LEADING CONSTITUTIONAL CASES ON CRIMINAL JUSTICE

1999 EDITION

Edited by

Lloyd L. Weinreb

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LLOYD L. WEINREB
Dane Professor of Law, Harvard University

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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.

I use these cases as they are presented here in a first-year law school course on Criminal Law, in which it seems appropriate to emphasize the constitutional aspect of criminal justice. In order to make the book more usable to 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, I believe, 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 made 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 most usable. 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 have increasingly relied on footnotes for citations and similar supporting material that was once included in the body of an opinion, 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 dots 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 expect hereafter to include cases liberally in the first two editions after the term in which the decision is announced and then to make a second, more restrictive judgment.

For this 1999 edition, I have included two new cases that present issues under the Fourth Amendment: *Knowles v. Iowa*, which concerns the authority of the police to search a car after stopping a person for a traffic violation and issuing a citation instead of arresting him, and *Minnesota v. Carter*, which concerns the standing of a guest on private premises to challenge a search of the premises. I have also added a note following the opinion in *Chambers v. Maroney*, about *Wyoming v. Houghton*, which concerns the authority of the police to search a passenger's belongings during the search of a car.

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

July 1999

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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, 121 Conn. 669; 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, 122 Conn. 529; 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.

. . .

1. The execution of the sentence will not deprive appellant of his life without the process of law assured to him by the Fourteenth Amendment of the Federal Constitution.

The argument for appellant is that whatever is forbidden by the Fifth Amendment is forbidden by the Fourteenth also. The Fifth Amendment, which is not directed to the states, but solely to the federal government, creates immunity from double jeopardy. No person shall be "subject for the same offense to be twice put in jeopardy of life or limb." The Fourteenth Amendment ordains, "nor shall any State deprive any person of life, liberty, or property, without due process of law." To retry a defendant, though under one indictment and only one, subjects him, it is said, to double jeopardy in violation of the Fifth Amendment, if the prosecution is one on behalf of the United States. From this the consequence is said to follow that there is a denial of life or liberty without due process of law, if the prosecution is one on behalf of the People of a State. . . .

We do not find it profitable to mark the precise limits of the prohibition of double jeopardy in federal prosecutions. The subject was much considered in Kepner v. United States, 195 U.S. 100, decided in 1904 by a closely divided court. The view was there expressed for a majority of the court that the prohibition was not confined to jeopardy in a new and independent case. It forbade jeopardy in the same case if the new trial was at the instance of the government and not upon defendant's motion. Cf. Trono v. United States, 199 U.S. 521. All this may be assumed for the purpose of the case at hand, though the dissenting opinions (195 U.S. 100, 134, 137) show how much was to be said in favor of a different ruling. Right-minded men, as we learn from those opinions, could reasonably, even if mistakenly, believe that a second trial was lawful in prosecutions subject to the Fifth Amendment, if it was all in the same case. Even more plainly, right-minded men could reasonably believe that in espousing that conclusion they were not favoring a practice repugnant to the conscience of mankind. Is double jeopardy in such circumstances, if double jeopardy it must be called, a denial of due process forbidden to the states? The tyranny of labels, Snyder v. Massachusetts, 291 U.S. 97, 114, must not lead us to leap to a conclusion that a word which in one set of facts may stand for oppression or enormity is of like effect in every other.

We have said that in appellant's view the Fourteenth Amendment is to be taken as embodying the prohibitions of the Fifth. His thesis is even broader. Whatever would be a violation of the original bill of rights (Amendments I to VIII) if done by the federal government is now equally unlawful by force of the Fourteenth Amendment if done by a state. There is no such general rule.

The Fifth Amendment provides, among other things, that no person shall be held to answer for a capital or otherwise infamous

crime unless on presentment or indictment of a grand jury. This court has held that, in prosecutions by a state, presentment or indictment by a grand jury may give way to informations at the instance of a public officer. . . . The Fifth Amendment provides also that no person shall be compelled in any criminal case to be a witness against himself. This court has said that, in prosecutions by a state, the exemption will fail if the state elects to end it. Twining v. New Jersey, 211 U.S. 78, 106, 111, 112. . . . The Sixth Amendment calls for a jury trial in criminal cases and the Seventh for a jury trial in civil cases at common law where the value in controversy shall exceed twenty dollars. This court has ruled that consistently with those amendments trial by jury may be modified by a state or abolished altogether. . . . As to the Fourth Amendment, one should refer to Weeks v. United States, 232 U.S. 383, 398, and as to other provisions of the Sixth, to West v. Louisiana, 194 U.S. 258.

On the other hand, the due process clause of the Fourteenth Amendment may make it unlawful for a state to abridge by its statutes the freedom of speech which the First Amendment safeguards against encroachment by the Congress . . . or the like freedom of the press . . . or the free exercise of religion . . . or the right of peaceable assembly, without which speech would be unduly trammeled . . . or the right of one accused of crime to the benefit of counsel . . . . In these and other situations immunities that are valid as against the federal government by force of the specific pledges of particular amendments [2] have been found to be implicit in the concept of ordered liberty, and thus, through the Fourteenth Amendment, become valid as against the states.

The line of division may seem to be wavering and broken if there is a hasty catalogue of the cases on the one side and the other. Reflection and analysis will induce a different view. There emerges the perception of a rationalizing principle which gives to discrete instances a proper order and coherence. The right to trial by jury and the immunity from prosecution except as the result of an indictment may have value and importance. Even so, they are not of the very essence of a scheme of ordered liberty. To abolish them is not to violate a "principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." Snyder v. Massachusetts, supra, p. 105 . . . . Few would be so narrow or provincial as to maintain that a fair and enlightened system of justice would be impossible without them. What is true of jury trials and indictments is true also, as the cases show, of the immunity from compulsory self-incrimination. Twining v. New

2. First Amendment: "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."

Sixth Amendment: "In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defence."