



# NEWS RELEASE

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## **Summary of Cases Accepted During the Week of July 25, 2005**

*[This news release is issued to inform the public and the press of cases that the Supreme Court has accepted and of their general subject matter. The statement of the issue or issues in each case set out below does not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.]*

**#05-167 California Com. on Peace Officer Standards & Training v. Superior Court, S134072.** (C045494; 128 Cal.App.4th 281; Sacramento County Superior Court; 03CS01077.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. This case includes the following issue: Is the information sought in this case, including the names and certain employment information pertaining to individual peace officers throughout the state, information obtained from confidential "personnel records" under Penal Code sections 832.7 and 832.8, and thus exempt from disclosure under the California Public Records Act (Gov. Code, § 6250 et seq.) pursuant to Government Code section 6254, subdivision (k)?

**#05-168 Catholic Mutual Relief Society v. Superior Court, S134545.** (B178101; 128 Cal.App.4th 879; Los Angeles County Superior Court; JCCP No. 4297.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. This case presents the following issue: Does Code of Civil Procedure section 2017 permit the discovery of information about the existence and extent of reinsurance coverage and the financial condition of a reinsurer for a defendant's insurer?

**#05-169 Independent Energy Producers Assn., Inc. v. McPherson, S135819.** (C050115; \_\_ Cal.App.4th \_\_ [2005 WL 1706487].)<sup>1</sup> Petition for review after the Court of Appeal granted a petition for peremptory writ

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<sup>1</sup> <http://www.courtinfo.ca.gov/opinions/documents/C050115.PDF>

of mandate. This case presents the following issue: Does article XII, section 5, of the California Constitution preclude the adoption of Proposition 80, an initiative designed to reestablish Public Utility Commission control over electricity providers through the initiative process, rather than by an enactment by the Legislature?

**#05-170 *International Federation of Prof. & Technical Engineers, Local 21, AFL-CIO v. Superior Court*, S134253.** (A108488; 128 Cal.App.4th 586; Alameda County Superior Court; RG04166830.) Petition for review after the Court of Appeal denied a petition for peremptory writ of mandate. This case includes the following issues: (1) Are the names and salaries of public employees who earn more than \$100,000 per year exempt from disclosure under the California Public Records Act (Gov. Code, § 6250 et seq.) pursuant to Government Code section 6254, subdivision (c)? (2) Is salary information about individually identified peace officers within the definition of confidential “personnel records” under Penal Code sections 832.7 and 832.8, and thus exempt from disclosure under the Public Records Act pursuant to section 6254, subdivision (k)?

**#05-171 *People v. Noel*, S134543.** (A099250, A099366, A099499, A109260; 128 Cal.App.4th 1391; San Francisco County Superior Court; 18181301, 18181302.) Petition for review after the Court of Appeal reversed an order granting a new trial, remanded with directions, and otherwise affirmed judgments of conviction of criminal offenses. The court limited review to the following issues: (1) Does the mental state required for implied malice include only conscious disregard for human life, or can it be satisfied by an awareness that the act is likely to result in great bodily injury? (2) Did the trial court abuse its discretion in granting defendant Knoller’s motion for new trial under Penal Code section 1181, subdivision (6), as to her conviction for second degree murder?

**#05-172 *Pioneer Electronics (USA), Inc. v. Superior Court*, S133794.** (B174826; 128 Cal.App.4th 246; Los Angeles County Superior Court; BC257222.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. This case includes the following issue: In a putative class action, would the privacy rights of potential class members be violated by a pre-certification letter to be sent to those potential class members who had complained to defendant regarding the alleged defect upon which the action is based, when the letter states that failure to respond to the letter will be treated as consent to disclose the identity of the potential class member to plaintiffs’ counsel for the purpose of this action?

**#05-173 *People v. Superior Court (Vidal)*, S134901.** (F045226; 129 Cal.App.4th 434; Tulare County Superior Court; 69782-C.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. This case presents the following issues: (1) Do the People have the right to pretrial review of a trial court’s determination under Penal Code section 1376 that a capital defendant is mentally retarded? (2) What measure should be used to determine mental retardation for purposes of section 1376?

**#05-174 *People v. Thoma*, S134243.** (B170355; 128 Cal.App.4th 676, mod. 128 Cal.App.4th 1368d; Ventura County Superior Court; 2003008254.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. This case presents the following issue: Was defendant’s silence during sentencing in a prior case when the trial court described the victim’s injuries an adoptive admission within the meaning of Evidence Code section 1221 that could be relied on in a subsequent case to prove that the defendant had personally inflicted great bodily injury on that victim and thus establish that the prior conviction was a serious felony under Penal Code section 1192.7, subdivision (c)(8)?

**#05-175 *People v. Herring*, S134398.** (A104624; unpublished opinion; Sonoma County Superior Court; SCR31472.) Petition for review after the Court of Appeal reversed a judgment of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Cage*, S127344 (#04-111), which includes the following issue: Are *all* statements made by an ostensible crime victim to a police officer in response to general investigative questioning “testimonial hearsay” within the meaning of *Crawford v. Washington* (2004) 541 U.S. \_\_\_, 124 S.Ct. 1354 and inadmissible in the absence of an opportunity to cross-examine the declarant, or does “testimonial hearsay” include only statements made in response to a formal interview at a police station?

**#05-176 *People v. Pena*, S134354.** (H023394; 128 Cal.App.4th 1219, mod. 129 Cal.App.4th 1348c; Santa Clara County Superior Court; CC091842.) Petition for review after the Court of Appeal affirmed in part and reversed in part judgments of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Modiri*, S120238 (#03-159), which includes the following issue: Is the so-called “group beating exception” (see *People v. Corona* (1989) 213 Cal.App.3d 589), as embodied in CALJIC No. 17.20, to the requirement of a finding of *personal* infliction of great bodily injury for purposes of imposing an enhancement under Penal Code section 12022.7, inconsistent with *People v. Cole* (1982) 31 Cal.3d 568?

**#05-177 *People v. Vo*, S134173.** (C034960; 128 Cal.App.4th 733, mod. 129 Cal.App.4th 410b; Sacramento County Superior Court; 98F03454.) Petition for review after the Court of Appeal modified and affirmed judgments of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Shabazz*, S131048 (#05-57), which includes the following issue: When a defendant is convicted of an offense that is punishable by a sentence of imprisonment for life without the possibility of parole, is the defendant also subject to a sentence enhancement of 25 years to life under Penal Code section 12022.53, subdivision (d), for personally discharging a firearm and causing death, or does Penal Code section 12022.53, subdivision (j), preclude the imposition of that enhancement when the punishment for the defendant’s underlying felony is imprisonment for life without the possibility of parole?

## **DISPOSITION**

Review in the following case was dismissed:

***#02-190 People v. Gregory, S110450.***

## **STATUS**

*People v. Avila*, S045982. The court requested the parties to file supplemental briefs in this automatic appeal addressing the effect, if any, of *Johnson v. California* (2005) 545 U.S. \_\_\_, 125 S.Ct. 2410, and *Miller-El v. Dretke* (2005) 545 U.S. \_\_\_, 125 S.Ct. 2317, on the issues in the case.

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