LEADING CONSTITUTIONAL CASES ON CRIMINAL JUSTICE

2008 EDITION

Edited by

Lloyd L. Weinreb

FOUNDATION PRESS
75TH ANNIVERSARY

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395 Hudson Street
New York, NY 10014
Phone Toll Free 1–877–888–1330
Fax (212) 367–6799
foundation–press.com

Printed in the United States of America

ISBN 978–1–59941–488–1

ISSN 0272–2151

TEXT IS PRINTED ON 10% POST CONSUMER RECYCLED PAPER

PREFACE

This book provides in a simple format the texts of leading constitutional cases about the investigation and prosecution of crime. The continuing development of constitutional principles in this area makes it worthwhile to consider the cases explicitly as constitutional law and not only as aspects, more or less important, of the whole structure of the administration of criminal justice. The rhetoric of many of the opinions resounds remote from the "street" or the police station or the courthouse; some of the doctrine elaborated in them is not substantial enough to control practices that depend on more than legal doctrine. If constitutional law is not the whole or from every perspective the most important part of criminal justice, it is nonetheless an important part, and in its constitutional aspect it is distinctive. While I should not look only to the Supreme Court to learn about the criminal process, therefore, I do not believe that the significance of the cases contained here lies entirely in their immediate, concrete consequences.

In the past, I used these cases as they are presented here in a first-year law school course on Criminal Law. Currently, because of curricular changes at the institution where I teach, I use them in an upper level course on the law of criminal investigation, as elaborated in the Fourth, Fifth, and Sixth Amendments. In order to make the book more usable for others, who have their own ideas about which cases are most important, I have included more cases than I use myself. The book may also serve as an unadorned reference source for people who are professionally engaged in the work of criminal justice. The format has been designed for annual inclusion of significant cases decided in the current Term of the Supreme Court (and exclusion of some that lose significance).

The cases are edited only for economy of space (and sometimes the reader's time), as neutrally as I was able. For the most part I have eliminated material that is largely irrelevant to criminal justice, material that is repetitious within a case or too much so within a line of connected cases reproduced here, historical material that does not currently have importance for the constitutional development, analyses of prior cases that serve mostly as a polite bow to the past, and separate opinions of the Justices that do not shed light on prevailing constitutional doctrine or (appear to) have much chance of prevailing themselves. I have included concurring and dissenting opinions that make a substantial contribution to discussion of the issue at stake; I have applied that standard generously. Separate opinions that are not reproduced are indicated in a footnote at the end of the case, along with the votes of Justices who did not join one of the reproduced opinions.

The arrangement of cases is guided by the constitutional focus so far as that makes sense. I could not always accept the Supreme Court's own statement about what constitutional rubric was at issue lest more important patterns disappear. The lineup decisions (*Wade* and *Kirby*), for example, "go off" on the right to counsel; but they are about lineups and have been so arranged. Rather than separate pieces of cases that deal significantly with more than one issue, such as *Schmerber*, I have placed the whole case where it seemed to fit best. In the end, I adopted the arrangement that seemed least likely to intrude on the cases. Rearrangement for the needs of a particular course will not be difficult.

Most footnotes have been deleted without indication. The original numbers are used for those that have been retained. Since the Justices commonly rely on footnotes for citations and similar supporting material, readers should consult the official report if they want to be sure that nothing of that kind is missed. That should not be necessary for most purposes. Citations have been omitted freely, but ellipses have been inserted to indicate their omission as well as all other omissions in the body of an opinion.

The length of the book has increased substantially since the first edition was published in 1973. As I have prepared succeeding editions, I have felt increasingly the need to shorten opinions, omit concurring or dissenting opinions, or omit cases altogether, lest the book become heavy, unwieldy, and expensive. The more of such choices that I have had to make, the more often probably will my omissions surprise and disappoint some of the book's users. I have tried to include the material most likely to be useful to the largest number of readers.

Some new cases that are included in the year after they were decided may prove not to be important enough to be included thereafter. Since I review and edit cases a second time after the opinion appears in final form (usually about two years after the decision is announced), I have an opportunity then to reconsider its inclusion. Users may find it helpful to have new cases included while they are new, even if they are not leading cases. With that in mind, I include cases liberally in the first two editions after the Term in which a decision is announced and reconsider their inclusion thereafter.

In this 2008 edition, I have added one new case, Virginia v. Moore (2008), which concerns the application of the exclusionary rule to a search that is unlawful under state law but is not independently a violation of the Fourth Amendment. I have also added several notes: Indiana v. Edwards (2008) (right to counsel; self-representation) at the end of Faretta v. California; Rothgery v. Gillespie County, Texas (2008) (commencement of adversary judicial proceedings) at the end of Coleman v. Alabama; Giles v. California (Confrontation Clause) at the end of Crawford v. Washington and Kennedy v. Louisiana (2008) at the end of Roper v. Simmons. I have also added, at the end of Faretta v. California, a note

about Indiana v. Edwards (2008), rejecting a right of self-representation by a person found not to be competent to conduct his own defense. In addition, the review of the whole text that was undertaken for the previous edition, to make the format and style of editing consistent throughout, has been completed. For that large task, I am immeasurably grateful to Melinda Eakin.

As in the past, I should be glad to hear from users of the book about omitted material that they would like to have included in future editions, as well as included material that might be omitted.

LLOYD L. WEINREB

June 2008

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LEADING CONSTITUTIONAL CASES

ON

CRIMINAL JUSTICE

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1. THE CONSTITUTION OF THE UNITED STATES: SELECTED PROVISIONS

The Bill of Rights (Amendments 1–10) and the Fourteenth Amendment §§ 1, 5

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

AMENDMENT III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and

district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

AMENDMENT VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

AMENDMENT VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

. . .

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

2. DUE PROCESS OF LAW

PALKO v. CONNECTICUT

302 U.S. 319, 58 S.Ct. 149, 82 L.Ed. 288 (1937)

MR. JUSTICE CARDOZO delivered the opinion of the Court.

A statute of Connecticut permitting appeals in criminal cases to be taken by the state is challenged by appellant as an infringement of the Fourteenth Amendment of the Constitution of the United States. Whether the challenge should be upheld is now to be determined.

Appellant was indicted in Fairfield County, Connecticut, for the crime of murder in the first degree. A jury found him guilty of murder in the second degree, and he was sentenced to confinement in the state prison for life. Thereafter the State of Connecticut, with the permission of the judge presiding at the trial, gave notice of appeal to the Supreme Court of Errors. This it did pursuant to an act adopted in 1886 which is printed in the margin.[1] Public Acts, 1886, p. 560; now § 6494 of the General Statutes. Upon such appeal, the Supreme Court of Errors reversed the judgment and ordered a new trial. State v. Palko, 186 Atl. 657. It found that there had been error of law to the prejudice of the state (1) in excluding testimony as to a confession by defendant; (2) in excluding testimony upon cross-examination of defendant to impeach his credibility, and (3) in the instructions to the jury as to the difference between first and second degree murder.

Pursuant to the mandate of the Supreme Court of Errors, defendant was brought to trial again. Before a jury was impaneled and also at later stages of the case he made the objection that the effect of the new trial was to place him twice in jeopardy for the same offense, and in so doing to violate the Fourteenth Amendment of the Constitution of the United States. Upon the overruling of the objection the trial proceeded. The jury returned a verdict of murder in the first degree, and the court sentenced the defendant to the punishment of death. The Supreme Court of Errors affirmed the judgment of conviction, 191 Atl. 320 . . . . The case is here upon appeal. 28 U.S.C. § 344.

1. Sec. 6494. *Appeals by the state in criminal cases.* Appeals from the rulings and decisions of the superior court or of any criminal court of common pleas, upon all questions of law arising on the trial of criminal cases, may be taken by the state, with the permission of the presiding judge, to the supreme court of errors, in the same manner and to the same effect as if made by the accused.

. . .