LIBERTY'S ENEMY:
CHIEF JUSTICE REHNQUIST'S CRIMINAL PROCEDURE OPINIONS

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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 new rehnquisition), during which the federal rights and remedies of criminal defendants have been slowly but inexorably narrowed. Chief Justice Rehnquist, the most articulate and ideological of the Court's conservative justices, may properly be regarded as the founder of this trend in favor of restricting criminal procedure rights. Few persons, however, even criminal defense attorneys, realize just how extremely conservative the Chief Justice really is.

Since 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) has written 99 majority or plurality opinions for the Court in the field of criminal procedure--that is, in cases involving the 4th, 5th, 6th, 8th, or 14th amendment rights of criminal suspects or defendants. In only 6 of these 99 criminal procedure cases (6.2%), did Rehnquist write an opinion upholding a claim of denial of rights asserted by the accused, and one of these six opinions was overruled by another opinion of Rehnquist's written three years later. Four of the six opinions were authored before 1976, five of them before 1980, and the sixth, handed down in 1987, was the single pro-accused opinion of Rehnquist's during the entire decade of the 1980's.

On the other hand, Rehnquist has written 93 criminal procedure opinions (93.8%) rejecting the claim of the accused that his or her rights were violated. On average, therefore, Rehnquist has authored over 5 anti-accused opinions each year he has served on the Court, while his pro-accused opinions average out to not quite one every 3 years. Furthermore, whereas his pro-accused opinions are getting even less frequent, the pace of Rehnquist's anti-accused opinions is increasing: there were 18 in the period 1972-75, 21 in the period 1976-1980, 26 in the period 1981-1985, and 28 thus far in the period 1986-90. And whereas Rehnquist's miserly 6 pro-accused opinions all involve rather minor or obvious issues of law, a number of his anti-accused opinions involve major issues and make drastic restrictions on basic rights.

Rehnquist's 6 opinions upholding an accused's claim of denial of rights are listed below in chronological order, and then his 93 opinions denying an accused's claims are listed, also in chronological order. Each opinion is accompanied by a parenthetical explaining the opinion.

In preparing this examination of Rehnquist's criminal procedure opinions I have limited myself to his majority or plurality opinions for the Court and have excluded his concurring or dissenting opinions. It should be noted, however, that Rehnquist has often dissented from the increasingly rare decisions of the Court over the past 18 years that have expanded criminal procedure protections. For example, he dissented in the following cases: (1) Delaware v. Prouse, 440 U.S. 648 (1979), which held that police may not randomly stop moving automobiles, (2) Edwards v. Arizona, 451 U.S. 777 (1981), which held that police may not reinterrogate a suspect who has invoked his Miranda right to counsel, (3) Evitts v. Lucey, 469 U.S. 387 (1985), which held that

due process guarantees a defendant the right to the effective assistance of counsel on direct appeal, and (4) Arizona v. Roberson, 486 U.S. 675 (1988), which extended the holding in Edwards v. Arizona to include cases where the police wish to interrogate a defendant about a crime unrelated to the crime which was the subject of the initial interrogation.

Doesn't a judge with this record, a judge who since 1981 has written over 50 criminal procedure opinions upholding the government's position and but one opinion sustaining the contentions of the accused, deserve the appellation inimicus libertatis--liberty's enemy?

Rehnquist Opinions Upholding a Defendant's Claim of Denial of Rights

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. 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)

4. 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.)

5. 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 6th and 14th amendments; conviction reversed)

6. 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)

Rehnquist Opinions Rejecting a Defendant's Claim of Denial of

Rights

1. Schneble v. Florida, 405 U.S. 427 (1972) (any violation of defendant's 6th 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 6th 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 4th 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

14th 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 4th 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 4th 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 14th 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 5th amendment self-incrimination privilege; order granting §2254 habeas corpus relief reversed)

14. Ross v. Moffitt, 417 U.S. 600 (1974) (the 14th 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 5th 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 6th amendment right to counsel clause nor the 5th 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 predisposed 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 5th 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 4th 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 4th 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 4th 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."

25. 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)

26. 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)

27. United States v. Ceccolini, 435 U.S. 268 (1978) (4th 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)

28. 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)

29. 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 5th amendment double jeopardy clause does not bar a government appeal from the termination; dismissal of government's appeal from the termination reversed)

30. 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)

31. 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 6th 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)

32. 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 body cavity inspections 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; "[a]dmittedly, this practice [body cavity inspections] gives up 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)

33. Parker v. Randolph, 442 U.S. 62 (1979) (Bruton v. United States, 391 U.S. 123 (1968), which interpreted 6th 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)

34. United States v. Bailey, 444 U.S. 394 (1979) (construing 18 U.S.C. §751(a), which punishes

escape from federal custody; conviction reinstated)

35. United States v. Apfelbaum, 445 U.S. 115 (1979) (when a witness has been granted immunity and testifies falsely, the 5th amendment self-incrimination privilege does not prevent the use of his immunized testimony in a subsequent prosecution for false swearing; conviction reinstated)

36. 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 8th amendment; denial of §2254 habeas corpus relief affirmed)

37. 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)

38. 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)

39. 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)

40. 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)

41. 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)

42. Oregon v. Kennedy, 456 U.S. 667 (1982) (where a defendant in a criminal trial successfully moves for a mistrial, 5th 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)

43. 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 5th amendment due process clause or the 6th 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)

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

45. Texas v. Brown, 460 U.S. 730 (1983) (warrantless search of defendant's automobile did not violate the 4th amendment; drug conviction reinstated) (plurality opinion)

46. 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)

47. 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)

48. United States v. Villamonte-Marquez, 462 U.S. 579 (1983) (4th 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)

49. 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)

50. 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 sentence to life imprisonment, relied on an aggravating circumstance that was not among the aggravating circumstances established by the state death penalty statute) (plurality opinion)

51. INS v. Delgado, 466 U.S. 210 (1984) ("factory surveys" by INS to enforce immigration laws did not violate the 4th 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)

52. 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)

53. 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' 6th 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)

54. 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)

55. 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)

56. 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)

57. 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)

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

59. 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)

60. 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)

61. 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)

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

63. 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 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 a 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)

64. 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)

65. 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)

66. 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)

67. 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)

68. Allen v. Illinois, 478 U.S. 364 (1986) (proceedings under the Illinois Sexually Dangerous Persons Acts are not criminal within the meaning of the 5th 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)

69. 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)

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

71. 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)

72. 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)

73. 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 is reversed)

74. 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 8th amendment, and any language to the contrary in Stack v. Boyle, 342 U.S. 1 (1951), is "dicta")

75. 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)

76. 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)

77. 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)

78. 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)

79. 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)

80. 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)

81. 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)

82. 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 5th amendment self-incrimination clause; order refusing to quash subpoena affirmed)

83. 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)

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

85. 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 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)

86. 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)

87. Murray v. Giarratano, 492 U. S. 1 (1989) (U.S. Constitution does not guarantee appointed counsel to indigents sentenced to death who seek state postconviction relief)

88. 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)

89. 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 4th amendment; the use of the term "people" in the 4th amendment means that its protections, unlike those of the 5th and 6th 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 4th amendment apply to illegal aliens in this country; the 4th 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)

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

91. Michigan v. Harvey, 494 U. S. 344 (1990) (statement extracted from a defendant by the police in violation of the 6th 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)

92. 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 8th 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)

93. 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).
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