

CHAPTER 1

SUPPLEMENT

**UNITED STATES SUPREME COURT
REVIEW – PREVIEW – OVERVIEW**

**(Supplement -- Selected criminal cases decided since May 10, 2005,
listed by date of decision)**

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***Deck v. Missouri*, No. 04-5293 (May 23, 2005)—Capital Prosecutions; Due Process.**

Due process forbids the use of visible shackles during a capital trial’s penalty phase, absent an essential state interest, such as courtroom security, specific to the particular case on trial.

***Arthur Andersen, LLP v. United States*, No. 04-368 (May 31, 2005)—Jury Instructions; Elements of the Offense.**

Title 18 U.S.C. § 1512(b)(2)(A) and (B), which make it a crime to “knowingly . . . corruptly persuad[e]” another person to withhold or alter documents in an official proceeding, require that the defendant be conscious of his or her wrongdoing in ordering documents destroyed. The jury instructions in the instant case failed to comport with § 1512’s wording; they removed the requirement that the jury find dishonesty, and they required no nexus between the destruction of documents and any particular official proceeding.

***Gonzalez v. Raich*, No. 03-1454 (June 6, 2005)—Commerce Clause; Medicinal Marijuana.**

Congress’s authority over commerce includes the power to prohibit local cultivation and use of marijuana, even if the cultivation and use is for medicinal purposes only, and complies with state law.

***Miller-El v. Dretke*, No. 03-9659 (June 13, 2005)—Jury Selection; Peremptory Challenges.**

In a capital habeas case, Court reverses, as an unreasonable application of *Batson v. Kentucky*, 476 U.S. 79 (1986), a state trial court’s denial of defendant’s challenge to the prosecution’s peremptory strikes of black venire persons. Contrary to the trial court’s finding, the prosecution did not show that strikes were race-neutral: 91% of blacks were excluded; the prosecution’s reasons for excluding them applied equally to whites who were not struck; and discrimination was shown by other, circumstantial evidence, including disparate questioning of whites and blacks, jury “shuffles” by the prosecution when blacks were likely to be selected, and the use of a manual on jury selection that outlined reasons for excluding minorities.

***Johnson v. California*, No. 04-6964 (June 13, 2005)—Jury Selection; Peremptory Challenges.**

To make out a prima facie case under *Batson v. Kentucky*, 476 U.S. 79 (1986), the defendant need not show that the prosecution's peremptory strikes were "more likely than not" based on race. The defendant need only produce evidence sufficient to permit the trial court to draw an inference that discrimination has occurred; the burden then shifts to the state to offer permissible, race-neutral justifications for the strikes.

***Bradshaw v. Stumpf*, No. 04-637 (June 13, 2005)—Guilty Pleas; Advice on Elements of the Offense; Prosecution on Inconsistent Theories.**

The district court's failure to advise the defendant of the specific-intent element of his capital offense did not mean that his guilty plea was uninformed. Defendant's attorneys stated at the plea hearing that they had informed the defendant of the elements, and the judge was entitled to rely on that representation in lieu of advising the defendant himself. Nor was the guilty plea vitiated by the prosecution's inconsistent theories that both defendant and his accomplice was the person who shot the decedent, since Ohio law supported a conviction for aggravated murder whether or not defendant was the triggerman. However, the case must be remanded for the court of appeals to decide whether the inconsistent prosecution theories could affect the validity of defendant's death sentence.

***Rompilla v. Beard*, No. 04-5462 (June 20, 2005)—Habeas Corpus; Ineffective Assistance.**

In preparing for capital sentencing, defense counsel provided constitutionally ineffective assistance by failing to review a publicly-available prosecution file for a previous crime that the state relied upon in seeking the death penalty. The file would have led to a wealth of mitigation evidence that counsel had not uncovered. Counsel's other investigations did not render his failure to review the file objectively reasonable.

***Dodd v. United States*, No. 04-5286 (June 20, 2005)—Habeas; Statute of Limitations; Retroactivity.**

The one-year statute of limitations for collateral attacks under 28 U.S.C. § 2255, paragraph 6(3), begins to run on the date the Supreme Court initially recognizes a new constitutional right, not on the date that the right is made retroactive. Defendant's § 2255 motion was accordingly untimely: the asserted right was recognized in 1999, but he did not file until after the Eleventh Circuit made the right retroactive in 2002.

***Halbert v. Michigan*, No. 03-10198 (June 23, 2005)—Right to Counsel; Appeals.**

The Due Process and Equal Protection Clauses require that the state appoint counsel when an individual seeks permission for his initial appeal, even if he has pleaded guilty.

***Mayle v. Felix*, No. 04-563 (June 23, 2005)—Habeas; Statute of Limitations; Amendment of Petition**

Under Federal Rule of Civil Procedure 15(c)(2), an amended habeas petition does not relate back (and thereby come within the one-year limitations period) when it asserts a new claim based on facts differing from those in the original petition. Because petitioner’s Fifth Amendment self-incrimination claim was based on different underlying facts than his Sixth Amendment Confrontation Clause claim, it did not relate back and was properly dismissed as untimely.

***Gonzalez v. Crosby*, No. 04-6432—Habeas; Relief from Judgment; Second or Successive Petitions**

A motion for relief from judgment under Federal Rule of Civil Procedure 60(b), seeking to challenge a district court ruling on the statute of limitations for filing habeas petitions, is not a “second or successive” habeas petition, and thus may be decided by the district court without prior permission from the court of appeals. Petitioner, however, failed to make a showing that he was entitled to 60(b) relief. The fact that the law changed on the limitations issue was, under the facts of petitioner’s case, an “extraordinary circumstance” as required for relief under Rule 60(b)(6).