



School of Law
UNIVERSITY OF GEORGIA

Digital Commons @ Georgia Law

Scholarly Works

Faculty Scholarship

8-12-2017

Inimicus Libertatis: Chief Justice Rehnquist's Majority or Plurality Opinions in the Field of Criminal Procedure

Donald E. Wilkes Jr.

University of Georgia School of Law, wilkes@uga.edu



Repository Citation

Donald E. Wilkes Jr., *Inimicus Libertatis: Chief Justice Rehnquist's Majority or Plurality Opinions in the Field of Criminal Procedure* (2017), Available at: https://digitalcommons.law.uga.edu/fac_artchop/1169

This Article is brought to you for free and open access by the Faculty Scholarship at Digital Commons @ Georgia Law. It has been accepted for inclusion in Scholarly Works by an authorized administrator of Digital Commons @ Georgia Law. [Please share how you have benefited from this access](#)
For more information, please contact tstriepe@uga.edu.

INIMICUS LIBERTATIS:
CHIEF JUSTICE REHNQUIST'S MAJORITY OR PLURALITY
OPINIONS IN THE FIELD OF CRIMINAL PROCEDURE

With a Bibliography

By
Donald E. Wilkes, Jr.
Professor of Law, UGA School of Law
August 12, 2007

Note: This survey covers U. S. Supreme Court decisions through the end of the Rehnquist's last term on the U.S. Supreme Court, the October 2004 Term, which ended on June 27, 2005. An earlier version of this paper was published as an article in The Georgia Defender, p. 1 (April 1990).

One could account for perhaps ninety percent of Chief Justice Rehnquist's bottom line results by looking, not at anything in the United States Reports, but rather at the platforms of the Republican Party.—Tushnet, A Republican Chief Justice, 88 Mich. L. Rev. 1326, 1328 (1990) (footnote omitted).

Our civilization can protect itself against open attacks on its principles by those who deny them, but cannot long withstand desertion by those who affirm them.—H. Ehrmann, The Case That Will Not Die x (1969).

If we are impressed by the “genius of Jeffreys’ personality,” we must still admit that in a judge, justice comes first; that if injustice is to be weighed, genius cannot be put in the opposite scale—it adds weight to the injustice.”—John C. Fox, The Lady Ivie's Trial lxxv (1929).

Impius et crudelis iudicandus est qui libertati non favet. [He is to be judged impious and cruel who does not favor liberty.]—Black's Law Dictionary 924 (3d ed. 1933).

Analysis

Since the early 1970's an increasingly conservative Supreme Court of the United States has been leading this country through a "Criminal Procedure Counterrevolution" (also called "The Rehnquistion"), during which the federal rights and remedies of criminal defendants have been inexorably and significantly eroded. There are numerous books and law review articles discussing this counterrevolution. Chief Justice Rehnquist, the most articulate and ideological of the Courts conservative justices, may properly be regarded as the intellectual founder and leader of this trend in favor of restricting criminal procedure rights.

From the time he took office as an Associate Justice of the Supreme Court of the United States on Jan. 7, 1972, William Hubbs Rehnquist (who became Chief Justice on Sept. 26, 1986) until his death on Sept. 4, 2005, wrote 173 majority or plurality opinions for the Court in decisions in the field of criminal procedure—that is, in cases involving (1) a criminal defendant, i.e., a person suspected of, charged with, or convicted of committing a crime, and (2) the construction or application of (a) a criminal statute or rule of criminal procedure or of a habeas corpus or civil rights statute, or (b) the constitutional rights protected by the fourth, fifth, sixth, eighth, or fourteenth amendments. In 152 of these 173 criminal procedure decisions (88%) Rehnquist's opinion was in favor of the government. In only 21 of these 173 decisions (12%) did Rehnquist write a majority or plurality opinion upholding a defendant's claim that a statute or rule of procedure had been erroneously interpreted or that a right had been denied, and one of these 21 opinions was overruled by another opinion of Rehnquist's written three years later. Five of the 21 opinions were authored before

1976, and six of the 21 before 1980. Between Jan. 1, 1980, and his death 25 years later, therefore, Chief Justice Rehnquist handed down only 15 pro-defendant opinions: one in 1987, one in 1990, one in 1992, one in 1995, one in 1997, three in 1998, three in 1999, two in 2000, one in 2004, and one in 2005. There was not a single Rehnquist pro-defendant opinion in 1980 or in subsequent years through 1986. Nor was there a single such Rehnquist opinion in 1988, 1989, 1991, 1993, 1994, 2001, 2002, or 2003.

On the other hand, Chief Justice Rehnquist has written 152 majority or plurality criminal procedure opinions rejecting the claim of the defendant that a statute or rule was wrongly interpreted, or that his or her federal constitutional rights were violated. On average, therefore, Rehnquist, during his 33 years on the Court authored nearly five (the precise figure: 4.6) anti-defendant opinions each year he has served on the Court, while his pro-defendant opinions average less than one per year (the precise figure: 0.64). There were 18 of Rehnquist's pro-government opinions in the period 1972-1975, 22 in the period 1976-1980, 26 in the period 1981-1985, 31 in the period 1986-1990, 25 in the period 1991-1995, 18 in the period 1996-2000, and 12 in the period 2001-2005. From the time he joined the Supreme Court in 1972 until his death in 2005, there was only one year, 2005, in which Rehnquist did not author at least two pro-government opinions, and in 1984 alone he wrote 10 such opinions.

This is a breathtaking record of serving up apologies for government power and disfavoring the rights of individuals in criminal procedure cases. A judge with this record, a judge who between Jan. 1, 1980 and June 30, 2005, wrote 116 majority or plurality criminal procedure opinions upholding the government's position and but 15 opinions sustaining the contentions of the criminal defendant, justly deserves, it is submitted, the appellation *inimicus libertatis*—the enemy of liberty.

Chief Justice Rehnquist's 21 criminal procedure opinions upholding a defendant's contentions are listed and summarized in chronological order in Part I, and his 152 criminal procedure opinions denying a defendant's claims are listed and summarized in chronological order in Part II.

PART I

Rehnquist Opinions Not in Favor of the Government

- 1. Ham v. South Carolina, 409 U.S. 524 (1973) (marijuana possession conviction of black civil rights worker violated due process because trial court refused to permit jurors on voir dire to be examined concerning possible racial prejudice; conviction reversed)**
- 2. Robinson v. Neil, 409 U.S. 505 (1973) (Waller v. Florida, 397 U.S. 387 (1970), prohibiting on double jeopardy grounds an individual from being subjected to two prosecutions, state and municipal, based on same act or offense, is fully retroactive; order granting §2254 habeas corpus relief affirmed)**
- 3. United States v. Maze, 414 U.S. 395 (1974) (statutory construction case; defendant's conduct involving a scheme to defraud did not fall within the reach of the federal mail fraud statute; reversal of conviction affirmed)**
- 4. Jenkins v. Georgia, 418 U.S. 153 (1974) (the motion picture "Carnal Knowledge" is not obscene; conviction of Albany theater manager for showing the movie is reversed)**
- 5. United States v. Jenkins, 420 U.S. 358 (1975) (although it is unclear whether the trial court's judgment discharging the defendant was a resolution of the factual issues against the government, the**

double jeopardy clause bars government appeal from the judgment, since further proceedings of some sort devoted to resolving factual issues going to the elements of the offense charged would have been required in the trial court if the judgment was reversed; order dismissing government's appeal from judgment discharging defendant affirmed), overruled, United States v. Scott, 437 U.S. 82 (1978) (Rehnquist, J.)

6. Burch v. Louisiana, 441 U.S. 130 (1979) (a conviction by a nonunanimous six person jury for a nonpetty offense violates right to trial by jury guaranteed by sixth and fourteenth amendments; conviction reversed)

7. Mathews v. United States, 485 U.S. 58 (1987) (generally, a defendant is entitled to an instruction as to any recognized defense for which there exists evidence sufficient for a reasonable jury to find in his favor; federal criminal defendants are not barred from asserting inconsistent defenses at trial; even if a defendant on trial in federal court denies one or more elements of the crime, he is entitled to an entrapment instruction whenever there is sufficient evidence for a reasonable jury to find entrapment; conviction reversed)

8. Florida v. Wells, 495 U. S. 1 (1990) (inventory search of locked suitcase found in impounded automobile violated fourth amendment because highway patrol had no policy whatever with respect to the opening of closed containers encountered during an inventory search; pretrial order suppressing evidence affirmed)

9. Dawson v. Delaware, 503 U. S. 159 (1992) (admission, at sentencing phase of capital punishment trial, of evidence that defendant was member of white racist prison gang, was violative of first and fourteenth amendment rights of defendant; death sentence vacated)

10. United States v. Lopez, 514 U. S. 549 (1995) (Gun-Free School Zones Act of 1990, which prohibits possession of firearms in school zones, exceeds Congress’s powers under the Commerce Clause of the U. S. Constitution and is unconstitutional (!); decision of the court of appeals reversing defendant’s conviction is affirmed)

11. Ornelas v. United States, 517 U. S. 690 (1996) (de novo standard is appropriate standard of appellate review of district court decision involving the issues of reasonable suspicion to stop and probable cause to search; court of appeals erred in applying a deferential standard under which the district court decision would be reversed only for clear error; judgment of court of appeals affirming denial of motion to suppress is reversed)

12. Bracy v. Gramley, 520 U. S. 899 (1997) (§2254 federal habeas corpus proceeding by state prisoner; the petitioner was convicted of murder and sentenced to death in an Illinois state court; later the trial judge was convicted of taking bribes from criminal defendants; although the trial judge was not bribed in the petitioner’s case, the judge was “fixing” other cases around the time of the petitioner’s trial, and the petitioner contends that the judge had an interest in convicting him in order to deflect suspicion that he was taking bribes in other cases; here, the petitioner has made a sufficient factual showing to establish good cause for discovery within the meaning of Rule 6(a), Rules Governing Section 2254 Cases; decision of court of appeals affirming denial of relief is reversed)

13. Bousley v. United States, 516 U. S. 137 (1998) (§ 2255 proceeding; where a defendant has procedurally defaulted a claim by failing to raise it on direct review, the claim may be raised in habeas only if the defendant can first demonstrate either cause and prejudice or that he is actually innocent; we have held that a claim that is so novel that its legal basis is not reasonably available to counsel may constitute cause

for a procedural default; nor is there cause on the theory that raising the claim would have been futile; a § 2255 movant cannot show cause for failing to make a Bailey v. United States, 516 U. S. 137 (1995), argument on direct appeal by demonstrating that circuit law at the time would have made any such argument futile; even if cause and prejudice are absent, collateral relief may be granted if the constitutional error has probably resulted in the conviction of one who is actually innocent; to establish actual innocence, the movant must demonstrate that in light of all the evidence, it is more likely than not that no reasonable juror would have convicted him; actual innocence means factual innocence and not mere legal insufficiency; “new rule” principle of Teague v. Lane, 489 U. S. 288 (1989), applies only to procedural rules and is inapplicable to situation in which this court decides the meaning of a federal criminal statute; decisions of this court holding that a substantive federal criminal statute does not reach certain conduct necessarily carry a significant risk that a defendant stands convicted for an act that the law does not make criminal; decision of court of appeals affirming denial of relief is reversed)

14. Stewart v. Martinez-Villareal, 523 U. S. 637 (1998) (in Title I of the Antiterrorism and Effective Death Penalty Act of 1996, Congress established a “gatekeeping” mechanism for the consideration of second or successive federal habeas corpus petitions; an individual seeking to file a second or successive petition must move in the appropriate federal court of appeals for an order directing the district court to consider the habeas petition; the court of appeals then has 30 days to decide whether to grant the authorization to file; a court of appeals decision whether to grant authorization shall not be appealable and shall not be the subject of petition for rehearing or for a writ of certiorari; under the circumstances here, where the § 2254 petitioner, under a death sentence, claimed that he was insane and therefore could not be executed, and where claim was raised but not ruled upon when the district court issued its final order on the habeas petition, there was

only one habeas petition, not successive ones, and therefore § 2244 was inapplicable; the petitioner's claim that because he was insane he could not be executed, which the district court treated as premature when it entered its final order, should be treated in the same manner as the claim of a habeas petitioner who returns to a federal habeas court after exhausting state remedies; to hold otherwise would mean that a dismissal of a first habeas petition for technical procedural reasons would bar the prisoner from ever obtaining federal habeas review; decision of court of appeals that AEDPA did not apply because there was no successive petition is affirmed)

15. Swidler & Berlin v. United States, 524 U. S. 399 (1998) (as part of its criminal investigation, Ken Starr's grand jury subpoenaed Vince Foster's attorney to obtain notes the attorney took of an interview with Foster shortly before Foster's death; in ruling in favor of Starr and against the attorney's effort to quash the subpoena, the Court of Appeals for the D. C. Circuit became the first common law jurisdiction court to ever hold that the attorney client privilege does not survive the death of the client; HELD, "It has generally, if not universally, been accepted, for well over a century, that the attorney-client privilege survives the death of the client in a case such as this; ... the Independent Counsel has simply not made a sufficient showing to overturn the common law rule ... that the attorney client privilege prevents disclosure of the notes at issue"; decision of court of appeals is reversed)

16. Knowles v. Iowa, 525 U. S. 113 (1999) (an Iowa police officer stopped defendant for speeding and issued him a citation rather than arresting him; nonetheless, the officer conducted a full search of the automobile, and seized drugs pursuant to the search; the Iowa Supreme Court has interpreted state statutory law to authorize officers to conduct a full-blown search in cases where they do not make a

custodial arrest but instead issue a citation; HELD, the search violated the fourth amendment; drug convictions reversed)

17. Wilson v. Layne, 526 U. S. 603 (1999) (civil rights action for damages; “media ride alongs” violate the fourth amendment; here, while executing an arrest warrant in a private home, police officers invited representatives of the media to accompany them; the state of the law was not clearly established when the search in this case took place, however, and therefore the officers are entitled to the defense of qualified immunity)

18. Bond v. United States, 529 U. S. 334 (2000) (a law enforcement officer’s physical manipulation of a bus passenger’s carry-on luggage violated the fourth amendment’s proscription against unreasonable searches)

19. Dickerson v. United States, 530 U. S. 428 (2000) (Miranda v. Arizona, 384 U.S. 436 (1966), is a constitutionally based decision; 18 U. S. C. § 3501, a federal statute enacted in 1968, which purports to make a confession of guilt inadmissible under Miranda admissible in federal court is unconstitutional) *Note*: In his 28 years on the U. S. Supreme Court, this was Chief Justice Rehnquist’s first and only pro-Miranda decision.

20. Leocal v. Ashcroft, 543 U.S. 1 (2004) (alien’s state court conviction for DUI causing serious bodily injury was not a “crime of violence” and therefore was not “an aggravated felony” warranting alien’s deportation)

21. Arthur Andersen LLP v. United States, 544 U.S. 696 (2005) (the defendant corporation, which was Enron Corporation’s accounting firm, was convicted of obstruction of justice because it instructed its employees, at the time Enron’s financial difficulties were becoming

public, to destroy documents pursuant to its document retention policy; the conviction is hereby reversed; we hold that the instructions given the jury were defective in that they incorrectly defined the term “corruptly persuad[ing], thereby authorizing a conviction in the absence of a consciousness of wrongdoing)

PART II

Rehnquist Opinions In Favor of the Government

1. Schneble v. Florida, 405 U.S. 427 (1972) (any violation of defendant’s sixth amendment confrontation rights under Bruton v. United States, 391 U.S. 123 (1968), was harmless error; conviction affirmed)
2. Adams v. Williams, 407 U.S. 143 (1972) (investigatory stops and frisks incident thereto need not be based on policeman’s personal observations, but may be based on informer’s tip; order granting §2254 habeas corpus relief reversed)
3. Mancusi v. Stubbs, 408 U.S. 204 (1972) (defendant’s sixth amendment confrontation rights were not violated; order granting §2254 habeas corpus relief reversed)
4. Davis v. United States, 411 U.S. 233 (1973) (failure to make pretrial motion to dismiss raising grand jury claim requires denial of application for postconviction relief under 28 U.S.C. §2255 raising the same claim, absent cause for the failure to file motion; order denying §2255 relief affirmed)
5. Tollett v. Henderson, 411 U.S. 258 (1973) (valid guilty plea requires denial of application for postconviction habeas corpus relief filed under 28 U.S.C. §2254 raising claim of systematic exclusion of black persons

from grand jury that indicted defendant; order granting §2254 habeas corpus relief reversed)

6. United States v. Russell, 411 U.S. 423 (1973) (adhering to “subjective” test of entrapment, and rejecting the “objective” test; drug conviction reinstated)

7. Cady v. Dombrowski, 413 U.S. 433 (1973) (warrantless search of locked trunk of defendant’s impounded automobile was not violative of fourth amendment, where defendant, an off-duty policeman, had been arrested for drunken driving after being involved in accident, automobile had been towed to private garage, and police had probable cause to believe the defendant’s service revolver was somewhere in the automobile; here police were “engage[d] in what, for want of a better term, may be described as community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute;” order granting §2254 habeas corpus relief reversed)

8. Cupp v. Naughten, 414 U.S. 141 (1973) (before a federal court may overturn a conviction resulting from state criminal trial on grounds involving a jury instruction claimed to violate due process, it must be established that the challenged instruction is not merely undesirable, erroneous, or even universally condemned, but also violative of the due process clause of the fourteenth amendment; furthermore, the instruction must be judged not in isolation but in the context of the overall charge; order granting §2254 habeas corpus relief reversed)

9. United States v. Robinson, 414 U.S. 218 (1973) (after making a custodial arrest of defendant for operating a motor vehicle after his driver’s license had been revoked, police were permitted by the fourth amendment to conduct a full body search of the defendant; drug conviction reinstated)

10. Gustafson v. Florida, 414 U.S. 260 (1973) (after making a custodial arrest of defendant for not having his driver's license in his possession, police were permitted by fourth amendment to conduct a full body search of the defendant; drug conviction affirmed)

11. Gooding v. United States, 416 U.S. 430 (1974) (federal statute relating to search warrants for controlled substances requires no special showing for a nighttime search other than that the contraband is likely to be on the property at that time; the standards for issuance of search warrants for controlled substances in the District of Columbia are governed by the federal statute relating to search warrants for controlled substances, rather than by local District of Columbia laws imposing more stringent requirements on nighttime searches; court of appeals' judgment reversing pretrial order suppressing the evidence seized under the search warrant is affirmed)

12. Donnelly v. DeChristoforo, 416 U.S. 637 (1974) (under the circumstances, the prosecutor's improper remarks—consisting of expressing a personal belief in defendant's guilt and suggesting defendant, charged with second degree murder, was guilty of first degree murder—did not violate the defendant's fourteenth amendment due process rights, where defense attorney objected immediately and trial judge instructed jury to disregard the statement suggesting defendant was guilty of first degree murder; order granting §2254 habeas corpus relief reversed)

13. Michigan v. Tucker, 417 U.S. 433 (1974) (Miranda warnings are “not themselves required by the Constitution,” but only “prophylactic standards” designed to safeguard the fifth amendment self-incrimination privilege; order granting §2254 habeas corpus relief reversed)

14. Ross v. Moffitt, 417 U.S. 600 (1974) (the fourteenth amendment does not require states to provide free counsel to convicted indigent

criminal defendants who seek discretionary appeal in state supreme court, or who seek to file certiorari petition in U.S. Supreme Court; order granting §2254 habeas corpus relief reversed)

15. Parker v. Levy, 417 U.S. 733 (1974) (articles of Uniform Code of Military Justice making it criminal for servicemen to engage in “conduct unbecoming an officer and a gentleman,” or to engage in “disorders and neglects to the prejudice of good order and discipline” in the armed forces, are not unconstitutionally vague or overbroad under the fifth amendment due process clause; order granting §2241 postconviction habeas corpus relief reversed)

16. Hamling v. United States, 418 U.S. 87 (1974) (affirming convictions for using the mails to carry obscene books)

17. United States v. Peltier, 422 U.S. 531 (1975) (Almeida-Sanchez v. United States, 413 U.S. 266 (1973), restricting warrantless automobile searches not based on probable cause, is not retroactive to searches conducted before the date of that decision; drug conviction reinstated)

18. United States v. Powell, 423 U.S. 87 (1975) (reinstating conviction for mailing concealable firearm; statute criminalizing such conduct is not unconstitutionally vague)

19. Middendorf v. Henry, 425 U.S. 25 (1976) (neither the sixth amendment right to counsel clause nor the fifth amendment due process clause guarantees indigent servicemen defendants the right to appointed counsel in summary court martial proceedings; order granting §2241 postconviction habeas corpus relief reversed)

20. Hampton v. United States, 425 U.S. 484 (1976) (a government informer supplied defendant with heroin, which he was then convicted of selling to undercover police; since defendant admits he was predis-

posed to the commit the crime, his claim that he was entrapped fails; defendant's due process claim also fails because if the police engage in illegal activity in concert with a predisposed defendant, the remedy lies not in freeing the equally culpable defendant, but in prosecuting the police for crime under the applicable federal or state laws; drug conviction affirmed) (plurality opinion)

21. United States v. MacCollom, 426 U.S. 317 (1976) (the due process clause of the fifth amendment does not establish any right to collaterally attack a final judgment of conviction; upholding validity of 28 U.S.C. §753(f), which limits free transcripts for indigent federal convicts seeking to collaterally attack their conviction to cases where the trial court certifies that the collateral attack proceeding is not frivolous and that the transcript is needed to decide the proceeding; dismissal of defendant's application for §2255 postconviction relief reinstated) (plurality opinion)

22. United States v. Santana, 427 U.S. 38 (1976) (warrantless arrest in public place based on probable cause satisfies the fourth amendment; the defendant here, who was standing in her doorway when police with probable cause to arrest her saw and approached her, was in a public place and hence subject to a lawful arrest; defendant's act of retreating into her home at the approach of the police could not thwart an otherwise proper arrest, and therefore police did not violate fourth amendment when they followed her into the vestibule of her home and arrested her there; evidence seized pursuant to the arrest was therefore admissible; drug conviction reinstated)

23. Splawn v. California, 431 U.S. 595 (1977) (affirming misdemeanor conviction for selling two reels of obscene film)

24. United States v. Ramsey, 431 U.S. 606 (1977) (18 U.S.C. §482, authorizing customs officials to open international mail entering the

United States if they have reasonable cause to suspect that the mail contains illegally imported merchandise, does not violate the fourth amendment; drug conviction reinstated)

25. Dobbert v. Florida, 432 U.S. 282 (1977) (defendant's death sentence did not violate ex post facto clause, even though there was no valid death penalty statute on the books at the time of defendant's crime, and even though the death penalty statute under which defendant was sentenced was enacted after defendant's crime) *Note: In his dissenting opinion, Justice Stevens wrote: "I assume that this case will ultimately be regarded as nothing more than an archaic gargoyle."*

26. Wainwright v. Sykes, 433 U.S. 72 (1977) (partially overruling "deliberate bypass" test of procedural default set forth in Fay v. Noia, 372 U.S. 391 (1963); failure of state prisoner to comply with state contemporaneous objection rule bars §2254 habeas corpus relief, absent cause and prejudice; order granting §2254 habeas corpus relief reversed)

27. Jones v. North Carolina Prisoners' Labor Union, Inc., 433 U.S. 119 (1977) (upholding validity of prison system regulations prohibiting prisoners from soliciting other inmates to join prisoners' labor union and barring union meetings and bulk mailings concerning the union from outside sources; judgment granting §1983 relief in favor of the union reversed)

28. United States v. Ceccolini, 435 U.S. 268 (1978) (fourth amendment exclusionary rule should be invoked with much greater reluctance where the claim is based in a causal relationship between a constitutional violation and the discovery of a live witness than when a similar claim is advanced to support suppression of an inanimate object; drug conviction reinstated)

29. Scott v. United States, 436 U.S. 128 (1978) (even though federal electronic surveillance statute contains a provision that the authorization to intercept be conducted so as to minimize the interception of communications not otherwise subject to interception, and even though only 40% of the conversations intercepted were drug-related, failure of police to make good faith efforts to comply with the minimization requirement while intercepting communications made on defendant's telephone does not require suppression of the evidence; drug conviction affirmed)

30. United States v. Scott, 437 U.S. 82 (1978) (United States v. Jenkins, 420 U.S. 358 (1975), overruled; where the defendant seeks to have the trial terminated without any submission to either judge or jury as to his guilt or innocence, the fifth amendment double jeopardy clause does not bar a government appeal from the termination; dismissal of government's appeal from the termination reversed)

31. Rakas v. Illinois, 439 U.S. 128 (1978) (partially overruling Jones v. United States, 362 U.S. 257 (1960), whereunder anyone legitimately on the premises had standing to object to an illegal search of the premises; passengers in automobile have no standing to object to an illegal search of the automobile, since they asserted neither a property nor a possessory interest in the automobile, nor in the property (rifles and ammunition) seized; robbery conviction affirmed)

32. Scott v. Illinois, 440 U.S. 367 (1978) (defendant, an indigent, was charged with a shoplifting offense punishable by 1 year in jail, \$500.00 fine, or both; he was not provided counsel and after a bench trial was convicted and fined \$50.00; HELD, the sixth amendment right to counsel does not extend to a case where one is charged with an offense for which imprisonment upon conviction is authorized but not actually imposed; conviction affirmed)

33. Bell v. Wolfish, 441 U.S. 520 (1979) (court declines to acknowledge propriety of using writ of habeas corpus to attack conditions of pretrial confinement; neither strip searches, nor “visual body cavity inspections” (whereby “[i]f the inmate is male, he must lift his genitals and bend over to spread his buttocks for visual inspection,” and whereby “[t]he vaginal and anal cavities of female inmates are visually inspected”) of pretrial detainees after contact visits with outsiders were unconstitutional under due process clause; nor were “publisher-only” rule, the prohibition on receipt of packages, or the room-search rule, although “[a]dmittedly, this practice [visual body cavity inspections] instinctively gives us the most pause (!);” in evaluating the constitutionality of conditions or restrictions of pretrial confinement, the proper inquiry is not whether the conditions are justified by compelling necessities of jail administration, but whether those conditions amount to punishment; an example of such unconstitutional pretrial punishment would be “loading a detainee with chains and shackles and throwing him in a dungeon (!);” “[t]he presumption of innocence ... has no application to a determination of the rights of a pretrial detainee during confinement before his trial has even begun (!);” order granting §2241 habeas corpus relief to federal pretrial detainees housed in Metropolitan Correctional Center reversed)

34. Parker v. Randolph, 442 U.S. 62 (1979) (Bruton v. United States, 391 U.S. 123 (1968), which interpreted sixth amendment confrontation clause to prohibit admission at joint trial of the confession of a codefendant who does not take the stand, does not apply where the defendant himself has confessed and the confessions “interlock;” order granting §2254 habeas corpus relief reversed) (plurality opinion), overruled, Cruz v. New York, 481 U.S. 186 (1987) (Scalia, J.)

35. United States v. Bailey, 444 U.S. 394 (1979) (statutory construction case involving 18 U.S.C. §751(a), which punishes escape from federal custody; conviction reinstated)

36. United States v. Apfelbaum, 445 U.S. 115 (1979) (when a witness has been granted immunity and testifies falsely, the fifth amendment self-incrimination privilege does not prevent the use of his immunized testimony in a subsequent prosecution for false swearing; conviction reinstated)

37. Rummel v. Estelle, 445 U.S. 263 (1980) (defendant, who previously on two separate occasions had been convicted and sentenced to prison for felonies (fraudulent use of a credit card to obtain \$80.00 worth of goods or services, and passing a forged check in the amount of \$28.36), was convicted of a third felony (obtaining \$120.75 by false pretenses), and sentenced under the recidivist statute to a mandatory term of life imprisonment; HELD, the life sentence did not violate the cruel and unusual punishments clause of the eighth amendment; denial of §2254 habeas corpus relief affirmed)

38. Rawlings v. Kentucky, 448 U.S. 98 (1980) (assuming that defendant and others were illegally detained in a house for 45 minutes while the police obtained a search warrant for the premises, the detention was in a “congenial atmosphere (!);” defendant lacked standing to object to search of his companion’s purse for his illegal drugs; drug conviction affirmed)

39. United States v. Salvucci, 448 U.S. 83 (1980) (“automatic standing” doctrine of the decision in Jones v. United States, 362 U.S. 257 (1960), is overruled; defendants charged with possessory crimes no longer have automatic standing to object to the search and seizure of the item unlawfully possessed; order granting suppression of evidence reversed)

40. Sumner v. Mata, 449 U.S. 539 (1980) (28 U.S.C. §2254(d), requiring deference to factual determinations made by state courts, requires deference to factual determinations of state appellate courts as well as state trial courts; when granting §2254 habeas corpus relief, the federal

district court should include in its opinion the reasoning which led it to conclude that deference to the state court factual determinations was inappropriate; order granting §2254 relief reversed)

41. Michael M. v. Superior Court, 450 U.S. 464 (1981) (California's statutory rape statute, which punishes males for having sexual intercourse with under-18 females, but does not punish women who have sexual intercourse with males under 18, does not unlawfully discriminate against males, and is constitutional; conviction affirmed) (plurality opinion)

42. Smith v. Phillips, 455 U.S. 209 (1981) (defendant was not denied a fair trial, even though one juror submitted during the trial an application for employment as an investigator for the district attorney's office, and even though the prosecuting attorney withheld the information about the juror's job application from the trial court and the defendant's attorney until after the trial; order granting §2254 habeas corpus relief reversed)

43. Oregon v. Kennedy, 456 U.S. 667 (1982) (where a defendant in a criminal trial successfully moves for a mistrial, fifth amendment double jeopardy clause bars retrial only if the conduct giving rise to the mistrial was prosecutorial or judicial conduct intended to provoke the defendant into moving for a mistrial; conviction reinstated)

44. United States v. Valenzuela-Bernal, 458 U.S. 858 (1982) (defendant, an alien, was arrested and charged with smuggling aliens into this country illegally; three of the passengers in defendant's car, also aliens, were also arrested; two of the passengers were then interviewed by a an assistant United States attorney, who concluded that they did not possess evidence material to the prosecution or defense of defendant, whereupon the two passengers were deported to Mexico; HELD, the mere fact that the government deports such witnesses is not

sufficient to establish a violation of the fifth amendment due process clause or the sixth amendment confrontation clause, absent a showing that the evidence lost would be both material and favorable to the defense; the Executive Branch's responsibility to enforce Congressional immigration policy justifies deportation of illegal-alien witnesses upon Executive's good faith determination that they possess no evidence favorable to the defendant in a criminal prosecution; conviction reinstated)

45. Marshall v. Lonberger, 459 U.S. 422 (1982) (guilty plea did not violate due process; order granting §2254 habeas corpus relief reversed)

46. Texas v. Brown, 460 U.S. 730 (1983) (warrantless search of defendant's automobile did not violate the fourth amendment; drug conviction reinstated) (plurality opinion)

47. Illinois v. Gates, 462 U.S. 213 (1983) (overruling the "two-pronged test" of Aguilar v. Texas, 378 U.S. 108 (1964), and Spinelli v. United States, 393 U.S. 410 (1969), which required that showing of probable cause based on informer's report show both the informer's basis of knowledge and the reliability of the informer; the task of the magistrate is simply to determine whether, based on the totality of the circumstances set forth in the affidavit in support of issuance of a search warrant, there is a fair probability that contraband or evidence of crime will be found in a particular place; drug conviction reinstated)

48. United States v. Knotts, 460 U.S. 276 (1983) (this case involves use by narcotics police of a beeper or transponder, i.e., a radio transmitter, usually battery operated, which emits periodic signals that can be picked up by a radio receiver, to trace a can of chloroform from its place of purchase to defendant's secluded cabin near Shell Lake, Wisconsin; the governmental surveillance conducted here amounted

principally to the following of an automobile on public streets and highways, and “[w]e have commented more than once on the diminished expectation of privacy in an automobile;” “[a] person traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another;” “[n]othing in the Fourth Amendment prohibited the police from augmenting the sensory faculties bestowed upon them at birth with such enhancement as science and technology afforded them in this case (!);” “[w]e have never equated police efficiency with unconstitutionality, and we decline to do so now;” although it is true that because of a failure of visual surveillance the police were able to locate the chloroform only because of the beeper, the scientific enhancement of this sort raises no constitutional issues which visual surveillance would not also raise, since a police car could have followed the automobile under surveillance to the cabin; drug conviction reinstated)

49. United States v. Villamonte-Marquez, 462 U.S. 579 (1983) (fourth amendment is not violated when customs officers, without any suspicion of wrongdoing, board for inspection of documents a vessel that is located in navigable waters providing ready access to the open sea; drug conviction reinstated)

50. Oregon v. Bradshaw, 462 U.S. 1039 (1983) (after being given Miranda warnings, the defendant requested counsel and the interrogation ceased; a few minutes later, the suspect asked the police what was going to happen to him now; HELD, the defendant’s question amounted to an initiation of further conversations with the police, and therefore the rule of Edwards v. Arizona, 451 U.S. 777 (1981), does not bar use of confession the defendant thereafter made in response to police questioning) (plurality opinion)

51. Barclay v. Florida, 463 U.S. 939 (1983) (defendant’s death sentence did not violate U.S. Constitution, even though trial judge, overriding

jury's recommendation that defendant be sentenced to life imprisonment, relied on an aggravating circumstance that was not among the aggravating circumstances established by the state death penalty statute) (plurality opinion)

52. INS v. Delgado, 466 U.S. 210 (1984) (“factory surveys” by INS to enforce immigration laws did not violate the fourth amendment, even though they were conducted by armed agents displaying badges and carrying walkie-talkies, some of whom stationed themselves at the exits of the factory, while others moved systematically through the factory questioning employees, and arresting, handcuffing, and leading away persons suspected to be illegal aliens; “our review ... satisfies us that the encounters with the INS agents were classic consensual encounters rather than Fourth Amendment seizures (!);” order denying summary judgment to INS reversed)

53. United States v. Rodgers, 466 U.S. 475 (1984) (18 U.S.C. §1001, which makes it a crime to make a false statement in any matter within the jurisdiction of a federal agency, punishes persons who lie to the FBI when questioned concerning an on-going criminal investigation; dismissal of indictment reversed)

54. United States v. Gouveia, 467 U.S. 180 (1984) (defendants, inmates of a federal prison, were suspected of murdering fellow inmates and placed in administrative segregation; thereafter, as a result of prison disciplinary proceedings, prison officials concluded that defendants had committed the murder; although federal prison regulations permit administrative segregation for up to 90 days for disciplinary reasons, defendants were kept there for periods ranging from 8 to 19 months, until their indictments for murder; HELD, defendants’ sixth amendment right to counsel attached only when the indictment was returned, not when the authorized period of 90 days in administrative segregation expired; convictions reinstated)

55. Schall v. Martin, 467 U.S. 253 (1984) (upholding constitutionality of New York state statute authorizing pretrial detention of accused juvenile delinquents; order granting §2241 pretrial habeas corpus relief reversed)

56. Ohio v. Johnson, 467 U.S. 493 (1984) (as a result of a killing and theft of property, defendant was indicted on one count each of murder, involuntary manslaughter, aggravated robbery, and grand theft; at his arraignment and over the state's objection, defendant pleaded guilty to the manslaughter and grand theft charges, and the remaining charges were dismissed; HELD, the double jeopardy clause does not bar the state from continuing its prosecution of defendant on the murder and robbery charges; dismissal of murder and robbery charges reversed)

57. New York v. Quarles, 467 U.S. 649 (1984) (creating "public safety" exception to holding in Miranda v. Arizona, 384 U.S. 436 (1966); conviction reinstated)

58. Richardson v. United States, 468 U.S. 317 (1984) (no violation of defendant's double jeopardy rights; denial of defendant's motion to bar retrial affirmed)

59. United States v. Abel, 469 U.S. 45 (1984) (federal evidence rules permit impeachment of witness for bias; conviction reinstated)

60. United States v. Powell, 469 U.S. 57 (1984) (court of appeals improperly carved out an exception to the decision in Dunn v. United States, 284 U.S. 290 (1932), which holds that a defendant convicted by a jury on one count cannot attack the conviction because it was inconsistent with the verdict of acquittal on another count; drug conviction reinstated)

61. Wainwright v. Witt, 469 U.S. 412 (1984) (partially overruling Witherspoon v. Illinois, 391 U.S. 510 (1968), which barred prosecutor in a capital case from challenging for cause a juror opposed to capital punishment unless the juror would automatically vote against the death penalty; the test for determining whether a juror can be challenged for cause because of his or her opposition to capital punishment is whether the juror's views would prevent or substantially impair the performance of his or her duties as a juror; order granting §2254 habeas corpus relief reversed)

62. Ponte v. Real, 471 U.S. 491 (1985) (due process does not require that prison officials' reasons for denying an inmate's witness request appear in the administrative record of the disciplinary hearing; although due process does require prison officials at some point to state their reasons for refusing to call a witness, they may do so by making the explanation part of the administrative record or by presenting testimony in court if the prison disciplinary proceeding is later challenged in court; order granting state habeas corpus relief reversed)

63. Garrett v. United States, 471 U.S. 773 (1985) (no violation of defendant's double jeopardy rights; drug conviction affirmed)

64. United States v. Montoya De Hernandez, 473 U.S. 531 (1985) (defendant, arriving at Los Angeles International Airport on a direct flight from Columbia, fit the "alimentary canal smuggler profile," and was reasonably suspected of being a "balloon swallower," i.e., a person who attempts to smuggle drugs into this country hidden in her alimentary canal; she was taken to a private area and given both a patdown and a strip search; defendant was not permitted to leave and was told she would be detained until either she agreed to X-raying or she defecated into a waste basket so that her excretions could be examined; defendant's requests to make a telephone call or to talk to a lawyer were refused; 16 hours after her flight had landed she was

still being detained in the customs office without any judicial authorization, at which time custom officials sought and obtained an ex parte court order requiring her to submit to X-raying and to a rectal examination; a physician then conducted the rectal examination and found balloons of cocaine, at which time defendant was formally arrested; HELD, customs officials may detain international travelers entering this country if they have reasonable suspicion that the traveler is carrying drugs in his or her alimentary canal; although defendant was held incommunicado 16 hours before a court order was sought, the detention was not unreasonably long; drug conviction reinstated)

65. Hill v. Lockhart, 474 U.S. 52 (1985) (in order to attack a guilty plea entered on the advice of counsel claimed to have been ineffective, defendant must prove both that counsel's representation fell below an objective standard of reasonableness, and also that there is a reasonable possibility that but for counsel's error, defendant would not have pleaded guilty and would have gone to trial; order denying §2254 habeas corpus relief affirmed)

66. United States v. Mechanik, 475 U.S. 66 (1985) (even assuming that the simultaneous presence and testimony of two government witnesses before the grand jury that indicted defendant violated Rule 6(d) of the Federal Rules of Criminal Procedure, and even though defendant exercising reasonable diligence did not discover the claimed violation until the second week of the trial, the trial jury's guilty verdict rendered harmless any error occurring in the grand jury proceedings; we express no opinion as to the appropriate remedy in a case where the violation of Rule 6(d) is discovered before the commencement of the trial; the reversal of a conviction entails substantial societal costs, and in this case the costs are far too substantial to justify overturning the verdict because of an error in the grand jury proceedings; conviction reinstated)

67. Lockhart v. McCree, 476 U.S. 162 (1986) (even assuming that “death-qualifying” trial juries—that is, excusing for cause at the guilt phase prospective jurors whose opposition to capital punishment would prevent or substantially impair the performance of their duties at the sentencing phase of a capital trial—in fact produces somewhat more conviction-prone juries than non-death-qualified juries, the use of death-qualifying procedures does not violate the Federal Constitution; order granting §2254 habeas corpus relief reversed)

68. McMillan v. Pennsylvania, 477 U.S. 79 (1986) (under the Pennsylvania Mandatory Minimum Sentencing Act, visible possession of a firearm is not an element of the offense charged, but is a “sentencing consideration” which is proved by a preponderance of the evidence at sentencing and, if so proved, requires a sentence of at least 5 years imprisonment for the offense charged (but not greater than the sentence otherwise required for the underlying offense); HELD, this scheme does not violate due process of law; conviction and sentence affirmed)

69. Allen v. Illinois, 478 U.S. 364 (1986) (proceedings under the Illinois Sexually Dangerous Persons Act are not criminal within the meaning of the fifth amendment self-incrimination clause, and therefore a person may be committed under the Act on the basis of evidence obtained in violation of the self-incrimination privilege, even though proceedings under the Act cannot be brought unless the person has already been criminally charged and unless in the commitment proceeding under the Act a sex crime is proved, and even though proceedings under the Act are accompanied by statutory procedural safeguards also found in criminal trials (right to counsel, right to trial by jury, right to confront and cross-examine accusers, and the requirement that sexual dangerousness be proved beyond a reasonable doubt), and even though persons committed under the Act are detained in a maximum security institution which also houses convicts needing

psychiatric care and which is run by the state department of corrections; judgment committing the defendant under the Act is affirmed)

70. Colorado v. Connelly, 479 U.S. 157 (1986) (coercive police activity is a necessary predicate to a finding that a confession is involuntary for due process purposes; the confession of a mentally disturbed person is voluntary and admissible if there was no police coercion; despite the “heavy burden” language in Miranda v. Arizona, 384 U.S. 436 (1966), the state must prove waiver of Miranda rights only by a preponderance of the evidence; conviction reinstated)

71. Colorado v. Bertine, 479 U.S. 367 (1986) (upholding inventory search of impounded automobile belonging to person arrested for DUI; drug conviction reinstated)

72. Connecticut v. Barrett, 479 U.S. 523 (1986) (Miranda v. Arizona, 384 U.S. 436 (1966), does not bar admission of oral statements reduced to writing where after being given Miranda warnings, suspect refused to make a written statement but agreed to talk about the crime; conviction reinstated)

73. California v. Brown, 479 U.S. 538 (1986) (at the sentencing phase of defendant’s capital trial, the judge instructed the jury that it “must not be swayed by mere sentiment, conjecture, sympathy, passion, prejudice, public opinion, or public feeling,” and thereafter defendant was sentenced to death; HELD, the antisympathy instruction did not violate the defendant’s federal constitutional rights; death sentence reinstated)

74. Pennsylvania v. Finley, 481 U.S. 551 (1987) (there is no federal constitutional right to appointed counsel in postconviction relief proceedings; states have no obligation to provide postconviction relief

proceedings as an avenue of relief; order granting state postconviction relief reversed)

75. United States v. Salerno, 481 U.S. 739 (1987) (upholding constitutionality of preventive detention provisions of Bail Reform Act of 1984; due process is not violated because preventive detention of criminal suspects is “regulatory” rather than “penal;” and “[w]e have repeatedly held that the government’s regulatory interest in community safety can, in appropriate circumstances, outweigh an individual’s liberty interest;” an individual’s right to personal liberty may be “subordinated to the greater needs of society;” nor does preventive detention of criminal suspects found to be dangerous to the community offend the excessive bail clause of the eighth amendment, and any language to the contrary in Stack v. Boyle, 342 U.S. 1 (1951), is “dicta”)

76. Hilton v. Braunskill, 481 U.S. 770 (1987) (in deciding whether to release a §2254 petitioner from custody pending an appeal from a district court order discharging the petitioner, the court should take into account the possibility of flight, the risk that the petitioner will pose a danger to the public if released, and the state’s interest in continued custody and rehabilitation; order denying stay of §2254 habeas corpus release order pending appeal is vacated)

77. Bourjaily v. United States, 483 U.S. 171 (1987) (relaxing restrictions on admissibility of evidence introduced under the out-of-court declaration of a co-conspirator exception to the hearsay rule; drug conviction affirmed)

78. Solorio v. United States, 483 U.S. 435 (1987) (overruling O’Callahan v. Parker, 395 U.S. 258 (1969), which barred courts martial from trying servicemen unless the offense was “service connected;” court martial conviction affirmed)

79. Lowenfield v. Phelps, 484 U.S. 231 (1987) (death sentence was not rendered unconstitutional by inquiries and supplemental charge to the jury during sentencing deliberations, or by reliance on aggravating circumstance which duplicated element of capital crime; denial of §2254 habeas corpus relief is affirmed)

80. United States v. Robinson, 485 U.S. 25 (1987) (Griffin v. California, 380 U.S. 609 (1965), which bars prosecutors from commenting on defendant's refusal to take the stand, was not violated where the prosecutor's reference in closing arguments to defendant's not testifying was a fair response to claims made by defense counsel in his closing arguments; conviction reinstated)

81. Huddleston v. United States, 485 U.S. 681 (1988) (upholding admissibility of "other crimes, wrongs, or acts" evidence under Rule 404(b) of the Federal Rules of Evidence; conviction affirmed)

82. Wheat v. United States, 486 U.S. 153 (1988) (trial court did not err in declining defendant's waiver of his right to conflict-free counsel and in refusing to permit defendant's proposed substitution of attorneys; drug conviction affirmed)

83. Ross v. Oklahoma, 487 U.S. 81 (1988) (although trial court erred in not removing for cause a potential juror at voir dire and the defendant was required to use a peremptory challenge to remove the juror, no violation of defendant's rights occurred, since the juror did not sit on the jury; murder conviction and death sentence affirmed)

84. Braswell v. United States, 487 U.S. 99 (1988) (custodian of corporate records may not resist a subpoena for the corporate records on the ground the act of production would incriminate him in violation of the fifth amendment self-incrimination clause; order refusing to quash subpoena affirmed)

85. Lockhart v. Nelson, 488 U.S. 33 (1988) (double jeopardy clause does not forbid retrial following reversal if the sum of the evidence offered by the state and admitted—whether erroneously or not—by the court at the first trial would have been sufficient to sustain a guilty verdict; order granting §2254 habeas corpus relief reversed)

86. Arizona v. Youngblood, 488 U.S. 51 (1988) (unless a criminal defendant can show bad faith on the part of the police, their failure to preserve potentially useful evidence does not constitute a denial of due process of law; conviction reinstated)

87. United States v. Sokolow, 490 U. S. 1 (1989) (DEA agents had reasonable suspicion and were therefore lawfully authorized to make an investigatory stop of defendant (who, Chief Justice Rehnquist notes several times, was wearing a black jumpsuit and gold jewelry) as he deplaned at Honolulu International Airport because prior to the stop the agents knew: (1) defendant had paid \$2100 for 2 airplane tickets from a roll of twenty dollar bills; (2) defendant traveled under a name that did not match the name under which his telephone was listed; (3) defendant's original destination was Miami, a source city for illegal drugs; (4) defendant stayed in Miami for only 48 hours, even though the roundtrip flight from Honolulu to Miami takes 20 hours; (5) defendant appeared nervous during his trip; and (6) defendant checked none of his luggage; drug conviction reinstated)

88. Alabama v. Smith, 490 U. S. 794 (1989) (no due process presumption of vindictiveness in sentencing arose where defendant pleaded guilty and was sentenced, the guilty plea was later vacated, and defendant was then tried for and convicted of the same offense and sentenced to a longer term of imprisonment than he had received following the guilty plea; Simpson v. Rice, 395 U.S. 711 (1969), overruled; conviction reinstated)

89. Murray v. Giarratano, 492 U. S. 1 (1989) (state collateral proceedings are not constitutionally required, and states have no obligation to provide this avenue of relief; U.S. Constitution does not guarantee appointed counsel to indigents sentenced to death who seek state postconviction relief) (plurality opinion)

90. Duckworth v. Eagan, 492 U. S. 195 (1989) (Miranda v. Arizona, 384 U.S. 436 (1966), was not violated where police gave the required warnings to suspect but added this sentence: “*We have no way of giving you a lawyer, but one will be appointed for you if you wish if and when you go to court (!)*”;” order granting §2254 habeas corpus relief reversed)

91. United States v. Verdugo-Urquidez, 494 U. S. 259 (1990) (alien defendant, whose Mexican residences were searched by DEA agents, lacks sufficient voluntary connections to the United States to be entitled to the protections of the fourth amendment; the use of the term “people” in the fourth amendment means that its protections, unlike those of the fifth and sixth amendments, extend only “to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community;” court is only willing to assume that the protections of the fourth amendment apply to illegal aliens in this country; the fourth amendment’s “purpose was to restrict searches and seizures which might be conducted by the United States in domestic matters;” “[w]ere defendant to prevail, aliens with no attachment to this country might well bring actions for damages to remedy claimed violations of the Fourth Amendment in foreign countries or in international waters (!);” drug conviction reinstated)

92. Blystone v. Pennsylvania, 494 U. S. 299 (1990) (upholding constitutionality of Pennsylvania death penalty statute; conviction and sentence affirmed)

93. Michigan v. Harvey, 494 U. S. 344 (1990) (statement extracted from a defendant by the police in violation of the sixth amendment right to counsel and inadmissible as substantive evidence of guilt may nonetheless be used as a prior inconsistent statement to impeach the defendant's credibility if the defendant takes the stand; conviction reinstated)

94. Boyde v. California, 494 U. S. 370 (1990) (jury instruction that the jury shall impose a death sentence if aggravating circumstances outweigh mitigating circumstances does not violate eighth amendment; claim that another instruction to jury restricted impermissibly jury's consideration of mitigating circumstances is rejected because there is no reasonable likelihood that the jury applied the challenged instruction in a way that prevented the consideration of constitutionally relevant evidence; conviction and sentence affirmed)

95. Butler v. McKellar, 494 U. S. 407 (1990) (Arizona v. Roberson, 486 U.S. 675 (1988), which bars police from interrogating a suspect about other crimes once the suspect has received the Miranda warnings and invoked the right to counsel, was not dictated by prior precedent and therefore is not retroactively applicable to cases on collateral review at time of Roberson decision; order denying §2254 habeas corpus relief is affirmed)

96. Michigan Dep't of State Police v. Sitz, 496 U. S. 444 (1990) (upholding the validity, under the fourth amendment, of police drunk driver roadblocks—called by the Court “highway sobriety checkpoints”—conducted by stopping every car passing through the checkpoint and questioning the driver, all without a warrant, without probable cause, without reasonable suspicion, and without any indication of criminal activity)

97. Collins v. Youngblood, 497 U. S. 37 (1990) (state statute permitting reformation of improper verdicts assessing unauthorized punishments, without the necessity of granting a new trial, did not, as applied to petitioner whose offense was committed prior to enactment of the statute, violate ex post facto clause; order granting §2254 habeas corpus relief reversed)

98. Arizona v. Fulminante, 499 U.S. 279 (1991) (admission of a defendant's involuntary confession at a criminal trial may be harmless error (!))

99. Florida v. Jimeno, 500 U. S. 248 (1991) (general consent by suspect to search of car for drugs includes consent to search any closed container in the car that might have the drugs inside; order granting suppression of evidence reversed)

100. Mu'Min v. Virginia, 500 U. S. 415 (1991) (although defendant's capital murder trial was preceded by exceptionally prejudicial publicity and 8 of the 12 jurors who ultimately sat on the jury admitted exposure to this publicity, there was no due process violation when trial judge merely asked the potential jurors who admitted to hearing about the case whether they could be impartial but refused ask them questions about the source or content of their knowledge of the case; conviction and death sentence affirmed)

101. Chapman v. United States, 500 U. S. 453 (1991) (statute requiring minimum 5-year sentence for distributing more than one gram of a mixture or substance containing a detectable amount of LSD requires that weight of carrier medium—in this case, blotter paper—be included, even though here the pure LSD weighed only 50 milligrams and the total weight of the paper and the LSD was 5.7 grams; drug conviction affirmed)

102. Payne v. Tennessee, 501 U. S. 808 (1991) (overruling Booth v. Maryland, 482 U. S. 496 (1987), and Gathers v. South Carolina, 490 U. S. 805 (1990), and holding eighth amendment cruel and unusual punishments clause does not bar admission of victim impact evidence during the penalty phase of a capital punishment trial; conviction and death sentence affirmed)

103. Estelle v. McGuire, 502 U. S. 62 (1991) (order granting §2254 habeas corpus relief reversed; the alleged errors, admission of battered child syndrome evidence, and the instructions given the jury, did not amount to due process violations)

104. White v. Illinois, 502 U. S. 301 (1992) (confrontation clause of the sixth amendment does not require that, before a trial court admits evidence under the “spontaneous declaration” and “medical examination” exceptions to the hearsay rule, the prosecution must either produce the declarant at trial or the trial court must find that the declarant is unavailable)

105. United States v. Felix, 503 U. S. 378 (1992) (a prosecution of a defendant for conspiracy, where certain of the overt acts relied upon by the government are based on substantive offenses for which the defendant has been previously convicted, does not violate double jeopardy clause of fifth amendment; decisions of court of appeals reversing defendant’s drug offense conviction reversed)

106. United States v. Alvarez-Machain, 504 U. S. 655 (1992) (instead of adhering to an extradition treaty between the United States and Mexico, DEA officials hired gangsters to forcibly kidnap the defendant, a Mexican doctor, from his offices in Guadalajara, Mexico and bring him to the United States; the lower federal courts held that, because the abduction violated the extradition treaty, the defendant was entitled to be returned to Mexico prior to trial; HELD, judgment reversed:

the illegal actions of the DEA did not violate the extradition treaty and the federal courts do not lack jurisdiction to try the defendant; since the treaty says nothing about illegal kidnappings outside the treaty, such abductions are not in violation of the treaty (!); the treaty does not forbid all means of gaining the presence of an individual outside its terms (!); “[defendant] and his amici may be correct that [defendant’s] abduction was shocking . . . and that it may be in violation of general international law principles” (!)

107. Sawyer v. Whitley, 505 U. S. 333 (1992) (the “actual innocence” exception to the rule that federal claims procedurally defaulted in the state court system may not be raised in a federal habeas corpus proceeding is narrow in scope; in the context of an attack on a death sentence rather than a conviction, the narrow exception for “actual innocence” is applicable only if the convicted person shows, by clear and convincing evidence, that, but for the constitutional error that occurred at sentencing, no reasonable juror would have voted for the death penalty; denial of §2254 habeas corpus relief affirmed)

108. Lockhart v. Fretwell, 506 U. S. 364 (1993) (failure of defense counsel to make an objection in a state criminal proceeding—an objection that would have been supported by a decision which was subsequently overruled—did not amount to ineffective assistance of counsel; order granting §2254 habeas corpus relief reversed)

109. Herrera v. Collins, 506 U. S. 390 (1993) (newly discovered evidence of innocence, even in a capital punishment case, is not grounds for §2254 habeas corpus relief (!); denial of §2254 relief affirmed)

110. Brecht v. Abrahamson, 507 U. S. 619 (1993) (in §2254 habeas corpus proceedings, the applicable harmless error standard is not the standard used on direct appeal, whereunder a constitutional error

cannot be deemed unless the state proves beyond a reasonable doubt that the error was harmless; instead, the harmless error standard applicable to §2254 proceedings is a less onerous one, namely, the harmless error standard traditionally limited in federal court to nonconstitutional errors, i.e., whether the error had a substantial and injurious effect or influence in determining the jury's verdict; denial of §2254 relief affirmed)

111. Gilmore v. Taylor, 508 U. S. 333 (1993) (under the holding in Teague v. Lane, 489 U. S. 288 (1989), the lower court decision granting §2254 habeas corpus relief was erroneous because it amounted to a "new rule" in criminal procedure and therefore cannot form the basis for granting postconviction habeas corpus relief; order granting §2254 relief reversed)

112. Wisconsin v. Mitchell, 508 U. S. 476 (1993) (state statute permitting enhancement of sentence when defendant intentionally selects his victim on basis of race is constitutional; state court decision vacating sentence reversed)

113. Alexander v. United States, 509 U. S. 544 (1993) (defendant, who owned more than a dozen bookstores and theaters dealing in sexually explicit materials, was convicted on numerous counts of violating federal obscenity and racketeering laws for having sold four magazines and three videotapes; following his convictions, defendant was sentenced to six years in prison, fined \$100,000, and ordered to pay the costs of his prosecution, incarceration, and supervised release; as additional punishment for the crimes for which he was convicted, defendant had his entire wholesale and retail business forfeited, including the assets of that business and almost nine million dollars acquired through that business; HELD, the forfeiture did not violate the first amendment (!); however, the judgment of the federal court of appeals

is reversed so that court may pass upon defendant's claim that the forfeiture violated the excessive fines clause of the eighth amendment)

114. Weiss v. United States, 510 U. S. 163 (1994) (special court martial convictions affirmed; current method of appointing military judges is constitutional, and the lack of a fixed term of office for military judges does not violate due process)

115. Albright v. Oliver, 510 U. S. 266 (1994) (arrest without probable cause does not violate substantive due process, although it may violate fourth amendment; dismissal of arrestee's §1983 civil rights action affirmed) (plurality opinion)

116. Custis v. United States, 511 U. S. 485 (1994) (except for convictions obtained in violation of right to counsel, defendant in federal sentencing proceeding has no right, during the sentencing proceeding, to collaterally attack the validity of previous state convictions used to enhance his federal sentence (!); sentence affirmed)

117. Nichols v. United States, 511 U. S. 738 (1994) (a sentencing court may consider a defendant's previous uncounseled misdemeanor conviction in sentencing him for a subsequent offense as long as the previous uncounseled conviction did not result in a sentence of imprisonment; sentence affirmed)

118. Romano v. Oklahoma, 512 U. S. 1 (1994) (no violation of due process or of the eighth amendment occurred when at the sentencing phase of defendant's capital punishment trial the prosecution was allowed to introduce evidence that defendant previously had been sentenced to death in another case (!)) *Note*: The previous death sentence was reversed on direct appeal while the defendant's present death sentence was being appealed (!). Also, during the defendant's

present appeal the defendant was retried, reconvicted, and again sentenced to death on the previous capital charges.

119. United States v. X-Citement Video, Inc., 513 U. S. 64 (1994) (provision of federal statute criminalizing child pornography should be construed to require that defendant know that one of the sexual performers is a minor, and, so construed, the provision is not facially unconstitutional; court of appeals decision reversing defendant's conviction under the provision is reversed)

120. Arizona v. Evans, 514 U. S. 1 (1995) (evidence obtained by an arrest that violates the fourth amendment is admissible (!), where the officer who made the arrest acted in reliance on computer information erroneously indicating the existence of an outstanding arrest warrant for the defendant—the warrant in fact had been quashed by a judge 17 days earlier—and a court clerk, rather than the police, was responsible for the erroneous entry in the police computer; there is, therefore, a “categorical exception to the exclusionary rule for clerical errors of court employees”)

121. Sandin v. Conner, 515 U. S. 472 (1995) (action of state officials in placing inmate in segregated confinement for 30 days as a disciplinary measure did not violate inmate's due process rights; decision of court of appeals in favor of inmate reversed)

122. United States v. Aguilar, 515 U. S. 593 (1995) (court of appeals erred in reversing defendant's conviction for disclosing wiretap information, and its decision reversed)

123. Bennis v. Michigan, 516 U. S. 442 (1996) (petitioner, a joint owner with her husband of an automobile—which was 11 years old and cost \$600.00—in which the husband engaged in sexual activity with a prostitute, with the result that a state court ordered the automobile forfeited)

as a public nuisance, with no offset for her interest, notwithstanding her lack of knowledge of her husband's activity; HELD, there is no constitutional requirement that an innocent owner defense be provided, and the forfeiture did not violate due process clause of amendment or the takings clause of the fifth amendment; judgment affirmed)

124. United States v. Armstrong, 517 U. S. 456 (1996) (respondents, black persons charged with crack cocaine offenses, moved for discovery in the federal district on grounds blacks were singled out for prosecution on account of their race; when the discovery motion was granted, the government refused to comply, with the result that the case was dismissed, and the court of appeals affirmed the dismissal; HELD, because the respondents failed to make a threshold showing that the government failed to prosecute similarly situated suspects of other races, the dismissal order is reversed)

125. Gray v. Netherland, 518 U. S. 152 (1996) (affirming denial of federal habeas corpus relief to state convict sentenced to death)

126. United States v. Ursery, 518 U. S. 267 (1996) (double jeopardy clause does not prohibit the government from both punishing a defendant for a criminal offense and forfeiting his property for that same offense; courts of appeals judgments to the contrary are reversed)

127. Felker v. Turpin, 518 U. S. 651 (1996) (provisions of Antiterrorism and Effective Death Penalty Act of 1996 restricting successive federal habeas corpus petitions are constitutional; denial of habeas corpus relief to death row inmate affirmed)

128. Ohio v. Robinette, 519 U. S. 33 (1996) (fourth amendment does not require that a lawfully seized motorist be advised that he is free to

go before his consent to search his automobile will be recognized as valid (!)

129. Maryland v. Wilson, 519 U. S. 408 (1997) (a police officer, without violating the fourth amendment, may as a matter of course order not only the driver but also the passengers of a lawfully stopped automobile to exit the vehicle; decision granting motion to suppress is reversed)

130. Johnson v. United States, 520 U. S. 461 (1997) (under the plain error doctrine, an appellate court may correct an error occurring in the convicting court even though the error was not raised in the convicting court; in order for the plain error doctrine to apply, there must be (1) error, (2) the error must be plain, (3) the error must affect substantial rights, and (4) the error must seriously affect the fairness, integrity, or public reputation of judicial proceedings; here the error did not seriously affect the fairness, integrity, or public reputation of judicial proceedings; conviction affirmed)

131. United States v. Hyde, 520 U. S. 670 (1997) (where district court accepted guilty plea but deferred acceptance of plea agreement, defendant could not withdraw plea pursuant to Rule 32(e), Fed. R. Crim. Proc., without showing a fair and just reason; court of appeals judgment to the contrary is reversed)

132. Hudson v. United States, 522 U. S. 93 (1997) (overruling United States v. Halper, 490 U. S. 435 (1989)); where the government administratively imposed penalties and occupation debarment on defendants and then later indicted for the same conduct, the double jeopardy clause is not a bar to the later criminal prosecution; decision of court of appeals denying pretrial double jeopardy claim is affirmed)

133. Buchanan v. Angelone, 522 U. S. 269 (1998) (§ 2254 habeas corpus case by death row inmate; the eighth amendment does not require that a capital jury be instructed on the concept of mitigating evidence generally, or on particular statutory factors; decision of court of appeals denying relief is affirmed)

134. United States v. Ramirez, 523 U. S. 65 (1998) (we have previously held that “no-knock” entries are justified when police officers have a reasonable suspicion that knocking and announcing their presence before entering would be dangerous or futile or inhibit their effective investigation of the crime; however, the fourth amendment does not hold officers to a higher standard when a “no-knock” entry results in the destruction of property; under the circumstances here, the police “no-knock” entry did not violate the fourth amendment; court of appeals decision affirming order suppressing evidence is reversed)

135. Minnesota v. Carter, 525 U. S. 83 (1999) (defendants and the lessee of an apartment were sitting in one of the rooms, bagging cocaine; who so engaged they were observed by a police officer who looked through a drawn window blind; HELD, no violation of defendants’s fourth amendment rights occurred; in order to claim the protection of the fourth amendment, a defendant must demonstrate that he personally has an expectation of privacy in the place searched, and that his expectation is reasonable; the defendants were not overnight guests or in anything similar to an overnight guest relationship; there is no suggestion that defendants had a previous relationship with the lessee of the apartment, or that there was any other purpose for the visit; defendants were using the property for commercial purposes, and they spent a relatively short amount of time on the premises; therefore, defendants had no reasonable expectation of privacy in the apartment; we need not decide whether the police officer’s observation constituted a search for purposes of the fourth amendment; judgment of the

Minnesota Supreme Court reversing the convictions is reversed; convictions reinstated)

136. Conn v. Gabbert, 526 U. S. 286 (1999) (§ 1983 civil rights action for damages; no violation of the fourteenth amendment occurred when prosecutor directed police detective to secure a search warrant and then caused the search warrant to search the person of attorney to be served on that attorney at the same time the attorney's client was testifying before a grand jury; the fourteenth amendment right to practice one's calling is not violated by the execution of a search warrant, whether calculated to annoy or even to prevent consultation with a grand jury witness; decision of court of appeals denying qualified immunity to the prosecutor and others is reversed)

137. Neder v. United States, 527 U. S. 1 (1999) (the harmless error rule applies to a jury instruction that omits an element of the offense; conviction affirmed)

138. Illinois v. Wardlow, 528 U. S. 119 (2000) (defendant fled upon seeing police officers patrolling an area known for heavy narcotics trafficking; HELD, the arresting officers had reasonable suspicion to make an investigatory stop of defendant pursuant to Terry v. Ohio, 392 U. S. 1 (1968); state supreme court decision reversing defendant's conviction for illegal possession of a pistol on grounds of illegal search and seizure is reversed, and the conviction is reinstated)

139. Weeks v. Angelone, 528 U. S. 225 (2000) (at the sentencing phase of defendant's death penalty trial, the trial judge did not err in responding to a question from the deliberating jurors by directing them to reread a paragraph of the written instructions he had given them; court of appeals decision denying habeas corpus relief to defendant sentenced to death is affirmed)

140. Ohler v. United States, 529 U. S. 753 (2000) (prior to defendant’s trial on drug charges the prosecution filed a motion *in limine* to introduce evidence of her prior felony drug conviction, which was granted; after the motion was granted, the defendant, to remove the sting of having the prosecution bring out the prior conviction on cross-examination, admitted the prior conviction on direct examination; HELD, a defendant who preemptively introduces evidence of a prior conviction on direct examination may not on appeal claim that the admission of such evidence was error; conviction affirmed)

141. Texas v. Cobb, 532 U. S. 162 (2001) (the sixth amendment right to counsel is “offense specific;” with respect to the right to exclude statements obtained in violation of the sixth amendment right to counsel, the sixth amendment right attaches only to the offense the defendant is formally charged with, and does not attach to offenses “closely related factually” to the charged offense; there is no difference between “offense” in the double jeopardy and the right to counsel contexts, and therefore when the sixth amendment right to counsel attaches, it encompasses not only the offense charged but also offenses that if charged would be considered the same offense in the double jeopardy context; at the time he confessed, the defendant had been indicted for burglary but not formally charged with murder; under Texas law, these crimes are not the same offense in the double jeopardy context; therefore, the confession was not obtained in violation of the right to counsel; state appellate court decision reversing murder conviction is reversed, and murder conviction and death sentence are reinstated)

142. United States v. Knights, 534 U. S. 112 (2001) (defendant was convicted of a drug offense in state court and sentenced to probation; one condition of probation was that defendant would submit his person, property, place of residence, vehicle, and personal effects to

search at anytime, without a search warrant, warrant of arrest or reasonable cause by any probation officer or law enforcement officer; police officers, aware of the search condition in defendant's probation order and possessed of reasonable suspicion that he had recently committed arson and related crimes against a power company transformer, searched defendant's house where they found a detonation cord, ammunition, liquid chemicals, instruction manuals on chemistry and electrical circuitry, bolt cutters, telephone pole-climbing spurs, etc.; the defendant was then indicted in federal court on charges of conspiracy to commit arson, possession of unregistered destructive devices, and being a felon in possession of ammunition; the defendant then filed a motion to suppress the evidence seized from his home; HELD, the search of defendant's home did not violate the fourth amendment; when an officer has reasonable suspicion that a probationer subject to a probation condition is engaged in criminal activity, the search is reasonable; a warrantless search supported by reasonable suspicion and authorized by a condition of probation does not violate the fourth amendment; court of appeals decision affirming order suppressing evidence is reversed)

143. United States v. Arvizu, 534 U. S. 266 (2002) (fourth amendment protections extend to brief investigative stops of persons or vehicles that fall short of traditional arrest; an investigative stop need not be supported by probable cause to believe a crime has been committed, but only by reasonable suspicion that criminal activity is afoot; in making reasonable-suspicion determinations, courts must look at the totality of the circumstances; this allows officers to draw on their own experience and specialized training to make inferences and deductions about the cumulative information available to them that might well elude an untrained person; although an officer's "hunch" is insufficient to justify a stop, the likelihood of criminal activity need not rise to the level required for probable cause, and it falls considerably short of satisfying a preponderance of the evidence standard; a

determination that reasonable suspicion exists need not rule out the possibility of innocent conduct; here, there was reasonable suspicion for border patrol agent's stopping of the defendant's minivan while he was driving on an unpaved road commonly used by smugglers in a remote area of southeastern Arizona; the circumstances the agent deemed suspicious included: it appeared the minivan might be trying to circumvent a border patrol checkpoint; the minivan was driving at a time when agents begin heading back to the checkpoint for a shift change, which leaves the area unpatrolled (smugglers are most active when agents are en route back to the checkpoint); the defendant's vehicle was a minivan, a type of automobile smugglers use; the driver of the minivan slowed dramatically on seeing the agent's car; the driver appeared stiff and his posture very rigid and he did not look at the agent and seemed to pretend the agent was not there; the three children in the back of the minivan began to wave in an abnormal pattern as if they were being instructed, and their odd waving continued on and off for about five minutes; the knees of the two children sitting in the very back seat were unusually high, as if their feet were propped up on some cargo on the floor; the minivan made an abrupt turn, onto a rougher road usually traversed by four-wheel drive vehicles, at the last place that would have allowed it to avoid the checkpoint; the minivan was not part of the local traffic; and a radio registration check of the minivan showed it was registered to an address in Douglas, Arizona that was four blocks north of the border in an area notorious for alien and narcotics smuggling; court of appeals decision reversing denial of motion to suppress the 128 pounds of marijuana seized from the minivan by the agent is reversed)

144. United States v. Cotton, 535 U. S. 625 (2002) (Ex parte Bain, 121 U. S. 1 (1887), which held that an improper amendment of an indictment deprived the trial court of jurisdiction over the offense and therefore authorized federal habeas corpus relief from a conviction based on the amended indictment, is overruled to the extent it held that

a defective indictment deprives a court of jurisdiction; Bain is a product of an era when this Court's authority of review federal criminal convictions was greatly circumscribed and when habeas corpus relief was limited to jurisdictional errors; in the Bain era this Court's desire to correct obvious constitutional violations led to a somewhat expansive notion of jurisdiction, which was more a fiction than anything else; Bain's elastic concept of jurisdiction is not what the term "jurisdiction" means today, i.e., the court's statutory or constitutional power to adjudicate the case; under the modern concept of subject matter jurisdiction, defects in subject matter jurisdiction can never be waived or forfeited, and defects in subject-matter jurisdiction require correction regardless of whether the error was raised in district court; in contrast, the right to grand jury indictment may be waived; post-Bain cases confirm that defects in an indictment do not deprive a court of its power to adjudicate a case; here, the defect in the indictment—that it failed to allege a fact, drug quantity, that increased the statutory maximum sentence—was not jurisdictional, and since the defendant did not raise the claim of error in the district court, the error is reviewable only under the plain error; here, the defective indictment was not plain error because it did not seriously affect the fairness, integrity, or public reputation of judicial proceedings; court of appeals decision vacating the sentence is reversed)

145. Bell v. Cone, 535 U. S. 685 (2002) (on grounds of ineffective assistance of counsel at penalty phase of his capital murder trial, the court of appeals granted state death row inmate federal habeas corpus relief from his death sentence and ordered him resentenced; at his trial the inmate's defense counsel was a lawyer named Dice who subsequent to inmate's trial was diagnosed with a mental illness that disqualified him to practice law and apparently led to his suicide; Dice's shortcomings at the penalty phase included a failure to interview witnesses who could have provided mitigating evidence, a failure to introduce available mitigating evidence, and a failure to make any

closing argument or plea for his client’s life at the conclusion of the penalty phase; in his opening statement at the beginning of the guilt phase of the trial, Dice promised several witnesses in aid of his client’s insanity defense, including the defendant’s mother, sister, and two aunts, but then presented only three witnesses in support of the insanity defense—the mother, a clinical psychologist and a pharmacologist; Dice also promised to prove that the murder victim’s sister had written a letter of forgiveness to the defendant, but it was never submitted to the jury; in its rebuttal case at the guilt phase, the state introduced the testimony of a witness who, as Dice later acknowledged, virtually destroyed the defendant’s insanity defense (“We were totally unprepared for that”); Dice had known that the witness was a possible prosecution witness but failed to interview her prior to the trial; Dice did four things at the penalty phase: he made a brief opening argument asking for mercy, he referenced the insanity evidence presented at the guilt phase, he brought out on cross-examination that the defendant had been awarded the Bronze Star in while serving in Vietnam, and he successfully objected to the state’s introduction of two photographs of the murder victims; he did not, however, interview witnesses aside from those relevant to guilt phase, he did not present testimony relevant to mitigation from available witnesses; he did not present testimony relevant to mitigation from witnesses who were available; and he made no plea for his client’s life or closing remarks after the state’s case; HELD, the court of appeals decision granting § 2254 relief is reversed; the 1996 Antiterrorism statute modified a federal habeas court’s role to ensure state convictions are given effect to the extent possible under law; federal habeas court can grant § 2254 habeas relief only if the state court decision is contrary to or involved an unreasonable application of clearly established federal law, as determined by the U. S. Supreme Court; under the “contrary to” clause, habeas relief may be granted if the state court applies a rule different from the governing rule set forth in our cases, or if it decides a case differently than we have done on a

set of materially indistinguishable facts; under the “unreasonable application” clause, habeas relief may be granted if the state court correctly identifies the governing legal principle from our decisions but unreasonably applies it to the facts of the particular case; under the “unreasonable application” clause, habeas relief may not be granted simply because the federal court in its independent judgment concludes that the state court decision applied clearly established federal law erroneously or incorrectly; rather, under the “unreasonable application” clause, the habeas petitioner must show that the state court applied the governing legal principle to the facts of his case in an objectively unreasonable manner; here, the state court decision that the defendant received effective assistance of counsel at the penalty phase was not contrary to, and did not involve an unreasonable application of, clearly established federal law)

146. Price v. Vincent, 538 U. S. 634 (2003) (decision of court of appeals granting federal habeas corpus relief to state prison inmate is reversed; federal habeas relief can be granted if the state court decision is contrary to clearly established federal law as determined by the U. S. Supreme Court; a state court decision is contrary to clearly established federal law as determined by the U. S. Supreme Court if it applies a rule that contradicts the governing law set forth in U. S. Supreme Court cases or if it confronts a set of facts materially indistinguishable from a decision of the U. S. Supreme Court and reaches a result different from the Supreme Court precedent; here, the decision of the state court on the double jeopardy issue was not an objectively unreasonable application of U. S. Supreme Court caselaw)

147. Maryland v. Pringle, 540 U. S. 366 (2003) (in the early morning hours a passenger car occupied by three men was stopped for speeding by a police officer; the officer, upon searching the car, seized \$763 of rolled-up cash from the glove compartment and five glassine baggies of cocaine from between the back-seat armrest and the back seat; after

all three men denied ownership of the cocaine and money, the officer arrested each of them; we hold that the officer had probable cause to arrest Pringle, a front-seat passenger, and one of the three men in the car; in fact, the officer had probable cause to arrest any and all of the three men; decision of Maryland Court of Appeals reversing defendant's conviction is reversed)

148. United States v. Flores-Montano, 541 U. S. 149 (2004) (customs officials seized 37 kilograms—a little more than 81 pounds—of marijuana from respondent's gas tank at the international border; the Court of Appeals for the Ninth Circuit held that the Fourth Amendment forbade the fuel tank search absent reasonable suspicion; the respondent was attempting to enter the U. S. from across the Mexican border; a customs inspector conducted an inspection of the station wagon, and requested respondent to leave the vehicle; the vehicle was then taken to a secondary inspection station; a second customs inspector inspected the gas tank by tapping it, and noted that the tank sounded solid; subsequently, the inspector requested a mechanic under contract with Customs to come to the border station to remove the tank; within 20 to 30 minutes, the mechanic arrived; he raised the car on a hydraulic lift, loosened the straps and unscrewed the bolts holding the gas tank to the undercarriage of the vehicle, and then disconnected some hoses and electrical connections; after the gas tank was removed, the inspector hammered off bondo (a putty-like hardening substance that is used to seal openings) from the top of the gas tank; the inspector opened an access plate underneath the bondo and found 37 kilograms of marijuana bricks; the process took 15 to 25 minutes; we hold that the search in question did not require reasonable suspicion; the government's interest in preventing the entry of unwanted persons and effects is at its zenith at the international border; time and again, we have stated that searches made at the border, pursuant to the longstanding right of the sovereign to protect itself by stopping and examining persons and property crossing into

this country, are reasonable simply by virtue of the fact that they occur at the border; we conclude that the government's authority to conduct suspicionless inspections at the border includes the authority to remove, disassemble, and reassemble a vehicle's fuel tank; decision of court of appeals affirming the district court's order granting the motion to suppress the marijuana is reversed)

149. Thornton v. United States, 541 U. S. 615 (2004) (once a police officer makes a lawful custodial arrest of an automobile's occupant, the Fourth Amendment allows the officer to search the vehicle's passenger compartment as a contemporaneous incident of arrest, even when an officer does not make contact until the person arrested has already left the vehicle; the stress of arrest is no less merely because the arrestee exited his car before the officer initiated contact, nor is an arrestee less likely to attempt to lunge for a weapon or to destroy evidence if he is outside of, but still in control of, the vehicle; in all relevant aspects, the arrest of a suspect who is next to a vehicle presents identical concerns regarding officer safety and evidence destruction as one who is inside; decision of court of appeals affirming petitioner's conviction is affirmed)

150. Kowalski v. Tesmer, 543 U.S. 125 (2004) (criminal defense attorneys lacked standing to seek federal injunctive relief against Michigan state judges who, in violation of lower federal court ruling, declined to appoint counsel to represent guilty-pleading defendants who sought a direct appeal)

151. Muehler v. Mena, 544 U.S. 93 (2004) (at 7 a.m., armed with a search warrant issued in connection with an investigation of a gang-related drive-by shooting, 8 police SWAT team officers clad in helmets and black vests broke into the house where a young lady, 5-foot 2-inch Iris Mena, the only resident in the house, was sleeping, entered her bedroom, handcuffed her hands behind her back at gunpoint,

searched her, forced her, still in her bed clothes, to walk barefoot through pouring rain to a nearby garage, and then kept her there for 3 hours while the house was searched, and denying her repeated requests to remove the handcuffs; we hold that Mena's detention was reasonable and did not violate the Fourth Amendment)

152. Pace v. DiGuglielmo, 544 U.S. 408 (2005) (state prisoner's federal habeas corpus petition was untimely under the federal habeas corpus statute's 1 year statute of limitations; furthermore, the prisoner was not entitled to equitable tolling of the limitation period; denial of the habeas petition is affirmed)

END OF INIMICUS LIBERTATIS

Bibliography

1. Books on Rehnquist and His Tenure on the Supreme Court

Martin H. Belsky (ed.), The Rehnquist Court: A Retrospective (2002)

Vincent Blasi (ed.), The Burger Court: The Counter-Revolution that Wasn't (1983)

Donald E. Boles, Mr. Justice Rehnquist, Judicial Activist: The Early Years (1987)

Craig Bradley (ed.), The Rehnquist Legacy (2006)

Sue Davis, Justice Rehnquist and the Constitution (1989)

John W. Dean, The Rehnquist Choice: The Untold Story of the Nixon Appointment that Redefined the Supreme Court (2001)

John F. Decker, Revolution to the Right: Criminal Procedure Jurisprudence During the Burger-Rehnquist Court Era (1992)

Stanley H. Friedelbaum, The Rehnquist Court: In Pursuit of Judicial Conservatism (1994)

Richard Y. Funston (ed.), Constitutional Counterrevolution? The Warren Court and the Burger Court: Judicial Policy Making in Modern America (1977)

John Galloway (ed.), Criminal Justice and the Burger Court (1978)

Arthur L. Galub, The Rehnquist Court, 1986-1994 (1995)

Martin Garbus, Courting Disaster: The Supreme Court and the Unmaking of American Law (2002)

Stephen E. Gottlieb, Morality Imposed: The Rehnquist Court and Liberty in America (2000)

Jan Crawford Greenburg, Supreme Conflict: The Inside Story of the Struggle for Control of the United States Supreme Court (2007)

David L. Hudson, The Rehnquist Court: Understanding Its Impact and Legacy (2007)

Peter Irons, Brennan vs. Rehnquist: The Battle for the Constitution (1994)

Thomas M. Keck, The Most Activist Court in History: The Road to Modern Judicial Conservatism (2004)

Charles M. Lamb and Stephen C. Halpern, The Burger Court: Political and Judicial Profiles (1991)

Mark R. Levin, Men in Black: How the Supreme Court is Destroying America (2005)

Leonard W. Levy, Against the Law: The Nixon Court and Criminal Justice (1974)

Earl Maltz (ed.), Rehnquist Justice: Understanding the Court Dynamic (2003)

David G. Savage, Turning Right: The Making of the Rehnquist Supreme Court (1992)

Bernard Schwartz, The New Right and the Constitution: Turning Back the Legal Clock (1990)

Herman Schwartz (ed.), The Burger Years: Rights and Wrongs in the Supreme Court, 1969-1986 (1987)

Herman Schwartz (ed.), The Rehnquist Court: Judicial Activism on the Right (2002)

Herman Schwartz, Right Wing Justice: The Conservative Campaign to Take Over the Courts (2004)

James F. Simon, In His Own Image: The Supreme Court in Richard Nixon's America (1973)

Christopher E. Smith, The Rehnquist Court and Criminal Punishment (1997)

Mark W. Smith, Disrobed: The New Battle Plan to Break the Left's Stranglehold on the Courts (2006)

Cass R. Sunstein, Radicals in Robes: Why Extreme Right-Wing Courts are Wrong for America (2005)

David F. B. Tucker, The Rehnquist Court and Civil Rights (1995)

Mark Tushnet, A Court Divided: The Rehnquist Court and the Future of Constitutional Law (2005)

Bob Woodward and Scott Armstrong, The Brethren: Inside the Supreme Court (1979)

Tinsley E. Yarbrough, The Rehnquist Court and the Constitution (2000)

2. Law Review Articles on Rehnquist and His Tenure on the Supreme Court

Chemerinsky, “The Rehnquist Court & Justice: An Oxymoron?,” 1 Wash. U. J. L. & Pol’y 37 (1999)

Clor, “Chief Justice Rehnquist and the Balances of Constitutional Democracy,” 25 Rutgers L. J. 557 (1994)

Colker and Brudney, “Dissing Congress,” 100 Mich. L. Rev. 80 (2001)

Kleven, “The Constitutional Philosophy of Justice William H. Rehnquist,” 8 Vt. L. Rev. 1 (1983)

Lee, “Stare Decisis in Historical Perspective: From the Founding Era to the Rehnquist Court,” 52 Vand. L. Rev. 645 (1999)

Macey, “Chief Justice Rehnquist, Interest Group Theory, and the Founder’s Design,” 25 Rutgers L. Rev. 577 (1994)

Maltz, “No Rules in a Knife Fight: Chief Justice Rehnquist and the Doctrine of Stare Decisis,” 25 Rutgers L. J. 669 (1994)

Maveety, “The Populist of the Adversary Society: The Jurisprudence of Justice Rehnquist,” 13 J. Contemporary L. 221 (1987)

Merrill, “Chief Justice Rehnquist: Pluralist Theory and the Interpretation of Statutes,” 25 Rutgers L. J. 621 (1994)

Note, “Justice Rehnquist’s Decision to Participate in Laird v. Tatum,” 73 Colum. L. Rev. 106 (1973)

Powell, “The Complete Jeffersonian: Justice Rehnquist and Federalism,” 91 Yale L. J. 1317 (1982)

Rahdert, “William Rehnquist’s Judicial Craft,” 60 Temple L. Rev. 841 (1987)

Ray, “A Law Clerk and His Justice: What William Rehnquist Did Not Learn from Robert Jackson,” 29 Ind. L. Rev. 535 (1996)

Shane, “Federalism’s ‘Old Deal’: What’s Right and Wrong with Conservative Judicial Activism,” 45 Vill. L. Rev. 201 (2000)

Shapiro, “Mr. Justice Rehnquist: A Preliminary View,” 90 Harv. L. Rev. 293 (1976)

Smith, “The Rehnquist Court and Criminal Procedure,” 73 U. Colo. L. Rev. 1337 (2002)

Shugerman, “A Six-Three Rule: Reviving Consensus and Deference on the Supreme Court,” 37 Ga. L. Rev. 893 (2003)

Spaeth, “Ideology, Strategy, and Supreme Court Decisions: William Rehnquist as Chief Justice,” 72 Judicature 247 (1989)

Stempel, “Rehnquist, Recusal, and Reform,” 53 Brooklyn L. Rev. 589 (1987)

“Symposium on the Rehnquist Court,” 99 Nw. U. L. Rev. 1 (2004)

Tushnet, “The Constitutional Right to One’s Good Name: An Examination of the Scholarship of Justice Rehnquist,” 64 Ky. L. J. 753 (1976)

Tushnet, “Observations on the New Revolution in Constitutional Criminal Procedure,” 94 Geo. L.J. 1627 (2006)

Tushnet, “A Republican Chief Justice,” 88 Mich. L. Rev. 1326 (1990)

Weisberg, “How Judges Speak: Some Lessons on the Adjudication of Billy Budd, Sailor with an Application to Justice Rehnquist,” 57 N.Y.U. L. Rev. 1 (1982)

Wilkins, Worthington, Becker, and Updike, “Supreme Court Voting Behavior,” 31 Hastings Const. L. Q. 499 (2004)

Zeppo, “Chief Justice Rehnquist, the Two Faces of Ultra-Pluralism, and the Originalist Fallacy,” 25 Rutgers L. J. 679 (1994)

3. Law Review Articles on the Rehnquisition

Amann, “International Law and Rehnquist-Era Reversals,” 94 Geo. L.J. 1319 (2006)

Barkow, “Originalists, Politics, and Criminal Law on the Rehnquist Court,” 74 Geo. Wash. L. Rev. 1043 (2006)

Bilionis, “Criminal Justice After the Conservative Reformation,” 94 Geo. L.J. 1347 (2006)

Bilionis, “Conservative Reformation, Popularization, and the Lessons of Reading Criminal Justice as Constitutional Law,” 52 UCLA L. Rev. 979 (2005)

Bradley, “Criminal Procedure in the Rehnquist Court: Has the Rehnquisition Begun?,” 62 Ind. L.J. 273 (1987)

Carrafiello, “A Counter-Revolution Gone Too Far? Justice Powell’s Valedictory on the New Law of Warrantless Aerial Surveillance,” 16 So. U. L. Rev. 327 (1987)

Chemerinsky, “The Rehnquist Court and the Death Penalty,” 94 Geo. L.J. 1367 (2006)

Clayton and Pickerill, “The Politics of Criminal Justice: How the New Right Regime Shaped the Rehnquist Court’s Criminal Justice Jurisprudence,” 94 Geo. L.J. 1385 (2006)

Comment, “‘Deference Does Not Imply Abandonment or Abdication of Review’: The Evolution of Habeas Jurisprudence Under the Rehnquist Court,” 72 UMKC L. Rev. 739 (2004)

Comment, “The Rehnquist Court and the De-Emphasis of Individual Liberty in Criminal Procedure Analysis,” 1988 U. Detroit L. Rev. 291

Fisher, “Categorical Requirements in Constitutional Criminal Procedure,” 94 Geo. L.J. 1493 (2006)

Fortunato, “The Supreme Court’s Experience Gap,” 82 Judicature 251 (May-June 1999)

McClurg, “Logical Fallacies and the Supreme Court: A Critical Examination of Justice Rehnquist’s Decisions in Criminal Procedure Cases,” 59 U. Colo. L. Rev. 741 (1988)

Regnier, “The ‘Loyal Foot Soldier’: Can the Fourth Amendment Survive the Supreme Court’s War on Drugs?,” 72 UMKC L. Rev. 631 (2004)

Riggs and Proffitt, “The Judicial Philosophy of Justice Rehnquist,” 16 Akron L. Rev. 555 (1983)

Slobogin, “Having It Both Ways: Proof That the U. S. Supreme Court is ‘Unfairly’ Prosecution-Oriented,” 48 Fla. L. Rev. 743 (1996)

Smith, “The Rehnquist Court and Criminal Procedure,” 73 U. Colo. L. Rev. 1337 (2002)

Smith, “Criminal Justice and the 1995-96 U. S. Supreme Court Term,” 74 U. Det. Mercy L. Rev. 1 (1996)

Smith, “Criminal Justice and the 1996-97 U. S. Supreme Court Term,” 23 Dayton L. Rev. 29 (1997)

Smith, “Criminal Justice and the 1997-98 U. S. Supreme Court Term,” 23 S. Ill. U. L. J. 443 (1998)

Smith, “Criminal Justice and the 1998-99 U. S. Supreme Court Term,” 9 Widener J. Pub. L. 23 (2001)

Smith, “Criminal Justice and the 1999-2000 U. S. Supreme Court Term,” 77 N. D. L. Rev. 1 (2001)

Smith, “The Impact of New Justices: The U. S. Supreme Court and Criminal Justice Policy,” 30 Akron L. Rev. 1 (1996)

Smith and Jones, “The Rehnquist Court’s Activism and the Risk of Injustice,” 26 Conn. L. Rev. 53 (1993)

Spiro, “Federal Sentencing Guidelines and the Rehnquist Court: Theories of Statutory Interpretation,” 37 Am. Crim. L. Rev. 103 (2000)

Taslitz, “Temporal Adversarialism, Criminal Justice, and the Rehnquist Court: The Sluggish Life of Political Factfinding,” 94 Geo. L.J. 1589 (2006)

Wasserstrom, “The Incredible Shrinking Fourth Amendment,” 21 Am. Crim. L. Rev. 257 (1984)

Whitebread, “The Counterrevolution in Criminal Procedure,” 24 Judges J. 40 (1985)

Yackle, “The Court That Devoured the Fourth Amendment: The Triumph of an Inconsistent Exclusionary Doctrine,” 58 Or. L. Rev. 151 (1979)

4. Selected Articles by Rehnquist

“Government by Cliche,” 45 Mo. L. Rev. 379 (1980)

“The Notion of a Living Constitution,” 54 Texas L. Rev. 693 (1976)

“Who Writes Decisions of the Supreme Court?,” 43 U. S. News & World Report 74 (Dec. 13, 1957)

End of Bibliography