u 0 E q w p u g n ' v j g q t k f g f " v j c v ' v j g' l w t q t " y c u " v j g o j q n f q w l w t q t o ' y j q ' y c u ' d o g t g n ' x q v k p i " j k u ' e q p u e k p e g e o ' c p f q r k p g f " v j c v ' v j k u l w t q t ' j c f " h k p i g t k p i " f q w d u ' y k j " t g u r g e v ' v q " v j g i w k n ' x g t f l e v 0

F ghgpf cpv' vj g' t g c h g t " o c f g " c " o q v k p " h q t " p g y " v t k n ' d c u g f " k p r c t v ' r q p " v j g' c u u g t v k p " v j c v ' v j g' i w k n ' x g t f l e v f k f " p q v t g r t g u g p v v j g' q r k p k p " q h ' g c e j " l w t q t " o c u ' k p f k e c v g f " d { " v j g' h q t g o c p u ' p q v g u c w k p i " v j c v ' q p g " l w t q t " f k f " p q v ' x q v g " j k u j g t " q y p " k p f g r g p f g p v o k p f " e q p e g t k p i " i w k n ' q t " l p p q e g p e g . " d w ' o g t g n " y g p v ' c n k p i y k j " v j g' o c l q t k { 0 " J k u " o q v k p " y c u " p q v ' u w r r q t v g f " d { " c p { c h h k c x k u 0 ' V j g' v t k n ' e q w t v ' f g p k f " v j g' o q v k p . " u c w k p i " v j c v p q " g x k f g p e g " j c f " d g g p " k p v t q f w e g f " f g o q p u t c v k p i " k o r t q r g t e q p f w e v ' q p " v j g' r c t v ' q h ' v j g' l w t { 0

K' y c u ' c v ' v j g' v k o g' q h ' v j g' o q v k p " h q t " p g y " v t k n ' c p f " p q v ' c v ' v j g o k f / r g p c n { " f g r k d g t c v k p " j g c t k p i . " v j c v ' v j g' e q w t v ' f g v g t o k p g f v j c v ' p q " d c u k u " g z k u g f " v q " k o r g c e j " v j g' i w k n ' x g t f l e v 0 F ghgpf cpv f q g u ' p q v ' e q p v g p f ' q p ' c r r g c n j c v ' v j g' v t k n ' e q w t v ' g t g f ' k p ' f g p { k p i j k u ' o q v k p " h q t " p g y " v t k n 0

Vj g' g' ku' pq' o gtk' lp' f ghgpf cpv' u' eqpvgp' vj cv' vj g' vtkn' eqwtv gttgf "y kj " t g u r g e v ' v q " v j g' i w k n ' x g t f l e v ' l p " h c k k p i " v q " g z c o k p g v j g' hqtgr gtuqp" tgi ctf kpi " j ku" q r k p k p " vj cv' qpg" lwtqt " j cf h k r g f " v q ' f g r k d g t c v g . " d g e c w a g " v j g' e q w t v ' f g v g t o k p g f " c p f " e q w p u g n e q p e g f g f " v j c v ' c p { " g h h q t v ' v q " k o r g c e j " v j g' i w k n ' x g t f l e v ' y c u " v q d g " e q p f w e v g f " d { " y c { " q h " c " o q v k p " h q t " p g y " v t k n ' 0 k p " d t k p i k p i u w e j " c " o q v k p . " k " y c u " f g h g p f c p v u " t g u r q p u k d k k v " v q " r t g u g p v c f o k u k d n g " g x k f g p e g " v q " k o r g c e j " v j g' x g t f l e v 0 * U g g " *People v. Von Villas* " *3; ; 4+ 32 " E c r f C r r 0 6 v j " 423 . 473 "] 35 " E c r f r u 0 f

84_]r ctv{ " uggkpi " vq " ko r gcej " vj g" xgtf lev' o wuv' r tguqpv
cf o kuukdrng'gxf ppeg'kp' uwr r qtv'qh' o qvqp _=ugg'cnuq "*People
v. Peavey*"*3; ; 3+348"EcnfCrr 6f "66."72/73"]39: "EcnfR v0
742_]lwtqt'u'ucvgo gpv'uj g"xqvgf "hqt " *1047 "i wkn'qpn' "vq
i q' cmppi "y kj "vj g" o clqtks{ "y cu' f go qpuctvkg' qh' o gpvcn
r tqeguugu'cpf "eqpuk' gtcvqpu'vj cv'kphwpegf "j gt'xgtf lev'cpf
vj wu'y cu'kpcf o kuukdrng'vq'ko r gcej "vj g"xgtf lev'0" F ghgpf cpv
hcku' vq' r gtuwcf g' wu' vj cv' vj g' v'kcn' eqwt'v' gttgf "kp' hckkpi "vq
r tqxkf g'c" j gctkpi "tgrcvf "vq' vj g' xcrkf kv{ "qh' vj g' i wkn' xgtf lev
y j kg' r gpcn{ "f grkdtcvkpu' y gtg' wpf gt' y c{ . "r ctvkwrcn{ "kp
rki j v'qhf ghgpg' eqwpug' u'ucvgo gpv' vj cv' g'y cu' p'qv' cwgo r vki
vq' ko r gcej "vj g' i wkn' xgtf lev' cv' vj cv' ko g0

b. Claims relating to the penalty verdict

*7: +i0Y kj "t gur gev'vq' f ghgpf cpv' u' eqpvqpvkqp' vj cv' vj g' lwt { u
r gpcn{ "r j cug' f grkdtcvkpu' y gtg' v'kpvf "d{ "vj g' uco g' lwtqt u
kpcdkk{ "vq' f grkdtcvg' cpf "hqmjy "kpwt vev'kpu. "cpf "vj cv' vj g
eqwt'v' gttgf "kp' hckkpi "vq' g'zco kpg' vj g' lwtqt "tgi ctf kpi "j ku
qt "j gt' ecr cekl{ "cpf "kp' r gto k'kpi "vj g' lwtqt "vq' eqpvkpwg' vq
ugtxg. "cu' y g' j cxg' pqvgf "chgt "vj g' eqwt'v' g'zco kpgf "vj g' lwt {
hqt gr' gtuq' w' w' pf gt' qc vj . "f ghgpg' eqwpug' r' eqp' w' gf "Itqo "uqo g
qh' vj g' hqt gr' gtuq' u' uc'vgo gpw' vj cv' vj g' lwtqt "y j q' cuugt' v' f n'
y cu' wpcdrng' vq' f grkdtcvg' kp' hcev' y cu' c' j q' r' q' w' lwtqt "y j q
y cu' vj g' uqrg' uwr r q' t' v' t' qh' c' "ugpvpeg" nguu' vj cp' f g' cvj 0' Vj g
r tqegewqt' u' w' j v' h' w' j gt' g'zco kpcvq' p' cpf "cuugt' v' f "vj g' lwtqt
uj q' w' f "dg' g'zewugf . "dw' f ghgpg' eqwpug' r' xki q' t' q' w' u' "q' r' r' q' u' f
vj g' r' tqegewqt' u' t' g' s' w' u' v' q' p' vj g' i' t' q' w' p' f "vj cv' vj g' t' g' y' cu' p' q'
k' p' f' k' c' v' k' p' vj g' lwtqt "y cu' wpcdrng' vq' hqmjy "vj g' r' cy . "cpf "vj cv
h' w' vj g' t' g' zco kpcvq' p' eqw' f' eqgt' g' vj g' j' q' r' f' q' w' lwtqt "vq' i' q' c' m' p' i'
y kj "vj g' o' clqtks{ "cpf "xqvg' hqt "c' "ugpvpeg' qh' f' g' cvj 0' W' p' f' gt
vj g' ekewo ucpegu' t' g' k' g' f' "cdq' x' g' . "y g' c' i' t' g' g' y' kj "t' gur' p' p' f' g' p' v'
vj cv' cp' { "ercko "qh' g' t' t' q' "ku' y' c' k' x' g' f' 0' *Ugg "*People v. Burgener*
*3; ; 8+63"Ecnf 727."743"]446"EcnfR v0334."936"R0f "3473_ .
f' k' u' r' r' t' q' x' g' f' "q' p' c' p' q' y' g' t' r' q' l' p' v' k' p' "*People v. Reyes*"*3; ; : +3;
Ecnf 6j "965": 2"EcnfR v04f "956." ; 8: "R0f "667_]j g' f' ghgpf cpv
o c{ "pqv' ej cngpi g' vj g' xgtf lev' q' p' cr' r' gcn' q' p' vj g' i' t' q' w' p' f "vj g'
eqwt' v' eqpf w' e' v' f' cp' "kp' u' h' k' e' l' g' p' v' k' p' s' w' t' { "qh' c' lwtqt "u' c' k' f' "vq' dg
wpcdrng' vq' f' grkdtcvg. "y j gp' "j g' q' d' l' g' e' v' f' "cv' v' k' c' n' q' p' "w' e' k' e' c' n'
i' t' q' w' p' f' u' v' q' g' zco kpcvq' p' qh' vj g' lwtqt _=ugg'cnuq "*People v. Wisely*
*3; ; 2+446"EcnfCrr 6f " ; 5; . ; 69/ ; 6: "]496"EcnfR v04; 3_ .
]ercko "q' h' l' w' t' { "b' k' e' q' p' f' w' e' v' o' c' { "d' g' y' c' k' x' g' f' hqt' h' c' k' w' t' g' v' q' d' l' g' e' v'
d' g' n' y _0-

*7: +i0F ghgpf cpv' p' g' z' v' eqpvqpvkqp' u' vj cv' lwtqt' u' y gtg' r' tglw' legf
d{ " lphco o cvqt { " r wdrlek{ " tgi ctf kpi " f ghgpf cpv' vj cv' y cu
f kuugo kpcvq' f' w' l' k' p' i' "vj g' r' gpcn{ "r j cug. "vj cv' vj g' eqwt' v' h' k' r' g' f'
vq' eqpf w' e' v' cp' c' f' g' s' w' e' v' k' p' s' w' t' { "kp' vq' vj g' r' quukdkk{ "vj cv' lwtqt
y gtg' chg' e' v' f' d{ " vj g' r' wdrlek{ . "cpf "vj cv' vj g' eqwt' v' gttgf "kp
hckkpi "vq' f' k' u' e' j' c' t' i' g' "Lwtqt "Cf 0" y j q' j' cf "j gctf "qj' g' t' lwtqt

o gpvqpv' vj g' t' wdrlek{ 'cpf 'y j q' l' j' q' y' g' f' f' k' u' t' g' u' u' w' r' q' p' h' g' c' t' p' k' p' i'
vj cv' vj q' u' g' l' w' t' q' t' u' j' c' f' 'd' g' g' p' f' k' u' e' j' c' t' i' g' f' 'h' t' q' o' 'v' j' g' l' w' t' { 0' F' g' h' g' p' f' c' p' v'
c' n' u' q' 'e' q' p' v' g' p' f' u' v' j' g' 'e' q' w' t' v' g' t' t' g' f' "k' p' t' g' h' u' k' p' i' "v' q' 'k' p' u' t' w' e' v' v' j' g' l' w' t' {
c' u' c' y' j' q' r' g' v' j' c' v' v' j' g' l' p' h' q' t' o' c' v' k' p' 'e' q' p' v' k' p' g' f' 'k' p' v' j' g' p' g' y' u' t' g' r' q' t' u'
y' c' u' h' c' n' u' g' 0

F w' l' k' p' i' " r' g' p' c' n' { " r' j' c' u' g' f' g' r' k' d' t' c' v' k' p' u' . " p' g' y' u' " c' e' e' q' w' p' u' " y' g' t' g'
r' w' d' r' i' k' u' j' g' f' " k' p' " v' j' g' " m' e' c' n' o' g' f' k' c' " t' g' i' c' t' f' k' p' i' " c' n' g' i' c' v' k' p' u' " v' j' c' v'
f' g' h' g' p' f' c' p' v' u' y' k' h' g' r' q' u' u' g' u' g' f' " c' r' k' u' v' q' h' " *1048 " r' g' t' u' q' p' u' y' j' q' o'
f' g' h' g' p' f' c' p' v' y' c' p' v' g' f' " n' k' r' g' f' " k' p' t' g' v' r' i' c' v' k' p' " h' q' t' " v' j' g' k' t' " r' c' t' v' e' k' r' c' v' k' p'
k' p' " v' j' g' r' t' q' u' e' w' k' p' " q' h' f' g' h' g' p' f' c' p' 0' F' g' h' g' p' f' c' p' v' d' t' q' w' i' j' v' v' j' g' u' g'
t' g' r' q' t' u' v' q' v' j' g' c' w' g' p' v' k' p' q' h' v' j' g' 'e' q' w' t' v' c' p' f' " w' i' g' f' " v' j' c' v' j' g' l' w' t' { u'
f' g' r' k' d' t' c' v' k' p' u' j' c' f' 'd' g' g' p' ' c' k' p' v' g' f' d' { " v' j' g' o' 0' J' g' 'e' q' p' v' g' p' f' g' f' v' j' c' v' b' p' {
l' w' t' q' t' y' j' q' y' c' u' g' z' r' q' u' g' f' " v' q' v' j' k' u' t' w' d' r' i' e' k' v' { " l' j' q' w' f' " d' g' f' k' u' e' j' c' t' i' g' f' 0'
J' g' " r' e' v' g' t' " o' c' f' g' c' " o' q' v' k' p' " h' q' t' " o' k' u' t' k' c' n' q' p' " v' j' g' " d' c' u' k' u' " q' h' v' j' g'
c' u' a' g' t' v' g' f' n' { " r' t' g' l' w' f' l' e' k' e' n' r' w' d' r' i' e' k' v' { 0

Vj g' eqwt' v' u' g' r' c' t' v' g' n' { 'g' z' c' o' k' p' g' f' 'g' c' e' j' ' b' o' g' o' d' g' t' q' h' v' j' g' l' w' t' { 'w' p' f' g' t'
q' c' v' j' . "k' p' e' n' f' k' p' i' " v' j' g' v' j' t' g' g' c' n' g' t' p' e' v' u' . "v' q' f' g' v' g' t' o' k' p' g' y' j' g' v' j' g' t' v' j' g'
l' w' t' q' t' u' j' c' f' "d' g' g' p' g' z' r' q' u' g' f' "v' q' v' j' g' r' w' d' r' i' e' k' v' { "q' t' " j' c' f' " j' g' c' t' f' "q' v' j' g' t'
r' g' t' u' q' p' u' . "k' p' e' n' f' k' p' i' " q' v' j' g' t' l' w' t' q' t' u' . " o' g' p' v' k' p' " k' s' 0' Vj g' 'e' q' w' t' v' c' n' u' q'
c' f' o' q' p' k' u' j' g' f' " v' j' g' l' w' t' q' t' u' v' q' t' g' h' c' k' p' " h' t' q' o' " t' g' c' f' k' p' i' " q' t' " r' k' u' g' p' k' p' i'
v' q' c' p' { "p' g' y' u' t' g' r' q' t' u' v' c' p' f' " h' t' q' o' " r' k' u' g' p' k' p' i' " v' q' c' p' { "f' k' u' e' w' u' k' q' p' " q' h'
v' j' g' 'e' c' u' g' ' c' o' q' p' i' " q' v' j' g' t' r' g' t' u' q' p' u' 0' w' r' q' p' g' z' c' o' k' p' c' v' k' p' . "k' w' r' r' g' c' t' g' f'
v' j' c' v' u' k' z' " q' h' v' j' g' l' w' t' q' t' u' " j' c' f' " j' g' c' t' f' " p' q' v' k' p' i' . " h' q' w' t' l' w' t' q' t' u' c' p' f'
v' y' q' c' n' g' t' p' e' v' u' j' c' f' " j' g' c' t' f' " v' j' c' v' v' j' g' t' g' j' c' f' " d' g' g' p' " p' g' y' u' t' g' r' q' t' u'
c' d' q' w' v' j' g' 'e' c' u' g' d' w' y' g' t' g' p' q' v' c' y' c' t' g' q' h' v' j' g' t' k' e' q' p' v' g' p' v' c' p' f' " v' j' t' g' g'
l' w' t' q' t' u' k' p' e' n' f' k' p' i' " q' p' g' c' n' g' t' p' e' v' u' j' c' f' j' g' c' t' f' " u' q' o' g' v' j' k' p' i' " c' d' q' w' v' j' g'
e' q' p' v' g' p' v' q' h' v' j' g' p' g' y' u' t' g' r' q' t' u' 0' h' v' j' g' u' g' v' j' t' g' g' . "q' p' g' l' w' t' q' t' u' c' p' f' " q' p' g'
c' n' g' t' p' e' v' u' y' g' t' g' f' k' u' e' j' c' t' i' g' f' 0' Vj g' l' w' t' q' t' u' y' j' q' y' g' t' g' f' k' u' e' j' c' t' i' g' f'
j' c' f' " o' q' t' g' v' j' c' p' r' c' u' l' k' p' i' " m' p' q' y' r' g' f' i' g' q' h' v' j' g' 'e' q' p' v' g' p' v' q' h' v' j' g' p' g' y' u'
t' g' r' q' t' u' . " c' p' f' " q' p' g' q' h' v' j' g' o' " j' c' f' " r' k' g' f' " c' d' q' w' j' k' u' g' z' r' q' u' w' t' g' v' q' v' j' g'
r' w' d' r' i' e' k' v' { 0' Vj g' l' w' t' q' t' u' v' j' g' v' j' t' g' g' . " L' w' t' q' t' C' f' 0' y' c' u' p' v' q' v' f' k' u' e' j' c' t' i' g' f' 0'
J' g' j' c' f' " p' q' v' d' g' g' p' g' z' r' q' u' g' f' " v' q' p' g' y' u' t' g' r' q' t' u' j' k' o' u' g' h' d' w' j' c' f' " d' g' g' p'
g' z' r' q' u' g' f' " v' q' v' j' g' o' " k' p' x' q' n' p' v' c' t' k' n' { " d' { " v' j' g' y' q' l' w' t' q' t' u' y' j' q' j' c' f' " d' g' g' p'
f' k' u' e' j' c' t' i' g' f' 0' J' g' j' c' f' " j' g' c' t' f' " x' g' t' { " r' k' w' r' g' t' g' i' c' t' f' k' p' i' " v' j' g' 'e' q' p' v' g' p' v' q' h'
v' j' g' p' g' y' u' t' g' r' q' t' u' . " j' c' f' " e' w' q' h' h' v' j' g' 'e' q' p' x' g' t' u' c' v' k' p' " k' p' " y' j' k' e' j' " v' j' g'
o' c' w' g' t' " y' c' u' f' k' u' e' w' u' g' f' " c' o' q' p' i' " v' j' g' l' w' t' q' t' u' . " c' p' f' " u' n' c' v' f' " v' j' c' v' j' g'
e' q' w' f' " d' g' h' c' k' " v' q' f' g' h' g' p' f' c' p' v' c' p' f' " y' q' w' f' " p' q' v' d' g' c' h' g' e' v' f' " d' { " v' j' g'
r' w' d' r' i' e' k' v' { 0' Vj g' t' k' e' n' e' q' w' t' v' e' q' o' g' p' v' g' f' " v' j' c' v' k' v' h' q' w' p' f' " j' k' o' " e' t' g' f' k' d' n' g'
c' p' f' " e' q' p' u' e' k' e' p' v' k' u' w' 0' Vj k' u' l' w' t' q' t' u' y' c' u' v' j' g' q' p' n' { " q' p' g' y' j' q' y' c' u' p' q' v'
u' r' g' e' k' h' e' c' n' { " t' g' c' f' o' q' p' k' u' j' g' f' " v' q' c' x' q' k' f' " g' z' r' q' u' w' t' g' v' q' r' w' d' r' i' e' k' v' . " d' w'
f' w' l' k' p' i' " v' j' g' 'e' q' w' t' v' u' l' p' s' w' t' { " j' g' f' g' o' q' p' u' t' c' v' g' f' " c' y' c' t' g' p' g' u' u' q' h' j' k' u'
f' w' f' " v' q' f' q' u' 0' Vj g' 'e' q' w' t' v' k' p' u' t' w' e' v' f' " v' j' g' l' w' t' q' t' u' y' c' v' v' j' g' 'e' q' p' v' g' p' v'
q' h' v' j' g' p' g' y' u' t' g' r' q' t' u' y' c' u' h' c' n' u' g' . " c' p' f' " v' j' g' l' w' t' q' t' u' c' r' r' g' c' t' g' f' " v' q' c' e' e' g' r' v'
v' j' k' u' l' w' c' v' g' o' g' p' v' y' k' j' " u' q' o' g' t' g' r' k' h' 0' Vj k' u' l' w' t' q' t' u' c' n' u' q' c' r' r' g' c' t' g' f' " v' q' d' g'
f' k' u' t' g' u' g' f' " v' j' c' v' v' j' g' v' j' g' t' v' y' q' l' w' t' q' t' u' y' k' j' " y' j' q' o' " j' g' j' c' f' " u' r' q' n' g' p'
q' h' v' j' g' o' c' w' g' t' j' c' f' " d' g' g' p' g' z' e' w' u' g' f' . " d' w' c' h' g' t' " k' p' s' w' t' { " d' { " v' j' g' 'e' q' w' t' v'

vj cv'vj g'eqo o kuukqp'qh'c'lgmp{ 'o wtf gt'eqpukwv'c'ur gekn ektewo ucpegO'Y g'tglgev'vj ku'enklo "kp"ri j v'qh'qwt'f gekukqpu j qif kpi " vj cv' vj g" ur gekn' ektewo ucpegu' ugv' hqt'v " kp" vj cv ucwv'ctg'pqv'qxgt'kpenukxg'd{ "vj gkt'pwo dgt"qt"d{ "vj gkt vgtu u.cpf"vj cv'vj g{ "j cxg'pqv'dggp'eqput wgf "kp"cp'wvf wv' gzt cpukxg'o cpgt0*People v. Arias."supra."35"Ecri6vj "cv'r r 0 3: 8/3: 9=People v. Ray, supra, "35"Ecri6vj "cv'r 0578=People v. Crittenden"*3; ; 6+; "Ecri6vj ": 5."377"J58"Ecri0'r v04f'696. : : 7"R04f": : 9_0+

*84+F ghgpf cpv'eqpv'p' u'ugev'kqp'3; 205. 'hcevt '*c+.'r gto k'kpi vj g" lwt{ " vq" eqpukf gt" vj g" ektewo ucpegu' qh' vj g" etko g" kp ci i txcv'kqp." j cu' dggp' cr r r'g'f " o'lp" uwej" c" y cpv'q" cpf l'gcnkij "o cpgt.ö'y kj qw'vj g'cr r r'ecv'kqp'qh'cp{ "tgcucp'cdng rko k'kpi "eqput wv'kqp'd{ "vj ku'eqwt.v'vj cv'k'xk'v'v'vj g"Hktj . U'z.vj ." Gki j vj ." cpf "Hq'w'v'g'p'v' "Co gpf o gpw'qh' vj g" W'pk'g'f U'cv'gu' Eq'puk'w'k'qp'0' F ghgpf cpv' eqpv'p' u' vj g" r t'q'x'k'k'qp" ku v'p'eq'puk'w'k'qp'cm{ "xci w'g'cu'cr r r'g'f . "d'gecv'w'g'k'j' cu'r gto k'v'g'f r t'q'ug'ew'qtu'v'q" cti w'g" vj cv'cp{ "eq'peg'k'x'cdng" ektewo ucpeg" qh c" ej cti g'f " etko g" u'j' q'w'f " dg" eqpukf gt g'f " kp" ci i txcv'kqp'0' J g *1051 "r q'lp'w'q'w' vj cv'tc'v'j g" eq'p'v'c'f' k'v'q't{ " ektewo ucpegu o c{ " dg" eqpukf gt g'f " kp" ci i txcv'kqp" kp" f k'ht'g'p'v' ecugu." cpf eqpv'p' u' vj cv' t'q'ug'ew'qtu'r' q'lp'v'v'q' ektewo ucpegu' qh' vj g' etko g vj cv'ö'eq'x'g' " vj g" gp'k'g' " ur g'v'w' " qh"] h'cevu' " l'p'g'k'c'd'n{ " r t'g'ug'p'v' l'p'g'x'g' { " j' qo k'k'f' g'0'J' g'w'i' gu'v' vj cv'v'j g' r t'q'x'k'k'qp' ku' cr r' r'g'f " l'p' cp' 'c'd'k'c't { " cpf 'e'c' r' t'k'q'w'v' o' c'p'p'g' t' u'q'cu'v'q' 'x'k'v'v'g' vj g' h'g'f' g'c'n i w'c't'c'p'v'g'g' qh'f' w'g' r' t'q'egu' qh' r'cy 0

F ghgpf cpv'u' eqpv'p'k'qp" eqtt'gur' q'p'f' u" kp" u'w'v'c'p'eg" vq" c eqpv'p'k'qp' h'q'w'p'f' l'p' l'w'v'g' D'rc'eno' w'p' u'f' k'ug'p'v' l'p' Tuilaepa v. California"*3; ; 6+734" WLU; 89"J336" UE v'04852.'34; "NGf 04f 972_0" Id. "cv'r r 0; ; 8/; : : "J336" UE v'0cv'r r 04864/4865_ "f' k'u0 q'r p'0'q'h' D'rc'eno' w'p. "L00'K'ku' g'x'k'f' g'p'v' vj cv'v'j ku' eqpv'p'k'qp" y cu p'q'v' r' g'tu'w'c'k'g' "vq" c" o' c'l'q't'k'v' "q'h' vj g" W'pk'g'f " U'cv'gu' U'w' t'go g' Eq'w't'v' j' g'p' "k'v'f' g'v'g'to' l'p'g'f " vj cv' u'g'v'k'p'3; 205. "hcevt '*c+." ku p'q'v' x'k'v'v'x'g' qh' vj g" Gki j vj " Co gpf o gpv' qp" vj g" d'cu'k' qh xci w'g'p'gu' qt" q'v' g't" i t'q'w'p'f' u'0' k'p'ung'c'f. " vj g" eq'w't'v' u' o' c'l'q't'k'v' q'r' k'p'k'p' u'v'v'g'f " vj cv'ö'q'w' 'e'c' r' k'c'n' l'w't'k'ur' t'w'f' g'p'eg' j' cu' g'w'c'd'r'k'ij' g'f vj cv'v'j g" u'g'p'v'p'eg' t' u'j' q'w'f' " eq'p'uk'f' g't' vj g" ektewo ucpegu' qh' vj g' etko g" kp" f' g'ek'f' k'pi " y j' g'v'j' g't" vq" ko r' q'ug' vj g" f' g'c'v'j " r' g'p'c'n'f. ö' c'p'f " vj cv'ö'v' ku' E'c'r'k'q't'p'k' " h'cevt' " l'p'ut'w'v'u' vj g' l'w't' { " vq" eq'p'uk'f' g't c" t'g'x'c'p'v' u'w'd'g'v' o' c'w'g't' c'p'f " f' q'gu' u'q" l'p" w'p'f' g'tu'c'p'f' c'd'ng v'g'to' u'0' *Tuilaepa v. California." supra. "734" WLU'cv'r 0'; 98 J336" UE v'0' cv' r 0' 4859_0" Vj g' eq'w't'v' q'd'ug't'x'g'f " vj cv' ö'v' j' g' ektewo ucpegu' qh' vj g' etko g" c't'g' " c" v'c'f' k'k'q'p'c'n' u'w'd'g'v' h'q't' eq'p'uk'f' g't'c'v'k'p' d' { " vj g' u'g'p'v'p'eg' t. " c'p'f' " c'p' l'p'ut' w'v'k'qp' v'q' eq'p'uk'f' g't vj g" ektewo ucpegu' ku' p'g'k'j' g't' x'c'i' w'g' p'q't' q'v'j' g't' y' k'ug' ko r' t'q'r' g't' w'p'f' g't' q'w' Gki j vj " Co gpf o gpv' l'w't'k'ur' t'w'f' g'p'eg'0' *Ibid. +

F ghgpf cpv'eqpv'p' u'k'v'ec'p'p'q'v'd'g'c'r r t'q'r' t'k'v'g'w'p'f' g't' vj g' Gki j vj Co gpf o gpv' qt" cu" c" o' c'w'g't' qh' f' w'g' r' t'q'egu' vq" r' g'to' k'v' vj g' lwt{ "vq" eqpukf gt "kp" ci i txcv'kqp. "hqt" g'zco r'ng. "vj cv'c" o' wtf gt y cu" eqo o k'v'g'f " kp" c" e'c'r'w'r'v'g'f " o' c'p'p'g't. " y j' k'g' " c" lwt{ " kp cp'q'v' g't' ecug" o c{ " dg" w'i' g'f " vq" eqpukf gt "kp" ci i txcv'kqp" vj cv vj g" o' wtf gt" y cu" eqo o k'v'g'f " kp" c" l'g'p'l' { " qh' x'k'v'g'p'eg'0' K' ku p'q'v' l'p'c'r r' t'q'r' t'k'v'g. " j' q'y' g'x'g't. " vj cv'c" r' c't'v'w'r't' ektewo ucpeg qh' c" e'c'r' k'c'n' e't'ko g" o' c{ " dg" eq'p'uk'f' g't'g'f " ci i txcv'k'p'i " kp" q'p'g' ecug. " y j' k'g' " c" eq'p'v't'c'v'k'p'i " ektewo ucpeg" o' c{ " dg" eq'p'uk'f' g't'g'f ci i txcv'k'p'i " kp" cp'q'v' g't' ecug'0' Vj g' u'g'p'v'p'eg' t' ku' v'q' eq'p'uk'f' g't' vj g' f' ghgpf cpv'u' l'p'f' k'k'f' w'c'n' e'w'r' c'd'k'k'v' { " vj g't'g' ku' p'q' eq'p'uk'w'k'q'p'c'n' t'g's' w'k't'g'o' g'p'v' vj cv' vj g" u'g'p'v'p'eg' t' eqo r' c't'g' vj g" f' ghgpf cpv'u' e'w'r' c'd'k'k'v' { " y' k'j' " vj g" e'w'r' c'd'k'k'v' { " qh' q'v'j' g't' f' ghgpf cpv'u'0' *Ugg People v. Crittenden." supra. ; " Ecri6vj "cv'r r 0378/3790+ Vj g' h'q'ewu' ku' w'r' q'p' vj g' l'p'f' k'k'f' w'c'n' ecug. " cpf " vj g" lwt{ " u'f' k'ue't'g'v'k'p' ku' d't'q'c'f' <ö'k'p' r' t'q'x'k'f' k'p'i " h'q't' l'p'f' k'k'f' w'c'k'f' g'f " u'g'p'v'p'ek'p'i . " k'v' o' w'v' dg" t'ge'q'i' p'k' g'f " vj cv'v'j g' U'cv'gu' o' c{ " c'f' q'r' v'c'c'r' k'c'n' u'g'p'v'p'ek'p'i r' t'q'egu'gu' vj cv't'g'n' { " w'r' q'p' vj g' lwt{ " kp" ku' u'q'w'p'f' " l'w'f' i o' g'p'v' vq' g'z'g't'ek'ug' y' k'f' g'f' k'ue't'g'v'k'p'0' *Tuilaepa v. California." supra. "734 WLU'cv'r 0'; 96"J336" UE v'0'cv'r 04858_0+

Vj wu. "hqt" g'zco r'ng. "kp" Tuilaepa" vj g' j' k'j " eq'w't'v' t'g'lg'ev'g'f " vj g' f' ghgpf cpv'u' e'c'k'o / u'w'v'c'p'v'k'cm{ " k'f' g'p'v'c'c'n' v'q' f' ghgpf cpv'u' e'c'k'o kp" vj g' r' t'g'ug'p'v' ecug/ vj cv' *1052 " u'g'v'k'p'3; 205. "hcevt '*k+.' r' g'to' k'k'p'i " eq'p'uk'f' g't'c'v'k'p' qh' vj g" f' ghgpf cpv'u' ci g. " ku' x'c'i' w'g. c'nj' q'w'j' . " vj g'f' ghgpf cpv'v'c'k'o' g'f . " r' t'q'ug'ew'qtu'v'v' r' k'c'm'f' { " c'ti' w'g' kp" h'c'x'q't' qh' vj g" f' g'c'v'j " r' g'p'c'n'f " d'cu'g'f " q'p" vj ku' h'cevt. " p'q' o' c'w'g't' y' j' g'v'j' g't' vj g'f' ghgpf cpv' ku' q'f' " q't" { " q'w'p'i' 0'ö'k' ku' p'g'k'j' g't' u'w'r' t'k'k'p'i' p'q't' t'g'o' c't'n'ed'ng' vj cv'v'j g' t'g'x'c'p'eg' qh' vj g'f' ghgpf cpv'u' ci g' e'c'p' r' q'ug' " c" f' k'g'o' o' c" h'q't' vj g' u'g'p'v'p'eg' t'0' D'w'f' l'k'k'ew'm'f' kp" cr r' r'ecv'k'qp" ku' p'q'v' g's' w'k'c'ng'p'v' vq" x'c'i' w'g'p'gu'0' D'q'v'j " vj g' r' t'q'ug'ew'k'qp' c'p'f' vj g'f' ghg'p'ug' o' c{ " r' t'g'ug'p'v' x'c'k'f' " c'ti' w'o' g'p'v' cu' v'q' vj g' l'k'i' p'k'h'c'p'eg' qh' vj g'f' ghgpf cpv'u' ci g' l'p'c' r' c't'v'w'r't' ecug'0' Eq'o r' g'v'k'p'i " c'ti' w'o' g'p'v' d' { " c'f' x'g't'uct' { " r' c't'v'g'u' d't'k'p'i " r' g'tur' g'e'v'k'g' v'q" c' r' t'q'd'ng'o' (000) *Tuilaepa v. California." supra. "734" WLU'cv r 0'; 99"J336" UE v'0'cv'r 04859_0+

F ghgpf cpv'eqpv'p' u'v'j cv'v'j g' j' k'j " eq'w't'v'v' f' k'ue'w'k'qp" kp" vj g' Tuilaepa' ecug'f' q'gu' p'q'v'f' k'ur' q'ug' q'h'j' ku' e'c'k'o . " d'gecv'w'g' vj g't'g' vj g' j' k'j " eq'w't'v' g'zco k'p'g'f' vj g' E'c'r'k'q't'p'k' u'c'w'w'g' q'p' ku' h'ce'g' . " y j' k'g' j' g' c'u'm' vj cv'v'j g' g'zco k'p'g' ku' c'ng'i' g'f " l'p'h't'o' k'k'gu' cu' cr r' r'g'f' 0' Cu' p'q'v'g'f . " j' g'f' t'c'y' u'q'w't' c'w'g'p'k'qp' vq" x'c't'k'q'w' ecugu' l'p" y j' l'ej' cr r' c't'g'p'v'f' l'p'eq'p'uk'v'g'p'v' e'c'k'o' u'y' g't'g'o' c'f' g'd' { " vj g'r' t'q'ug'ew'k'qp' y' k'j' " t'g'ur' g'e'v'v'q' vj g' t'g'x'c'p'eg' q'h' e'g't'v'c'p' ektewo ucpegu' qh' vj g' e'j' c'ti' g'f' " etko' g'u'0'J' g' c'nu'q' t'g'ht'u' w'u' v'q' x'c't'k'q'w' ecugu' l'p" y j' l'ej' . j' g' c'ng'i' g'u. " r' t'q'ug'ew'qtu' o' c'f' g' d't'q'c'f' " w'ug' qh' u'g'v'k'p'3; 205. h'cevt' '*c+.' v'q' c'ti' w'g' v'q' vj g' lwt{ " vj cv' h'cevu' l'p'g'k'c'd'n' { " r' t'g'ug'p'v' l'p' g'x'g't' { " j' qo k'k'f' g' eq'p'uk'w'g' ektewo ucpegu' l'p" ci i txcv'k'qp'0'49 J' g' eq'p'v'p'f' u'v'j cv'v'j g'ug' ecugu'f' go q'p'ut'c'v'g' vj cv' u'g'v'k'p'3; 205.

supra." 37" Ecrf6j " cv' r0' 3598= "People" v. Melton" *3; : : + 66" Ecrf6 "935."978."lp0' 39" j466" Ecrf0r v0' : 89."972" R0f 963 = "People v. Gates" *3; : 9+ 65" Ecrf6f "338: ."3425" j462 Ecrf0r v0'888."965" R0f "523 _: "dw'cuugt'v'j cv'qwt'f gekukpu y gtg'y tqpi n' "f gekf gf 0'Y g'f genkpg"vq"tgeqpukf gt"vj go 0*87+ J g"cnuq"eqpvpgf u'v'j cv'v'j g"wug."lp"ci i txcvqkp."qh"gxkf gpeg qh' f ghgpf cpv'u' cuucwn' wr qp" O t0' O pptqg." Ut0' f gur kg' " y j g ekteuo ucpeg" v'j cv' v'j g' ej cti g" cu" v'j cv' cuucwn' j cf " dggp f tqr r gf 'r wtuucpv'v'q' c' r rgc' ci tgggo gpv' eqpukwgf 'c' dtgcej 'qh cp" ko r rkgf "vgt0 "qh'v'j g"ci tgggo gpv'cu'y gni'cu" c" eqpugs wpeg qh'v'j g" i wkm' "r rgc' qh' y j lej " j g" y cu' pqv' lphqto gf " y j gp" j g gpvgtgf " v'j g" r rgc' 0' Vj g" lptqf vevkqp" qh' gxkf gpeg. "r wtuucpv'v'q ugevkqp" 3; 205." hcevt " *d+." qh' v'j g" hcevt' wpf gtn' lpi " ej cti gu f luo kuugf " cu' r ctv' qh' c" r rgc' ci tgggo gpv' f qgu' pqv' uwhgt " v'j g eqpukwkp' p' lphkto kkgu' kf gpv' hgtf " d { " f ghgpf cpv' 0' *People v. Osband" *3; ; 8+ 35" Ecrf6j "844."933" j77" Ecrf0r v0' f "48." ; 3; R0f "862_ " jkptqf vevkqp" qh' gxkf gpeg" qh' etko g" cu" v'q" y j lej c" ej cti g" y cu' f luo kuugf " cu' r ctv' qh' c" r rgc' ci tgggo gpv' f qgu pqv' eqpukwgf " c" xkqv' v'q" qh' v'j g" f qwdng' lqqr ctf { " erwug" qh v'j g" Hk'j "Co gp' f o gpv' = "People v. Garceau, supra." 8" Ecrf6j cv' r 0' 3; ; " juco g = "People v. Morris, supra." 75" Ecrf6f " cv' r 0' 439" jpq" xkqv' v'q" qh' tki j u' l' p' lptqf vevkpi " cuugt' v'f n' " ucrg gxkf gpeg" qh' r tkqt " etko lpcn' cev' xk' " cu" v'q" y j lej " v'j g" ucwug qh' rko kcv' kpu' j cf " twp = "People v. Frank" *3; ; 2+ 73" Ecrf6f 93: ." 94: " j496" Ecrf0r v0' 594." 9; : " R0f " 3437 _ " jtg' l' v'kpi f v'g" r t' qegu' emko " ctk' kpi " h' t' qo " l' p' t' qf vevkqp" qh' ci i txcv' kpi gxkf gpeg" qh' ekteuo ucpegu' qh' ej cti g" f luo kuugf " r wtuucpv'v'q c" r rgc' ci tgggo gpv' = "People v. Melton, supra." 66" Ecrf6f " cv r r 0' 977/978." cpf " lp0' 39" jpq" vph' c' k' p' gu' l' p' r gto k' kpi " ecr' kcn lwt { " v'q' eqpukf gt. " lp" ci i txcv' kqp. " gxkf gpeg' t' g' r' v'kpi " v'q' ej cti gu f luo kuugf " r wtuucpv' v'q" c" r rgc' ci tgggo gpv' 0' " O qtg' xqg. " cu t' gur p' qf gpv' r' q' l' p' u' q' w' f' ghgpf cpv' j' cu' p' q' v' q' h' g' t' g' f' cp { " u' w' r' q' t' v' l' p' v' j' g" t' g' e' q' t' f' " h' q' t' v' j' g" e' q' p' v' g' v' k' p' v' j' cv' j' g" y cu' r' t' qo ku' g' f' v' j' cv gxkf gpeg" qh' v'j g' cuucwn' ci cl' p' u' v' O t' 0' O pptqg. " Ut0' y q' w' f' " p' q' v' d' g' w' g' f' " ci cl' p' u' v' j' ko " l' p' h' w' w' g' r' t' q' e' g' g' f' l' p' i u' 0

F gur kg' " f ghgpf cpv'u' wti lpi. " y g" f genkpg" vq" tgeqpukf gt qwt' eqpenwukqp" v'j cv' 0' w' u' g" qh' v'j g" y qtf u' " g' z' t' g' o' g" cpf u' w' d' u' c' p' v' k' n' l' p' " ugevkqp" 3; 205." hcevtu " *f + " *1055 " cpf " *i + f qgu' pqv' ko r gto kuukdn' " rko k' v' eqpukf g' t' c' v' k' p' " qh' o kki cv' kpi hcevtu' l' p' " xkqv' v'q" qh' v'j g" h' g' f' g' t' c' n' " Eqpukwkp 0' " *People v. Barnett, supra." 39" Ecrf6j " cv' r r 0' 339: /339; 0' *88+ F ghgpf cpv' h' k' p' c' n' { " eqpv' g' f' u. " l' p' " v' y q' eqpenwuk { " u' g' p' v' g' e' g' u. v'j cv' ugevkqp" 3; 205." hcevt " *h+." ko r tqr gtn' " rko ku' eqpukf g' t' c' v' k' p' qh' o kki cv' kpi " hcevtu' 0' hcevt " *h+ r' t' q' x' k' f' g' u' v' j' cv' v' j' g' l' w' t { " o c { eqpukf gt " 0' Y j g' v' j' g' t' q' t' " p' q' v' v' j' g' q' h' t' g' p' u' g' y cu' eqo o kwgf " w' p' f' g' t' ekteuo ucpegu' y j lej " v'j g" f' ghgpf cpv' t' g' c' u' p' c' d' n' { " d' g' r' k' e' x' g' f' " v'q dg" c" o q' t' c' n' l' w' u' k' h' e' c' v' k' p' " q' t' " g' z' v' g' p' w' c' v' k' p' " h' q' t' " j' k' u' eqp' f' v' e' v' 0' F ghgpf cpv' o cl' p' v' k' p' u' v' j' g' l' w' t { " u' j' q' w' f' " d' g' r' g' t' o' k' w' g' f' " v'q' eqpukf gt

c' f' ghgpf cpv'u' "unreasonable" d' g' r' k' h' l' p' " v' j' g' " g' z' k' v' g' p' e' g' " q' h' u' q' o' g' o' q' t' c' n' l' w' u' k' h' e' c' v' k' p' " q' t' " g' z' v' g' p' w' c' v' k' p' " q' h' v' j' g' " e' t' k' o' g' 0' k' p' " j' k' u' q' y' p' e' c' u' g' . " j' g' " u' c' v' g' u' . " v' j' g' " l' w' t { " u' j' q' w' f' " j' c' x' g' " d' g' g' p' " r' g' t' o' k' w' g' f' " v'q' eqpukf gt " g' x' g' p' j' k' u' v' p' t' g' c' u' p' c' d' n' g' d' g' r' k' h' l' v' j' c' v' F' g' v' g' e' v' x' g' Y' k' r' i' c' o' u' j' c' f' " u' g' v' j' ko " w' " h' q' t' r' t' q' u' g' e' w' k' p' l' p' v' j' g' " E' c' t' r' g' p' v' g' t' " t' q' d' d' g' t' { " c' p' f' c' u' c' w' n' 0' P' q' l' ko r t' q' r' g' t' " r' k' o' k' c' v' k' p' " q' p' v' j' g' l' w' t { u' } " eqpukf g' t' c' v' k' p' qh' o kki cv' kpi " g' x' k' f' g' p' e' g' " q' e' e' w' t' u' d' { " x' k' t' w' g' " q' h' v' j' g' " y' q' t' f' l' p' i " q' h' h' c' e' v' t' " *h+ " v' j' g' o' kki cv' kpi " x' c' n' w' g' " q' h' f' g' h' g' p' f' c' p' v' u' } w' p' t' g' c' u' p' c' d' n' g' d' g' r' k' h' l' p' o' q' t' c' n' l' w' u' k' h' e' c' v' k' p' h' q' t' . " q' t' l' p' " g' z' v' g' p' w' c' v' k' p' " q' h' v' j' g' e' t' k' o' g' o' c { " d' g' " eqpukf g' t' g' f' " r' w' t' u' c' p' v' v' q' " ugevkqp" 3; 205." hcevt " *m+ " cpf w' p' f' g' t' v' j' g' l' p' u' t' v' e' v' k' p' . " c' u' i' k' x' g' p' l' p' v' j' g' r' t' g' u' g' p' v' e' c' u' g' . " v' j' c' v' v' j' g' l' w' t { o c { " eqpukf g' t' 0' } " cp { " v' j' g' t' " e' k' t' e' u' o' u' c' p' e' g' y' j' k' e' j' " g' z' v' g' p' w' c' v' g' u' v' j' g' i' t' c' x' k' v' { " q' h' v' j' g' " e' t' k' o' g' " g' x' g' p' v' j' q' w' i' j' " k' v' k' u' " p' q' v' c' " r' g' i' c' n' i' g' z' e' w' u' g' " h' q' t' v' j' g' e' t' k' o' g' 0' o' " *People v. Lang. supra." 6; " Ecrf6f " cv' r 0' 32590-

6. Alleged violation of international law

F ghgpf cpv' eqpv' g' p' f' u' v' j' cv' v'j g' x' k' q' v' v' k' p' u' j' g' j' cu' c' n' g' i' g' f' " q' h' u' c' v' g' c' p' f' h' e' g' f' g' t' c' n' l' e' q' p' u' k' w' k' p' c' n' i' r' e' y / r' t' c' v' e' w' e' r' n' i' f' " v' j' g' t' k' i' j' v' l' q' h' c' k' l' t' k' e' n' c' p' f' " v'q' d' g' " h' t' g' g' " h' t' q' o' " l' p' x' k' f' k' q' w' u' f' k' u' e' t' k' o' l' p' c' v' k' p' " l' o' r' q' u' g' f' " d' { " v' j' g' u' c' v' g' " q' p' v' j' g' " d' c' u' k' u' q' h' t' c' e' g' / c' n' u' q' " e' q' p' u' k' w' w' g' " x' k' q' v' v' k' p' u' q' h' i' x' c' t' k' q' u' l' p' v' g' t' p' c' v' k' p' c' n' i' r' e' y " g' c' v' l' g' u' " c' p' f' " q' v' j' g' t' " g' o' d' q' f' k' o' g' p' u' v' q' h' i' p' v' g' t' p' c' v' k' p' c' n' i' r' e' y 0' Y' g' p' g' g' f' " p' q' v' e' q' p' u' k' f' g' t' " v' j' g' " c' r' r' h' e' c' d' k' k' v' { " q' h' v' j' g' u' g' " t' g' c' v' k' e' u' c' p' f' " r' e' y' u' " v'q' " v' j' k' u' " c' r' r' g' e' n' " d' g' e' c' w' u' g' " f' g' h' g' p' f' c' p' v' j' c' u' " h' e' k' e' g' f' " v'q' g' u' e' d' i' k' u' j' " v' j' g' r' t' g' o' k' u' g' v' j' c' v' j' k' u' t' k' e' n' l' p' x' q' n' k' g' f' " x' k' q' v' v' k' p' u' q' h' i' u' c' v' g' c' p' f' h' e' g' f' g' t' c' n' l' e' q' p' u' k' w' k' p' c' n' i' r' e' y . " q' t' v' j' c' v' j' k' u' t' k' i' j' u' v' u' f' w' g' r' t' q' e' g' u' u' q' h' r' e' y " c' p' f' " v'q' d' g' " h' t' g' g' " h' t' q' o' " l' p' x' k' f' k' q' w' u' f' k' u' e' t' k' o' l' p' c' v' k' p' " q' p' v' j' g' d' c' u' k' u' q' h' t' c' e' g' j' c' x' g' " d' g' g' p' " x' k' q' v' v' g' f' 0' C' n' j' q' w' i' j' " j' g' " e' q' p' v' g' p' f' u' v' j' c' v' l' p' v' g' t' p' c' v' k' p' c' n' i' r' e' y " q' p' v' j' g' " k' u' u' w' g' " q' h' i' t' c' e' l' c' n' i' f' k' u' e' t' k' o' l' p' c' v' k' p' " y' q' w' f' f' k' h' g' t' " h' t' q' o' " q' w' " g' s' w' e' n' r' t' q' v' e' v' k' p' " c' p' f' " G' i' j' v' j' " C' o' g' p' f' o' g' p' v' l' w' t' k' u' r' t' w' f' g' p' e' g' . " l' p' v' j' c' v' l' p' v' g' t' p' c' v' k' p' c' n' i' r' e' y " y' q' w' f' " r' g' t' o' k' v' j' g' w' u' g' q' h' v' j' g' h' k' p' f' " q' h' i' u' c' v' g' u' k' e' c' n' i' g' x' k' f' g' p' e' g' t' g' l' g' e' v' g' f' " d' { " v' j' g' " W' p' k' g' f' " U' c' v' g' u' U' w' t' g' o' g' " E' q' w' v' l' p' " M' c' C' l' e' s' k' e' y " v' . K' e' m' p' " *3; : 9+ 6: 3" W' L' U' 0' 49; j329" U' E' v' 0' 3978. " ; 7" N' O' G' f' 0' f' " 484_ " v' q' f' g' o' q' p' u' t' c' v' g' " v' j' c' v' v' j' g' f' g' e' v' j' " r' g' p' c' n' i' f' " k' u' l' o' r' q' u' g' f' " l' p' c' t' c' e' k' e' m' { " f' k' u' e' t' k' o' l' p' c' v' k' p' { " o' c' p' p' g' t' . j' g' " r' t' q' x' k' f' g' u' " p' q' " c' w' j' q' t' k' v' { " l' p' " u' w' r' q' t' v' " q' h' v' j' k' u' " r' t' q' r' q' u' i' k' p' 0' F ghgpf cpv' l' p' q' v' j' g' t' " t' g' u' r' g' e' w' u' f' q' g' u' " p' q' v' c' r' r' g' e' t' " v'q' e' q' p' v' g' p' f' " v' j' c' v' l' p' v' g' t' p' c' v' k' p' c' n' i' r' e' y " y' q' w' f' " e' q' p' f' g' o' p' " c' " e' t' k' o' l' p' c' n' i' v' k' e' n' i' v' c' v' j' c' f' d' g' g' p' " e' q' p' f' v' e' w' g' f' " l' p' c' " o' c' p' p' g' t' " e' q' p' u' k' v' g' p' v' y' k' j' " f' w' g' r' t' q' e' g' u' u' q' h' r' e' y " q' t' " q' v' j' g' t' h' e' g' f' g' t' c' n' i' c' p' f' " E' c' r' i' k' h' q' t' p' l' c' " e' q' p' u' k' w' w' k' p' c' n' i' r' t' q' x' k' u' k' p' u' . c' p' f' " j' g' " e' g' t' v' c' l' p' n' { " f' q' g' u' " p' q' v' u' g' v' q' w' u' l' p' " y' j' c' v' o' c' p' p' g' t' " v' j' g' " v' y' q' d' q' f' k' u' q' h' i' r' e' y " o' c { " f' k' h' g' t' 0' C' e' e' q' t' f' l' p' i' n' . " j' k' u' e' r' k' o' " k' u' t' g' l' g' e' v' g' f' 0' *1056

7. Alleged cumulative prejudice

F ghgpf cpv' eqpv' g' p' f' u' v' j' g' ewo w' r' v' x' g' r' t' g' l' w' f' k' e' l' c' n' i' g' h' t' e' v' " q' h' v' j' g' x' c' t' k' q' u' a' " g' t' t' q' t' u' " j' g' " j' c' u' " t' c' k' u' g' f' " q' p' " c' r' r' g' e' n' i' t' g' s' w' k' t' g' u' " t' g' x' g' t' u' c' n' q' h' v' j' g' i' w' k' n' " c' p' f' " r' g' p' c' n' i' f' " l' w' f' i' o' g' p' u' 0' Y' g' " j' c' x' g' " t' g' l' g' e' v' g' f' " j' k' u' c' u' i' k' i' p' o' g' p' u' v' q' h' i' g' t' t' q' t' . " y' k' j' " r' k' o' k' g' f' " g' z' e' g' r' v' k' p' u' l' p' " y' j' k' e' j' " y' g

hqwpf "vj g"gttqt "vq"dg"pqpr tglwf lckr0'Eqpukf gtgf "vqi gjv gt. cp{ "gttqtu" y gtg" pqpr tglwf lckr0' Eqpvtct{ "vq" f ghgpf cpvju eqpvgpvkqp."j ku"vkrn'y cu"pqv'hwfp co gpvcn{"wphck."gxgp"kh y g"eqpukf gt "vj g"ewo wvkvxg"ko r cev'qh'vj g"hg'y "gttqtu"vj cv qeewtfg 0

III. Disposition

Y g'chtko 'vj g'lwfi o gpv'kp'ksu'gpvktgv{0

O qum"l0"Mgppctf . "l0"Dczvgt. "l0"Y gtf gi ct. "l0"cpf "Ej kp. "l0 eqpewtfg 0

BROWN, J.,

Eqpewtkpi 0'Eqepew"kp"vj g'lwfi o gpv'vq"chtko "f ghgpf cpvju eqpxlewqp"cpf "r gpcn{0

Ky tkg'ugr ctcvgn{ 'dgecvug'Ks wgvkqp"vj g'eqpenwukp"vj cvF kcpv Lgnkpu"j cf "cr r ctgppv'cwj qtkv{ "vq"eqpugpv'vq" c"ugctej "qh f ghgpf cpvju'dtlghfcug0"O cl0qr p0"ante."cv'r 0; 98/; : 20+

Kp"United States v. Matlock"*3; 96+"637"wu0386"]; 6"UEv0 ; : : "5; "NGf 0f"464_"*Matlock+."vj g'Wpkv'Ucvgu"Uwr tgo g Eqwtv'cmqy gf "vj cv'oeqpgpv'qh'qpg'y j q'r quuguu"eqo o qp cwj qtkv{"qxtg" r tgo kugu"qt" ghgcu"ku"xcrkf "cu"ci cklpv'vj g cdugpv."pqpeqpgpvkpi "r gtuqp"y kj "y j qo "vj cv'cwj qtkv{"ku uj ctgf 0"*Id."cv'r 0'392"]; 6"UEv0'cv'r 0'; ; 5_0"Ceeqtf kpi n{. vj g'r tqugewkqp"o c{ "lwukh{ "c'y cttepvrguu"ugctej "d{ "uj qy kpi 0vj cv'r gto kuukp"vq"ugctej "y cu"qdvclp'gf "Itqo "c"vj kf "r ctv{ y j q'r quuguugf"eqo o qp"cwj qtkv{"qxtg"qt"qvj gt"uwHhkegpv tgrvklpvj kr "vq"vj g'r tgo kugu'qt'ghgcu"lqwi j vq'dg'kpur gev'f 0 *Id."cv'r 0'393"]; 6"UEv0'cv'r 0'; ; 5_0"0Vj g"cwj qtkv{"y j lej lwukhku"vj g'vj kf/r ctv{ 'eqpugpv'f qgu'pqv't guv'wr qp"vj g'rcy "qh r tqr gtv{ "00]ekcvkqp_"dwt'gusu"tcv'gt"qp"o wwen'wug'qh'vj g r tqr gtv{ "d{ "r gtuqpu"i gpgtcm{ "j cxkpi "lqkpv'ceeguu"qt"eqpvtqn hqt"o quv'r wtr qugu."uq"vj cv'ks'ku"tgcuaqpcdrv"vq"tgeqi pk g"vj cv cp{ 'qh'vj g'eq/kp'j cdkepvw'j cu'vj g'tki j vq'r gto kv'vj g'kpur gev'kqp kp"j ku"qy p"tki j v'cpf "vj cv'vj g"qvj gtu'j cxg"cuwo gf "vj g"tkum vj cv'qpg"qh'vj gkt"pwo dgt"o ki j v'r gto kv'vj g"eqo o qp"ctgc"vq dg'ugctej gf 0"*Id."cv'r 0'394."hp09"]; 5"UEv0'cv'r 0'; ; 5_0"0Vj g dwtf gp"qh'gucdrkuj kpi "vj cv'eqo o qp"cwj qtkv{"t'gusu'wr qp"vj g Ucv'g0"*Illinois v. Rodriguez"*3; ; 2+6; 9"wu0399."3: 3"]332 UEv049; 5."49; 9."333"NGf 0f"36: 0+

Kp"Illinois v. Rodriguez."supra."6; 9"wu0399."vj g'j ki j "eqwtv hwt'vj gt'cmqy gf "vj cv'c"vj kf "r ctv{ 'eqpugpv'ugctej "ku'xcrkf "gxgp kh"vj g'vj kf "r ctv{ "f kf" *1057 "pqv'j cxg"cewcn'cwj qtkv{"cu rqi "cu"0"vj g'rcu'cxckcdrv"vq"vj g'qHhleg"cv'vj g"o qo gpv'00]y qwf "0y cttepv'c"o cp'qh'tgcuaqpcdrv'ecwv'kp"vj g'dgrgh'0

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Cu"vj g"j ki j "eqwtv"kp"Rodriguez"ecwv'k'p'gf ."0]g_xgp"y j gp vj g" kpxkcvkqp"]vq" gpvt" vj g" r tgo kugu_" ku" ceeqo r cklp'gf d{ "cp" g'zr rckv' cuugv'kqp" vj cv' vj g" r gtuqp" rkgu" vj gtg." vj g uwt'qwp'kpi "ektewo ucpegu'eqwrf "eqpegkxcdn{ "dg"uwej "vj cv'c tgcuaqpcdrv"r gtuqp"y qwf "f qwdv'ku"v'wvj "cpf "pqv'cev'wr qp"kv y kj qw'hw'vj gt "kps vkt {00"*Illinois v. Rodriguez."supra."6; 9 Wu0'cv'r 0'3: : "332"UEv0'cv'r 0'4: 23_0" Ceeqtf kpi n{." vj g r tqugewkqp)"dwtf gp'oeppqv'dg"o gv'k'ci gpw. hcev'f "y kj "cp co dki wqwu'ukwcvkqp."pgx'gt'vj g'guu"r tqeggf"y kj qw"o cnkpi hwt'vj gt" kps vkt {0' K{ "vj g" ci gpw" f q"pqv'rgctp"gpqwi j . "k{ "vj g ektewo ucpegu'o cng'kv'wpergt"y j gvj gt"vj g'r tqr gtv{ "cdq'w'vq dg"ugctej gf "ku"uwd'ge'v'vq"o wwn'wug'd{ "vj g"r gtuqp"i kxkpi eqpugpv."vj gp"y cttepvrguu'gpv{ "ku"wp'rcy hwt'without further inquiry0]Ekcvkqp00"*United States v. Whitfield."supra."5; H0f "cv'r 03297."s vq'kpi "Illinois v. Rodriguez."supra."6; 9"wu0 cv'r 0'3: : /3: ; "332"UEv0'cv'r 0'4: 23/4: 24_0+

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no such distinction, and its “assumption of the risk” rationale is equally applicable to personal property. *1058 In fact, the court relied on *Frazier v. Cupp* (1969) 394 U.S. 731 [89 S.Ct. 1420, 22 L.Ed.2d 684] in formulating its third party consent rationale. (*Matlock, supra*, 415 U.S. at pp. 170-171 [94 S.Ct. at pp. 992-993].) *Frazier* involved a duffel bag “used jointly” by the defendant and his cousin. (*Matlock, supra*, at p. 170 [94 S.Ct. at pp. 992-993].) The cousin consented to a search, which the court upheld because “joint use of the bag rendered the cousin's authority to consent to its search clear.... By allowing the cousin the use of the bag, and by leaving it in his house, *Frazier* was held to have assumed the risk that his cousin would allow someone else to look inside. [Citation.]” (*Id.* at p. 171 [94 S.Ct. at p. 993].) If mutual use is unnecessary for a search of personal property, a court would have no basis for assessing whether the defendant assumed the risk of a third party consent. A contrary conclusion would also be inconsistent with the theory that one's reasonable expectation of privacy is diminished to the extent another has access to and authority over the property.

In the absence of any evidence defendant entrusted the briefcase to his sister, it is impossible to reasonably find he ceded any privacy interest or control over its contents. The majority's discussion as to what the officer could have inferred from the circumstances is strictly speculation. (Maj. opn., *ante*, at p. 978.) The familial connection does not, in itself, establish the “other sufficient relationship” required under *Matlock*. (*Matlock, supra*, 415 U.S. at p. 171 [94 S.Ct. at p. 993].) “Relationships which give rise to a presumption of control of property include parent-child relationships and husband-wife relationships. [Citations.] In contrast, a simple co-tenant relationship does not create a presumption of control and actual access would have to be shown. [Citations.] The difference [is that the former relationships] raise[] a presumption about the parties' reasonable expectations of privacy in relation to each other in spaces typically perceived as private in a co-tenant relationship. [Citation.]” (*U.S. v. Rith* (10th Cir. 1999) 164 F.3d 1323, 1330, fn. omitted.) Adult brothers and sisters are more akin to cotenants in this regard,

at least absent any contrary evidence. Moreover, from both his conduct and his subsequent testimony, the officer plainly did not draw any inference of common authority or mutual use from the fact Diane Jenkins retrieved defendant's briefcase. He simply asked whether any of defendant's belongings were at the residence and took the briefcase without further inquiry when she handed it to him. A finding of valid third party consent on these facts flies in the face of *Matlock* and *Rodriguez* as well as numerous federal court decisions applying their principles.

I would not, however, invalidate the search. The trial court articulated several grounds for finding the officer's actions proper, the most viable of which I find to be inevitable discovery. Indeed, but for the intervention of *1059 defendant's sister, the briefcase would have been seized and opened pursuant to the warrant issued the previous day. That warrant authorized a search of both defendant's residence and his vehicles, including the Jeep, for numerous items most of which could reasonably be located in such a container. Given that circumstance, the officer could have readily obtained a supplemental warrant and testified he would have done so had Diane Jenkins refused to surrender the briefcase. Efforts to locate the murder weapon and identify other possible coconspirators were ongoing. The facts already known clearly would have established probable cause. Thus, this was not a situation in which the police would have had to exploit Detective Holder's initial illegality in searching the briefcase without consent. (See generally *Wong Sun v. United States* (1963) 371 U.S. 471, 487-488 [83 S.Ct. 407, 417-418, 9 L.Ed.2d 441].) As the Attorney General notes, “ ‘there is not a judge in the world that would not sign a warrant with these facts.’ ” (*People v. McDowell* (1988) 46 Cal.3d 551, 564 [250 Cal.Rptr. 530, 763 P.2d 1269].)

Appellant's petition for a rehearing was denied June 28, 2000, and the opinion was modified to read as printed above.

*1060

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Solano and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On August 14, 2020, I served the:

- **County of San Diego's Comments on the Draft Proposed Decision filed August 14, 2020**

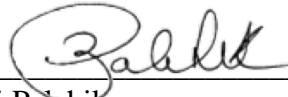
Accomplice Liability for Felony Murder, 19-TC-02

Penal Code Sections 188, 189, and 1170.95; Statutes 2018, Chapter 1015 (SB 1437)

County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 14, 2020 at Sacramento, California.



Heidi Palchik

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Mailing List

Last Updated: 8/4/20

Claim Number: 19-TC-02

Matter: Accomplice Liability for Felony Murder

Claimant: County of Los Angeles

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