



State of New York
Court of Appeals

Stuart M. Cohen
Clerk of the Court

Clerk's Office
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NOTICE TO THE BAR

Capital Amicus Curiae Motions

The court takes this occasion to remind the Bar of the dates for amicus motions in pending capital case appeals:

In *People v Stephen LaValle*, amicus motions must be noticed to be heard by February 18, 2003.

In *People v Angel Mateo*, amicus motions must be noticed to be heard by March 31, 2003.

In *People v Robert Shulman*, amicus motions must be noticed to be heard by August 25, 2003.

Appellants' preliminary, non-binding statements of issues to be raised on these appeals are available on the Court's Internet web site: <http://www.courts.state.ny.us/ctapps/newfile.htm>.

Amicus motions must comply with section 510.12 of the Rules of the Court of Appeals in Capital Cases. The text of the Rule is available on the Court's Internet web site: <http://www.courts.state.ny.us/ctapps/510ruleslhtm#12>.

Questions may be directed by telephone to the Clerk's Office at (518) 455-7700.

October 7, 2002

Stuart M. Cohen
Clerk of the Court

People v Robert Shulman

Nonbinding Statement of Issues Likely to be Raised on Appeal

1. The prosecution's misuse of the Grand Jury subpoena process to obtain Mr. Shulman's psychiatric records, without a waiver of the privilege, prior to the filing of the death notice violated the Constitution of the United States and the Constitution and laws of the State of New York.
2. The integrity of the Grand Jury proceedings was impaired in violation of the Constitution and laws of the State of New York.
3. The 1995 statute under which Mr. Shulman's death sentence was imposed, on its face and as administered and applied to Mr. Shulman, violates the Constitution of the United States and the Constitution and laws of the State of New York.
4. C.P.L. §250.40, which lacks any standards governing the prosecution's decision whether to seek the death penalty, lends itself to arbitrary and discriminatory application and, on its face and as administered and applied to Mr. Shulman, violates the Constitution of the United States and the Constitution and laws of the State of New York.
5. P.L. §125.27(1)(a)(xi), on its face and as applied to Mr. Shulman, violates the Constitution of the United States and the Constitution and laws of the State of New York.
6. The trial court's refusal to permit Mr. Shulman to plead guilty to first-degree murder and to impanel a separate sentencing jury violated the Constitution of the United States and the Constitution and laws of the State of New York.
7. The trial court's refusal to expand the discovery order in the manner specified by trial counsel violated the Constitution of the United States and the Constitution and laws of the State of New York.
8. Mr. Shulman was arrested without probable cause in violation of the Constitution of the United States and the Constitution and laws of the State of New York and, therefore, the fruits of the illegal arrest must be suppressed.
9. Mr. Shulman's statements to police and the ensuing search warrant were obtained in violation of the Constitution of the United States and the Constitution and laws of the State of New York.
10. The police failed to notify Mr. Shulman at the time of his arrest of their authority, purpose, and reason for the arrest in violation of the Criminal Procedure Law of the State of New York.

11. The court erred when it admitted opinion testimony at the suppression hearing by the trainer of a police "cadaver dog" without requiring the prosecution to establish that this testimony was scientifically reliable, and refused to require that the trainer be certified as an expert witness, in violation of the Constitution of the United States and the Constitution and laws of the State of New York.

12. The hearing court improperly refused to order disclosure of notes prepared by a detective regarding statements allegedly made by Mr. Shulman while in police custody in violation of the laws of the State of New York.

13. The hearing court improperly refused to issue a material-witness order to compel the attendance of a witness in violation of the Constitution of the United States and the Constitution and laws of the State of New York.

14. The trial court's denial of a challenge for cause to a prospective juror who had formed an opinion as to the defendant's guilt violated the Constitution of the United States and the Constitution and laws of the State of New York.

15. The trial court's denial of a challenge for cause to a prospective juror who had violated judicial instructions during the two months between completing his juror questionnaire and appearing for an individual interview violated the Constitution of the United States and the Constitution and laws of the State of New York.

16. The trial court's denial of a challenge for cause to a prospective juror who explained the meaning of life imprisonment without possibility of parole as "3 hots and a cot, free medical, \$50,000 a year wasted" violated the Constitution of the United States and the Constitution and laws of the State of New York.

17. The trial court's denial of a challenge for cause to a prospective juror who stated that he would tend to believe police officers more than other witnesses violated the Constitution of the United States and the Constitution and laws of the State of New York.

18. The trial court's denial of a challenge for cause to a prospective juror whose close relative attended a meeting about Mr. Shulman's case while serving as a homicide prosecutor violated the Constitution of the United States and the Constitution and laws of the State of New York.

19. The trial court's denial of a challenge for cause to a prospective juror who believed that life without possibility of parole is a more severe penalty than death and said he might consider that opinion in determining sentence violated the Constitution of the United States and the Constitution and laws of the State of New York.

20. The trial court's denial of a challenge for cause to a prospective juror who said he would not impose a death sentence if a victim's family requested that such a sentence not be imposed violated the Constitution of the United States and the Constitution and laws of the State of New York.

21. The trial court's denial of a challenge for cause to a prospective juror who claimed that one of his questionnaire answers, given under oath, was "sarcastic" and did not reflect his true views violated the Constitution of the United States and the Constitution and laws of the State of New York.

22. The trial court's denial of a challenge for cause to a prospective juror who would not give mitigating effect to certain mental health evidence violated the Constitution of the United States and the Constitution and laws of the State of New York.

23. The trial court's granting of a challenge for cause based upon a prospective juror's purported bias against the defense at the guilt phase of trial violated the Constitution of the United States and the Constitution and laws of the State of New York in light of the defense's objection to granting the challenge based upon its entitlement to make the strategic decision as to whether the juror's views as to guilt or sentence were more important to the defense.

24. The trial court's enforcement of pre-set time limits to curtail the defense's questioning of a prospective juror whose answers were not candid violated the Constitution of the United States and the Constitution and laws of the State of New York.

25. The trial court's ruling curtailing questioning of a prospective juror who was a police detective about his on-the-job experiences on the ground that his answers might expose him to adverse employment consequences violated the Constitution of the United States and the Constitution and laws of the State of New York.

26. The trial court's ruling barring questioning of a prospective juror as to whether he would consider the absence of a certain type of evidence "as a factor" in evaluating the truthfulness or voluntariness of an alleged confession violated the Constitution of the United States and the Constitution and laws of the State of New York.

27. The trial court's refusal to grant defense counsel's request for a mistrial when the prosecution referred to the penalty phase in its opening statement at the guilt phase violated the Constitution of the United States and the Constitution and laws of the State of New York.
28. The trial court's admission of "victim impact" testimony during the guilt phase of trial violated the Constitution of the United States and the Constitution and laws of the State of New York.
29. The trial court's admission of numerous photographs whose probative value was outweighed by their prejudicial impact violated the Constitution of the United States and the Constitution and laws of the State of New York.
30. Various trial court errors relating to the admission of testimony about the total number of blood stains in Mr. Shulman's room, a blood stain that did not match any of the known samples, and the total number of blood stain samples sent to Cellmark Laboratories violated the Constitution of the United States and the Constitution and laws of the State of New York.
31. The trial court abused its discretion when it refused defense counsel's request to voir dire the jurors about whether they were exposed to a prejudicial newspaper article that appeared mid-trial in a local newspaper.
32. The trial court's admission of expert testimony about the associative value of fiber evidence violated the Constitution of the United States and the Constitution and laws of the State of New York.
33. The trial court's admission of hearsay testimony violated the Constitution of the United States and the Constitution and laws of the State of New York.
34. The trial court's refusal to redact from Robert Shulman's statements references to uncharged crimes violated the Constitution of the United States and the Constitution and laws of the State of New York.
35. The trial court's admission into evidence of Robert Shulman's statement made to a reporter during an impermissible "perp walk" violated the Constitution of the United States and the Constitution and laws of the State of New York.
36. The trial court's admission into evidence of a newspaper found in Robert Shulman's closet violated the Constitution of the United States and the Constitution and laws of the State of New York.

37. The trial court's admission of testimony about whether or not a detective believed statements he took from Robert Shulman violated the Constitution of the United States and the Constitution and laws of the State of New York.

38. The trial court's refusal to grant defense counsel's request for a remedy when the prosecution failed to notify defense counsel of a substantive mistake in the Rosario material was error.

39. The trial court's admission of evidence of other crimes violated the Constitution of the United States and the Constitution and laws of the State of New York.

40. The prosecutor's misconduct during the guilt phase trial violated the Constitution of the United States and the Constitution and laws of the State of New York.

41. The evidence at trial was insufficient to establish that the homicides were committed in a similar fashion, as required by P.L. §125.27(1)(a)(xi).

42. The trial court's dismissal of the depraved indifference murder counts, its refusal to charge depraved indifference murder as a lesser included offense of capital murder, and its refusal to charge any other lesser included offenses, violated the Constitution of the United States and the Constitution and laws of the State of New York.

43. The trial court's refusal to instruct the jury, at the beginning of the guilt phase summations, that they would not be considering depraved indifference murder violated the Constitution of the United States and the Constitution and laws of the State of New York.

44. The trial court's limitations on the defense summation at the guilt phase violated the Constitution of the United States and the Constitution and laws of the State of New York.

45. Prosecutorial misconduct in summation at the guilt phase violated the Constitution of the United States and the Constitution and laws of the State of New York.

46. The trial court's refusal to charge the jury at the guilt phase regarding, among other things, intoxication, sentencing, and C.P.L. §140.15 violated the Constitution of the United States and the Constitution and laws of the State of New York.

47. The trial court's instruction on the requirement that the murders be committed in a "similar fashion" in order to qualify as first-degree murder under P.L. §125.27(1)(a)(xi) violated the Constitution of the United States and the Constitution and laws of the State of New York.

48. The trial court's refusal to exclude the post-mortem dismemberment language from its reading of the indictment and its refusal to instruct the jury that post-mortem dismemberment was not to be considered on the element of "similar fashion" violated the Constitution of the United States and the Constitution and laws of the State of New York.

49. The trial court's jury instructions at the guilt phase regarding, among other things, witness credibility, confessions, intent, the burden of proof, and the presumption of innocence violated the Constitution of the United States and the Constitution and laws of the State of New York.

50. The trial court's limitations on the defense post-guilt-phase questioning of the jury foreperson about his medical condition during the guilt-phase trial violated the Constitution of the United States and the Constitution and laws of the State of New York.

51. The removal of defendant's medication during the guilt-phase trial, and the trial court's failure to conduct a sufficient inquiry upon discovery of this fact, violated the Constitution of the United States and the Constitution and laws of the State of New York.

52. Where the trial court instructed the jury to first deliberate on the two counts of second-degree murder, and, if it convicted Mr. Shulman of both counts, to deliberate on the greater charge of first-degree murder, Mr. Shulman's conviction of first-degree murder, after the jury had convicted him of the two counts of second-degree murder, violated the Constitution of the United States and the Constitution and laws of the State of New York.

53. The trial court's refusal to sequester the jury during the competency hearing and the penalty phase violated the Constitution of the United States and the Constitution and laws of the State of New York.

54. The trial court's refusal to seal the courtroom during the competency hearing violated the Constitution of the United States and the Constitution and laws of the State of New York.

55. The trial court's denial of Mr. Shulman's requests for continuances, made both prior to and again near the end of the competency hearing, violated the Constitution of the United States and the Constitution and laws of the State of New York.

56. The trial court's restrictions on the cross-examination of the prosecution's experts at the competency hearing violated the Constitution of the United States and the Constitution and laws of the State of New York.

57. The trial court's ruling that Mr. Shulman was competent to proceed with the penalty phase violated the Constitution of the United States and the Constitution and laws of the State of New York.

58. The trial court's ruling precluding Mr. Shulman's expert from testifying at the competency hearing on the minimum standards for client competence at a penalty phase violated the Constitution of the United States and the Constitution and laws of the State of New York.

59. The trial court's refusal to take testimony from defense counsel or even consider his statements regarding Mr. Shulman's ability to assist counsel violated the Constitution of the United States and the Constitution and laws of the State of New York.

60. Mr. Shulman's death sentence is unconstitutional under United States v. Jackson, 390 U.S. 570 (1968), People v. Harris, ___ N.Y.2d ___, WL 1461372 (July 9, 2002), and Matter of Hynes v. Tomei, 92 N.Y.2d 613 (1998), cert. denied, 527 U.S. 1015 (1999).

61. The trial court's refusal to impanel a separate sentencing jury violated the Constitution and laws of the State of New York.

62. C.P.L. §400.27(14)(a)(ii), requiring the defense to disclose to the prosecution the statements of witnesses and any reports or documents the defense intends to use at the sentencing proceeding, violates the Constitution of the United States and the Constitution and laws of the State of New York.

63. The anticipatory deadlock instruction required by C.P.L. §400.27(10) violates the Constitution of the United States and the Constitution and laws of the State of New York.

64. The method of execution in New York State violates the Constitution of the United States and the Constitution of the State of New York.

65. The trial court's interpretation and application of C.P.L. §400.27, requiring Mr. Shulman to establish mitigating factors by a preponderance of the evidence, violated the Constitution of the State of New York.

66. The trial court's refusal to ask certain questions proposed by the defense during the pre-penalty-phase voir dire of jurors required by C.P.L. §400.27(2) violated the Constitution of the United States and the Constitution and laws of the State of New York.

67. The trial court's erroneous instructions concerning the scope of mitigation evidence before the voir dire required by C.P.L. §400.27(2) violated the Constitution of the United States and the Constitution and laws of the State of New York.

68. The trial court's denial of defense challenges to sitting jurors made during the voir dire required by C.P.L. §400.27(2) violated the Constitution of the United States and the Constitution and laws of the State of New York.

69. The trial court's order barring the defendant's older brother from being present at meetings between the defense team and other prospective mitigation witnesses, following the older brother's testimony, violated the Constitution of the United States and the Constitution and laws of the State of New York.

70. The trial court's ruling barring the defense from calling a former deputy warden at San Quentin Prison to testify at the penalty phase concerning the prospects for a man in Mr. Shulman's circumstances to adjust successfully and make a positive contribution to prison life while serving a life sentence violated the Constitution of the United States and the Constitution and laws of the State of New York.

71. The prosecutor asked improper questions and engaged in misconduct during her cross-examination of penalty-phase witnesses in violation of the Constitution of the United States and the Constitution and laws of the State of New York.

72. The prosecutor made impermissible arguments and engaged in misconduct during both her opening and closing arguments at the penalty phase in violation of the Constitution of the United States and the Constitution and laws of the State of New York.

73. The trial judge erroneously limited the arguments that defense counsel could make during his penalty-phase summation in violation of the Constitution of the United States and the Constitution and laws of the State of New York.

74. In its instructions and the verdict form it submitted to the jury at the penalty phase, the trial court erroneously truncated the written list of mitigating factors proposed by the defense in violation of the Constitution of the United States and the Constitution and laws of the State of New York.

75. In its preliminary and final penalty-phase instructions, the trial court erroneously instructed, or failed to adequately instruct, the jury about the scope of the aggravating and mitigating factors and how to evaluate and weigh them, the "reasonable doubt" standard, and other matters relating to sentencing in violation of the Constitution of the United States and the Constitution and laws of the State of New York.

76. The death sentence imposed on the first-degree-murder count was against the weight of the evidence.

77. The imposition of sentence for Mr. Shulman's second-degree murder conviction violated the Constitution of the United States and the Constitution and laws of the State of New York.

Nonbinding Statement of Issues Likely to be Raised on Appeal

The following errors were committed below:

1. The prosecutor impaired the integrity of the grand jury by presenting inadmissible and prejudicial evidence to the grand jury.
2. Mr. Mateo was tried and sentenced to death under a statute whose guilty-plea provisions unconstitutionally penalized him for exercising his right to trial.
3. The trial court refused to disqualify the trial prosecutors although they were potential defense witnesses to police promises made to Mr. Mateo during his interrogation.
4. The trial court refused to dismiss the first-degree kidnapping murder charge even though it "double counted" the death of the victim to establish both the murder and the kidnapping.
5. The trial court refused to sever charges involving two unrelated home invasions from those involving a kidnapping and murder at a different time and place.
6. The trial court refused to dismiss the first-degree murder charge, even though the provisions of the Penal Law that allowed Mr. Mateo to be charged with this crime for "commanding" the victim's killing are unconstitutionally vague and overbroad.
7. The trial court denied Mr. Mateo's motion to suppress physical evidence seized by police from his home and car.
8. The trial court denied Mr. Mateo's motion to suppress his custodial statements to police.
9. The trial court denied Mr. Mateo's motion to suppress identification testimony from civilian witnesses to two home invasions.
10. The prosecution improperly asserted inconsistent theories at Mr. Mateo's trial and the earlier trial of his codefendant.
11. Mr. Mateo was denied a fair trial by prejudicial pretrial publicity and the Appellate Division's denial of his motion to change venue.
12. The pool from which Mr. Mateo's grand jury and petit jury were drawn underrepresented cognizable groups and was illegally composed, and the Appellate Division impermissibly refused to allow Mr. Mateo discovery to develop this claim.
13. The trial court unreasonably limited and intervened in defense voir dire.

14. The trial court denied several defense challenges for cause to jurors who were biased against Mr. Mateo.
15. The trial court granted several prosecution challenges for cause to jurors who opposed capital punishment but who indicated they could nevertheless follow the law at a sentencing hearing.
16. "Death-qualifying a jury," as provided for by CPL § 270.20(1)(f) and conducted in Mr. Mateo's case, violates the state and federal constitutions.
17. The trial court admitted irrelevant, prejudicial evidence that Mr. Mateo committed three additional, unrelated killings.
18. The trial court admitted irrelevant, prejudicial evidence that Mr. Mateo physically abused his ex-girlfriend and wife.
19. The trial court failed to provide the jury with adequate limiting instructions on how to consider other criminal incidents in deciding the first-degree murder charge.
20. The trial court admitted inflammatory and unnecessary evidence of Mr. Mateo's arrest by a large group of armed police.
21. The trial court admitted a hearsay tape of a 911 call and hearsay testimony about statements made by Mr. Mateo's wife to domestic-violence counselors.
22. The trial court admitted irrelevant, prejudicial evidence about the personal characteristics and family relationships of the victims of the charged offenses.
23. The trial court admitted unreliable evidence of alleged burn injuries to the deceased victim.
24. The trial court excluded relevant, admissible defense evidence of a taped telephone conversation between Mr. Mateo and his mother on the night of his interrogation.
25. The trial court excluded relevant, admissible defense evidence of the prosecutor's opening statement and summation from the trial of Mr. Mateo's codefendant.
26. The prosecutor misstated the evidence, used evidence admitted for one purpose for another, inflamed the jury, and otherwise engaged in misconduct during his trial summation.
27. The trial court gave an instruction on reasonable doubt that diluted the prosecution's burden of persuasion.
28. The trial court misinstructed the jury on the definition of "command."

29. The trial court improperly refused to instruct the jury on second-degree depraved-indifference murder.
30. The trial court misinstructed the jury on the tests for determining witness credibility.
31. The trial court refused to give appropriate instructions on the truthfulness and voluntariness of Mr. Mateo's statements to police.
32. The trial court refused to give a specific-unanimity instruction on the prosecution's dual theories that Mr. Mateo was guilty of first-degree murder as a principal or accomplice.
33. The trial court refused to give an appropriate instruction on shooting as the sole asserted cause of death.
34. The trial court provided the jury a written list of the elements of the charged crimes.
35. The verdict of guilty on the first-degree murder charge was against the weight of the evidence.
36. The trial court denied Mr. Mateo's motion challenging the death penalty as cruel and unusual punishment.
37. The trial court denied Mr. Mateo's motion challenging the statutorily-required instruction on the consequences of a jury deadlock at the sentencing hearing.
38. The trial court refused to order a separate sentencing hearing.
39. The trial court unreasonably limited pre-sentencing voir dire of the jury.
40. The trial court permitted the prosecution to introduce inadmissible, prejudicial evidence at the sentencing hearing of additional crimes by Mr. Mateo, under the guise of "rebuttal."
41. The trial court refused to permit the defense to present certain evidence about Mr. Mateo's mother without providing notice of intent to offer psychiatric evidence and potentially making Mr. Mateo available for an evaluation by a prosecution mental health expert.
42. The trial court refused to admit defense evidence of Mr. Mateo's childhood hospital records.
43. The prosecutor inflamed jurors and otherwise engaged in serious misconduct during his summation at the sentencing hearing.

44. The trial court refused to instruct the jury at the sentencing hearing that there was a presumption in favor of a sentence of life imprisonment without parole.
45. The trial court's instructions at the sentencing hearing expanded the statutory definition of the aggravating factor.
46. The trial court's instructions at the sentencing hearing invited jurors to consider other crimes attributed to Mr. Mateo.
47. The trial court refused to give an instruction at the sentencing hearing that adequately explained to jurors their obligation to identify and weigh mitigating factors individually.
48. The trial court misinstructed jurors at the sentencing hearing on the definitions of "reasonable doubt" and "substantially outweigh."
49. The trial court misinstructed jurors at the sentencing hearing on how to weigh aggravating and mitigating factors and on how they could arrive at a verdict of life imprisonment without parole.
50. In its instructions and the verdict form it submitted to the jury at the sentencing hearing, the trial court truncated the written list of mitigating factors proposed by the defense.
51. The jury refused to find and weigh certain clearly established mitigating factors.
52. The death sentence was against the weight of the evidence and excessive.
53. The trial court denied Mr. Mateo's motion challenging lethal injection as a method of execution.

Nonbinding Statement of Issues Likely to be Raised on Appeal

1. Lodging venue within Suffolk County violated the Constitution of the United States and the Constitution and laws of the State of New York.

2. The court removed qualified prospective jurors because they allegedly were not "death qualified" (violating the Constitution of the United States and the Constitution and laws of the State of New York).

3. The court retained unqualified prospective jurors who were not "life qualified" and were otherwise unfit for jury service (violating the Constitution of the United States and the Constitution and laws of the State of New York).

4. The prosecution's peremptory strikes to limit the number of women on the jury violated the Constitution of the United States and the Constitution and laws of the State of New York.

5. The capital jury-selection process, by undermining the presumption of innocence and the presumption against a death sentence, violated the Constitution of the United States and the Constitution and laws of the State of New York.

6. The withholding of materially favorable defense evidence, which undercut defendant's ability to mount a defense at the guilt- and penalty-phases of the trial, violated the Constitution of the United States and the Constitution and laws of the State of New York.

7. The court's refusal to let defendant represent himself violated the Constitution of the United States and of the State of New York.

8. The court refused to grant continuances before the guilt-and penalty-phases, hampering the ability of defense counsel to mount an effective guilt-phase defense and to present a case in support of a non-death sentence (violating the Constitution of the United States and the

Constitution and laws of the State of New York).

9. The joinder of the murder counts with the separate and independent first-degree robbery count violated the Constitution of the United States and the Constitution and laws of the State of New York.

10. The court allowed the jury to learn that the defendant had a criminal past (violating the Constitution of the United States and the Constitution and laws of the State of New York).

11. The court permitted in the guilt phase inadmissible hearsay testimony concerning defendant's whereabouts and activity on the day after the crime (violating the Constitution of the United States and the Constitution and laws of the State of New York).

12. The court permitted in the guilt phase a prosecution DNA expert to testify that he had saved DNA samples for defense testing, thus raising the expectation that the defense would, if it could, present a DNA expert of its own (violating the Constitution of the United States and the Constitution and laws of the State of New York).

13. The admission of victim-impact evidence in the guilt phase violated the Constitution and laws of the State of New York.

14. The prosecution's use of graphic crime-scene and autopsy images in the guilt phase to inflame the jury's passions against the defendant violated the Constitution of the United States and the Constitution and laws of the State of New York.

15. The sentencing jury's re-examination of inflammatory autopsy images during deliberations violated the Constitution of the United States and the Constitution and laws of the State of New York.

16. The court permitted the taking of testimony in defendant's absence and then misled the jury as to why that was done (violating the Constitution of the United States and the

Constitution and laws of the State of New York).

17. The court's refusal to instruct the jury on intoxication, extreme emotional disturbance, and depraved-indifference murder violated the Constitution of the United States and the Constitution and laws of the State of New York.

18. The court's guilt-phase jury charge relieved the prosecution of its burden of proof and diluted the reasonable-doubt standard (violating the Constitution of the United States and the Constitution and laws of the State of New York).

19. The prosecution guilt- and penalty-phase summations violated the Constitution of the United States and the Constitution and laws of the State of New York.

20. The court's penalty-phase jury charge stripped from the jury the obligation to confront defendant's "death-worthiness," grapple with the mitigating circumstances independent of the weighing process, and decide punishment without regard to non-statutory aggravating factors; it also misled at least some jurors to believe that the defense had to adduce mitigating evidence rather than rely on evidence admitted at the behest of the prosecution in the guilt-phase proceedings (violating the Constitution of the United States and the Constitution and laws of the State of New York).

21. The court's penalty-phase jury charge on the consequences of a sentencing deadlock coerced jurors to arrive at a unanimous verdict (violating the Constitution of the United States and the Constitution and laws of the State of New York).

22. Allowing the defendant to waive his right to present mitigating evidence violated the Constitution of the United States and the Constitution and laws of the State of New York. But even if a defendant may waive mitigation, the court's acceptance of defendant's mitigation waiver here without conducting a competency hearing violated the Constitution of the United

States and the Constitution and laws of the State of New York; and its acceptance of defendant's mitigation waiver without conducting an adequate colloquy to determine whether that waiver was knowing, voluntary, and intelligent also violated the Constitution of the United States and the Constitution and laws of the State of New York.

23. The court failed to give the sentencing jury mitigating evidence it possessed (violating the Constitution of the United States and the Constitution and laws of the State of New York).

24. Lethal injection violates the Constitution of the United States and of the State of New York.

25. Extended death-row incarceration violates the Constitution of the United States and of the State of New York.

26. The death penalty violates the Constitution of the State of New York.