

First Annual Appellate Update

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UNIVERSITY OF BAL

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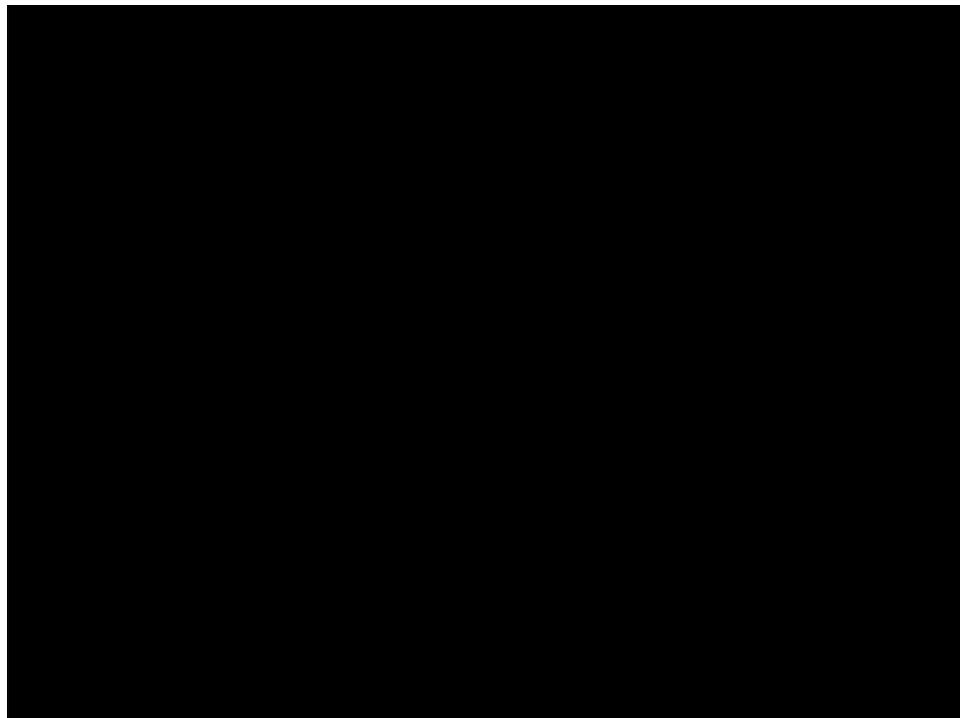
Volume Nine

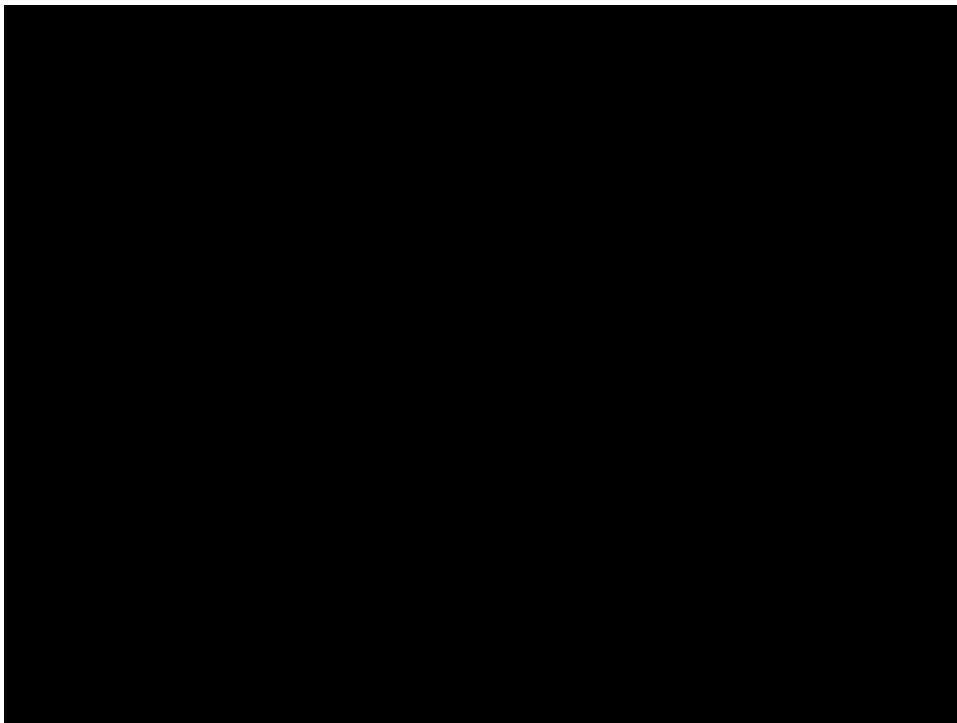
Spring

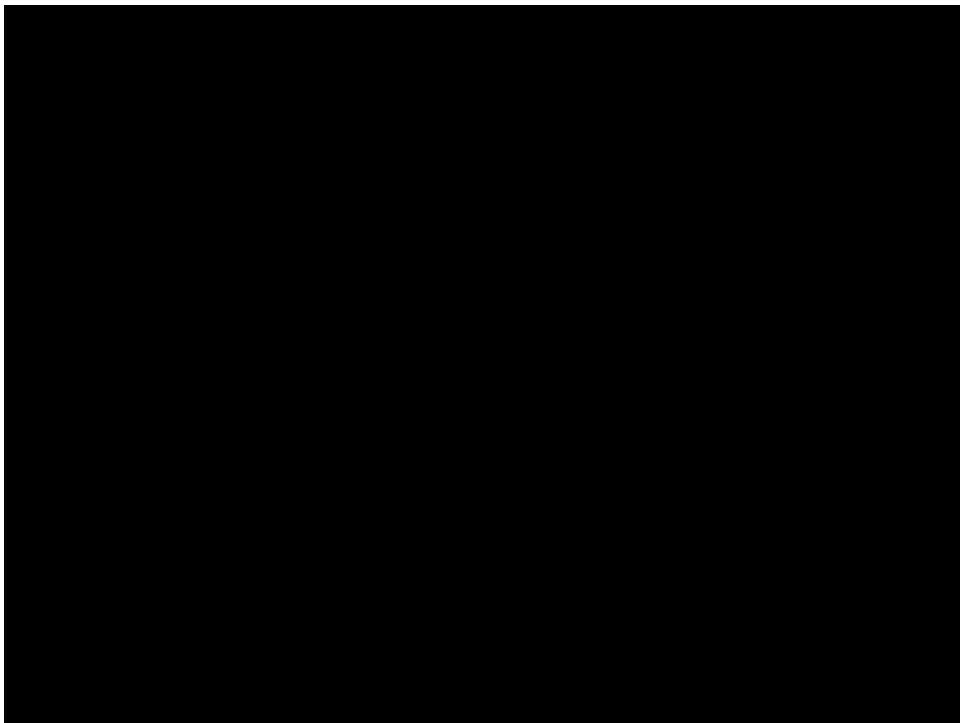
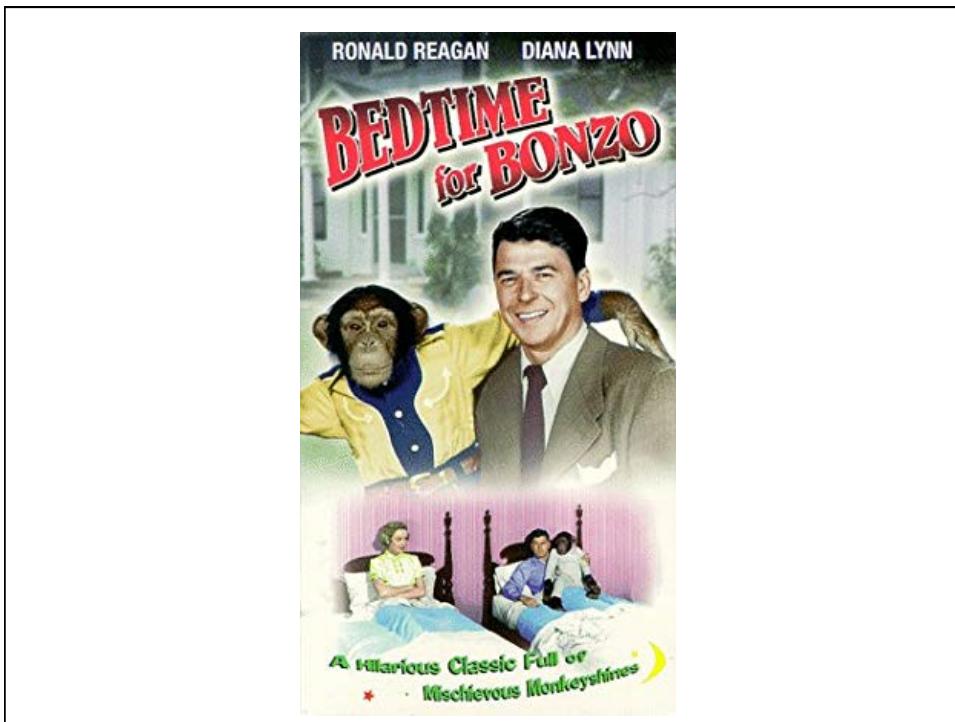
FIRST THINGS FIRST: STATES' BILL

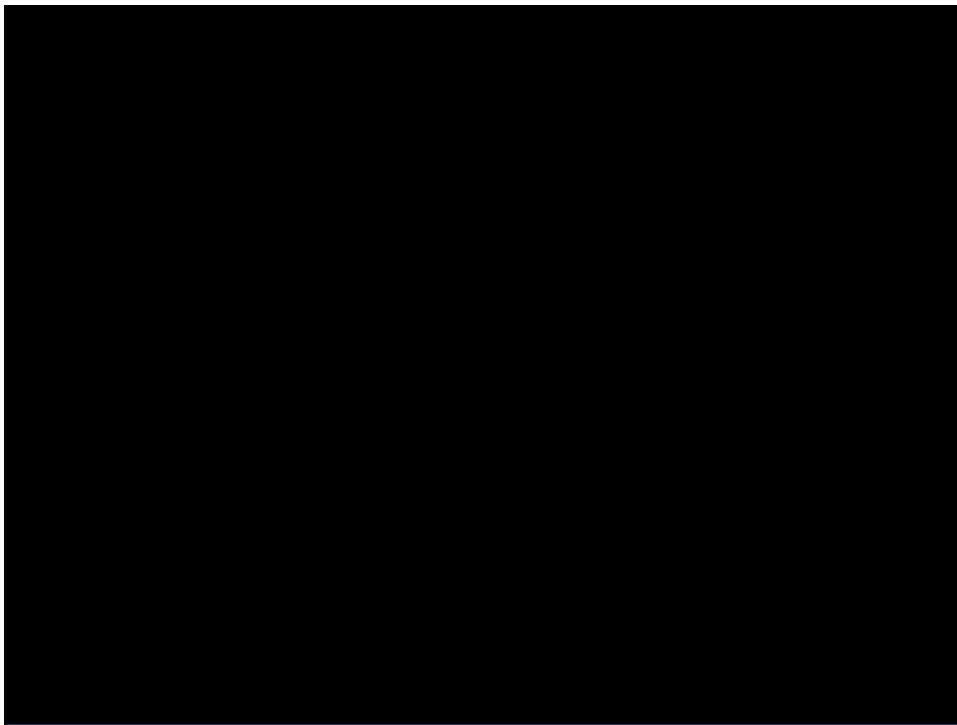
Justice Ha

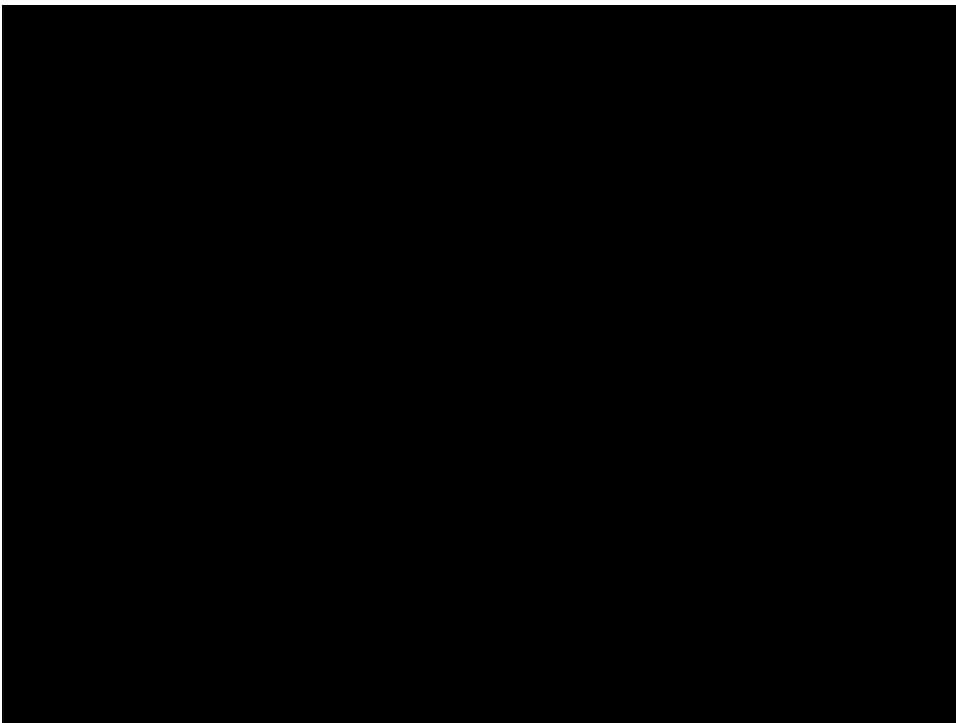
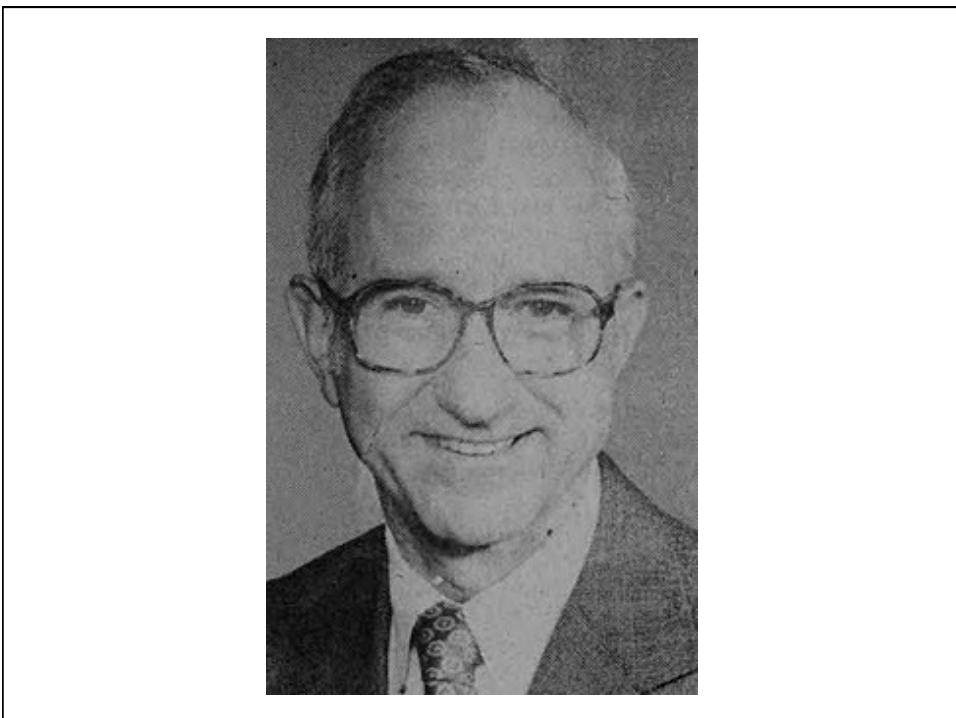
The first annual Judge Train, was held on May 16, 1979, its topic of the program was "S Linde's speech, set forth below, courts and lawyers to decide q under their own state constit the interest at stake. Justice L confronted with a constitut





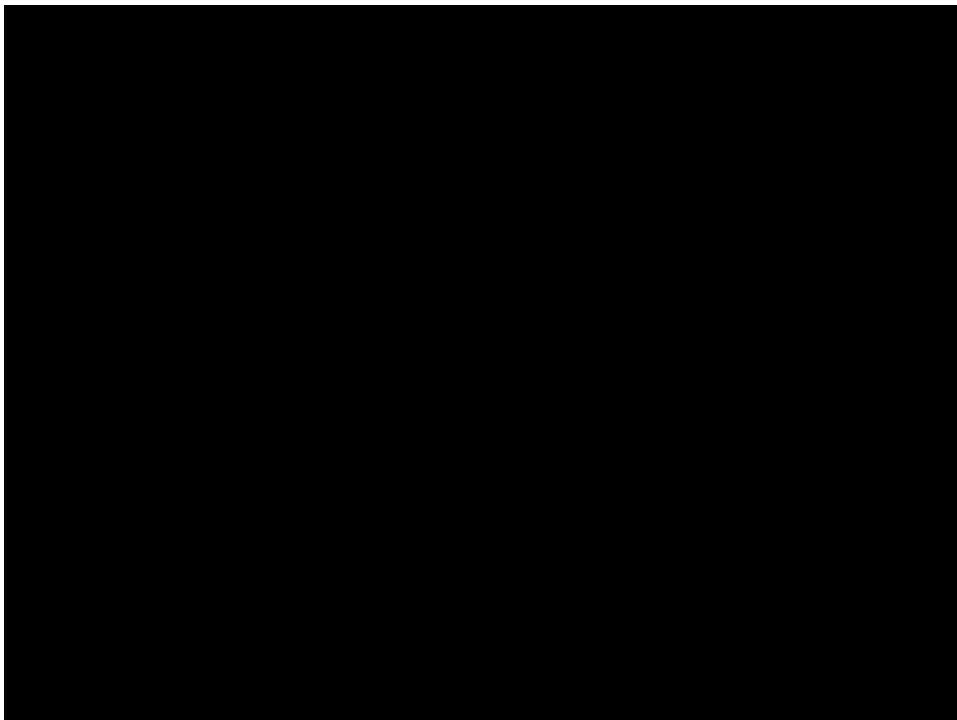




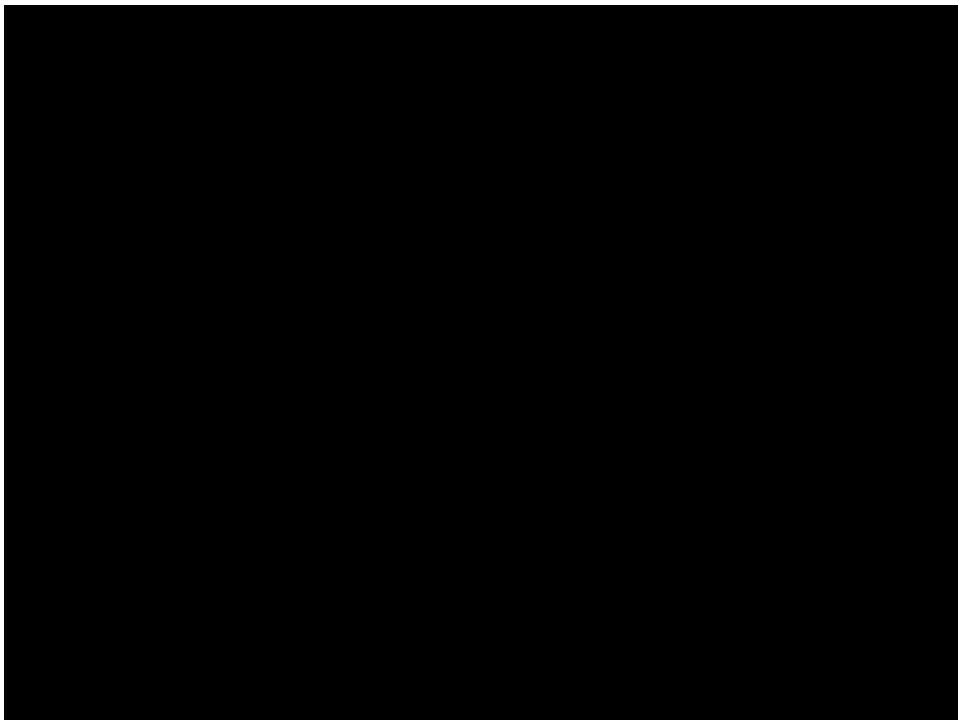


It is common knowledge that the rights all Americans prize, whether or not they wish to see them enforced, come from the first ten amendments of the United States Constitution. It is common knowledge, but of course it is false.

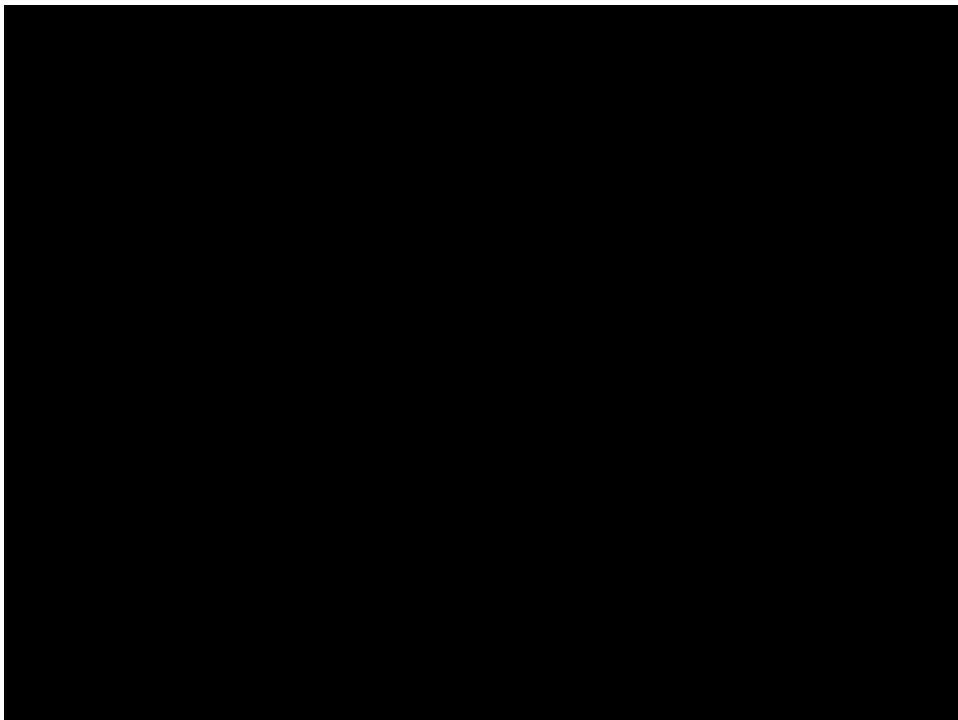
Far from being the model for the states, the Federal Bill of Rights was added to the Constitution to meet demands for the same guarantees against the new central government that people had secured against their own local officials. Moreover, the states that adopted new constitutions during the following decades took their bills of rights from the preexisting state constitutions rather than from the federal amendments. For example, Oregon's constitution in 1859 adopted Indiana's copy of Ohio's version of sources found in Delaware and elsewhere.



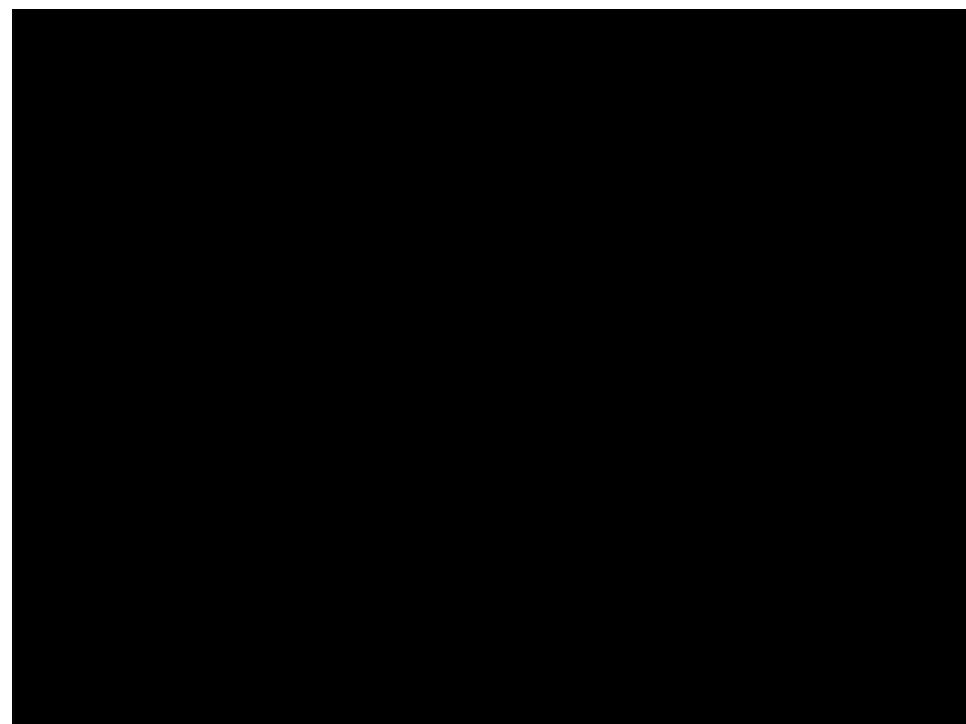
What this should mean in practice is simply good lawyering, both at the bar and on the bench. If we expect to get careful attention to a state statute, we should give equally careful attention to the state constitution. This is easier said than done. A generation of lawyers brought up on United States Supreme Court opinions seems literally speechless when we ask from the bench, as we sometimes do, how we should decide a constitutional question if the Supreme Court has never addressed it. Yet a lawyer must ask himself precisely that question if he wants the court to take seriously his argument under the state constitution.



prefers the opposite result. Counsel would do well to begin his memoranda and briefs with a fresh, well-considered argument to the court why he should win under the state constitution and relegate all the old, familiar shorthand about first, fourth, fifth, or sixth amendment rights, "automobile exceptions," "Miranda warnings," "clear and present danger," and the rest of the federal phraseology to a short final section. Once these federal claims are properly invoked with supporting citations, the court will have to deal with them in any event.

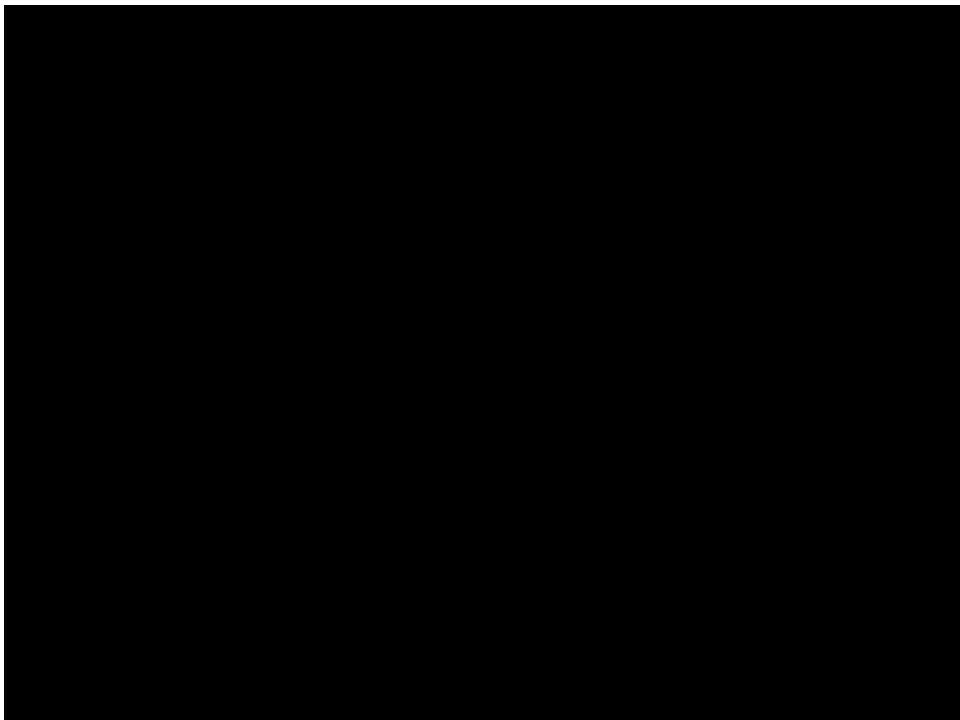


**Reinstatement of the Death
Penalty in Oregon**



Reinstatement of the Death Penalty in Oregon

- November 3, 1964—Oregon Voters Repeal The Death Penalty By 60%
- November 7, 1978—Oregon Voters Pass Ballot Measure 8, Reinstating the Death Penalty By 64%
- The Trial Court Determines Whether To Impose The Death Penalty



Reinstatement of the Death Penalty in Oregon

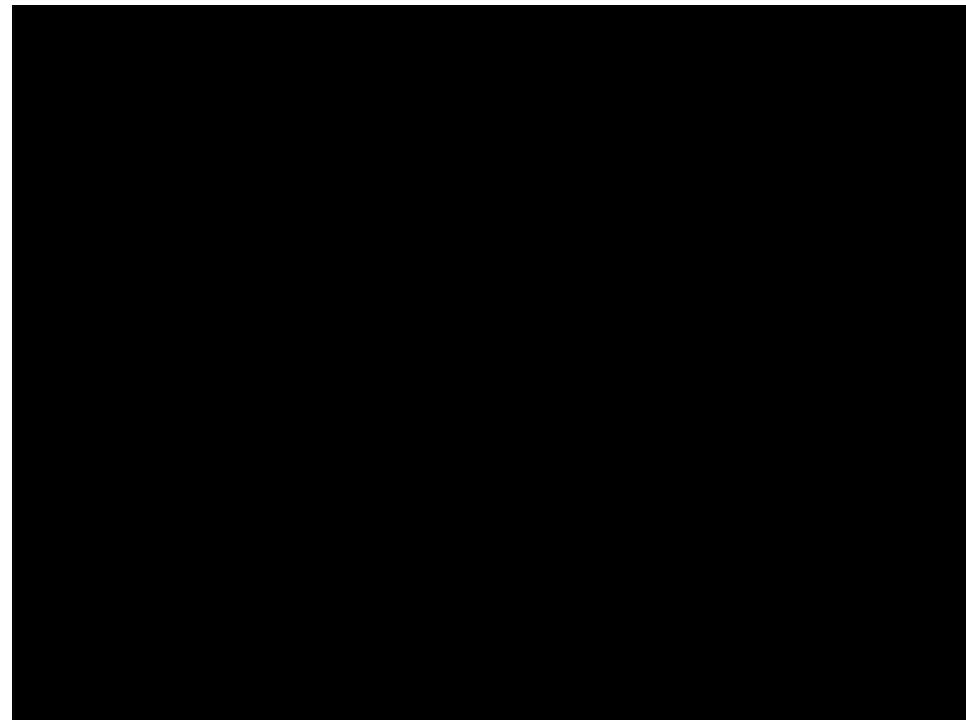
BALLOT MEASURE 8. REQUIRES DEATH PENALTY FOR MURDER UNDER SPECIFIED CONDITIONS

Purpose: Requires separate sentencing procedures before judge after murder conviction. Requires death penalty if judge, beyond reasonable doubt, finds: defendant acted deliberately with reasonable expectation death would result; and probability defendant is continuing violent threat to society; and defendant responded unreasonably to provocation, if any, by deceased. Automatic Supreme Court review. If any findings is negative, sentence is life with minimum 25 years confinement before parole. Adds homicide by air piracy or bomb to murder definition.

Reinstatement of the Death Penalty in Oregon

Lockett v. Ohio, 438 US 586 (1978):

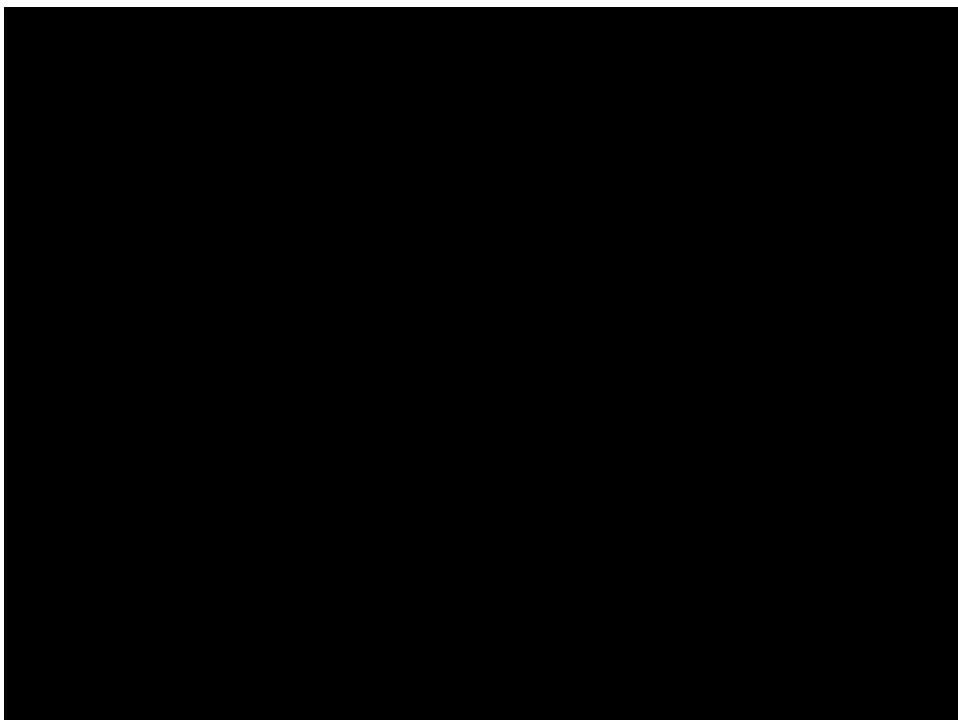
"* * * we conclude that the Eighth and Fourteenth Amendments require that the sentencer, in all but the rarest kind of capital case, not be precluded from considering, as a mitigating factor, any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death."



JUVENILE COURT JURISDICTION

STATE v. SCURLock, 286 Or 277 (1979) :

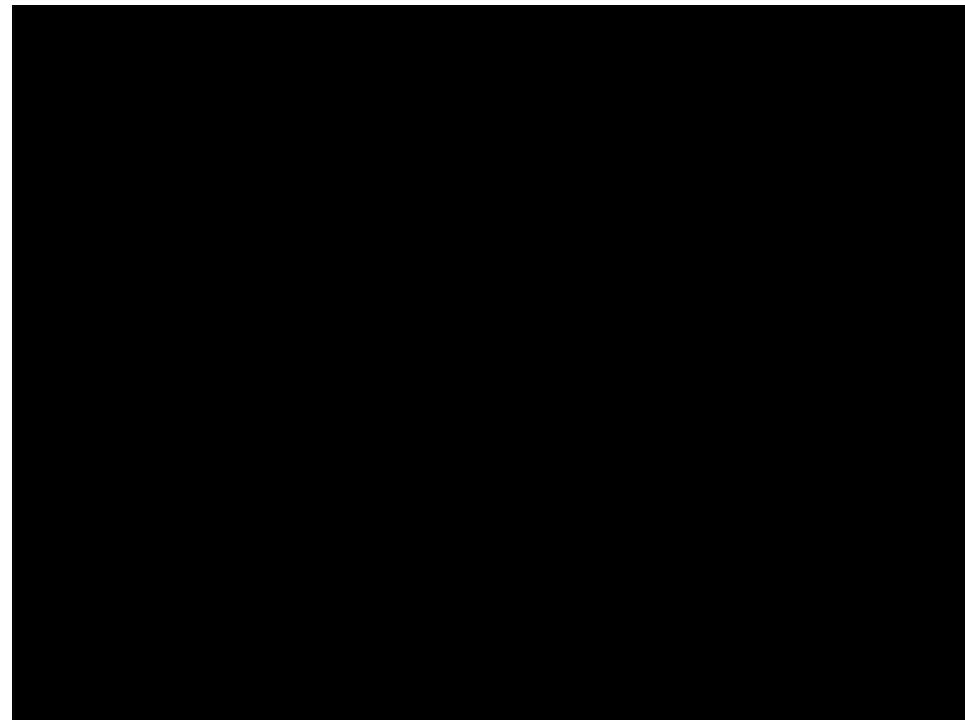
"In effect, the initial determination as to whether a 16- or 18-year-old offender is better suited for treatment as a juvenile or an adult would be made by the district attorney, and only if the district attorney decided in favor of juvenile treatment would the juvenile court have an opportunity to consider the matter."



REASONABLE SUSPICION

STATE v. VALDEZ, 277 Or 621 (1977):

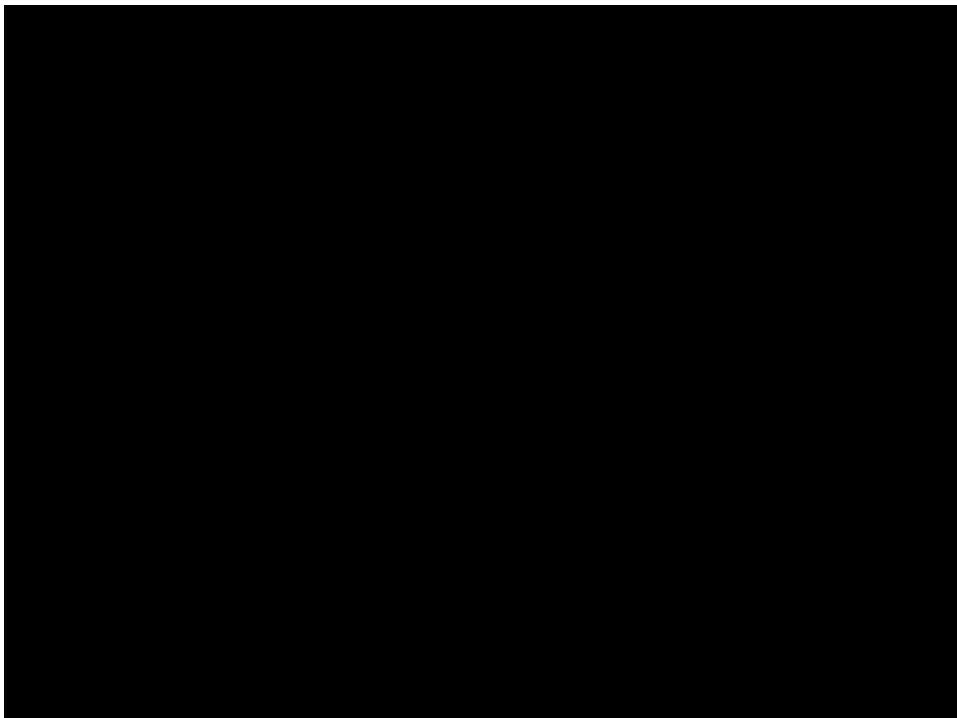
"We also recognize that experienced police develop what amounts to an intuitive sixth sense about matters of this kind."



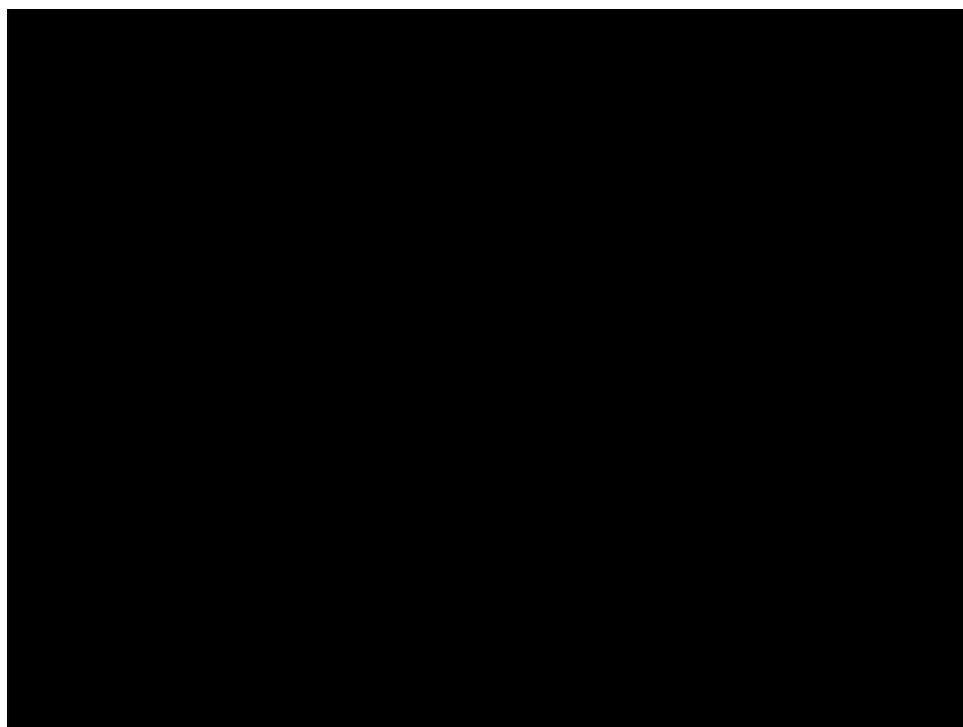
REASONABLE SUSPICION

STATE v. VALDEZ, 277 Or 621 (1977):

"Such instinct and experience cannot, however, form the entire basis for 'reasonable suspicion,' because no practical control can be exercised over police by the courts if, in the absence of any very remarkable activity, the officer's instinct and experience may be used as the sole reason to justify infringement upon the personal liberty sought to be protected by the statute."



The Show Must Go On



Comfortably Numb

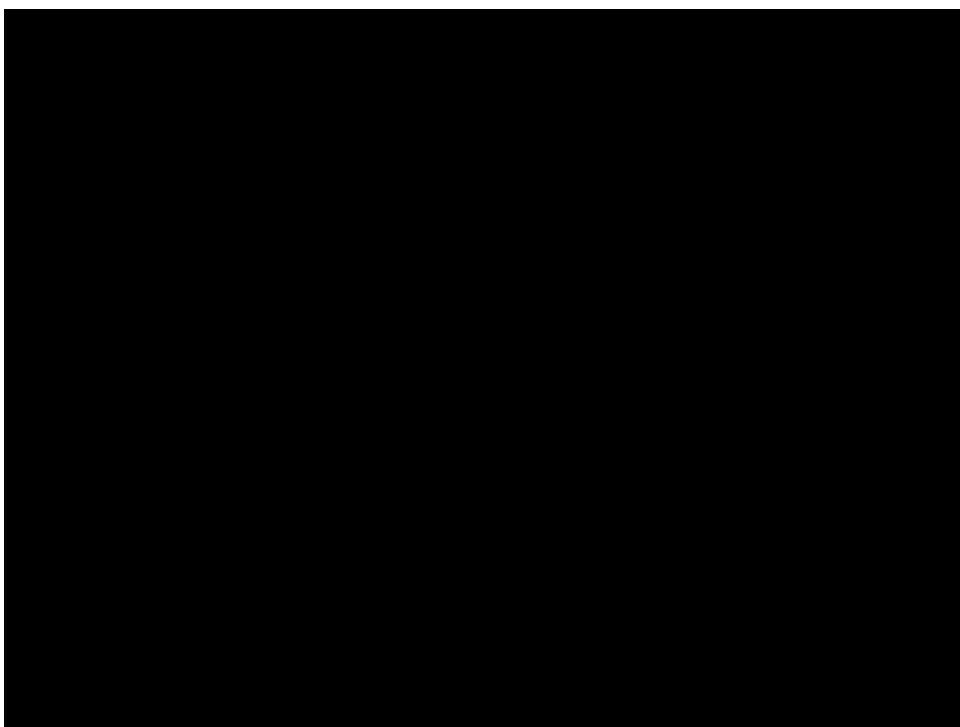
STATE v. Matsen/Wilson, 287 Or 581 (1979)

- "The police cannot weave together a web of information, then claim exigent circumstances when the suspect arrives and can conveniently be snared. The warrant process is more than an inconvenient formality."



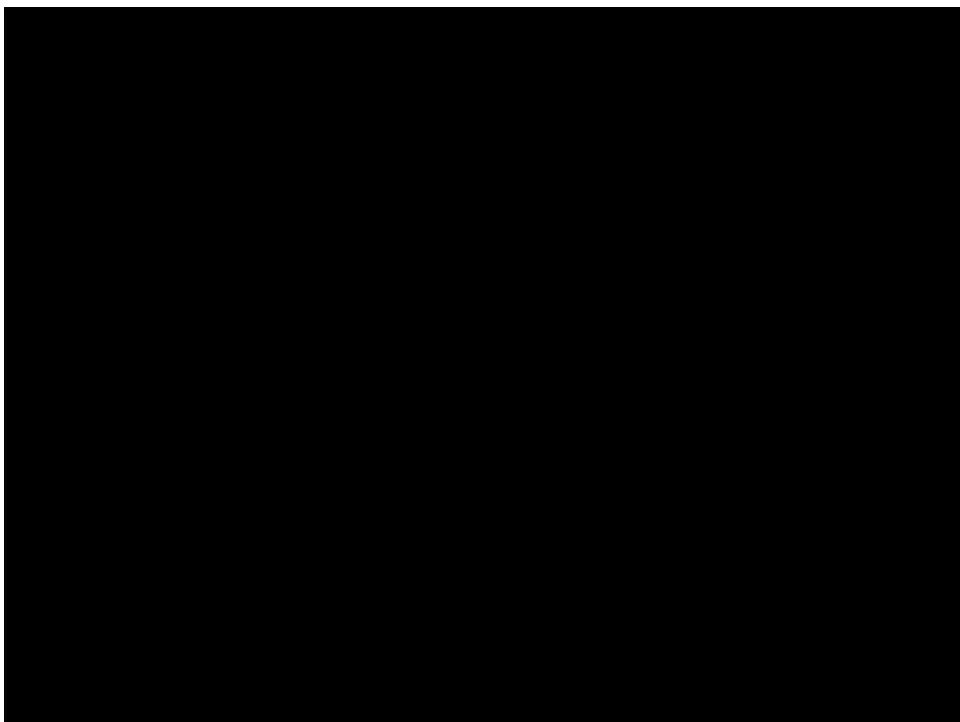
Run Like Hell

STATE v. PELLAR, 277 Or 621 (1979)



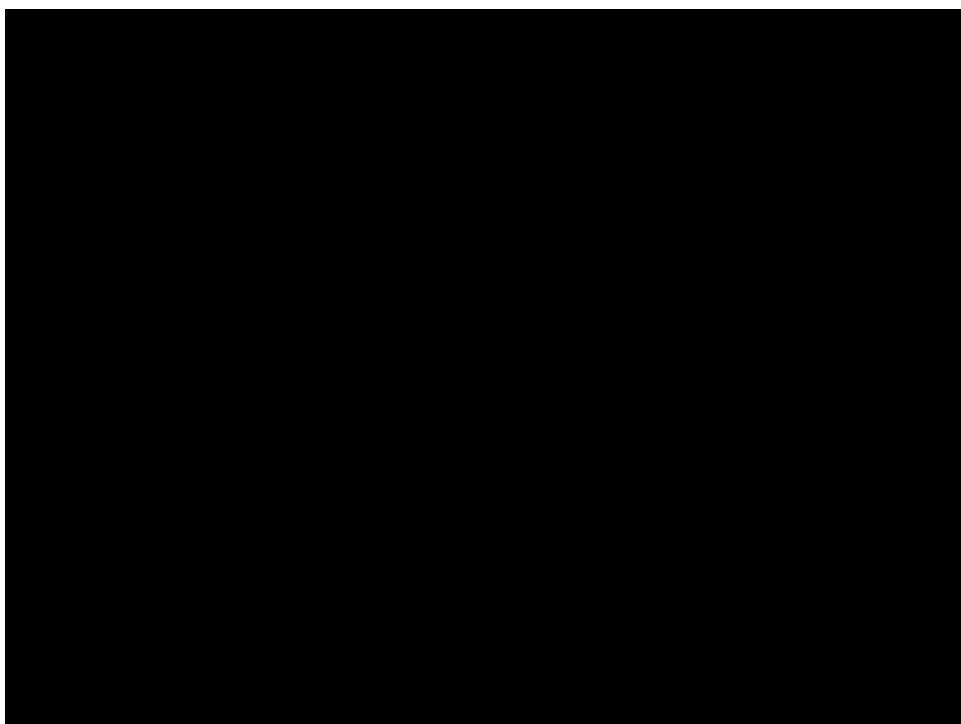
Exigent Circumstances

STATE v. Parras, 43 Or App 373(1979)



Exigent Circumstances

STATE v. Eacret, 40 Or App 341(1979)



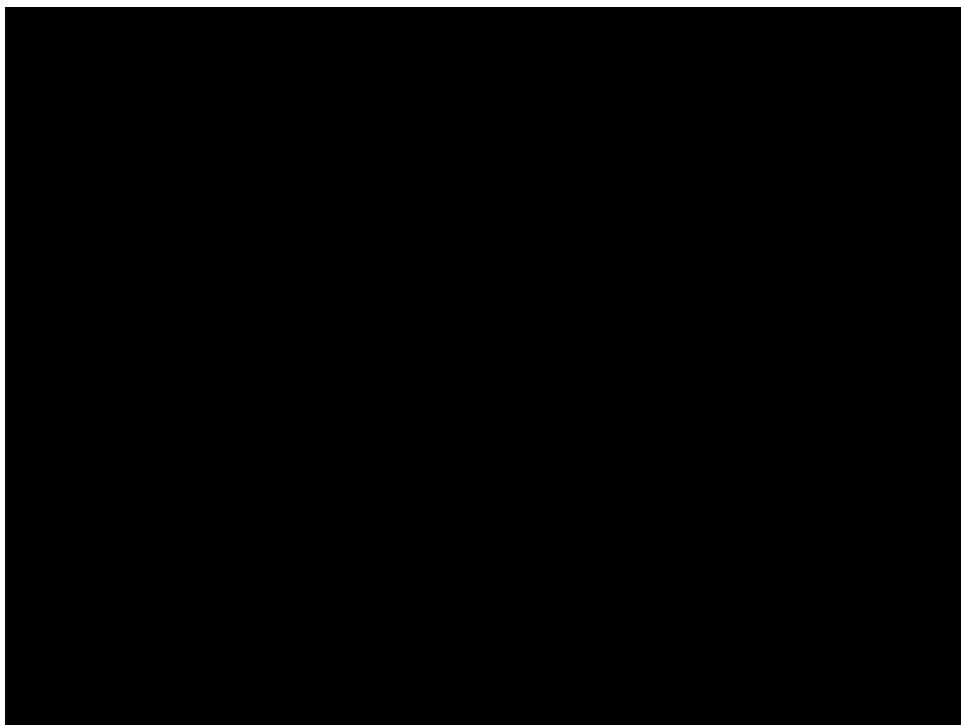
The Thin Ice

STATE v. Mendacino, 288 Or 231 (1979):



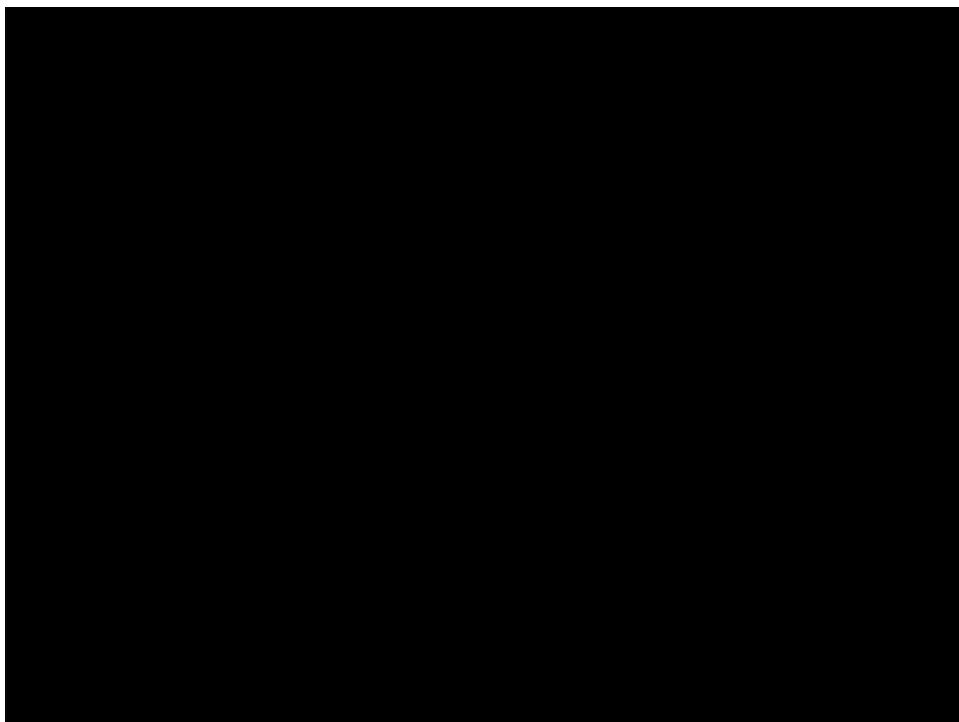
Hey You

STATE v. Haynes, 288 Or 59 (1979):



In the Flesh

STATE v. Steven Pelletier, 43 Or 157 (1979):



Nobody Home

STATE v. Olson, 287 Or 157 (1979):



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Questions?

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