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# Death Penalty

in a  
nutshell

VICTOR STREIB

4TH EDITION



WEST.

**DEATH  
PENALTY  
IN A NUTSHELL**

FOURTH EDITION

By

**VICTOR STREIB**

Professor of Law (Retired)  
Ohio Northern University

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To  
Lynn,  
and to  
Jessi and Noah

## PREFACE

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What could be more dramatic and demanding for a lawyer or any other criminal justice professional than a death penalty case? In the field of criminal law, these are the worst crimes committed by the worst offenders. In criminal procedure, these are the most complicated cases. In our day-to-day lives, these are the cases that make the headlines and provide the storyline for our movies and murder mysteries. This Nutshell explains the law and legal process followed in these truly extraordinary cases.

This brief text is designed to serve several purposes. The first audience is made up of law students, particularly those taking a course on death penalty law and practice. It is written intentionally to be in sync with nationally published cases and materials on this topic and to serve as brief sketch of almost all of the issues covered in those large and detailed texts. Another part of this law student audience includes those doing research and/or writing a paper on a death penalty issue. This brief text will provide them a concise summary of their topic and place it in the broad context of death penalty law and procedure.

In addition to law students, this text is designed for practicing lawyers and other criminal

## PREFACE

justice professionals who find themselves involved in a death penalty case. Almost every unique death penalty issue they will confront is covered briefly in this text, with citations to the primary authorities they should consult. Another audience for this Nutshell comprises graduate students and upper-level undergraduate students studying the death penalty in criminology, criminal justice, or a related department. This brief text is written by a law professor/death penalty lawyer primarily for law students and other lawyers, so the language may be less familiar to nonlawyers but is still accessible. Last, but certainly not least, the educated general public will find this Nutshell to provide a complete, stem-to-stern description of the substantive and procedural law of the death penalty in the United States in the early 21st century. However, this is not another book about why the death penalty is or is not moral, or wise, or effective. The effort here is to provide a factual description of what death penalty law is and how it works, leaving to others the gnarly questions of whether we should have it at all.

This text is organized for use either as a progression from chapter to chapter, exploring all of death penalty law in a logical order, or as a brief source of specific information about a succinct issue within death penalty law. The first four chapters sketch the background and context of the death penalty, including the history, the basic constitutional issues, and the arguments for and against this ultimate punishment. The second major part of

## PREFACE

the book covers substantive criminal law topics. In addition to the specific crimes that carry with them the possibility of the death penalty, these chapters describe the additional factors that pull the jury toward a death sentence or push them toward a life sentence.

Parts Three and Four cover the complex, sometimes Byzantine procedures followed in death cases. On the premise that all of the players should know what happens at their own stage and at all of the other stages, these chapters run from arrest to execution. The operating theme is to describe only the unique way that death penalty cases are handled and not to go through all of the procedures of all criminal cases (over 99% of which are not death cases). Finally, Part Five collects several special death penalty issues for isolated consideration. These include the pivotal role of the capital defense attorney, the integral problems of bias in the system, and the specter of mistakenly executing the innocent. The final chapter explores foreign and international law in an effort to place the American death penalty system into a global context.

Every story gets a spin from the storyteller, so you should know about my background and perspective. I have taught criminal law topics since 1971 and capital punishment courses since 1987. I research and write about death penalty issues, particularly the death penalty for juveniles and for women. In addition to this work as a law professor, I serve as defense counsel for death row prisoners before courts all over the country. Having tried

## PREFACE

mightily (and undoubtedly failed) to present neutral and evenhanded descriptions, I suspect that my views unavoidably come through.

Every attempt has been made to keep the language in this text informal, but undoubtedly a good deal of “legaleze” has crept into it. One convention that should be pointed out is the fairly consistent use of the male pronoun when referring to a defendant in a death penalty case or a death row prisoner. It seemed to the author that this convention was most appropriate, given that around 99% of those persons are male. When other individuals within the death penalty system are referred to, the typical “he or she” terminology is used.

Finally, many thanks are in order to many people. The Ohio Northern University College of Law has been generous in providing me time, space, funding and encouragement in this effort. My family has, as always, allowed me to slave away at the office, doing what I seemingly must do, instead of going on vacations and family outings like normal people. Far more important than their tolerance is their daily encouragement and support for my work, without which you would not be reading these words.

V.S.

Greensboro, NC  
July 2012



# TABLE OF CASES

References are to Pages

---

## A

- Abdul-Kabir v. Quarterman, 550 U.S. 233, 127 S.Ct. 1654, 167 L.Ed.2d 585 (2007), 80
- Adams v. Texas, 448 U.S. 38, 100 S.Ct. 2521, 65 L.Ed.2d 581 (1980), 137
- Alabama v. Shelton, 535 U.S. 654, 122 S.Ct. 1764, 152 L.Ed.2d 888 (2002), 241, 249
- Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), 189
- Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000), 77
- Arave v. Creech, 507 U.S. 463, 113 S.Ct. 1534, 123 L.Ed.2d 188 (1993), 76
- Arave v. Hoffman, 552 U.S. 117, 128 S.Ct. 749, 169 L.Ed.2d 580 (2008), 121
- Arizona v. Fulminante, 499 U.S. 279, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991), 197
- Atkins v. Virginia, 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002), 55, 105, 194, 210, 282, 294
- Ayers v. Belmontes, 549 U.S. 7, 127 S.Ct. 469, 166 L.Ed.2d 334 (2006), 81

## B

- Bagley, United States v., 473 U.S. 667, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985), 153
- Barbour v. Allen, 551 U.S. 1134, 127 S.Ct. 2996, 168 L.Ed.2d 707 (2007), 188

## TABLE OF CASES

- Barclay v. Florida, 463 U.S. 939, 103 S.Ct. 3418, 77 L.Ed.2d 1134 (1983), 198
- Barefoot v. Estelle, 463 U.S. 880, 103 S.Ct. 3383, 77 L.Ed.2d 1090 (1983), 191
- Barron v. Baltimore, 32 U.S. 243, 8 L.Ed. 672 (1833), 30
- Baze v. Rees, 553 U.S. 35, 128 S.Ct. 1520, 170 L.Ed.2d 420 (2008), 225
- Bell v. Cone, 535 U.S. 685, 122 S.Ct. 1843, 152 L.Ed.2d 914 (2002), 237
- Betts v. Brady, 316 U.S. 455, 62 S.Ct. 1252, 86 L.Ed. 1595 (1942), 233
- Booth v. Maryland, 482 U.S. 496, 107 S.Ct. 2529, 96 L.Ed.2d 440 (1987), 167
- Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), 153
- Brady v. United States, 397 U.S. 742, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970), 120
- Breard v. Greene, 523 U.S. 371, 118 S.Ct. 1352, 140 L.Ed.2d 529 (1998), 289
- Brennan v. State, 754 So.2d 1 (Fla.1999), 102, 187
- Brewer v. Quarterman, 550 U.S. 286, 127 S.Ct. 1706, 167 L.Ed.2d 622 (2007), 80
- Brown v. Sanders, 546 U.S. 212, 126 S.Ct. 884, 163 L.Ed.2d 723 (2006), 200
- Burdine v. Johnson, 262 F.3d 336 (5th Cir.2001), 240

## C

- Cabana v. Bullock, 474 U.S. 376, 106 S.Ct. 689, 88 L.Ed.2d 704 (1986), 198
- Callins v. Collins, 510 U.S. 1141, 114 S.Ct. 1127, 127 L.Ed.2d 435 (1994), 41
- Campbell v. Wood, 18 F.3d 662 (9th Cir.1994), 224
- Chapman v. California, 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967), 197
- Clemons v. Mississippi, 494 U.S. 738, 110 S.Ct. 1441, 108 L.Ed.2d 725 (1990), 199
- Cockrell v. Burdine, 535 U.S. 1120, 122 S.Ct. 2347, 153 L.Ed.2d 174 (2002), 240
- Coker v. Georgia, 433 U.S. 584, 97 S.Ct. 2861, 53 L.Ed.2d 982 (1977), 32, 54, 67, 293

TABLE OF CASES

**Commonwealth v. \_\_\_\_\_ (see opposing party)**

Cronic, *United States v.*, 466 U.S. 648, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984), 236

**D**

Darden v. Wainwright, 477 U.S. 168, 106 S.Ct. 2464, 91 L.Ed.2d 144 (1986), 156

Domingues v. State, 114 Nev. 783, 961 P.2d 1279 (Nev.1998), 292

Douglas v. California, 372 U.S. 353, 83 S.Ct. 814, 9 L.Ed.2d 811 (1963), 188, 234

Duncan v. State of Louisiana, 391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968), 31

Dusky v. United States, 362 U.S. 402, 80 S.Ct. 788, 4 L.Ed.2d 824 (1960), 108

**E**

Eddings v. Oklahoma, 455 U.S. 104, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982), 79, 89, 90, 101, 174

Enmund v. Florida, 458 U.S. 782, 102 S.Ct. 3368, 73 L.Ed.2d 1140 (1982), 99, 198

**F**

Federal Republic of Germany v. United States, 526 U.S. 111, 119 S.Ct. 1016, 143 L.Ed.2d 192 (1999), 289

Fierro v. Gomez, 77 F.3d 301 (9th Cir.1996), 224

Ford v. Wainwright, 477 U.S. 399, 106 S.Ct. 2595, 91 L.Ed.2d 335 (1986), 109, 219

Furman v. Georgia, 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972), 7, 31, 32, 38, 66, 76, 136, 180, 253

**G**

Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963), 31, 233, 241

Gilmore v. Utah, 429 U.S. 1012, 97 S.Ct. 436, 50 L.Ed.2d 632 (1976), 188

## TABLE OF CASES

- Godfrey v. Georgia, 446 U.S. 420, 100 S.Ct. 1759, 64 L.Ed.2d 398 (1980), 75
- Gray v. Lucas, 710 F.2d 1048 (5th Cir.1983), 224
- Gray v. Mississippi, 481 U.S. 648, 107 S.Ct. 2045, 95 L.Ed.2d 622 (1987), 138
- Gregg v. Georgia, 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976), 6, 11, 44, 50, 73, 82, 136, 165, 173, 187
- Griffin v. Illinois, 351 U.S. 12, 76 S.Ct. 585, 100 L.Ed. 891 (1956), 188

## H

- Heckler v. Chaney, 470 U.S. 821, 105 S.Ct. 1649, 84 L.Ed.2d 714 (1985), 224
- Herrera v. Collins, 506 U.S. 390, 113 S.Ct. 853, 122 L.Ed.2d 203 (1993), 127, 205, 206, 216, 263
- Holmes v. South Carolina, 547 U.S. 319, 126 S.Ct. 1727, 164 L.Ed.2d 503 (2006), 158
- House v. Bell, 547 U.S. 518, 126 S.Ct. 2064, 165 L.Ed.2d 1 (2006), 128, 205, 207
- Hunt v. Nuth, 57 F.3d 1327 (4th Cir.1995), 224

## I

**In re (see name of party)**

## J

- Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), 208
- Javor v. United States, 724 F.2d 831 (9th Cir.1984), 239
- Johnson v. Zerbst, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938), 233
- Jurek v. Texas, 428 U.S. 262, 96 S.Ct. 2950, 49 L.Ed.2d 929 (1976), 48

## K

- Kansas v. Marsh, 548 U.S. 163, 126 S.Ct. 2516, 165 L.Ed.2d 429 (2006), 263

TABLE OF CASES

- Kelly v. South Carolina, 534 U.S. 246, 122 S.Ct. 726, 151 L.Ed.2d 670 (2002), 179
- Kemmler, In re, 136 U.S. 436, 10 S.Ct. 930, 34 L.Ed. 519 (1890), 34, 223
- Kennedy v. Louisiana, 554 U.S. 407, 128 S.Ct. 2641, 171 L.Ed.2d 525 (2008), 33, 55, 68, 194
- Kimmelman v. Morrison, 477 U.S. 365, 106 S.Ct. 2574, 91 L.Ed.2d 305 (1986), 208

L

- Lockett v. Ohio, 438 U.S. 586, 98 S.Ct. 2954, 57 L.Ed.2d 973 (1978), 54, 80, 90
- Lockhart v. McCree, 476 U.S. 162, 106 S.Ct. 1758, 90 L.Ed.2d 137 (1986), 138
- Lowenfield v. Phelps, 484 U.S. 231, 108 S.Ct. 546, 98 L.Ed.2d 568 (1988), 53

M

- Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961), 31
- Maynard v. Cartwright, 486 U.S. 356, 108 S.Ct. 1853, 100 L.Ed.2d 372 (1988), 76
- McCleskey v. Kemp, 481 U.S. 279, 107 S.Ct. 1756, 95 L.Ed.2d 262 (1987), 254, 259, 288
- McGautha v. California, 402 U.S. 183, 91 S.Ct. 1454, 28 L.Ed.2d 711 (1971), 37, 50
- Medellin v. Texas, 552 U.S. 491, 128 S.Ct. 1346, 170 L.Ed.2d 190 (2008), 291
- Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), 31
- M'Naghten's Case, 8 Eng.Rep. 718 (H.L.1843), 108
- Morgan v. Illinois, 504 U.S. 719, 112 S.Ct. 2222, 119 L.Ed.2d 492 (1992), 139
- Murray v. Giarratano, 492 U.S. 1, 109 S.Ct. 2765, 106 L.Ed.2d 1 (1989), 188, 202, 234

TABLE OF CASES

O

- Ohio Adult Parole Authority v. Woodard, 523 U.S. 272, 118 S.Ct. 1244, 140 L.Ed.2d 387 (1998), 215  
Oregon v. Guzek, 546 U.S. 517, 126 S.Ct. 1226, 163 L.Ed.2d 1112 (2006), 175, 270

P

- Panetti v. Quarterman, 551 U.S. 930, 127 S.Ct. 2842, 168 L.Ed.2d 662 (2007), 109, 220  
Payne v. Tennessee, 501 U.S. 808, 111 S.Ct. 2597, 115 L.Ed.2d 720 (1991), 168  
Penry v. Lynaugh, 492 U.S. 302, 109 S.Ct. 2934, 106 L.Ed.2d 256 (1989), 104  
Perry, State v., 610 So.2d 746 (La.1992), 110, 221  
Powell v. Alabama, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158 (1932), 35, 232  
Proffitt v. Florida, 428 U.S. 242, 96 S.Ct. 2960, 49 L.Ed.2d 913 (1976), 48, 50  
Pulley v. Harris, 465 U.S. 37, 104 S.Ct. 871, 79 L.Ed.2d 29 (1984), 52, 269

R

- Ring v. Arizona, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002), 74, 77, 132, 142, 182, 196  
Roberts v. Louisiana, 428 U.S. 325, 96 S.Ct. 3001, 49 L.Ed.2d 974 (1976), 50, 66, 73  
Robinson v. California, 370 U.S. 660, 82 S.Ct. 1417, 8 L.Ed.2d 758 (1962), 31  
Roper v. Simmons, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005), 25, 33, 55, 89, 101, 103, 187, 194, 210, 284, 287, 294  
Roper v. Weaver, 550 U.S. 598, 127 S.Ct. 2022, 167 L.Ed.2d 966 (2007), 170  
Rose v. Mitchell, 443 U.S. 545, 99 S.Ct. 2993, 61 L.Ed.2d 739 (1979), 209  
Ross v. Moffitt, 417 U.S. 600, 94 S.Ct. 2437, 41 L.Ed.2d 341 (1974), 188, 234  
Rudolph v. Alabama, 375 U.S. 889, 84 S.Ct. 155, 11 L.Ed.2d 119 (1963), 36

TABLE OF CASES

S

- Saffle v. Parks, 494 U.S. 484, 110 S.Ct. 1257, 108 L.Ed.2d 415 (1990), 210
- Sam, Commonwealth v., 597 Pa. 523, 952 A.2d 565 (Pa.2008), 110
- Sawyer v. Smith, 497 U.S. 227, 110 S.Ct. 2822, 111 L.Ed.2d 193 (1990), 210
- Schriro v. Landrigan, 550 U.S. 465, 127 S.Ct. 1933, 167 L.Ed.2d 836 (2007), 239
- Shafer v. South Carolina, 532 U.S. 36, 121 S.Ct. 1263, 149 L.Ed.2d 178 (2001), 179
- Simmons v. South Carolina, 512 U.S. 154, 114 S.Ct. 2187, 129 L.Ed.2d 133 (1994), 178
- Skipper v. South Carolina, 476 U.S. 1, 106 S.Ct. 1669, 90 L.Ed.2d 1 (1986), 179
- Snyder v. Louisiana, 552 U.S. 472, 128 S.Ct. 1203, 170 L.Ed.2d 175 (2008), 144
- South Carolina v. Gathers, 490 U.S. 805, 109 S.Ct. 2207, 104 L.Ed.2d 876 (1989), 168
- Stanford v. Kentucky, 492 U.S. 361, 109 S.Ct. 2969, 106 L.Ed.2d 306 (1989), 32, 102, 187, 293
- State v. \_\_\_\_\_ (see opposing party)**
- Stone v. Powell, 428 U.S. 465, 96 S.Ct. 3037, 49 L.Ed.2d 1067 (1976), 208
- Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), 193, 235, 245, 249
- Sumner v. Shuman, 483 U.S. 66, 107 S.Ct. 2716, 97 L.Ed.2d 56 (1987), 51

T

- Teague v. Lane, 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989), 209, 211
- Thompson v. Oklahoma, 487 U.S. 815, 108 S.Ct. 2687, 101 L.Ed.2d 702 (1988), 101, 187, 283, 293
- Tippins v. Walker, 77 F.3d 682 (2nd Cir.1996), 239
- Tison v. Arizona, 481 U.S. 137, 107 S.Ct. 1676, 95 L.Ed.2d 127 (1987), 100
- Townsend v. Sain, 372 U.S. 293, 83 S.Ct. 745, 9 L.Ed.2d 770 (1963), 203

TABLE OF CASES

- Trop v. Dulles, 356 U.S. 86, 78 S.Ct. 590, 2 L.Ed.2d 630 (1958),  
32, 134, 293  
Turner v. Murray, 476 U.S. 28, 106 S.Ct. 1683, 90 L.Ed.2d 27  
(1986), 143, 254

U

**United States v. \_\_\_\_\_ (see opposing party)**

- Uttecht v. Brown, 551 U.S. 1, 127 S.Ct. 2218, 167 L.Ed.2d 1014  
(2007), 137, 138

W

- Weems v. United States, 217 U.S. 349, 30 S.Ct. 544, 54 L.Ed. 793  
(1910), 32  
Wiggins v. Smith, 539 U.S. 510, 123 S.Ct. 2527, 156 L.Ed.2d 471  
(2003), 238  
Wilkerson v. Utah, 99 U.S. 130, 9 Otto 130, 25 L.Ed. 345 (1878),  
223  
Wilson, United States v., 32 U.S. 150, 8 L.Ed. 640 (1833), 215  
Winship, In re, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368  
(1970), 152, 158  
Witherspoon v. Illinois, 391 U.S. 510, 88 S.Ct. 1770, 20 L.Ed.2d  
776 (1968), 135  
Withrow v. Williams, 507 U.S. 680, 113 S.Ct. 1745, 123 L.Ed.2d  
407 (1993), 208  
Woodson v. North Carolina, 428 U.S. 280, 96 S.Ct. 2978, 49  
L.Ed.2d 944 (1976), 50, 66, 73

Z

- Zant v. Stephens, 462 U.S. 862, 103 S.Ct. 2733, 77 L.Ed.2d 235  
(1983), 75



# OUTLINE

---

	Page
PREFACE .....	V
TABLE OF CASES .....	XV
<b>PART I. BACKGROUND AND CONTEXT</b>	
<b>Chapter 1. History and Evolution</b> .....	1
§ 1.1 Pre-American Period .....	1
§ 1.2 Colonial Period to 1970s .....	4
§ 1.3 Current Death Penalty Era .....	6
<b>Chapter 2. Arguments for and Against the Death Penalty</b> .....	9
§ 2.1 Retribution and Symbolism .....	10
§ 2.2 Incapacitation and Deterrence .....	14
§ 2.3 Bias, Caprice, and Error .....	17
§ 2.4 Other Concerns .....	22
<b>Chapter 3. Basic Constitutional Chal- lenges and Limitations</b> .....	27
§ 3.1 Critical Provisions of the United States Constitution .....	27
§ 3.2 Pre-1970s Supreme Court Rulings .....	34
§ 3.3 Early 1970s: An End to the Old Way ...	37