
The Georgetown Law Journal

Volume 76 Number 3 February 1988

PROJECT

SEVENTEENTH ANNUAL REVIEW OF CRIMINAL PROCEDURE: UNITED STATES SUPREME COURT AND COURTS OF APPEALS 1986-1987

CONTENTS

I. INVESTIGATION AND POLICE PRACTICES	521
SCOPE OF THE FOURTH AMENDMENT.....	521
<i>Government Action</i>	522
<i>Conduct Constituting a Search</i>	524
<i>Seizures</i>	532
<i>Reasonableness</i>	534
<i>Probable Cause</i>	538
THE WARRANT REQUIREMENT	541
<i>Difference Between Arrest Warrants and Search Warrants</i>	543
<i>When Warrants Are Required</i>	545
<i>Particularity</i>	547
<i>Effects of Inaccuracies in Affidavits</i>	553
<i>Execution of Warrants</i>	556
WARRANTLESS SEARCHES AND SEIZURES	561
<i>Investigatory Detentions</i>	561
<i>Warrantless Arrests</i>	570
<i>Search Incident to Arrest</i>	577
<i>Seizure of Items in Plain View</i>	579
<i>Exigent Circumstances</i>	584
<i>Inventory Searches</i>	589
<i>Consent Searches</i>	592
<i>Border Searches</i>	600
<i>High Seas Searches</i>	606
<i>Searches of Vehicles and Containers</i>	610
<i>Administrative Searches</i>	617
<i>Special Needs</i>	621
ELECTRONIC SURVEILLANCE	626
<i>Orders for Electronic Surveillance</i>	628
<i>Statutory Postauthorization Duties</i>	634
<i>Suppression</i>	638
<i>Civil Actions</i>	640

<i>Grand Jury Witnesses</i>	641
<i>Electronic Surveillance Exempted from Title III</i>	643
IDENTIFICATIONS	650
<i>Right to Counsel</i>	651
<i>Due Process</i>	653
<i>Evidentiary Hearings</i>	658
CONFESSIONS	660
<i>Custodial Interrogation</i>	662
<i>Assertion and Waiver of Miranda Rights</i>	667
<i>Right to Counsel</i>	673
<i>Voluntariness of Confessions</i>	675
THE EXCLUSIONARY RULE	684
<i>Definition, Purpose, and Scope</i>	684
<i>Standing</i>	687
<i>Exceptions to the Exclusionary Rule</i>	692
<i>Good faith</i>	692
<i>Attenuation</i>	698
<i>Independent Source</i>	702
<i>Inevitable Discovery</i>	704
<i>Impeachment</i>	705
II. Preliminary Proceedings	707
PROSECUTORIAL DISCRETION	707
<i>Selective Prosecution</i>	711
<i>Vindictive Prosecution</i>	715
GRAND JURY	721
<i>Grand Jury Procedures</i>	721
<i>Challenges to Composition of the Grand Jury</i>	730
<i>Powers of the Grand Jury</i>	732
<i>Appeal of Grand Jury Orders</i>	739
<i>Policy of Grand Jury Secrecy</i>	741
INDICTMENTS	747
<i>Dismissals of Indictments</i>	748
<i>Challenges to the Evidence</i>	756
<i>Sufficiency of the Indictment</i>	759
<i>Amendments and Variances</i>	769
PRELIMINARY HEARINGS	774
<i>Gerstein Hearing</i>	774
<i>Initial Appearance</i>	777
<i>Preliminary Examination</i>	781
JOINDER AND SEVERANCE	784
<i>Joinder and Severance of Offenses</i>	787
<i>Joinder and Severance of Defendants</i>	788
BAIL	795
<i>Pretrial Detention</i>	798
<i>Detention Hearings</i>	802
<i>Rebuttable Presumption of Dangerousness</i>	804
<i>Amendment and Review of Detention and Release Orders</i>	806
<i>Release Pending Appeal</i>	807
<i>Violations of Release Conditions</i>	809
DISCOVERY	811
<i>Government's Constitutional Duties to Disclose</i>	811
<i>Government's Statutory Duty to Disclose</i>	820
<i>Defendant's Duty to Disclose</i>	827

MOTION FOR CONTINUANCE	830
SPEEDY TRIAL	836
<i>Constitutional Safeguards Against Preaccusation Delay</i>	837
<i>Constitutional Safeguards Against Postaccusation Delay</i>	839
<i>Statutory Safeguards Against Postaccusation Delay</i>	843
GUILTY PLEAS	850
<i>Entering the Plea</i>	853
<i>Ensuring the Factual Accuracy of the Plea</i>	858
<i>Plea Bargaining</i>	860
<i>Withdrawing the Plea</i>	866
COMPETENCY TO STAND TRIAL	867
<i>Psychiatric Examination</i>	869
<i>Competency Hearing</i>	870
<i>Postconviction Incompetency Claims</i>	874
<i>Fifth Amendment Issues</i>	874
<i>Commitment of Incompetent Defendant</i>	876
DOUBLE JEOPARDY	877
<i>Attachment of Jeopardy</i>	878
<i>Termination of Jeopardy</i>	881
<i>Procedural Issues</i>	883
<i>Retrial Following Mistrial</i>	886
<i>Retrial Following Dismissal</i>	891
<i>Government Appeals</i>	892
<i>Retrial Following Defendant's Successful Appeal</i>	894
<i>Sentencing</i>	897
<i>Multiple Charges and Offenses</i>	903
<i>Collateral Estoppel</i>	912
<i>Dual Sovereignty</i>	915
<i>Guilty Pleas</i>	918
III. Trial	921
RIGHT TO COUNSEL	921
<i>Scope and Application</i>	921
<i>Waiver and Pro Se Representation</i>	927
<i>Ineffective Assistance of Counsel</i>	931
<i>Conflict of Interest</i>	938
<i>Immunity from Civil Suit</i>	942
<i>Attorney-Client Relationship</i>	943
RIGHT TO JURY TRIAL	946
<i>Jury Composition</i>	949
<i>Challenges to Jury and Grand Jury Selection Procedure</i>	951
<i>Voir Dire</i>	956
<i>Challenges for Cause and Peremptory Challenges</i>	963
CONTROL OF THE JURY	971
<i>Contamination by Extraneous Influences</i>	972
<i>Pretrial And Trial Publicity</i>	979
<i>Juror Disqualification and Substitution</i>	985
AUTHORITY OF THE TRIAL JUDGE	986
<i>Judicial Misconduct</i>	986
<i>Judicial Immunity</i>	992
<i>Recusal and Disqualification</i>	994
<i>Contempt Power</i>	998
PROSECUTORIAL MISCONDUCT	1004
<i>Use of Defendant's Silence</i>	1011

The Georgetown Law Journal

Volume 76 Number 3 February 1988

PROJECT

SEVENTEENTH ANNUAL REVIEW OF
CRIMINAL PROCEDURE:
UNITED STATES SUPREME COURT AND
COURTS OF APPEALS 1986-1987

CENTRO LINCOLN

<i>Preservation of Rights for Review</i>	1217
<i>Plain Error</i>	1220
<i>Harmless Error</i>	1222
HABEAS RELIEF FOR FEDERAL PRISONERS	1229
<i>Jurisdiction and Venue</i>	1231
<i>Cognizable Issues</i>	1236
<i>Exhaustion and Waiver</i>	1238
<i>Right to Legal Assistance</i>	1240
<i>Evidentiary Hearings</i>	1241
<i>Remedies and Appeals</i>	1243
HABEAS RELIEF FOR STATE PRISONERS	1245
<i>Jurisdiction and Venue</i>	1245
<i>Right to Legal Assistance</i>	1248
<i>Cognizable Issues</i>	1249
<i>Exhaustion and Procedural Default</i>	1254
<i>Dismissal of Petitions and Delayed or Successive Petitions</i>	1264
<i>Evidentiary Hearings</i>	1271
<i>Remedies and Appeals</i>	1279
VI. Prisoners' Rights	1283
PRISONERS' SUBSTANTIVE RIGHTS	1284
<i>Right Of Access to Courts</i>	1284
<i>Retained Freedoms of Speech, Religion, and Association</i>	1287
<i>Retained Rights Related to Searches, Seizures, and Personal Privacy</i>	1291
<i>Living Conditions, Disciplinary Treatment, and Medical Care</i>	1293
<i>Procedural Due Process Protections Retained by Prisoners</i>	1298
<i>Retained Rights to Equal Treatment</i>	1304
<i>Retained Rights to Assistance of Counsel</i>	1305
<i>Rights Retained by Pretrial Detainees</i>	1305
PROCEDURAL MEANS OF ENFORCEMENT UNDER 42 U.S.C. § 1983	1307
<i>Provisions and Applicability</i>	1307
<i>Assistance of Counsel</i>	1311
<i>Affirmative Defenses</i>	1313
<i>Available Remedies</i>	1317
Case Index	1321

<i>Evidentiary Issues</i>	1015
FIFTH AMENDMENT AT TRIAL	1018
<i>Privilege Against Self-Incrimination</i>	1018
<i>Witness' Invocation of Privilege Against Self-Incrimination</i>	1024
SIXTH AMENDMENT ISSUES AT TRIAL	1027
<i>Public Trial</i>	1027
<i>Confrontation Clause</i>	1034
<i>Compulsory Process</i>	1050
PROOF ISSUES	1055
<i>Proving Elements Beyond A Reasonable Doubt</i>	1055
<i>Affirmative Defenses</i>	1059
<i>Presumptions</i>	1064
IV. Sentencing, Probation, and Parole	1073
SENTENCING	1073
<i>Sentencing Reform</i>	1073
<i>Sentencing Guidelines</i>	1078
<i>Presentence Investigation Reports</i>	1081
<i>Imposition of Sentence</i>	1090
<i>Improper Considerations in Determining Sentence</i>	1093
<i>Credit for Time Served</i>	1100
<i>Increased Sentence for Dangerous Special Offenders</i>	1103
POST-SENTENCE REVIEW	1108
<i>Constitutional Challenges</i>	1111
<i>Other Challenges</i>	1115
<i>Correction and Reduction of Sentence Under Rule 35</i>	1117
<i>Correction of Illegal Sentences and Double Jeopardy</i>	1122
CRUEL AND UNUSUAL PUNISHMENT	1123
<i>The Death Penalty</i>	1131
<i>Proportionality of Capital Sentencing</i>	1135
<i>Statutory Capital Punishment Schemes</i>	1138
<i>Consideration of Aggravating Circumstances</i>	1141
<i>Consideration of Mitigating Circumstances</i>	1146
<i>Role of the Jury</i>	1150
<i>Ineffective Assistance of Counsel in Capital Cases</i>	1157
<i>Double Jeopardy and the Death Penalty</i>	1162
<i>Mental Incompetency and the Death Penalty</i>	1163
<i>Expedited Review Procedures in Capital Cases</i>	1165
PROBATION	1166
<i>Imposition and Duration of Probation</i>	1167
<i>Conditions of Probation</i>	1170
<i>Restitution</i>	1174
<i>Revocation</i>	1176
PAROLE	1182
<i>Repeal of the Parole Commission and Reorganization Act</i>	1183
<i>Parole Under the Parole Commission and Reorganization Act</i>	1185
<i>Due Process Considerations in Parole Decisions</i>	1191
<i>Parole Revocation</i>	1194
V. Review Proceedings	1199
NEW TRIAL	1199
APPEALS	1206
<i>Jurisdiction</i>	1206
<i>Government Appeals</i>	1213
<i>Concurrent Sentence Doctrine</i>	1215