

Table of Contents

CHAPTER 1. THE CLOCK

I. PRELIMINARY HEARING

§ 1:1 Definition

II. TIME WAIVERS

§ 1:2 Penal Code § 859b

§ 1:3 Defendant's agreement to waive time

§ 1:4 General time waivers

§ 1:5 Limited time waivers

§ 1:6 Once taken, time waivers are irrevocable

§ 1:7 Penal Code § 1368 and competency

§ 1:8 Absent § 859b violation, no dismissal within 60-day period

§ 1:9 If defendant enters general time waiver, court has limited options to dismiss

§ 1:10 Defendant must personally waive time

§ 1:11 Penal Code § 977(b) waiver and Penal Code § 859b's personal waiver requirement

§ 1:12 Time waiver scripts

§ 1:13 Preliminary hearing waiver script and form

III. CONTINUOUS PRELIMINARY HEARING

§ 1:14 One session rule

§ 1:15 Violation of the rule

§ 1:16 No violation of the rule

IV. AMENDING THE COMPLAINT, BENCH WARRANT PICK UPS, AND THE CLOCK

§ 1:17 Amending the complaint may reset the clock

§ 1:18 Only substantive amendments "trigger" a new clock

§ 1:19 Does a substantive amendment give the People the right to a new clock?

§ 1:20 Bench warrant pick ups after a defendant was initially arraigned

V. CONTINUANCES

§ 1:21 Motions to continue and the 10/60-day rules

- § 1:22 The 10-day rule
- § 1:23 —Operative statutes—Penal Code § 1050
- § 1:24 ——Penal Code § 859b (second and third paragraphs)
- § 1:25 —Continuances within the 10-day period
- § 1:26 —Defendants out of custody
- § 1:27 —Defendants in custody
- § 1:28 —People’s motion to continue for good cause
- § 1:29 —Defense’s motion to continue over the defendant’s objection
- § 1:30 The 60-day rule

VI. MOTIONS TO DISMISS FOR VIOLATIONS OF 10/60-DAY RULES

- § 1:31 Three categories of motions
- § 1:32 The 10-day rule
- § 1:33 Motion to dismiss for violation of 10-day rule—Custody status
- § 1:34 —Solely on this complaint
- § 1:35 —No good cause: Dismiss or release OR (two schools of thought)
- § 1:36 —Good cause: OR release (the OR rule)
- § 1:37 —Good cause: OR release (the OR rule): The *In re Samano* Exception
- § 1:38 —Good cause: OR release (the OR rule): The 10th day miss-out problem
- § 1:39 —Good cause: OR release (the OR rule) and the quarantine problem
- § 1:40 —Good cause: No dismissal for violation of the OR rule
- § 1:41 The 60-day rule
- § 1:42 Motion to dismiss for violation of 60-day rule—No good cause exception to 60-day rule
- § 1:43 —In or out of custody
- § 1:44 —Counting the 60-Day clock
- § 1:45 —Tolled in limited circumstances
- § 1:46 —The 60 day predicament
- § 1:47 Limited time waiver rule
- § 1:48 Motions to dismiss for violation of limited time waiver

Appendix 1A. Penal Code § 859b

Appendix 1B. Penal Code §§ 977(b) and 977(c) Waiver Forms

Appendix 1C. Time Waiver Scripts (Penal Code § 859b)

Appendix 1D. Preliminary Hearing Waiver Script and Form

TABLE OF CONTENTS

- Appendix 1E. Continuous Hearing Waiver Script
- Appendix 1F. The Clock—Judge Gustavo Sztraicher’s Bench Card
- Appendix 1G. Admonition if Defendant Refuses to Appear in Court

CHAPTER 2. HEARINGS AND COURTROOM ISSUES

- § 2:1 Defendant’s presence at preliminary hearing
- § 2:2 Right to conflict free counsel
- § 2:3 Handcuffing
- § 2:4 Code of Civil Procedure Section 170.6—Timeliness
- § 2:5 Preliminary hearing script
- § 2:6 Statement of constitutional rights
- § 2:7 Oaths
- § 2:8 Confrontation rights—Prop 115
- § 2:9 —Masks and COVID
- § 2:10 Remote and/or non-face-to-face cross-examination likely permissible
- § 2:11 Remote appearance of Defendant (Penal Code § 977(b), (c))
- § 2:12 Remote appearance of witnesses (Penal Code § 977.3)
- § 2:13 Demurrer (Penal Code § 1003)
- § 2:14 Amending complaint/consolidation/joinder/severance
- § 2:15 Preliminary hearings—Not for discovery
- § 2:16 Preliminary hearing waiver—No adding new charges (Penal Code § 1009)
- § 2:17 Bar on successive prosecution (Penal Code § 654 and *Kellett*)
- § 2:18 Magistrate—Scope of authority
- § 2:19 Short breaks without continuous hearing waiver
- § 2:20 Witness’s invocation of the Fifth Amendment on cross examination
- § 2:21 Witness’s invocation of the Fifth Amendment by and through counsel
- § 2:22 Defendants on bond should be ordered back for all appearances
- § 2:23 Bench warrants—Actual notice not required
- § 2:24 Expanding scope of preliminary hearing for uncharged offenses (Penal Code § 739)
- § 2:25 Criminal protective orders (Penal Code § 136.2)
- § 2:26 —Prejudgment protective order
- § 2:27 —Post judgment protective order during probationary period

PRELIMINARY HEARING HANDBOOK

- § 2:28 —Post judgment protective order for up to 10 years regardless if defendant on probation or sentenced to state prison or county jail
- § 2:29 Exclusion of witnesses
- § 2:30 Special concerns involving self-represented litigants
- § 2:31 Separate interpreters required for co-defendants
- § 2:32 Unruly defendant
- § 2:33 Unruly/intimidating spectator
- § 2:34 Minor/child witnesses
- § 2:35 Moral Support Person (MSP)
- § 2:36 Moral support dog
- § 2:37 Recording the proceedings
- § 2:38 Transcripts required for audio recordings (Cal. Rules of Court, rule 2.1040(b)(2) or (b)(3))
- § 2:39 Calendaring motions
- § 2:40 Ex parte applications (Cal. Rules of Court, rule 3.1200)
- § 2:41 Under seal filings
- § 2:42 Expert fees/ancillary costs
- § 2:43 Expert reports (Evid. Code § 730)
- § 2:44 Victim's prior sexual conduct (Evidence Code § 782)
- § 2:45 Reviewing police reports (Penal Code § 1204.5)
- § 2:46 Bench officer who arraigned defendant and considered bail not disqualified
- § 2:47 Any preliminary hearing judge can hear motion to quash/traverse a warrant
- § 2:48 Refiling the case and Code of Civil Procedure § 170.6 challenges
- § 2:49 Doubt declared: criminal proceedings suspended but preliminary hearing requested (Penal Code § 1368.1)
- § 2:50 Involuntary medication
- § 2:51 Restoration hearing (Penal Code § 1370(c)(1))
- § 2:52 Guilty plea cannot be joined with plea of not guilty by reason of insanity
- § 2:53 Common Penal Code offenses & corresponding CALCRIM instructions
- § 2:54 Operative preliminary hearing statutes
- Appendix 2A. Attorney Conflict Waiver Script
- Appendix 2B. Preliminary Hearing Script and Discussion
- Appendix 2C. Statement of Constitutional Rights
- Appendix 2D. Oaths
- Appendix 2E. Operative Preliminary Hearing Statutes

CHAPTER 3. EVIDENTIARY ISSUES

I. DISCOVERY

- § 3:1 Discovery: Constitutional, not statutory
- § 3:2 Discovery of prior convictions
- § 3:3 Delayed disclosure of informant/witness information

II. MOTIONS/EVIDENTIARY OBJECTIONS

- § 3:4 Motion to quash/traverse warrant
- § 3:5 Motion to dismiss for lack of venue
- § 3:6 Motion to change venue
- § 3:7 *Harvey-Madden* rule
- § 3:8 *Miranda* motions and motions challenging voluntariness of statements
- § 3:9 Eyewitness identification
- § 3:10 Motion to suppress identification
- § 3:11 —Six-pack photo arrays
- § 3:12 —Multiple six-packs
- § 3:13 —Single person show-up
- § 3:14 Witness's identification based on viewing of photo/video surveillance (the *Mixon* objection)
- § 3:15 Secondary evidence rule—Oral testimony regarding contents of writing/video
- § 3:16 Secretly recorded conversation
- § 3:17 Admission of DNA evidence
- § 3:18 Corpus delicti rule applies in preliminary hearings
- § 3:19 Cross examination re U visa
- § 3:20 Evidence and inferences
- § 3:21 Asking whether other witnesses are lying/credibility
- § 3:22 Speed
- § 3:23 Domestic violence and friends with benefits
- § 3:24 Rap Lyrics (Evidence Code § 352.2)
- § 3:25 Demonstrative evidence
- § 3:26 Motion to quash subpoena for third party records

III. HEARSAY

- § 3:27 Hearsay generally inadmissible
- § 3:28 Prop. 115
- § 3:29 —Experts and Prop. 115
- § 3:30 —Business records and Prop. 115
- § 3:31 —Defense and Prop. 115
- § 3:32 Compilations
- § 3:33 Price Tags Are Nonhearsay

- § 3:34 Injuries
- § 3:35 Witness's statement to doctor
- § 3:36 Translator
- § 3:37 Accomplice/codefendant's statements
- § 3:38 Prior inconsistent statement as substantive evidence
- § 3:39 Prior convictions
- § 3:40 Labels/chain of custody/identification
- § 3:41 Logos used as circumstantial evidence of identity
- § 3:42 Receipts
- § 3:43 Prior identification of defendant
- § 3:44 Check
- § 3:45 Past recollection recorded
- § 3:46 Unavailability exception
- § 3:47 Silence in response to text may not be adoptive admission
- § 3:48 Texting
- § 3:49 Admission of child statements
- § 3:50 Excited utterance (Evidence Code § 1240)
- § 3:51 Fresh complaint
- § 3:52 Impeachment (Evidence Code § 1202)

IV. AUTHENTICATION

- § 3:53 Defined
- § 3:54 Medical records
- § 3:55 Police reports
- § 3:56 Certification of CLETS to prove convictions
- § 3:57 Uncertified, unauthenticated records of conviction not admissible
- § 3:58 Court records/minute orders/official records re convictions
- § 3:59 Prison/jail records re conviction
- § 3:60 Chain of custody
- § 3:61 Request for judicial notice
- § 3:62 Social media evidence

V. EXPERTS

- § 3:63 General standard
- § 3:64 —*Kelly*
- § 3:65 *Kelly*—TruNarc did not meet the *Kelly* test
- § 3:66 General standard—*Sargon*
- § 3:67 Scientific expert testimony and the gatekeeper function
- § 3:68 Lay witness testimony
- § 3:69 Expert need not rely upon admissible evidence
- § 3:70 Hypothetical questions
- § 3:71 Expert opinions

TABLE OF CONTENTS

- § 3:72 —Drugs
- § 3:73 —Bulletproof vest
- § 3:74 —HGN and opinion re: driving under the influence
- § 3:75 —Eyewitness identification
- § 3:76 —Computer animation and expert testimony
- § 3:77 —Crime scene reconstruction
- § 3:78 —Shotspotter evidence
- § 3:79 —Permanent injury in hit and run
- § 3:80 —Stun gun
- § 3:81 —DNA
- § 3:82 —Suggestibility and susceptibility re false confession
- § 3:83 —Tool mark analysis
- § 3:84 —Child Sexual Assault Accommodation Syndrome
- § 3:85 —Mold and causation
- § 3:86 —Matching a cartridge case to the gun
- § 3:87 *Sanchez*, case-specific hearsay, and preliminary hearings
- § 3:88 —Expert’s use of reference materials was background information, not case-specific hearsay
- § 3:89 —Information in autopsy report was case-specific hearsay
- § 3:90 —Expert’s testimony regarding supervisor’s approval was case-specific hearsay
- § 3:91 —Expert’s testimony regarding size of the real property lot was case-specific hearsay

VI. COMMON PRELIMINARY HEARING EVIDENTIARY ISSUES

- § 3:92 Determining amount of loss/value
- § 3:93 —Business publications and compilations
- § 3:94 —Receipts
- § 3:95 —Vandalism
- § 3:96 —Loss amounts and hearsay
- § 3:97 Stolen cars
- § 3:98 —Post-theft driving
- § 3:99 —Unlawful driving or taking of a vehicle and receiving stolen property

CHAPTER 4. CRIMES

I. MURDER

- § 4:1 Murder defined

II. FIRST DEGREE

- § 4:2 First Degree defined

- § 4:3 Substantial concurrent proximate cause
- § 4:4 Examples
- § 4:5 Felony Murder defined
- § 4:6 Actus reus requirement for felony murder
- § 4:7 Major Participant/Reckless Indifference (1)—Crime spree

III. SECOND DEGREE

- § 4:8 Second Degree defined
- § 4:9 Second Degree Murder—Elements of Implied Malice Murder by Perpetrator
- § 4:10 Second Degree Murder—Implied Malice Vehicular Murder (*Watson* Murder)
- § 4:11 Second Degree—Provocation

IV. ATTEMPTED MURDER

- § 4:12 Attempted Murder defined
- § 4:13 Premeditated, Deliberated, and Willful Attempted Murder
- § 4:14 Kill zone
- § 4:15 Multiple counts for shooting into crowd (specific vs. random targets)
- § 4:16 Attempted Murder by pointing a gun

V. AIDING AND ABETTING MURDER

- § 4:17 Aiding and Abetting defined
- § 4:18 Aiding and Abetting—Circumstances to consider
- § 4:19 Aiding and Abetting First Degree Murder
- § 4:20 Aiding and Abetting Second Degree Murder
- § 4:21 Aiding and Abetting Second Degree Implied Malice Murder
- § 4:22 Aiding and Abetting Attempted Murder

VI. MANSLAUGHTER

- § 4:23 Manslaughter defined
- § 4:24 Voluntary Manslaughter
- § 4:25 —Heat of Passion Defense
- § 4:26 —Imperfect Self-Defense
- § 4:27 Involuntary Manslaughter
- § 4:28 Vehicular Manslaughter Gross Negligence
- § 4:29 Vehicular Manslaughter not lesser included offense of Murder
- § 4:30 DUI Causing Bodily Injury not lesser included offense of Gross Vehicular Manslaughter While Intoxicated where different victims are involved

VII. ARSON

- § 4:31 Arson defined

TABLE OF CONTENTS

- § 4:32 Arson of inhabited dwelling
- § 4:33 Burning of trash
- § 4:34 Arson and the manufacture of a controlled substance
- § 4:35 Burning of structure
- § 4:36 Burning on forest land

VIII. EAVESDROPPING

- § 4:37 Eavesdropping/Recording Conversations
- § 4:38 Expectation of privacy and confidential communication

IX. ROBBERY

- § 4:39 Robbery defined
- § 4:40 Robbery by force
- § 4:41 Robbery by fear
- § 4:42 Fear is subjective, not objective
- § 4:43 *Estes* Robbery
- § 4:44 Attempted *Estes* Robbery
- § 4:45 Robbery at ATM
- § 4:46 Aiding and Abetting Robbery
- § 4:47 Abandonment

X. CRIMINAL THREATS AND STALKING

- § 4:48 Criminal Threats defined
- § 4:49 Excludes non-verbal conduct
- § 4:50 Family members
- § 4:51 Threats in a school setting
- § 4:52 Threat in context
- § 4:53 Sustained fear
- § 4:54 Absolutely unconditional threat not required
- § 4:55 One count versus two counts of Criminal Threats
- § 4:56 Attempted Criminal Threats is lesser included offense
- § 4:57 Stalking
- § 4:58 Use of intermediaries is not attempted stalking
- § 4:59 Criminal Threats and Stalking—Not lesser included offenses of one another

XI. DISSUADING A WITNESS

- § 4:60 Dissuading a Witness defined
- § 4:61 Dissuading a Witness applies to completed crimes, not future crimes
- § 4:62 Felony Dissuading does not include threat of self-harm
- § 4:63 Dissuading a Witness From causing a complaint to be sought

§ 4:64 Dissuading by preventing a call to 911

XII. ASSAULT WITH A DEADLY OR DANGEROUS WEAPON

- § 4:65 Assault With a Deadly Weapon defined
- § 4:66 Use of weapon must be capable of and likely to produce death or great bodily injury
- § 4:67 Specific intent not necessary
- § 4:68 Imminence and present ability
- § 4:69 Victim need not be aware of threat
- § 4:70 Assault with Deadly Weapon and Penal Code § 12022(b) enhancement
- § 4:71 Duplicative counts and enhancement
- § 4:72 Lesser included offenses
- § 4:73 Examples of deadly weapons that are not inherently deadly or dangerous
- § 4:74 Not used as deadly or dangerous weapon

XIII. GREAT BODILY INJURY (GBI)

- § 4:75 GBI defined
- § 4:76 Assault By Means of Force Likely to Produce Great Bodily Injury
- § 4:77 GBI must be to person other than accomplice
- § 4:78 GBI and Reckless Driving
- § 4:79 GBI and Furnishing Drugs

XIV. VANDALISM

- § 4:80 Vandalism defined
- § 4:81 Damage/Loss amounts
- § 4:82 Loss amounts and hearsay
- § 4:83 Kelley Blue Book value
- § 4:84 Voluntary intoxication not a defense to Vandalism

XV. KIDNAPPING

- § 4:85 Kidnapping defined
- § 4:86 Incidental movement is not Aggravated Kidnapping
- § 4:87 Capacity to consent
- § 4:88 General act of Kidnapping requires threat or force, not deceit
- § 4:89 General act of Kidnapping to commit Rape

XVI. FELONY CHILD ABUSE

- § 4:90 Felony Child Abuse defined
- § 4:91 Social Worker's nonfeasance does not support charges of Child Abuse

TABLE OF CONTENTS

§ 4:92 Child endangerment

XVII. MAYHEM

§ 4:93 Mayhem defined

§ 4:94 Scarring can establish Mayhem

XVIII. THEFT AND THEFT-RELATED CRIMES

§ 4:95 Theft—Grand Theft and Petty Theft

§ 4:96 Fair Market Value

§ 4:97 Theft from Elder

§ 4:98 Theft and Receiving Stolen Property

§ 4:99 Single Larceny doctrine (*Bailey Doctrine*)

§ 4:100 Forgery

§ 4:101 Identity Theft

§ 4:102 —Defendant does not need to know if the victim
is a real person

§ 4:103 Forgery and Identity Theft

§ 4:104 Counterfeiting

§ 4:105 —Possession of Counterfeiting Equipment

§ 4:106 —Possession for Sale of Counterfeit Goods

§ 4:107 —Counterfeit Currency

§ 4:108 Access Card Fraud

§ 4:109 Embezzlement

§ 4:110 Shoplifting—Cashing stolen check

§ 4:111 Charging limitations—Burglary, Theft, and
Shoplifting

§ 4:112 Receiving Stolen Property from two stores where
each theft is less than \$950

§ 4:113 Mail Theft as a misdemeanor

XIX. VEHICLE THEFT

§ 4:114 Vehicle Theft defined

§ 4:115 Vehicle Theft and post theft driving

§ 4:116 Joyriding—Car theft and Prop. 47

§ 4:117 Buying or Receiving Stolen Vehicle

§ 4:118 Definition of vehicle

§ 4:119 VIN Tampering (Vehicle Code § 10802)

XX. BURGLARY

§ 4:120 Burglary defined

§ 4:121 First Degree Burglary—Inhabited dwelling

§ 4:122 —Not inhabited dwelling

§ 4:123 —Person Present

§ 4:124 —Incidental use of utilities/consumption of items
and specific intent

- § 4:125 Second Degree Commercial Burglary—Value over \$950
- § 4:126 Burglary or Shoplifting from a commercial establishment
- § 4:127 Burglary or Shoplifting of an interior room
- § 4:128 Burglary or Shoplifting involving ATM
- § 4:129 Attempted Burglary
- § 4:130 Penetration of outer boundary
- § 4:131 Vehicle Burglary
- § 4:132 Burglary Tools
- § 4:133 —Intent
- § 4:134 —Possession

XXI. LAW ENFORCEMENT AND CUSTODY-RELATED OFFENSES

- § 4:135 Obstructing or Resisting Officer by Threat or Violence defined
- § 4:136 First Amendment defense to Penal Code § 69
- § 4:137 Resisting, Delaying, or Obstructing Officer
- § 4:138 Lesser included offenses
- § 4:139 Battery on Peace Officer—Incidental touching
- § 4:140 Evasion
- § 4:141 Battery by Gassing
- § 4:142 Defendant’s mental states for law enforcement related crimes
- § 4:143 Assault by Public Officer
- § 4:144 Officer Filing a False Report
- § 4:145 Bringing Contraband into Jail
- § 4:146 Possession of small amounts of cannabis in prison is still a felony
- § 4:147 Usable amount of methamphetamine paper in prison
- § 4:148 Conviction for Penal Code § 4573 requires usable amount
- § 4:149 Conspiracy to deliver cell phone in prison
- § 4:150 Conspiracy to bring contraband into jail
- § 4:151 Computer Fraud or Abuse (Penal Code § 502)

XXII. DRIVING UNDER THE INFLUENCE

- § 4:152 Driving Under the Influence defined
- § 4:153 Title 17 Compliance
- § 4:154 DUI and blood draw
- § 4:155 DUI, FSTs and the Fifth Amendment
- § 4:156 Blood draws and the Fourth Amendment

XXIII. FIREARMS AND WEAPONS

- § 4:157 *Bruen* and California’s firearm statutes

TABLE OF CONTENTS

- § 4:158 Dirk and Dagger
- § 4:159 10/20/25-Life Firearm Enhancement
- § 4:160 Personal Use
- § 4:161 Constructive Possession of Firearm
- § 4:162 Knowledge of size of sawed-off shotgun
- § 4:163 Possession of Machine Gun is a strict liability offense
- § 4:164 Possession of Concealed Firearm
- § 4:165 Possession of Firearm vs. Armed with Firearm
- § 4:166 Possession of Controlled Substance While Armed with Loaded Firearm
- § 4:167 Discharging a Firearm From a Vehicle

XXIV. DRUG CRIMES

- § 4:168 Furnishing Controlled Substance to Minor and Great Bodily Injury
- § 4:169 Possession of Controlled Substance While Armed with Loaded Firearm
- § 4:170 Possession of small amounts of cannabis in prison is still a felony
- § 4:171 Usable amount of methamphetamine paper in prison
- § 4:172 Conviction for Penal Code § 4573 requires usable amount

XXV. FINANCIAL WHITE COLLAR CRIMES

- § 4:173 Money Laundering
- § 4:174 Bribery

XXVI. SEX CRIMES

- § 4:175 Sexual Communications with Minor
- § 4:176 Meeting Minor for Lewd Purposes
- § 4:177 Human Trafficking of Minor
- § 4:178 —Substantive Offense
- § 4:179 —Attempt
- § 4:180 Human Trafficking and consent
- § 4:181 Human Trafficking and hearsay
- § 4:182 Aiding and Abetting Human Trafficking and Pimping
- § 4:183 Pandering
- § 4:184 Forcible Acts of Sexual Penetration
- § 4:185 Sexual Battery by Restraint
- § 4:186 Sexual Battery by Fraud
- § 4:187 Rape by an Intoxicating Substance and Kidnapping to Commit Rape
- § 4:188 Sodomy and Oral Copulation by Duress
- § 4:189 Child Pornography

§ 4:190 *Mayberry* Defense—Did the victim consent?

**XXVII. THEORIES OF LIABILITY, DEFENSES,
AND CHALLENGES TO
PROSECUTION’S CASE**

- § 4:191 Prosecution theories of liability
 - § 4:192 —Attempt
 - § 4:193 —Attempt vs. Preparation (First Degree Robbery)
 - § 4:194 —Aiding and Abetting
 - § 4:195 —Natural and Probable Consequences and Aiding and Abetting
 - § 4:196 —Conspiracy
 - § 4:197 —Conspiracy to Murder
 - § 4:198 —Distinction between Conspiracy and Aiding and Abetting
 - § 4:199 —Accessory After the Fact
 - § 4:200 Defenses and challenges to Prosecution’s case
 - § 4:201 —*Williamson* Rule: More specific statute controls
 - § 4:202 —Corpus Delicti Rule
 - § 4:203 —Corpus Delicti Rule and Conspiracy
 - § 4:204 —Self-Defense: Proof at preliminary hearing
 - § 4:205 —Self-Defense: Defendant’s physical limitations can be considered in determining objective reasonableness of self-defense
 - § 4:206 —Heat of Passion/Provocation
 - § 4:207 —Self-Defense/Heat of Passion defense and gang evidence
 - § 4:208 —Imperfect Self-Defense
 - § 4:209 —Robbery and Self-Defense
 - § 4:210 —Assault and Self-Defense
 - § 4:211 —Self-Defense unavailable where defendant is instigator
 - § 4:212 —Unconsciousness
 - § 4:213 —Mistake of Fact
 - § 4:214 —Displays of deadly force cannot be used to defend property
 - § 4:215 —Voluntary Intoxication and Second Degree Murder
 - § 4:216 —First Amendment defense to Penal Code § 69 where statement is not a true threat
 - § 4:217 —Violent Victim Rule
 - § 4:218 —Home Protection Bill of Rights Presumption (Castle Doctrine)
 - § 4:219 —Intervening cause
- Appendix 4A. Common Penal Code Offenses and Corresponding CALCRIM Instructions

TABLE OF CONTENTS

**CHAPTER 5. STREET TERRORISM
(GANG CRIMES)**

I. INTRODUCTION

§ 5:1 The Legislation

II. ELEMENTS OF CRIMINAL STREET GANG

§ 5:2 Difficult statutory language

§ 5:3 Elements of a criminal street gang

§ 5:4 —“organized”

§ 5:5 —Common name or common identifying sign or symbol

§ 5:6 —Primary activities

§ 5:7 —Pattern of criminal gang activity

§ 5:8 —*Prunty*, gang subsets and the sameness requirement

III. PENAL CODE § 186.22(A): ACTIVE PARTICIPATION IN A CRIMINAL STREET GANG

§ 5:9 Penal Code § 186.22(a)—Substantive offense

§ 5:10 —Active participation

§ 5:11 —Willfully assisted, furthered or promoted

§ 5:12 —Felonious criminal conduct

§ 5:13 —Sentencing

IV. PENAL CODE § 186.22(B): FELONY COMMITTED FOR BENEFIT OF CRIMINAL STREET GANG

§ 5:14 Penal Code § 186.22(b)—Proving the enhancement

§ 5:15 —Benefit, direction, association

§ 5:16 —Underlying felony must be gang-related

§ 5:17 —Specific intent to promote, further, or assist

§ 5:18 —Insufficient evidence crime was committed for benefit of, at the direction of, or in association with a criminal street gang

§ 5:19 —Crime was committed for benefit of, at the direction of, or in association with a criminal street gang

§ 5:20 —Sentencing and alternate penalties

V. PENAL CODE § 186.22(D): ALTERNATE PENALTY—ELEVATING A MISDEMEANOR TO A WOBLER

§ 5:21 Penal Code § 186.22(d)—Alternate penalty

- § 5:22 —Sentencing
- § 5:23 Penal Code § 186.22(d) Sentencing—Interaction with the Three Strikes Law (Penal Code §§ 667(a)-(i), 1170.12(a)-(d))

VI. PENAL CODE § 182.5: GANG CONSPIRACY CRIMES

- § 5:24 Attempted first degree robbery
- § 5:25 Not unconstitutionally vague

VII. GANG EXPERTS

- § 5:26 Insufficient evidence to support expert’s opinions
- § 5:27 Gang experts
- § 5:28 Gang expert’s testimony unhelpful to the jury, but not prejudicial
- § 5:29 Gang experts—*Sanchez* bars introduction of case-specific testimonial hearsay by expert witness
- § 5:30 —*Sanchez* applies at preliminary hearing
- § 5:31 —Unclear whether expert witness, who is qualified Prop. 115 officer, can relate case specific hearsay
- § 5:32 —Pattern of criminal gang activity—Primary activities are background information and not case specific facts
- § 5:33 — —Predicates are case specific hearsay
- § 5:34 —Field identification cards involving defendant may be case-specific hearsay

Appendix 5A. Penal Code § 186.22

Appendix 5B. The Predicate Offenses (Penal Code § 186.22(e)(1)(A)-(Z)) (by offense section number)

CHAPTER 6. HOLD TO ANSWER

I. HOLD TO ANSWER (HTA)

- § 6:1 “Sufficient cause”
- § 6:2 Degree of murder
- § 6:3 Attempted willful, deliberate, and premeditated murder
- § 6:4 Special circumstances
- § 6:5 Pleading and proof—Enhancements
- § 6:6 —Special circumstance allegation
- § 6:7 —Priors that are elements of the offense or used to elevate a misdemeanor to a felony
- § 6:8 —Priors, strikes, and bail
- § 6:9 —Aggravating factors

TABLE OF CONTENTS

- § 6:10 Misdemeanors
- § 6:11 Setting date in arraignment court
- § 6:12 Exhibits—Introduction and retention
- § 6:13 People unable to proceed
- § 6:14 Penal Code § 1385 dismissal and consideration of arguments
- § 6:15 Penal Code § 1385 dismissal—Enhancements
- § 6:16 Proceeding on existing complaint in lieu of dismissal
- § 6:17 Holding order and jurisdiction
- § 6:18 Not held to answer and release
- § 6:19 Court cannot add a charge on its own
- § 6:20 Once preliminary hearing waiver taken, the People cannot add new charges
- § 6:21 Transcript
- § 6:22 Use of the prelim transcript at the trial

II. PENAL CODE § 17(B)

- § 6:23 The statute
- § 6:24 What type of cases can be reduced
- § 6:25 When Penal Code § 17(b) motion can be heard
- § 6:26 Ruling must be made before HTA
- § 6:27 Factors to consider
- § 6:28 Penal Code § 17(b) indicated sentence
- § 6:29 Penal Code § 17(b) and the timely trial clock
- § 6:30 Court reducing felony to misdemeanor—timing and appealability

III. THE INFORMATION AND REVIEW OF THE MAGISTRATE’S DECISION

- § 6:31 Petition for writ of mandate in superior court
- § 6:32 Adding charges to the information
- § 6:33 Standard of review in superior court
- § 6:34 Dismissed charges and the People’s options
- § 6:35 Findings of fact or conclusions of law
- § 6:36 Penal Code § 995 motion
- § 6:37 —Timing
- § 6:38 —After the hearing
- § 6:39 —The People’s dilemma—proceed or dismiss and refile
- § 6:40 —Remanding to correct minor errors (Penal Code § 995(a))
- § 6:41 —People’s appeal (Penal Code § 871.5)
- § 6:42 —Standard of review in appellate court

IV. TWO DISMISSAL RULE

- § 6:43 Generally

§ 6:44 Exceptions to two dismissal rule

Appendix 6A. After the Hearing: The Procedural Options

CHAPTER 7. PLEAS

I. FELONY PLEA SCRIPT

- § 7:1 Change of plea/maximum sentence/terms of disposition
- § 7:2 True name and date of birth
- § 7:3 Consequences of plea
- § 7:4 Other possible consequences depending on charges
- § 7:5 Waiver of constitutional rights
- § 7:6 Voluntariness inquiry
- § 7:7 Factual basis
- § 7:8 —*West* plea
- § 7:9 Court's approval of plea (Penal Code § 1192.5)
- § 7:10 Take the plea
- § 7:11 Findings
- § 7:12 Firearm advisement and orders—PPRF Report (Penal Code § 29810)
- § 7:13 Sentencing
- § 7:14 —Immediate sentencing
- § 7:15 — —Firearms compliance hearing waiver
- § 7:16 — —Impose sentence and conditions
- § 7:17 —Continuing the sentencing date
- § 7:18 — —Time waiver
- § 7:19 — —*Arbuckle* (same judge)
- § 7:20 — —*Cruz* waiver (out of custody, ordered back)
- § 7:21 — —Remand
- § 7:22 — —Impose sentence and conditions
- § 7:23 Alternative felony plea script

II. MISDEMEANOR PLEA SCRIPT WITHOUT *TAHL* WAIVER FORM

- § 7:24 Arraignment on amended complaint
- § 7:25 Change of plea/maximum sentence/terms of disposition
- § 7:26 Consequences of plea
- § 7:27 Other possible consequences depending on the charges
- § 7:28 Waiver of constitutional rights
- § 7:29 Voluntariness inquiry
- § 7:30 Counsel
- § 7:31 *West* plea
- § 7:32 Take the plea

TABLE OF CONTENTS

- § 7:33 Findings
- § 7:34 Firearm advisement and orders—PPRF Report
(Penal Code § 29810)
- § 7:35 Immediate sentencing
- § 7:36 —Impose sentence and conditions
- § 7:37 Continuing the sentencing date—Time waiver
- § 7:38 —*Arbuckle* (same judge)
- § 7:39 —*Cruz* waiver (out of custody, ordered back)
- § 7:40 —remand
- § 7:41 Sentencing
- § 7:42 —Impose sentence and conditions

III. MISDEMEANOR PLEA SCRIPT WITH COMPLETED *TAHL* WAIVER FORM

- § 7:43 Arraignment on amended complaint
- § 7:44 Change of plea
- § 7:45 Waiver of rights/Voluntariness/Consequences
- § 7:46 *Watson* advisement
- § 7:47 Counsel
- § 7:48 *West* plea
- § 7:49 Take the plea
- § 7:50 Findings
- § 7:51 Sentencing

IV. MISDEMEANOR PENAL CODE § 977(A) CHANGE OF PLEA SCRIPT

- § 7:52 Arraignment on amended complaint
- § 7:53 Change of plea
- § 7:54 Waiver of rights/Voluntariness/Consequences
- § 7:55 Counsel
- § 7:56 Take the plea
- § 7:57 Findings
- § 7:58 Sentencing

V. INDICATED SENTENCE SCRIPT

- § 7:59 By the court

CHAPTER 8. SENTENCING

I. SENTENCING GENERALLY

- § 8:1 Right to be physically present or by remote
appearance
- § 8:2 Sentencing triad
- § 8:3 Sentences for attempt crimes and notable
exceptions

- § 8:4 Aggravating factors
- § 8:5 Penal Code § 654
- § 8:6 Conspiracy and substantive offenses
- § 8:7 Possession of concealed firearm—Alternate ways
of committing the same offense
- § 8:8 Multiple cases, single sentence
- § 8:9 One year/364-day limitation in county jail
- § 8:10 Waiving back time
- § 8:11 Diagnostic study

II. PLEA AGREEMENTS

- § 8:12 Plea agreements generally
- § 8:13 Violation of *Cruz* Waiver
- § 8:14 Motion to withdraw plea based upon ineffective
assistance of counsel
- § 8:15 Withdrawal of plea for misadvised re credit
limitations

III. ENHANCEMENTS

- § 8:16 Enhancements generally
- § 8:17 Crimes committed while on bail
- § 8:18 Dismissal of enhancements (Penal Code § 1385)
- § 8:19 Status enhancements not subject to 1/3 term
limitations
- § 8:20 Pleading and proving vicarious firearm
enhancements
- § 8:21 Striking enhancements or punishment for
enhancements
- § 8:22 Striking or imposing personal use of firearm
enhancements
- § 8:23 Prison priors
- § 8:24 Status priors

IV. STRIKE LAW

- § 8:25 Strikes generally
- § 8:26 Judge versus jury in determining whether prior
conviction is a strike
- § 8:27 Foreign state convictions as priors
- § 8:28 Determining whether prior Penal Code § 245
conviction is serious felony
- § 8:29 Mandatory state prison for prior strike
- § 8:30 Prior strike and custody credits
- § 8:31 Offense reduced to misdemeanor does not qualify
as prior serious felony (strike)
- § 8:32 Serious and violent sentences concurrent
- § 8:33 Striking a strike (*Romero* motion)
- § 8:34 Juvenile adjudication is a strike

TABLE OF CONTENTS

V. CUSTODY CREDITS

- § 8:35 Two days in custody equals four days presentence credits
- § 8:36 Presentence conduct custody credits—serious felonies
- § 8:37 —violent felonies
- § 8:38 Presentence custody credits—Strikes
- § 8:39 Presentence custody credits for electronic monitoring and home detention
- § 8:40 Presentence mental health custody credits
- § 8:41 Calculating Presentence Custody Credits
- § 8:42 Presentence custody credits—Concurrent multiple open cases
- § 8:43 Calculating custody credits upon resentencing

VI. PROBATION

- § 8:44 Suspending imposition of sentence or suspending execution of sentence
- § 8:45 Crimes eligible and ineligible for probation
- § 8:46 One year maximum in county jail as condition of probation
- § 8:47 Maximum probation period of 2 years for felonies and 1 year for misdemeanors
- § 8:48 Multiple counts—One grant of probation
- § 8:49 Term of probation not reduced by presentencing custody
- § 8:50 Maximum probation term with exempt and non-exempt crimes
- § 8:51 AB 1950 applies retroactively
- § 8:52 Probation conditions—*Lent* test
- § 8:53 —When electronic search conditions are allowed
- § 8:54 —When electronic search condition are not allowed
- § 8:55 —Marijuana condition fails *Lent* test
- § 8:56 —Unconsented sexual touching not unconstitutionally vague
- § 8:57 —“Pornographic” is vague and overbroad
- § 8:58 Court cannot add new probation condition(s) absent changed circumstances
- § 8:59 Early termination and reduction of felony to misdemeanor
- § 8:60 Early termination and sex offender counseling
- § 8:61 Termination of DV probation

VII. PROBATION VIOLATIONS—SUMMARY REVOCATION

- § 8:62 Summary revocation generally

- § 8:63 Evidentiary standard at hearing
- § 8:64 Hearsay rule
- § 8:65 Willful violation and deportation
- § 8:66 No violation where event occurs while probation is revoked
- § 8:67 Reinstatement or imposition of new probation term
- § 8:68 AB 1950 and the court's jurisdiction

VIII. PAROLE/POSTRELEASE COMMUNITY SUPERVISION (PRCS)

- § 8:69 State prison parole/PRCS
- § 8:70 Time served and defendant's obligation to report to probation/parole
- § 8:71 Extension of PRCS
- § 8:72 Excess custody credits and PRCS

IX. MANDATORY SUPERVISION

- § 8:73 Not after completion of county jail sentence
- § 8:74 County jail split sentences
- § 8:75 Finality of judgment
- § 8:76 Early termination of mandatory supervision

X. FINES AND FEES

- § 8:77 Defendant's right to be present
- § 8:78 Shifting burdens at sentencing
- § 8:79 Ability to pay code provisions

XI. RESTITUTION

- § 8:80 Restitution generally
- § 8:81 Defendant's presence generally required (unless waived) at restitution hearing
- § 8:82 Ability to pay
- § 8:83 Restitution not for insurance companies
- § 8:84 Restitution based upon victim's estimate of the value of the property
- § 8:85 Extending probation to pay restitution
- § 8:86 Restitution—Sentence completed
- § 8:87 Restitution can be ordered during term of mental health diversion, not afterwards
- § 8:88 Jurisdiction to order restitution after probation terminates
- § 8:89 Victim restitution with interest
- § 8:90 Restitution imposed by a different judge absent an *Arbuckle* waiver
- § 8:91 Restitution overcompensating the victim

TABLE OF CONTENTS

§ 8:92 Restitution award examples

XII. MENTAL HEALTH DIVERSION

§ 8:93 Penal Code § 1001.36 (amended eff. 1/1/23))

Appendix 8A. Violent Felony Reference Sheet—PC
§ 667.5

Appendix 8B. Serious Felony Reference Sheet

Appendix 8C. One Strike Offenses

Appendix 8D. Offenses Requiring STATIC-99 Reports/
290 Registrable Sex Offenses (By
Section Number and Alphabetical)

Appendix 8E. AIDS Testing Required Offenses (Penal
Code § 1202.1)

Appendix 8F. Striking a Strike Checklist

Appendix 8G. Probation Eligibility and Mandatory Jail
Terms

Appendix 8H. Crimes Excluded From the One-Year or
Two-Year Limit on Probation Due to
Specific Probation Lengths (Penal Code
§§ 1203a(b), 1203.1(l)(1))

Appendix 8I. Crimes Excluded From the Two-Year
Limit on Probation Due to Inclusion in
Penal Code §§ 667.5(c) or 1203.1(l)(2)

Appendix 8J. PPRF Misdemeanor Crimes

**CHAPTER 9. POSTCONVICTION &
RESENTENCING**

§ 9:1 Court generally lacks jurisdiction to modify final
sentence/restitution/fines and fees

§ 9:2 No general, nonstatutory right to recall and
correct a sentence

§ 9:3 Finality of judgment

§ 9:4 —Probation not final

§ 9:5 Correcting abstract of judgment

§ 9:6 Whether a new law applies retroactively to
nonfinal cases—The *Estrada* rule

§ 9:7 Does a new law apply retroactively to cases that
are *final*?

§ 9:8 Resentencing—After final judgement (Penal Code
§ 1172.1)

§ 9:9 —Remand from appellate court—Postconviction
rehabilitative conduct considered

§ 9:10 —Defendant's presence at resentencing hearing

§ 9:11 —Defendant's waiver of appearance and remote
appearance at hearing

- § 9:12 —Striking 1-year sentence enhancements (Penal Code § 667.5(b)) entitles defendant to full resentencing (SB 483/Penal Code § 1172.75))
- § 9:13 —Penal Code 1172.6—Challenge same sentencing judge is untimely
- § 9:14 —Veterans status
- § 9:15 —Plea agreements—The *Stamps* case
- § 9:16 — —Upper term/aggravating factors
- § 9:17 — —Open plea to court
- § 9:18 — —Probation granted (AB 1950)
- § 9:19 — —Calculating custody credits
- § 9:20 Expungement (felonies/misdemeanors)
- § 9:21 Sealing records—Expungement pursuant to Penal Code § 1203.4 insufficient
- § 9:22 Reduction to misdemeanor (Penal Code § 17(b)(1) or (b)(3))
- § 9:23 —Does not affect 290 registration
- § 9:24 —Prop. 47 and misdemeanor parole
- § 9:25 Parole revocation and Penal Code § 1385
- § 9:26 Transfer from parole to PRCS
- § 9:27 Certificate of rehabilitation

Appendix 9A. Assembly Bill No. 200 Renumbered Penal Code Sections

CHAPTER 10. MARSDEN, FARETTA AND DISRUPTIVE DEFENDANTS

I. MARSDEN MOTIONS

- § 10:1 Procedure
- § 10:2 Timing
- § 10:3 Burden of proof
- § 10:4 Four requirements
- § 10:5 The legal landscape
- § 10:6 Motion to withdraw plea based upon IAC triggers
Marsden hearing
- § 10:7 *Marsden* summary sheet
- § 10:8 Motion to withdraw plea based upon ineffective assistance of counsel (IAC) triggers *Marsden* hearing

II. FARETTA MOTIONS

- § 10:9 Procedure
- § 10:10 Timing
- § 10:11 Critical stages
- § 10:12 *Faretta* and competency
- § 10:13 Burden of proof

TABLE OF CONTENTS

- § 10:14 *Faretta* waiver
- § 10:15 Court's *Faretta* colloquy
- § 10:16 *Faretta* motion often occurs after denial of
Marsden motion
- § 10:17 Post-trial motions

III. DIFFICULT DEFENDANTS

- § 10:18 Willful refusal to appear in court and disruptive
defendants
- § 10:19 Steps for proceeding without a defendant, or
removal of the defendant from court
- Appendix 10A. *Marsden* Summary Sheet
- Appendix 10B. *Faretta* Waiver Summary Sheet
- Appendix 10C. Refusal or Disruptive Behavior Warning
Script

CHAPTER 11. CONTEMPT

I. INTRODUCTION

- § 11:1 Contempt generally

II. NON-DOMESTIC VIOLENCE CASES

- § 11:2 Make preliminary finding
- § 11:3 Order witness to take oath or answer questions
- § 11:4 Appoint counsel for witness
- § 11:5 Warn the witness
- § 11:6 Find witness in contempt
- § 11:7 Sanctions
- § 11:8 Witness eventually agrees to take oath/answer
questions

III. DOMESTIC VIOLENCE CASES

- § 11:9 Make preliminary finding
- § 11:10 Make finding re domestic violence witness
- § 11:11 Optional referral to domestic violence counselor
(Code of Civil Procedure § 1219(b))
- § 11:12 Order witness to take oath or answer questions
- § 11:13 Appoint counsel for witness
- § 11:14 Warn the witness
- § 11:15 Find witness in contempt
- § 11:16 Sanctions
- § 11:17 Stay contempt sentence, if fine imposed
- § 11:18 Witness eventually agrees to take oath/answer
questions

IV. SEXUAL ASSAULT CASES

- § 11:19 Make preliminary finding

- § 11:20 Make finding re sexual assault victim (Code of Civil Procedure § 128(d)(1))
- § 11:21 Order witness to take oath or answer questions
- § 11:22 Appoint counsel for witness
- § 11:23 Warn the witness
- § 11:24 Find witness in contempt
- § 11:25 Sanctions
- § 11:26 Stay contempt sentence, if imposed
- § 11:27 Witness eventually agrees to take oath/answer questions

Appendix 11A. Code of Civil Procedure § 1219

Appendix 11B. Penal Code § 861

CHAPTER 12. MOTIONS INVOLVING OFFICIAL INFORMATION AND GOVERNMENT INFORMANT PRIVILEGES

I. INTRODUCTION

- § 12:1 Context, privileges, and scripts
- § 12:2 Official information privilege
- § 12:3 Informant privilege

II. MOTION TO DISCLOSE OFFICIAL INFORMATION PRIOR TO OR DURING PRELIMINARY HEARING

- § 12:4 Procedural steps
- § 12:5 Script

III. MOTION TO DISCLOSE SURVEILLANCE SITE PRIOR TO OR DURING PRELIMINARY HEARING

- § 12:6 Procedural steps
- § 12:7 Script

IV. MOTION TO DISCLOSE INFORMANT'S IDENTITY PRIOR TO OR DURING PRELIMINARY HEARING

- § 12:8 Procedural steps
- § 12:9 Script

TABLE OF CONTENTS

**V. MOTION TO DISCLOSE INFORMANT'S
IDENTITY FILED IN CONJUNCTION WITH
A MOTION TO SUPPRESS (WITHOUT A
WARRANT)**

§ 12:10 Motions to suppress (without a warrant)
generally

**VI. MOTION TO DISCLOSE INFORMANT'S
IDENTITY FILED IN CONJUNCTION WITH
A MOTION TO QUASH/TRAVERSE (WITH
WARRANT, NOT SEALED)**

§ 12:11 Motions to quash/traverse generally

**VII. MOTION TO DISCLOSE INFORMANT'S
IDENTITY FILED IN CONJUNCTION WITH
A MOTION TO QUASH AND/OR TRAVERSE
(WITH SEALED WARRANT)**

§ 12:12 *Hobbs* protocol

§ 12:13 Procedural steps

Appendix 12A. Evidence Code § 1040—Privilege for
Official Information

Appendix 12B. Evidence Code § 1041—Privilege for
Identity of Informer

Appendix 12C. Evidence Code § 1042—Adverse Order or
Finding in Certain Cases

Appendix 12D. Common Motions

**CHAPTER 13. PRETRIAL RELEASE
AND BAIL**

I. BAIL REVIEW

§ 13:1 The *Humphrey* case

§ 13:2 Felony bail review

§ 13:3 —Court and counsel colloquy

§ 13:4 Ruling: Deny defense motion for less restrictive
conditions

§ 13:5 Ruling: Grant defense motion for alternative
release

§ 13:6 Serious and/or violent felony cases

§ 13:7 —Deny motion to deviate from bail schedule

§ 13:8 —Grant motion to deviate from bail schedule

§ 13:9 —Discussion of notice requirement with counsel

§ 13:10 —Less restrictive alternative

II. PEOPLE’S MOTION FOR MORE RESTRICTIVE RELEASE CONDITIONS, INCREASED BAIL, OR PRETRIAL DETENTION

- § 13:11 Procedural posture
- § 13:12 California Constitution—People seek no bail
- § 13:13 California Constitution, Art. I, § 12
- § 13:14 —Violent felony and great bodily harm to others (Art. I, § 12(b))
- § 13:15 —Felony and threatened great bodily harm (Art. I, § 12(c))
- § 13:16 Ruling—Grant request for no bail
- § 13:17 —Deny request for no bail
- § 13:18 California Constitution, Art. I, § 28(f)(3)
- § 13:19 *Humphrey/Brown/Kowalczyk*—People’s motion for more restrictive conditions, higher bail, or pretrial detention

III. PROCEDURAL POSTURE

- § 13:20 Pretrial proceedings
- § 13:21 Reconsideration of prior judge’s bail ruling
- § 13:22 After guilty plea and before sentencing (felony cases)
- § 13:23 After sentencing pending appeal (felony cases)
- § 13:24 Probation violations

IV. MISCELLANEOUS BAIL/BOND ISSUES

- § 13:25 Defendants on bond ordered back for all appearances
 - § 13:26 Bail bond premium
 - § 13:27 Conditions of release
 - § 13:28 Recall of forfeiture
 - § 13:29 Jailer can set date
 - § 13:30 Sufficient excuse not to forfeit bond
- Appendix 13A. *Humphrey/Brown* Pretrial Release Flow Chart

CHAPTER 14. RIGHT TO CONFLICT-FREE COUNSEL AND WAIVER

- § 14:1 Legal principles
- § 14:2 Waiver script

Table of Laws and Rules

Table of Cases

Index