

**FIRST DISTRICT APPELLATE PROJECT
TRAINING SEMINAR
January 30, 2010**

***CRAWFORD* AFTER *MELENDEZ-DIAZ*—
THE GIFT THAT KEEPS ON GIVING?**

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- Confrontation Clause: The Sixth Amendment provides that “[i]n all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him.” (U.S. Const., 6th Amend.)

- *Crawford*

Crawford v. Washington (2004) 541 U.S. 36: Confrontation Clause guarantees a defendant’s right to confront those “who ‘bear testimony’” against him. (*Id.*, at p. 51.) It attaches to a testimonial out-of-court statement offered against the accused in a criminal prosecution, rendering testimonial statements by a nontestifying witness inadmissible unless the witness is unavailable and was previously subject to cross-examination by the defendant. *Crawford* expressly abrogated the rule of *Ohio v. Roberts* (1980) 448 U.S. 56, which had deemed the Confrontation Clause satisfied if the statement contained adequate guarantees of trustworthiness or indicia of reliability, holding “To be sure, the Clause’s ultimate goal is to ensure reliability of evidence, but it is a procedural rather than a substantive guarantee. It commands, not that evidence be reliable, but that reliability be assessed in a particular manner: by testing in the crucible of cross-examination.” (*Crawford, supra*, 541 U.S. at p. 61.)

Crawford’s “core class of testimonial statements”:

- I. “‘*ex parte* in-court testimony or its functional equivalent—that is, material such as affidavits, custodial examinations, prior testimony that the defendant was unable to cross-examine, or similar pretrial statements that declarants would reasonably expect to be used prosecutorially. . . .’” (*Crawford*, at p. 51, quoting Brief for Petitioner at p. 23.)
- II. “extrajudicial statements . . . contained in formalized testimonial materials, such as affidavits, depositions, prior testimony, or confessions. . . .” (*Crawford*, at pp. 51-52, quoting *White v. Illinois* (1992) 502 U.S. 346, 365 (Thomas, J.))

III. “statements that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial.” (*Crawford*, at p. 52, quoting NACDL amicus brief at p. 3 .)

● ***Geier***

People v. Geier (2007) 41 Cal.4th 555: testimony about a DNA report, laboratory notes and test results conveyed via a testifying supervisor, rather than the laboratory analyst who performed the tests, did not run afoul of the Confrontation Clause, because the report, notes and results were not testimonial evidence. (*Geier, supra*, 41 Cal.4th at pp. 602-604.)

Rationale:

- (1) the results of scientific tests are not accusatory, but are rather inherently neutral and reliable. They are not accusatory because a lab analyst who conducts the tests does so “as part of her job, not in order to incriminate the defendant,” and is not, strictly speaking, a witness who bears testimony “against” the defendant. (*Geier*, at p. 607.)
- (2) the results were not testimonial because they represented “a contemporaneous recordation of observable events rather than the documentation of past events,” even if they were prepared for use at trial. (*Geier*, at p. 603-606, relying on *Davis v. Washington* (2006) 547 U.S. 813.)
- (3) forensic test results are generally admissible as business records. (*Geier*, at p. 606, citing several post-*Crawford* out-of-state cases.)

● ***Melendez-Diaz, Its Potential Applications, and the Future of Geier***

Melendez-Diaz v. Massachusetts (2009) 557 U.S. ----, [129 S.Ct..

2527, 174 L.Ed.2d 314]: certificates of drug analysis (sworn statements of chemical analysis performed by a state laboratory upon police request, as required by Massachusetts state law), were admitted at trial as “‘prima facie evidence of the composition, quality, and the net weight of the narcotic ... analyzed,’” under state law. (129 S.Ct. at p. 2531.) Held: “[T]he analysts’ affidavits were testimonial statements, and the analysts were ‘witnesses’ for purposes of the Sixth Amendment.” (*Id.*, at p. 2532.) Therefore, “[a]bsent a showing that the analysts were unavailable to testify at trial and that petitioner had a prior opportunity to cross-examine them, petitioner was entitled to ‘be confronted with’ the analysts at trial.” (*Ibid.*)

Rationale: “There is little doubt that the documents at issue in this case fall within the ‘core class of testimonial statements’” described in *Crawford*. (*Melendez-Diaz*, 129 S.Ct. at p. 2532, citing *Crawford*, 541 U.S. at pp. 51-52.)

- (1) The documents are “quite plainly” affidavits. (*Melendez-Diaz*, 129 S.Ct. at p. 2532.) (See *Crawford* discussion, *ante*, at pp. 1-2, I&II.)
- (2) “The fact in question is that the substance found . . . was, as the prosecution claimed, cocaine—the precise testimony the analysts would be expected to provide if called at trial. The ‘certificates’ are functionally identical to live, in-court testimony, doing precisely what a witness does on direct examination.” (*Melendez-Diaz*, 129 S.Ct. at p. 2532.) (See *Crawford* discussion, *ante*, at p. 1, I.)
- (3) “[N]ot only were the affidavits “‘made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial,’” but under Massachusetts law the *sole purpose* of the affidavits was to provide ‘prima facie evidence of the composition, quality, and the net weight’ of the analyzed substance.” (*Melendez-Diaz*, 129 S.Ct. at p. 2532.) (See *Crawford* discussion, *ante*, at p. 2, III.)

Applications: *Melendez-Diaz* is potentially applicable to any forensic evidence subject to lab analysis that the state employs to prove

up an element of the crime: e.g., drug and alcohol testing, ballistics tests, DNA, fingerprint analysis, toxicology, serology, and autopsy reports, sexual assault examination reports, and chain of custody regarding forensic evidence. Outside the realm of forensic evidence, *Melendez-Diaz*, suggests that clerk’s certificates attesting to the nonexistence of records (“CNRs”), if necessary to establish a necessary element of the crime, would also require a live-witness to overcome a confrontation objection. See Appendix A for a collection of cases applying *Melendez-Diaz* to particular types of forensic evidence.

The majority’s reply to respondent and dissent’s “potpourri of analytic arguments in an effort to avoid this rather straightforward application of our holding in *Crawford*”:

Dissent	Majority
<p>Lab analysts are not “accusatory” witnesses because “they do not directly accuse [a defendant] of wrongdoing; rather, their testimony is inculpatory only when taken together with other evidence.” (<i>Melendez-Diaz</i>, 129 S.Ct. at p. 2533.)</p>	<p>Not so fast: Sixth Amendment contemplates only two kinds of witnesses: (1) against the defendant (Confrontation Clause) and (2) those in defendant’s favor (Compulsory Process); no “third category.” “To the extent the analysts were witnesses (a question resolved above), they certainly provided testimony against petitioner, proving one fact necessary for his conviction—that the substance he possessed was cocaine.” (<i>Id.</i>, at pp. 2533-2534.)</p>

<p>Analysts are not “typical,” “ordinary” or “conventional” witnesses, as envisioned by the Confrontation Clause, because (1) they do not recall events observed in the past, but rather report “near contemporaneous observations” of a test (relying on <i>Davis</i>), (2) they “observe[d] neither the crime nor any human action related to it,” and (3) they do not respond “to questions under interrogation.” (<i>Id.</i>, at pp. 2534-2535.)</p>	<p>Wrong: As for (1), dissent misunderstands <i>Davis</i>: statements in <i>Davis</i> related only to the statement’s admissibility under the present sense impression exception to the hearsay rule, but were still subject to confrontation; (2): There is no authority for this proposition; besides, under this logic a crime scene report would be admissible; (3): No authority that one who volunteers testimony is any less a “witness against’ the defendant,” than one who is responds to interrogation. (<i>Id.</i>, at p. 2535.)</p>
<p>Lab analysis testimony is different: it is the result of “neutral, scientific testing” and not “prone to distortion or manipulation.” Besides, there is no reason to confront the forensic analyst, essentially because he is a neutral “laboratory professional” whose scientific work is inherently reliable. (<i>Melendez-Diaz</i>, 129 S.Ct. at p. 2536.)</p>	<p>“This argument is little more than an invitation to return to our overruled decision in <i>Roberts</i>.” Affirming <i>Crawford</i>: the Confrontation Clause “commands, not that evidence be reliable, but that reliability be assessed in a particular manner: by testing in the crucible of cross-examination.” (<i>Id.</i>, at p. 2536, quoting <i>Crawford</i>, 541 U.S. at p. 61.) Lab testing is not inherently neutral or reliable: “Forensic evidence is not uniquely immune from the risk of manipulation” (fraudulent and incompetent analysts). (<i>Id.</i>, at pp. 2536-2538.)</p>

<p>The certificates of drug analysis should be admissible without confrontation as akin to official or business records. (<i>Id.</i>, at p. 2538.)</p>	<p>“[T]he affidavits do not qualify as traditional official or business records, and even if they did, their authors would be subject to confrontation nonetheless. Documents kept in the regular course of business may ordinarily be admitted at trial despite their hearsay status. But that is not the case if the regularly conducted business activity is the production of evidence for use at trial.” (<i>Id.</i>, at p. 2538.)</p>
<p>The sky will fall.</p>	<p>“Perhaps the best indication that the sky will not fall after today’s decision is that it has not done so already.” Many states have already applied <i>Crawford</i> to forensic lab evidence, while others have enacted “notice and demand” statutes, permitting the defendant to assert (or forfeit by silence) his Confrontation Clause right after receiving notice of the prosecution’s intent to use a forensic analyst’s report. (<i>Id.</i>, at pp. 2540-2541.)</p>

Cases granted review to decide the viability of *Geier*:

People v. Dungo, S176886, (3rd Dist) rev. granted 12/02/2009: “(1) Was defendant denied his right of confrontation under the Sixth Amendment when one forensic pathologist testified to the manner and cause of death in a murder case based upon an autopsy report prepared by another pathologist? (2) How does the decision of the United States Supreme Court in *Melendez-Diaz v. Massachusetts* (2009)

557 U.S. ___, 129 S.Ct. 2527, 174 L.Ed.2d 314, affect this court's decision in *People v. Geier* (2007) 41 Cal.4th 555?"

People v. Lopez, S177046, (4th Dist., Div. 1) rev. granted 12/02/2009: "(1) Was defendant denied his right of confrontation under the Sixth Amendment when the trial court admitted into evidence the results of blood-alcohol level tests and a report prepared by a criminalist who did not testify at trial? (2) Was the error prejudicial in light of the testimony of a supervising criminalist about testing procedures at the lab? (3) How does the decision of the United States Supreme Court in *Melendez-Diaz v. Massachusetts* (2009) 557 U.S. ___, 129 S.Ct. 2527, 174 L.Ed.2d 314, affect this court's decision in *People v. Geier* (2007) 41 Cal.4th 555?"

People v. Rutterschmidt, S176213, (2nd Dist., Div. 5) rev. granted 12/02/2009: "(1) Was defendant denied her right of confrontation under the Sixth Amendment when a supervising criminalist testified as to the result of drug tests and the report prepared by another criminalist? (2) How does the decision of the United States Supreme Court in *Melendez-Diaz v. Massachusetts* (2009) 557 U.S. ___, 129 S.Ct. 2527, 174 L.Ed.2d 314, affect this court's decision in *People v. Geier* (2007) 41 Cal.4th 555?"

People v. Gutierrez, S176620, (2nd Dist., Div. 1) rev. granted 12/02/2009: "(1) Was defendant denied his right of confrontation under the Sixth Amendment when (a) one nurse practitioner testified as to the results of a sexual assault examination and the report prepared by another nurse practitioner, and (b) a supervising criminalist testified as to the result of DNA tests and the report prepared by another criminalist? (2) How does the decision of the United States Supreme Court in *Melendez-Diaz v. Massachusetts* (2009) 557 U.S. ___, 129 S.Ct. 2527, 174 L.Ed.2d 314, affect this court's decision in *People v. Geier* (2007) 41 Cal.4th 555?"

See Appendix B for collection of other California cases which have considered *Melendez-Diaz* (including some not yet final).

● ***Briscoe v. Virginia (and the Future of Melendez-Diaz)***

Briscoe v. Virginia (07-11191) Cert. Granted 6/29/2009

Question presented: "If a state allows a prosecutor to introduce a certificate of a forensic laboratory analysis, without presenting the testimony of the analyst who prepared the certificate, does the state avoid violating the Confrontation Clause of the Sixth Amendment by providing that the accused has a right to call the analyst as his own witness?"

Appendix A¹

¹ FDAP thanks Law Clerk Jen Stanger for her assistance in preparing these materials.

Case Name	Case Cite	Jx	Pub?	Charge	Type of Document or Testimony	Rev on M. Grounds?	Procedure	Holding
7/15/09 <i>Sanders v. Director fo CDC</i>	2009 U.S. Dist. LEXIS 63049; 2009 WL 2136935	Fed - CA East	N	Sale of cocaine base	Field identification card.	N	Investigative officers' testimony that other officers had identified defendant through field identification.	Defendant waived argument by not raising at trial. Additionally, even had the defendant not waived the issue, any error was harmless because other officers also identified defendant.
7/16/09 <i>Tabaka v. District of Columbia</i>	976 A.2d 173	DC	Y	Operating motor vehicle without a permit	Clerk's certificate of no permit	Y	Certificate admitted without testimony.	Certificate was testimonial, was created for trial. Certificate was the only proof that defendant was not licensed.
7/16/09 <i>Duvall v. U.S.</i>	975 A.2d 839	DC	Y	Drug possession	DEA Lab report.	Y	Certificate admitted without testimony.	Admission was error. It was not harmless despite defendant's admission, officer's testimony and identification of marijuana, and a positive THC field test. "Government has not eliminated the 'reasonable possibility' that [the report] contributed to Duvall's conviction."
7/21/09 <i>Iuli v. Indiana</i>	2009 Ind. App. Unpub LEXIS 1397; 2009 WL 2166971	Indiana	N	Drug possession	Chain of custody doc and Certificate of Analysis	N	Lab tech testified	Lab tech testified at trial and therefore was subject to cross, and any error would have been harmless
7/28/09 <i>People v. Frey</i>	2009 Mich. App. LEXIS 1601; 2009 WL 2244521	Mich.	N	Molestation	DNA Test	N	Report admitted with supervisor's testimony	Testifying analyst had actually witnessed the DNA lab test and therefore was familiar with the methodology and results.
7/28/09 <i>People v. Payne</i>	2009 Mich. App. LEXIS 1592; 2009 WL 2253287	Mich.	Y	"Criminal sexual conduct"	DNA Test	Y	Report admitted without testimony.	Straight <i>Melendez</i> application. Reports were decisive of the outcome of the trial and therefore, the court reversed the conviction.
7/29/09 <i>Casillas v. Woodford</i>	2009 U.S. Dist. LEXIS 80876; 2009 WL 2898819	Fed - CA Central	N	Burglary - First degree	None.	N	Witness's statements admitted through police officer testimony.	Statements were not testimonial since they were not given with "an eye toward trial." They also did not regard "past events."
7/30/09 <i>People v. Quezada</i>	2009 Cal.App.Unpub LEXIS 6168; 2009 WL 2277157	Cal. (2d Dist)	N	Attempted murder	Ballistics report.	N	Supervisor testimony	Error was harmless. There was an "abundance of incriminating evidence" at trial. Also, testimony of supervisor properly admitted, which reached the same conclusion as the report.
7/30/09 <i>People v. Nelson</i>	2009 Mich. App. LEXIS 1626; 2009 WL 2343168	Mich.	N	Murder - First Degree	Autopsy report	N	Report admitted, but the author (in 1979) had since died.	Error was harmless. Defendant did not contest cause of death.
7/30/09 <i>Camacho v. State</i>	2009 Tex. App. LEXIS 5975; 2009 WL 235688	Tex.	N	Drug possession	Lab results	N	Supervising chemist testified. Report not admitted.	Defendant not preserve the issue for review by failing to object at trial. No out-of-court "statement" was admitted. Error was harmless.
8/4/09 <i>Rice v. Hudson</i>	2009 U.S. Dist. LEXIS 67592; 2009 WL 2410436	Fed - OH Dist.	N	Rape	None.	N	Victim's statements admitted through social worker's testimony.	Statements to social worker outside presence of law enforcement are not testimonial. Additionally, <i>Melendez</i> is applicable only to lab procedure documents and hearsay admitted through "affidavits."

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8/5/09	<i>State v. Willis</i>	230 Ore. App. 215	Oreg.	Y	Drug possession	Lab tests.	N	Certificate admitted without testimony.	Harmless error. Independent evidence, such as a police officer with extensive training in drug recognition, concluded the contents of a vial were methamphetamine. Also, defendant's trial court theory did not dispute that the substance was meth.
8/6/09	<i>Bobadilla v. Carlson</i>	575 F.3d 785	Fed - 8th Cir.	Y	Sexual abuse of minor.	None.	Y	Victim's statements admitted through social worker's testimony.	Did not apply <i>Melendez</i> , but noted it was issued after the trial court's ruling that testimony inadmissible since the victim's statements were testimonial. Court cited <i>Melendez</i> in a footnote to mention it further supported the ruling..
8/7/09	<i>Govt. of the Virgin Islands v. Vicars</i>	2009 U.S. App. LEXIS 17633; 2009 WL 2414378	Fed - 3rd Cir.	N	Attempted rape/unlawful sexual contact	Physician report.	Y	Report admitted, and another physician testified regarding its contents	Report testimonial because it was intended for use at trial. Report inadmissible, and testimony of physician explaining the report also inadmissible.
8/10/09	<i>State v. Walker</i>	2009 Tenn. Crim. App. LEXIS 644; 2009 WL 2433176	Tenn.	Y	Drug possession (probation revocation)	Drug test results.	N	Certificate admitted without testimony.	Probation revocation proceeding is not a criminal prosecution, and 6th Amendment rights therefore are inapplicable.
8/12/09	<i>Commonwealth v. Bultumer</i>	2009 Mass. App. Unpub. LEXIS 548; 2009 WL 2447920	Mass. (App)	N	Drug possession	Certificates of Analysis	N	Certificate admitted without testimony. Claim on appeal is ineffective assistance given failure to object at trial.	Because <i>Melendez</i> was not decided until after appellant's trial, no I/A claim was warranted.
8/13/09	<i>In re: S.P.</i>	346 Ore. 592	Oreg.	Y	Sodomy - First degree	Statements to state child abuse agency	Y	Victim's statements to agency admitted.	<i>Melendez</i> cited for general Sixth Amendment right to confront.
8/17/09	<i>State v. McDougald</i>	2009 Ohio 4417	Ohio	Y	N/A	N/A	N	Appellant's appeal filed 17 months after 180 day deadline	<i>Melendez</i> does not apply retroactively.
8/18/09	<i>U.S. v. Forstell</i>	2009 U.S. Dist. LEXIS 74810; 2009 WL 2634666	Fed - VA Dist.	N	DUI	Certificate of Instrument Accuracy (for BAC test)	N	Technician who calibrated BAC test instrument not called to testify. Certificate admitted instead with administering police officer's testimony	Certificates are not testimonial. They merely offer routine information.
8/18/09	<i>Horarik v. Cmmsr. Of Public Safety</i>	2009 Minn. App. Unpub LEXIS 907; 2009 WL 2498214	Minn.	N	Revocation of License proceeding following DUI	Urinalysis	N	Report admitted without testimony.	Proceeding is not a criminal prosecution, but rather civil in nature. Therefore Sixth Amendment is inapplicable.
8/19/09	<i>People v. Carruth</i>	2009 Cal.App.Unpub LEXIS 6697; 2009 WL 2564832	Cal. (1st Dist.)	N	Drug possession	Drug test results.	N	Supervisor testimony	Error was harmless, even if by circumstantial evidence. Scientific evidence is not necessary to identify narcotic.
8/19/09	<i>Berkley v. State</i>	___ S.W.3d___ (2009 Tex. App. LEXIS 6415; 2009 WL 2524926)	Tex.	Y	Sexual assault	Victim's statements to forensic nurse examiner	N	Supervising nurse examiner testified as to contents of report. Report itself admitted.	Purpose of the report was to render medical treatment. Medical records are not testimonial, and therefore there was no confrontation clause violation.

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8/20/09 <i>Long v. State</i>	2009 Tex. App. LEXIS 6577; 2009 WL 2579610	Tex.	N	Murder	Victim's toxicology report.	N	Doctor who performed the autopsy testified at trial, but not the person who ran the tox report. The tox report was included in the autopsy report, which was admitted.	Admission was error, but it was harmless. Defendant argued that the results of the tox report, which showed the victim had no drugs or alcohol, made the victim seem like an innocent bystander. Court held the tox report results were irrelevant because there was no provocation claim.
8/21/09 <i>U.S. v. Pursley</i>	577 F.3d 1204	Fed - 10th Cir.	Y	Retaliation against a witness	None.	N	Victim's statements admitted through testimony of police officer. Victim separately testified, but not on the same subject.	Defendant had ample opportunity to cross-examine the victim about all of his statements. Therefore, no Confrontation Clause violation.
8/27/09 <i>People v. Pineda</i>	2009 Cal.App.Unpub LEXIS 6960; 2009 WL 2622608	Cal. (2d Dist)	N	Vehicular MS while intoxicated	Blood alcohol report	N	Supervisor testimony	Error was harmless. Witnesses confirmed intoxication as did breathalyzer tests.
8/28/09 <i>U.S. v. Gitarts</i>	2009 U.S. App. LEXIS 19376; 2009 WL 2705507	Fed - 4th Cir.	N	Conspiracy to defraud U.S.	Corporate records.	N	Records admitted into evidence.	Melendez does not extend to business records. Traditional business records are not testimonial.
8/28/09 <i>Kansas v. Leshay</i>	213 P.3d 1071	Kansas (Supreme)	Y	Drug possession	Lab reports	N	Reports admitted at preliminary examination (to determine probable cause) without testimony	Sixth Amendment right is applicable only to trials, and not to preliminary examinations.
8/28/09 <i>State v. Locklear</i>	363 N.C. 438	N.C.	Y	Murder - First Degree	Autopsy report	N	Report admitted without testimony.	Error was harmless. The report was not critical to the conviction, especially because defendant had confessed.
8/28/09 <i>Cuadros-Fernandez v. State</i>	___ S.W.3d___ (2009 Tex. App. LEXIS 6896; 2009 WL 2647890)	Tex.	Y	Murder	DNA Test	Y	Report admitted without testimony.	The admission of the report without testimony was a violation of the confrontation right. Because the prosecution's case was largely circumstantial, it cannot be said that the report did not contribute to the verdict and therefore the error was not harmless.
8/31/09 <i>Hamilton v. State</i>	___ S.W.3d___ (2009 Tex. App. LEXIS 6923; 2009 WL 2751044)	Tex.	Y	Rape	DNA Test	N	Supervisor testified, and not the scientist who performed the tests. Report not admitted.	Supervisor was an expert basing opinion on raw data. Raw data is not testimonial. They are statements of the machine itself rather than statements of the operator of the machine. Therefore no confrontation clause violation.
9/1/09 <i>Commonwealth v. Marin</i>	2009 Mass. App. Unpub. LEXIS 519; 2009 WL 2744176	Mass. (App)	N	Drug distribution	Certificates of Analysis	N	Certificate admitted without testimony.	Error was harmless. Substantial evidence supported that substance was cocaine.
9/1/09 <i>Grant v. Commonwealth</i>	54 Va. App. 714	Virg.	Y	DUI	Breathalyzer result report.	Y	Breathalyzer operator not called to testify, but police officer who witnessed the test did testify. Certificate of breathalyzer result admitted.	Virginia statute requiring breathalyzer preparer "attest" to results was very similar to statute in <i>Melendez</i> . <i>Melendez</i> is directly applicable. Defendant did not waive by failing to subpoena the operator since he requested that the Commonwealth produce him.
9/2/09 <i>McKesson v. Shearin</i>	2009 U.S. Dist. LEXIS 79506; 2009 WL 2884762	Fed - MD Dist.	N	Murder - First Degree	None.	N		Melendez cited for general Sixth Amendment right.

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9/4/09	<i>Kansas v. Chatmon</i>	214 P.3d 1226	Kansas	N	Drug possession	N/A	N	Trial continued so that lab tech could testify regarding reports.	Right to speedy trial infringement justified by lab tech's unavailability.
9/14/09	<i>U.S. v. Hibbert</i>	2009 U.S. Dist. LEXIS 83499; 2009 WL 2948460	Fed - MO Dist.	N	Parole violation (poss. meth).	Drug test results.	N	Government seeks to admit lab results in revocation of supervised release proceedings.	In supervised release revocation hearings, the rules of evidence and the 6th Amd are relaxed. 6th Amd analysis requires a balancing test between burden to government and infringement. The highway patrol "has a very significant history of preparing reliable and accurate" lab tests and "[r]equiring a patrol officer to travel from and back to the laboratory... requires substantial time and resources and any benefit to Defendant would be very slight...."
9/15/09	<i>People v. Benjamin</i>	2009 Cal.App.Unpub LEXIS 7412; 2009 WL 2933153	Cal. (2d Dist)	N	Murder - First Degree	DNA Test	N	Lab reports put into evidence. Supervisor testified.	(1) Defendant waived argument by not raising at trial. (2) there was no confrontation clause violation because the supervisor was an expert who was called to interpret the report
9/15/09	<i>Commonwealth v. Avila</i>	912 N.E.2d 1014	Mass. (Supreme)	Y	Murder - First Degree	Coroner's Report	N	Chief medical examiner testified instead of ME that performed the autopsy	Chief medical examiner was an expert. He may not testify as to the underlying factual findings of the report, but rather only his opinion based on evidence. While Chief did so testify, error was harmless.
9/17/09	<i>Storey v. Vasbinder</i>	2009 U.S. Dist. LEXIS 84660; 2009 WL 3153101	Fed - MI Dist.	N	Murder - First Degree	None.	N		Melendez cited for general Sixth Amendment right.
9/17/09	<i>Commonwealth v. Connolly</i>	913 N.E.2d 356	Mass. (Supreme)	Y	Drug trafficking	Certificate of Analysis (Chemist)	N	Reports admitted without testimony	Error was harmless. Substantial evidence supported that substance was cocaine.
9/22/09	<i>U.S. v. Griffin</i>	2009 U.S. Dist. LEXIS 86794; 2009 WL 3064757	Fed - VA Dist.	N	DUI	Certificate of Instrument Accuracy (for BAC test)	N	Technician who calibrated BAC test instrument not called to testify. Certificate admitted instead.	Document not testimonial: not prepared for any specific defendant's trial, not "against" the defendant, used to certify only that routine calibration had been performed.
9/23/09	<i>State v. Bergin</i>	217 P.3d 1087	Oreg.	Y	DUI	Certificate of Instrument Accuracy (for BAC test)	N	Certificate admitted without testimony.	<i>Melendez</i> is inapplicable to certificates of accuracy of breathalyzers. The certificates are more akin to business records than to the certificates in <i>Melendez</i> . They are also have a more attenuated relationship to the guilty verdict since they do not in and of themselves establish guilt. It is not prepared for any particular trial. Finally, <i>Melendez</i> specifically excludes certificates of accuracy (123 S. Ct. at 2532 n. 1)

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9/25/09	<i>Commonwealth v. Rodriguez</i>	913 N.E.2d 880	Mass. (App)	Y	Drug trafficking	Certificates of Analysis	Y	Certificate admitted without testimony.	Conviction requires proof of over 100 grams of cocaine, and certificates are only evidence of cocaine's weight. Therefore, error is not harmless. (Court notes that state may re-try the case under <i>Kater v. Commonwealth</i> (1995) 421 Mass. 17.)
10/1/09	<i>Digsby v. U.S.</i>	981 A.2d 598	DC	Y	Drug possession	DEA Lab report.	Y	Report admitted without testimony.	Remanded, not reversed. Error was not harmless since the government did not otherwise establish that the substance was illegal.
10/1/09	<i>Commonwealth v. Roach</i>	2009 Mass.App.Unpub. LEXIS 1029; 2009 WL 3126902	Mass. (App)	N	Drug distribution	Certificates of Analysis	N/A	Certificate admitted without testimony.	Prosecution conceded error on this issue, and court briefly discussed whether it was harmless error. It concluded that because defendant's conviction was reversed on other grounds, it need not decide whether the error was harmless.
10/7/09	<i>Washington v. Florida</i>	18 So.3d 1221	Florida	Y	Acting as unlicensed contractor	Certificate of Non Licensure	N	Certificate admitted without testimony.	Error was harmless. Defendant admitted that he had no license.
10/7/09	<i>Wood v. State</i>	___ S.W.3d___ (2009 Tex. App. LEXIS 7882; 2009 WL 3230848)	Tex.	Y	Murder	Autopsy report	N	Medical examiner other than the one who wrote report testified.	Testifying medical examiner was an expert, and therefore could explain the basis for his opinion (the report). Yet the gravity of the testimony given was for the truth of the matter, and not as a basis for opinion. However, any error was harmless.
10/8/09	<i>Commonwealth v. Brown</i>	914 N.E.2d 332	Mass. (App)	Y	Possession (firearm)	Ballistics report.	Y	Report admitted without testimony.	Issue properly preserved at trial, and Commonwealth did not meet its burden to show harmless error beyond a reasonable doubt.
10/8/09	<i>State v. Norman</i>	2009 Ohio 5458	Ohio	Y	Burglary	DNA Test	N	Forensic scientist that performed the tests testified, but the lab employee that collected the DNA samples from the evidence did not testify.	The employee made no testimonial statements, since he merely handled the evidence. This situation is more similar to the chain of custody analysis than to the <i>Melendez</i> one. Therefore, admission of DNA reports was not unconstitutional.
10/9/09	<i>Kansas v. Laturner</i>	___ P.3d ___ (2009 Kan. LEXIS 870; 2009 WL 3233750)	Kansas (Supreme)	Y	Drug possession	Lab reports.	Y	Reports admitted without testimony	Straight <i>Melendez</i> application. Case remanded for new trial, not reversed.
10/13/09	<i>Commonwealth v. Mendes</i>	914 N.E.2d 348	Mass. (App)	Y	Possession (firearm)	Ballistics report.	N	Report admitted without testimony.	Harmless error. Independent, though circumstantial, evidence showed the gun was operable.
10/14/09	<i>Commonwealth v. Zewiey</i>	2009 Mass. App. Unpub LEXIS 1055; 2009 WL 3270582	Mass. (App)	N	Drug trafficking	Certificates of Analysis	N	Certificate admitted without testimony.	Error was harmless. Defendant's argument at trial was not that the substance was not oxycontin, but rather that it was for his personal use. Certificate subject was deemed admitted.

	Case Name	Case Cite	Jx	Pub?	Charge	Type of Document or Testimony	Rev on M. Grounds?	Procedure	Holding
10/14/09	<i>Commonwealth v. Montina</i>	2009 Mass.App.Unpub LEXIS 1052; 2009 WL 3270578	Mass. (App)	N	Drug possession	Certificates of Analysis	N	Unknown.	Police officer that testified could have qualified as an expert who could identify the substance. Therefore error harmless. Also, argument as to one substance was that it belonged to codefendant, and not the substance was legal.
10/15/09	<i>Commonwealth v. Dennis</i>	2009 Mass. App. Unpub. LEXIS 1047; 2009 WL 329665	Mass. (App)	N	Unknown.	Unknown.	Y	Unknown.	Entire opinion: "On review of the record, the briefs, and the transcript, nothing has been made to appear that would cause us to conclude that the circumstances presented here are not controlled by the teachings of Melendez-Diaz. Accordingly, we are constrained to vacate the defendant's conviction and remand this matter to the Superior Court for such proceedings as the Commonwealth deems appropriate. Judgment reversed. Verdict set aside."
10/16/09	<i>U.S. v. Diaz-Delgado</i>	2009 U.S. Dist. LEXIS 96843; 2009 WL 3384181	Fed - CA South	N	Illegal alien found in U.S. without permission of authorities	Certificate of Non-Existence (of permission to be in U.S.)	N	Certificate admitted without testimony	Error was harmless. The certificate was unnecessary to case since defendant admitted he had no permission to be within U.S. and border patrol agent testified that agent had searched for defendant's files.
10/16/09	<i>Commonwealth v. Vasquez</i>	914 N.E.2d 944	Mass. (App)	Y	Drug distribution	Certificates of Analysis	N	Certificates admitted without testimony.	Trial counsel waived issue by failure to object at trial.
10/19/09	<i>Commonwealth v. Augustin</i>	2009 Mass. App. LEXIS 1252; 2009 WL 3334798	Mass. (App)	N	Possession (firearm)	Ballistics report.	Y	Unknown.	Only one paragraph on this issue, and reversed on that ground. Straight <i>Melendez</i> application, then a statement that the prosecution did not prove the error was harmless beyond a reasonable doubt.
10/20/09	<i>State v. Galindo</i>	146 N.C. App. 753	N.C.	Y	Drug trafficking	Drug test results.	N	Lab supervisor testified instead of tech who performed the test	Testimony of supervisor, even though expert, was based solely on the lab report. Therefore, the admission of the testimony was unconstitutional. However, the error was harmless.
10/22/09	<i>Commonwealth v. Baxter</i>	2009 Mass. App. Unpub. LEXIS 1092; 2009 WL 3379037	Mass. (App)	N	Drug possession	Certificates of Analysis	Y	Certificate admitted without testimony.	Straight <i>Melendez</i> application. Error was not harmless. It is not enough to show that the remaining evidence was sufficient to support the conviction. The Commonwealth must show beyond a reasonable doubt that the evidence did not "contribute" to the verdict.
10/26/09	<i>U.S. v. Corona-Rivera</i>	2009 U.S. Dist. LEXIS 100146; 2009 WL 3490286	Fed - CA South	N	Illegal alien found in U.S. without permission of authorities	Certificate of Non-Existence (of permission to be in U.S.)	N	Certificate admitted without testimony	Error was harmless. The certificate was merely cumulative evidence as defendant admitted he had no permission to be within U.S. and federal agent testified that agent had searched for defendant's files.

	Case Name	Case Cite	Jx	Pub?	Charge	Type of Document or Testimony	Rev on M. Grounds?	Procedure	Holding
10/26/09	<i>Commonwealth v. Nixon</i>	2009 Mass. App. Unpub. LEXIS 1099; 2009 WL 3415661	Mass. (App)	N	Drug distribution	Certificates of Analysis	Y	Certificate admitted without testimony.	Error was not harmless. Certificate was the only proof that the substance was illegal.
10/27/09	<i>Commonwealth v. Chery</i>	915 N.E.2d 284	Mass. (App)	Y	Possession (guns)	Ballistics report.	Y	Certificates admitted without testimony.	Straight Melendez application.
10/30/09	<i>Koenig v. Indiana</i>	916 N.E. 2d 200	Indiana	Y	Drug possession	Lab tests.	N	Lab supervisor testified instead of tech who performed the test	While the admission of the report was error, it was harmless. There was sufficient alternative evidence to support the conviction.
11/20/09	<i>Kansas v. Appleby</i>	___ P.3d ___ (2009 WL 3930461; 2009 Kan. LEXIS 1080)	Kansas	Y	Attempted rape and murder	Statistics re: DNA testing	N	Statistics of population's DNA profile and likelihood of DNA found at scene belonging to defendant was admitted.	The statistics were not testimonial and therefore defendant had no right to confront the statistician who compiled them.
11/6/09	<i>U.S. v. Rose</i>	___ F.3d ___ (2009 WL 3683127; 2009 U.S. App. LEXIS 24473)	5th Cir. (Texas)	Y	Possession (drug and firearm)	Lab report (drugs)	N	Lab supervisor testified instead of tech who performed the test	Because no objection at trial level, standard of review is only for plain error. Regardless of whether Confrontation Clause was violated, it was not plain error.
11/5/09	<i>Commonwealth v. Harris</i>	916 N.E. 2d 396	Mass. (App)	Y	Drug distribution	Certificates of Analysis	N	Certificates introduced without testimony.	There was sufficient circumstantial evidence proving substance was cocaine, and therefore that certificates were introduced was harmless error.
11/3/09	<i>State v. Mobley</i>	___ S.E. 2d ___ (2009 N.C. App. LEXIS 1713; 2009 WL 3617541)	N.C.	Y	Rape	DNA Test	N	Lab supervisor testified instead of tech who performed the test	Defendant did not object at trial. "Plain error" review unavailable since defendant did not argue it on appeal. In any case, testifying supervisor was expert who testified as to her own technical review of the data.
9/15/09	<i>U.S. v. Bacas</i>	___ F.Supp.2d ___ (2009 WL 3229370)	Fed. (Va.)	Y	Reckless driving	Certificate of Instrument Accuracy (for radar)	N	Certificate admitted without testimony.	Certificates are not testimonial. They merely offer routine information not specific to any defendant.
11/19/09	<i>State v. Ngang</i>	2009 WL 3954523	Ariz.	N	DUI	Unspecified.	N	Document admitted without testimony.	Defendant did not object at trial. "Plain error" review unavailable since defendant did not argue it on appeal. Court therefore refuses to consider.
11/19/09	<i>People v. Brown</i>	___ N.E.2d ___ (2009 N.Y. LEXIS 4047; 2009 WL 3849919)	N.Y.	Y	Rape	Rape kit lab results.	N	Testing performed by private company under contract with government. Government lab supervisor testified at trial.	The report is non-testimonial since it merely consisted of raw data and contained no conclusions. The government called to the stand the person who actually analyzed the data. Therefore, there was no Conf. Clause violation.
11/4/09	<i>Grey v. State</i>	___ S.W. 3d ___ (2009 Tex. App. LEXIS 8572; 2009 WL 3682598)	Tex.	Y	Assault	Criminal history summary	N	Social and criminal history by unnamed department employee drafted upon dfn's admission to prison following prior conviction admitted in sentencing phase.	The document was not drafted in anticipation of prosecutorial use and therefore is not testimonial, and its introduction does not implicate the 6th Amendment.

Case Name	Case Cite	Jx	Pub?	Charge	Type of Document or Testimony	Rev on M. Grounds?	Procedure	Holding
11/13/09 <i>State v. Murphy</i>	___ P.3d ___ (2009 Kan. App. LEXIS 880; 2009 WL 3788057)	Kan.	Y	Possession (drugs)	Lab reports.	N	Admitted without testimony.	Defendant waived argument by failure to comply with a Kansas "notice and demand" statute whereby the people gave notice of intent to introduce the report, and dfn failed to object within 10 days.
11/17/09 <i>Commonwealth v. Hollister</i>	___ N.E.2d ___ (2009 Mass. App. LEXIS 1405; 2009 WL 3808293)	Mass.	Y	Possession (firearm)	Ballistics report.	Y	Admitted without testimony.	Certificate was necessary to prove gun was of a certain illegal size, and contain ballistics opinion on the ultimate issue of fact. People did not meet its burden of showing error was harmless. Even though defense theory at trial was lack of intent, and defense did not attack the certificate, this is not outweighed by the fact that there was no other evidence to prove gun was an illegal firearm.
11/20/09 <i>Commonwealth v. Morales</i>	2009 Mass. App. Unpub. LEXIS 1211; 2009 WL 3878092	Mass.	N	Drug trafficking	Certificates of Analysis	Y	Admitted without testimony.	Admission was error and error was not harmless. Prosecution repeatedly referred to the certificates in its closing and jury was instructed by judge that the certificates had "special evidentiary value." Without the certificates, evidence insufficient to show that the substance was cocaine or that there was sufficient amount.
11/12/09 <i>Commonwealth v. Brown</i>	2009 Mass. App. Unpub. LEXIS 1179; 2009 WL 3762889	Mass.	N	Drug trafficking	Certificates of Analysis	Y	Unknown.	Confrontation Clause was violated and error was not harmless since without the certificates a jury could not conclude that there was sufficient cocaine to meet the legal requirement of trafficking.
11/20/09 <i>Commonwealth v. Camacho</i>	2009 Mass. App. Unpub. LEXIS 1212; 2009 WL 3878089	Mass.	N	Drug distribution	Certificates of Analysis	Y	Unknown.	Confrontation Clause violated. Commonwealth concedes that error was not harmless.
11/17/09 <i>Commonwealth v. Jordan</i>	2009 Mass. App. Unpub. LEXIS 1193; 2009 WL 3817939	Mass.	N	Possession (firearm)	Ballistics report.	N	Unknown.	Confrontation Clause violated, but error was harmless. There was testimony by police, who had fired the gun, that demonstrated it was a firearm.
11/17/09 <i>Commonwealth v. Marshall</i>	2009 Mass. App. Unpub. LEXIS 1195; 2009 WL 3817941	Mass.	N	Possession (drugs and firearm)	Certificates of Analysis/ballistics report	Y/N	Admitted without testimony.	Admission of both certificates was a violation of the Confrontation Clause. As to drugs, the error was not harmless and conviction reversed. However, as to the firearm, the error was harmless and conviction affirmed.
11/13/09 <i>Commonwealth v. Bin Li</i>	2009 Mass. App. Unpub. LEXIS 1185; 2009 WL 3785931	Mass.	N	Drug distribution	Certificate of analysis	N	Admitted without testimony.	While there was a violation, error was harmless. The substance itself was admitted into evidence at trial, for all to see. There was little mention of the drug certificate, and the defense relied on other theories during trial.

	Case Name	Case Cite	Jx	Pub?	Charge	Type of Document or Testimony	Rev on M. Grounds?	Procedure	Holding
11/12/09	<i>Commonwealth v. Moses</i>	2009 Mass. App. Unpub. LEXIS 1180; 2009 WL 3762900	Mass.	N	Possession (drug)	Certificate of analysis	Y	Unknown.	Summary opinion without reasoning. Reversed.
11/10/09	<i>Commonwealth v. Keller</i>	2009 Mass. App. Unpub. LEXIS 1165; 2009 WL 3734183	Mass.	N	Drug trafficking/Pos session (drugs)	Certificates of analysis	Y/N	Admitted without testimony.	Drug trafficking reversed, but possession affirmed. People relied entirely on the certificate to prove the weight of the drugs in the trafficking charge. Therefore, error was not harmless. As to possession charge, other evidence was sufficient to prove the substance was marijuana.
11/9/09	<i>Commonwealth v. Davis</i>	2009 Mass. App. Unpub. LEXIS 1161; 2009 WL 3712361	Mass.	N	Drug distribution	Certificate of analysis.	Y	Admitted without testimony.	Summary opinion without reasoning. Reversed.
11/5/09	<i>Commonwealth v. Dixon</i>	2009 Mass. App. Unpub. LEXIS 1154; 2009 WL 3644110	Mass.	N	Possession (drugs)	Certificate of analysis.	Y	Admitted without testimony.	Confrontation Clause was violated, and error was not harmless. There was insufficient independent evidence to prove the substances were illegal.
11/4/09	<i>Commonwealth v. Nero</i>	2009 Mass. App. Unpub. LEXIS 1137; 2009 WL 3615017	Mass.	N	Possession (drugs)	Certificate of analysis.	Y	Admitted without testimony.	Confrontation Clause was violated, and error was not harmless. There was insufficient independent evidence to prove the substances were illegal.
11/25/09	<i>Oregon v. Hamilton</i>	___ P. 3d ___ (2009 Ore. App. LEXIS 1833; 2009 WL 4066644)	Oreg.	Y	Possession (drugs)	Certificate of analysis.	Y	Admitted without testimony.	State conceded that admission of lab report was error. Conviction reversed.
11/13/09	<i>Commonwealth v. Bonner</i>	2009 Mass. App. Unpub. LEXIS 1181; 2009 WL 3785825	Mass.	N	Possession (drug)	Certificate of analysis	Y	Unknown.	Summary opinion without reasoning. Reversed.
11/25/09	<i>Commonwealth v. Vasquez</i>	2009 WL 4110816; 2009 Mass. App. Unpub. LEXIS 1228	Mass.	Y	Drug distribution	Certificate of analysis	Y	Unknown.	Summary opinion without reasoning. Reversed.

Appendix B²

² FDAP thanks Law Clerk Emily O'Connor for her assistance in preparing these materials.

1. *People v. Velazquez* 2009 Cal. App. LEXIS 2080

- Date filed: Dec. 24, 2009
- Court of Appeal of California, Fourth Appellate District, Division Two
- Unpublished
- Doc/testimony at issue: Testimony by an expert whose opinion is based on lab reports of narcotics testing prepared by a nontestifying expert
- Holding: Court concludes that *Geier* is still good law and applies here. Lab test results/reports were business records rather than testimonial hearsay, and therefore *Melendez-Diaz* did not apply.
- Result: Testimony was proper, judgment affirmed.

2. *People v. Vargas* (2009) 178 Cal.App.4th 647

- Date filed: Oct. 22, 2009
- Court of Appeal of California, Second Appellate District, Division Four
- Partially published
- Doc/testimony at issue: Victim's statements to a nurse during a sexual assault examination
- Holding: Court concludes that under *Geier*, the victim's statements to a nurse were testimonial and inadmissible. Victim's statements were documented primarily as evidence for transmittal to law enforcement and for possible use in court.
- Result: Admitting victim's statements was harmless error as to forcible rape conviction. Admitting statements was reversible error as to forcible penetration with a foreign object.

3. *People v. Anunciacion* 2009 Cal. App. Unpub. LEXIS 10128

- Date filed: Dec. 22, 2009
- Court of Appeal of California, Fourth Appellate District, Division One
- Unpublished
- Doc/testimony at issue: Testimony by an expert whose opinion is based on

- autopsy findings prepared by a nontestifying expert
- Holding: Court applies *Melendez-Diaz* principles and concludes that *Geier* is seriously undermined by *Melendez-Diaz*. The underlying autopsy report and findings were testimonial. The defendant's right to confront the pathologist who conducted the autopsy and prepared the report was not satisfied by the opportunity to cross examine an expert witness who did not participate in the autopsy.
- Result: Error was not harmless, conviction reversed

4. *People v. Martinez* 2009 Cal. App. Unpub. LEXIS 10039

- Date filed: Dec. 18, 2009
- Court of Appeal of California, Fifth Appellate District
- Unpublished
- Doc/testimony at issue: 1) Autopsy report 2) Testimony by an expert whose opinion is based on autopsy report prepared by a nontestifying expert
- Holding: Court acknowledges the split in authority regarding *Geier's* continuing validity in light of *Melendez-Diaz* but declines to draw its own conclusion. Court does not consider Confrontation clause issue.
- Result: Harmless error, judgment affirmed

5. *People v. Petillo* 2009 Cal. App. Unpub. LEXIS 9816

- Date filed: Dec. 14, 2009
- Court of Appeal of California, Second Appellate District, Division Five
- Unpublished
- Doc/testimony at issue: Reports by two print examiners who verified findings of the testifying forensic print specialist
- Holding: Court concludes that no Confrontation clause violation occurred. The testifying specialist personally performed the print comparisons and was questioned regarding the verification reports during cross-examination. Court does not state whether the verification reports were testimonial.
- Result: Any error in admitting verification reports was harmless, judgment affirmed

6. *People v. Vasquez* 2009 Cal. App. Unpub. LEXIS 9576

- Date filed: Dec. 2, 2009
- Court of Appeal of California, Second Appellate District, Division Four
- Unpublished
- Doc/testimony at issue: Sexual assault examination report (SART report) findings introduced through testimony of expert who did not personally conduct the examination
- Holding: Court acknowledges the post-*Melendez-Diaz* split in authority regarding the admissibility of expert testimony based on reports created by nontestifying witnesses. However, Court does not apply *Melendez-Diaz* or state whether or not the SART report constitutes testimonial evidence.
- Result: Harmless error, judgment affirmed

7. *People v. Bingley* 2009 Cal. App. Unpub. LEXIS 8759

- Date filed: Nov. 3, 2009
- Court of Appeal of California, Second Appellate District, Division Two
- Unpublished
- Doc/testimony at issue: Lab reports of narcotics testing
- Holding: Court concludes that *Geier* is still good law and states that under *Geier* the lab reports are nontestimonial. The lab reports were properly admitted along with testimony of an expert who did not personally perform the narcotics testing.
- Result: Judgment affirmed

8. *People v. Rodriguez* 2009 Cal. App. Unpub. LEXIS 7560

- Date filed: Sept. 22, 2009
- Court of Appeal of California, Third Appellate District
- Unpublished
- Doc/testimony at issue: Testimony by an expert whose opinion is based on lab reports of narcotics testing prepared by a nontestifying expert
- Holding: Defendant claims that counsel's failure to object to the expert testimony constitutes ineffective assistance of counsel. Court notes that

Melendez-Diaz is distinguishable from the case at issue but acknowledges that the lab report was most likely admitted erroneously. Even if *Melendez-Diaz* did apply to the expert testimony, defendant could not make showing of prejudice required to establish ineffective assistance of counsel.

- Result: Judgment affirmed

9. *People v. Navarro* 2009 Cal. App. Unpub. LEXIS 7522

- Date filed: Sept. 21, 2009
- Court of Appeal of California, Second Appellate District, Division Four
- Unpublished
- Doc/testimony at issue: 1) Lab reports of narcotics testing 2) Testimony by an expert whose opinion is based on lab reports of narcotics testing prepared by a nontestifying expert
- Holding: Court acknowledges that the documents and testimony at issue raise Confrontation clause issues under *Melendez-Diaz*. However, Court does not apply *Melendez-Diaz* and instead assumes the documents and testimony at issue were admitted erroneously.
- Result: Harmless error, judgment affirmed

10. *People v. Ellis* 2009 Cal. App. Unpub. LEXIS 7497

- Date filed: Sept. 18, 2009
- Court of Appeal of California, Second Appellate District, Division One
- Unpublished
- Doc/testimony at issue: 1) Lab reports of narcotics testing 2) Testimony by an expert whose opinion is based on lab reports of narcotics testing prepared by a nontestifying expert
- Holding: Court concludes that *Geier* controls and *Melendez-Diaz* does not apply. Lab reports were not testimonial therefore defendant's Confrontation clause rights were not violated.
- Result: Judgment affirmed

11. *People v. Benjamin* 2009 Cal. App. Unpub. LEXIS 7412

- Date filed: Sept. 15, 2009
- Court of Appeal of California, Second Appellate District, Division Six
- Unpublished
- Doc/testimony at issue: Testimony by an expert whose opinion is based on DNA reports prepared by a nontestifying expert
- Holding: Court concludes that *Melendez-Diaz* does not apply. Defendant here did not object to admission of DNA reports and he had the opportunity to cross-examine the testifying expert. Court states that defendant's Confrontation clause rights were not violated.
- Result: Judgment affirmed

12. *People v. Pineda* 2009 Cal. App. Unpub. LEXIS 6960

- Date filed: Aug. 27, 2009
- Court of Appeal of California, Second Appellate District, Division Two
- Unpublished
- Doc/testimony at issue: Testimony by an expert whose opinion is based on blood alcohol report prepared by a nontestifying expert
- Holding: Court declines to decide whether testimony based on blood alcohol report was erroneous in light of *Melendez-Diaz*.
- Result: Harmless error, judgment affirmed

13. *People v. Carruth* 2009 Cal. App. Unpub. LEXIS 6697

- Date filed: Aug. 19, 2009
- Court of Appeal of California, First Appellate District, Division Four
- Doc/testimony at issue: Lab report of narcotics testing
- Holding: Court concludes that *Melendez-Diaz* applies. Under *Melendez-Diaz* the lab report was testimonial and inadmissible. The expert did not testify as to the narcotic nature of the drugs and thus defendant's Confrontation rights were violated.
- Result: Harmless error, judgment affirmed

14. *People v. Quezada* 2009 Cal. App. Unpub. LEXIS 6168

- Date filed: July 30, 2009
- Court of Appeal of California, Second Appellate District, Division Two
- Doc/testimony at issue: Firearm analyst's report
- Holding: Court concludes that the report at issue is testimonial under *Melendez-Diaz*. Admission of the report was erroneous but properly admitted testimony of a second expert reached the same conclusion.
- Result: Harmless error, judgment affirmed