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# NEWS RELEASE

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## **Summary of Cases Accepted During the Week of September 8, 2008**

*[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.]*

**#08-140 *In re Davis*, S116750.** Original proceeding. In this case, which is related to the automatic appeal in *People v. Davis* (2005) 36 Cal.4th 510, the court issued an order to show cause limited to claims why petitioner is not entitled to relief on the following grounds: (1) false evidence that was substantially material or probative with respect to the special circumstances findings and the penalty determination was introduced at petitioner's trial; (2) defense counsel rendered ineffective assistance by failing to object to the prosecutor's biblical references; (3) petitioner is mentally retarded within the meaning of *Atkins v. Virginia* (2002) 536 U.S. 304 (see *In re Hawthorne* (2005) 35 Cal.4th 40); (4) defense counsel rendered ineffective assistance by failing to object to the prosecutor's comments accusing the defense of fabrication; and (5) cumulative prejudice arises from the facts alleged in the above and related claims.

**#08-141 *Sutton v. Intersurance Exchange of the Automobile Club*, S165269.** (B198855; nonpublished opinion; Los Angeles County Superior Court; BC341289.) Petition for review after the Court of Appeal reversed the judgment in a civil action. The court ordered briefing deferred pending decision in *Delgado v. Interinsurance Exchange of the Automobile Club*, S155129 (#07-409), which presents the following issue: When a liability policy covers injury arising from an "occurrence," which is defined as an "accident," does the insurer have a

duty to defend an action for assault if the complaint alleges the insured was acting under an unreasonable and negligent belief that he was acting in self-defense?

## **DISPOSITION**

**#08-118 *Harvey v. Sybase, Inc.*, S163888.** Review in this case was dismissed in light of the settlement of the action.

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