

MAY 03 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DANIEL SHAWN NEWSOM,

Petitioner - Appellant,

v.

**D. L. RUNNELS; ATTORNEY
GENERAL OF THE STATE OF
CALIFORNIA,**

Respondents - Appellees.

No. 09-15125

D.C. No. 2:04-cv-02134-GEB-
DAD

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Garland E. Burrell, District Judge, Presiding

Submitted April 13, 2010**
San Francisco, California

Before: **KOZINSKI**, Chief Judge, **NOONAN** and **CALLAHAN**, Circuit
Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Because the trial judge's provision of a binder to the jury did not violate the Constitution, much less entitle petitioner to relief under 28 U.S.C. § 2254(d)(1), we need not address respondent's argument that petitioner's claims are procedurally barred. The judge did not pressure the jury to decide the case a particular way; he merely provided procedural advice to help the jury deliberate. The Constitution does not prohibit use of bold font in jury instructions to aid the jury's comprehension. Nor did the judge violate the Constitution when he instructed the jury to deliberate and follow the law. "It is the duty of the court to instruct the jury as to the law and it is the duty of the jury to follow the law as it is laid down by the court." Sparf v. United States, 156 U.S. 51, 74 (1895) (Harlan, J.) (quoting United States v. Battiste, 24 F. Cas. 1042, 1043 (Story, Circuit Justice, C.C.D. Mass. 1835)).

AFFIRMED.