

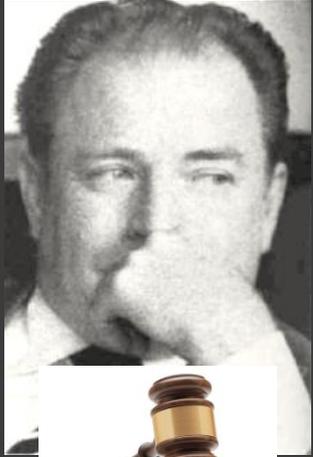
UPC Fall Conference



Supreme Court case law update

John J. Nielsen

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Utah v. Strieff



The Attenuation Doctrine

Utah v. Strieff

- ◎ Question presented: If an officer stops someone on facts just shy of reasonable suspicion, learns during the stop that the person has a warrant, arrests them on the warrant, and searches them, are the fruits of that search admissible?

Utah v. Strieff

- Short answer: Yes. The warrant attenuates the taint of the prior illegal stop, so long as the stop wasn't flagrantly illegal.

Utah v. Strieff



Utah v. Strieff



Utah v. Strieff



Utah v. Strieff



Utah v. Strieff



Utah v. Strieff

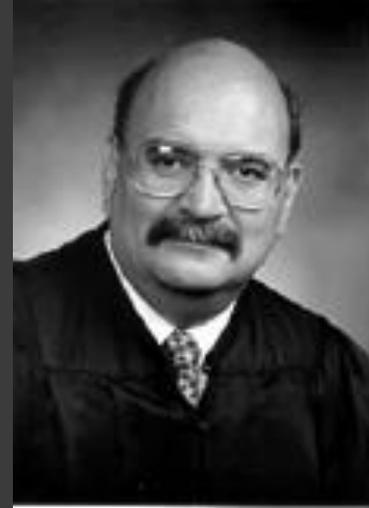
- ⦿ Attenuation doctrine: the fruits of a search that would not have taken place but for an illegal act (like a stop without reasonable suspicion or an arrest without probable cause) can be admissible if an intervening event “attenuates” the prior illegality. Basically a balancing test—is suppression going to deter police misconduct?
- ⦿ For example, a confession is admissible where a suspect is unlawfully arrested, released, then comes back on his own and talks (*Wong Sun v. U.S.*)
- ⦿ Test: consider 1. temporal proximity; 2. intervening circumstance; 3. purpose and flagrancy of misconduct (*Brown v. Illinois*)

Utah v. Strieff



“Matt Bates is right.”

Utah v. Strieff



“Matt Bates is right.”

Utah v. Strieff



“Matt Bates is wrong.”

Utah v. Strieff



- Reversed (5-0, Lee, J.): The attenuation doctrine applies only “an independent act of a defendant’s free will in confessing to a crime or consenting to a search.” Because those were not involved here, the evidence was suppressed.

Utah v. Strieff

- ◎ 3 approaches to attenuation involving warrants among state and federal courts:
 - Majority: a warrant qualifies as an attenuating circumstance, because it provides independent probable cause for arrest (*U.S. v. Green*, 7th Cir.)
 - Minority: a warrant can qualify as an attenuating circumstance, but only sometimes (Kansas)
 - One judge in a dissent: a warrant can never qualify as an attenuating circumstance (Florida)—adopted by Utah and Nevada supreme courts.

Utah v. Strieff



“The Utah Supreme Court is wrong. Matt Bates is right.”

Utah v. Strieff



- ⦿ Temporal proximity: the warrant was discovered close in time to the illegal arrest, so this favors suppression.
- ⦿ Intervening circumstance: the warrant was “entirely unconnected with the stop,” and once the officer “discovered the warrant, he had an obligation to arrest,” and the search incident to arrest was lawful, so this favors no suppression.
- ⦿ Purpose and flagrancy: no evidence of a flagrant violation here—it was just a fact shy of reasonable suspicion, “at most negligent.” This favors no suppression.

Utah v. Strieff



Utah v. Strieff



- “The Court today holds that the discovery of a warrant for an unpaid parking ticket will forgive a police officer’s violation of your Fourth Amendment rights. . . . This case allows the police to stop you on the street, demand your identification, and check it for outstanding traffic warrants—even if you are doing nothing wrong.”
- Sotomayor essentially believes that every Fourth Amendment violation is “flagrant,” that this will encourage suspicionless stops, and that warrants are common enough to make the exception too broad.

Birchfield v. North Dakota



Birchfield v. North Dakota

- Question: Does the Fourth Amendment permit warrantless breath and blood testing for DUIs?
- Answer: Breath, yes; blood, no.

Birchfield v. North Dakota

- ◎ Implied consent laws (Utah Code Ann. § 41-6a-520)
 - By getting a driver's license, you agree to submit to chemical testing of your breath and bodily fluids to determine if you are DUI
 - Refusal results in administrative sanctions, e.g., suspension or revocation of driver's license

Birchfield v. North Dakota

- Consolidated 3 cases from jurisdictions which went a step further, criminalizing a refusal; each defendant argued that this violated their Fourth Amendment rights
 - Birchfield: refused blood draw after single car accident
 - Bernard: refused breath test after arrest for BUI
 - Beylund: consented to blood draw after DUI arrest, later claimed consent was result of threat of criminal prosecution

Birchfield v. North Dakota



- Court reviews impact of DUIs, history of DUI laws
 - “Drunk drivers take a grisly toll on the Nation’s roads, claiming thousands of lives, injuring many more victims, and inflicting billions of dollars in property damage every year”



Birchfield v. North Dakota



- Success for all three petitioners depends upon whether the State can compel a warrantless breath or blood test under the Fourth Amendment.

Birchfield v. North Dakota

1. Schmerber v. California (1966)
2. Skinner v. Railway Labor Executives Assn. (1989)
3. Missouri v. McNeely (2013)

Birchfield v. North Dakota

- ◎ Missouri v. McNeely (2013)
 - Exigency is always a case-by-case analysis
 - Other exceptions to warrant requirement apply categorically (e.g., automobile exception, administrative searches).

Birchfield v. North Dakota

◎ Search incident to arrest

- “A thorough search of the felon is of the utmost consequence to your own safety, and the benefit of the public, as by this means he will be deprived of the instruments of mischief and evidence may probably be found on him sufficient to convict him, of which, if he has either time or opportunity allowed him, he will besure [sic] to find some means to get rid of.”

Birchfield v. North Dakota

- ◎ Search incident to arrest
 - Surface clothing
 - Body
 - Luggage
 - Saddlebags
 - Shoes, socks
 - Mouth

Birchfield v. North Dakota

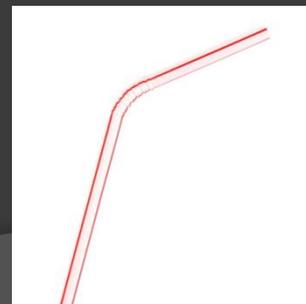
- ◎ Search incident to arrest
 - The “touchstone” of the Fourth Amendment is reasonableness (*Brigham City v. Stuart* (2006))
 - Balance privacy interest and government’s interest



Birchfield v. North Dakota



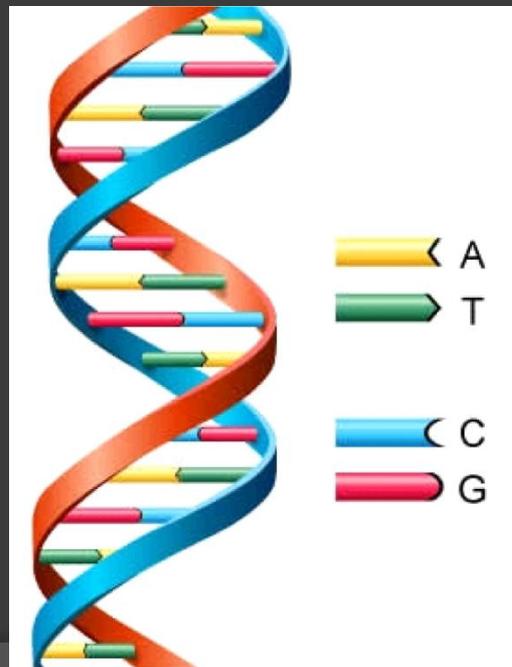
- ◉ Warrantless breath tests are not very intrusive
 - It's essentially a search incident to arrest
 - Unlike blood or DNA or cell phones, breath's only use is to determine intoxication
 - Minimal to no intrusion: The effort "is no more demanding than blowing up a party balloon" or drinking through a straw



Birchfield v. North Dakota



- ◎ Blood tests, however, are quite intrusive
 - Require greater effort, more pain to get
 - Potentially reveal a lot more information than breath



Birchfield v. North Dakota



- The government's interest in preventing and punishing DUIs is a weighty one, and this sort of evidence can disappear if not obtained within a fairly short period of time
- But in most cases, an e-warrant will be available



Birchfield v. North Dakota



- On balance, warrantless breath tests are reasonable, but warrantless blood tests (generally) are not
- The circumstances of a given case may show an exigency justifying a warrantless blood draw (*Schmerber v. California* (1966))
- BUT the evanescence of blood evidence is not sufficient justification standing alone (*Missouri v. McNeely* (2013))

Birchfield v. North Dakota



- ◎ Criminal implied consent laws:
 - Breath: yes
 - Blood: no
- ◎ Civil implied consent laws:
 - Breath: yes
 - Blood: yes
- ◎ Blood draws on unconscious persons
 - Appears to be an open question, but Alito says they are rare and police can apply for a warrant

Betterman v. Montana



Betterman v. Montana

- Question: Does the Sixth Amendment's speedy trial clause apply to the time between verdict and sentencing?
- Answer: No.

Betterman v. Montana

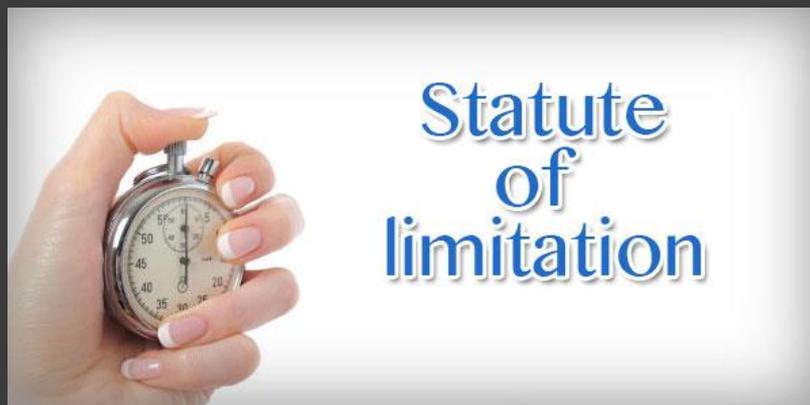
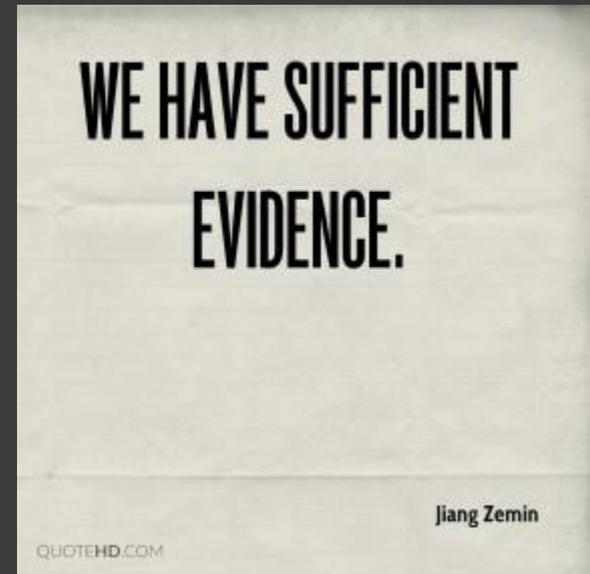


Betterman v. Montana



- ◎ **Sixth Amendment:** “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury...”
- ◎ Criminal proceedings have three phases:
 - **Pre-arrest/indictment:** at this stage, statutes of limitation and due process provide the primary protection against delay
 - **Arrest to conviction:** this is where the speedy trial clause does its work, grounded in the presumption of innocence
 - **Conviction to sentencing:** this is not a trial, defendants no longer have the presumption of innocence; state statutes deal with this; dismissal would be too much of a windfall

Musacchio v. United States



Musacchio v. United States

- First question: when an elements instruction includes something not in the criminal statute, is the evidentiary sufficiency judged by the elements in the statute or the elements in the instruction?
- Answer: The statute.

Musacchio v. United States



Musacchio v. United States



Musacchio v. United States

- ◎ 18 U.S.C. § 1030(a)(2)(c)

- “Whoever intentionally accesses a computer without authorization **or** exceeds authorized access, and thereby obtains information from any protected computer.”

- ◎ Jury instruction

- “18 U.S.C. § 1030(a)(2)(c) makes it a crime for a person to intentionally access a computer without authorization **and** exceed authorized access.”

Musacchio v. United States



⦿ “We hold that, when a jury instruction sets forth all the elements of a charged crime but incorrectly adds one more element, a sufficiency challenge should be assessed against the elements of the charged crime, not against the erroneously heightened command in the jury instruction.”

Musacchio v. United States

- Sufficiency review is about whether this should have been submitted to the jury
- Addressed through directed verdict motion, which is before jury instructions
- If a defendant wins, the dismissal is an acquittal for double jeopardy purposes (McDaniel v. Brown, 558 U.S. 120 (2010))

Musacchio v. United States

- ⦿ Sufficiency and Double Jeopardy: if a defendant successfully shows an insufficiency in the evidence, then that effectively means that the case never should have been submitted to the jury in the first place; thus, a dismissal for insufficiency is an acquittal for double jeopardy purposes (*McDaniel v. Brown*, 558 U.S. 120, 131 (2010))
- ⦿ An extra finding on a non-element is a non-event for sufficiency purposes, because it has nothing to do with whether the statute was violated

Musacchio v. United States

- Look out for defendants arguing an evidentiary error then trying to horn in an insufficiency claim while disregarding the allegedly improper evidence. *State v. Lamorie* (Utah 1980), *McDaniel v. Brown* (U.S. 2010)



Musacchio v. United States

- ◎ Three things I'm NOT saying
 - Whether the additional element must be proven when it is part of the indictment/info
 - Whether the government adds an element when it charges alternative elements in the conjunctive
 - That an erroneous jury instruction cannot result in reversible error just because the evidence was sufficient

Musacchio v. United States

- Question two: Can a defendant raise a statute of limitations defense for the first time on appeal without arguing plain error or IAC?
- Answer:



Musacchio v. United States

- ⦿ Some time statutes are jurisdictional, some are not.
- ⦿ Criminal statutes of limitation are not jurisdictional, because they are essentially affirmative defenses that are forfeited if not pressed
- ⦿ BUT remember that they can always claim ineffective assistance—though counsel will often have a reason not to press the issue, e.g., on a lesser offense. See, e.g., *Jackson v. State*, 2015 UT App 217.

Foster v. Chatman



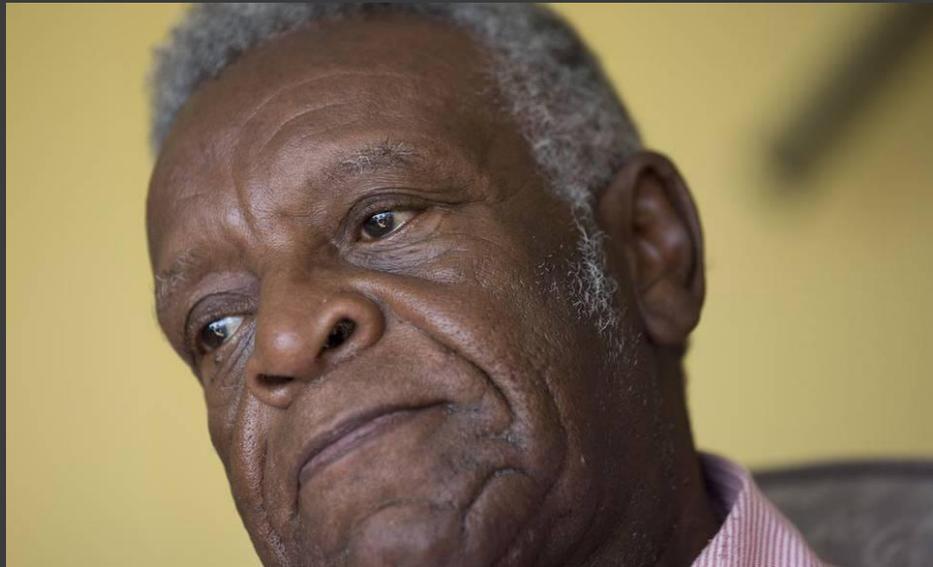
Foster v. Chatman

- Question: If a prosecutor gives race-neutral explanations for striking black jurors, but those explanations are inconsistent with not striking other jurors and his notes and files show an almost single-minded focus on race, were his explanations adequate under *Batson*?
- Answer: No.

Foster v. Chatman



Foster v. Chatman



Foster v. Chatman

- ⦿ None of this was known to the defense at trial, but there was a *Batson* objection.
- ⦿ *Batson* review:
 - Cannot exclude venirepersons on account of race (or gender)
 - 3-step
 - Pattern of allegedly discriminatory strikes (by either party), objection (by either party), prima facie finding
 - Party offers non-discriminatory explanation (need not rise to for-cause level)
 - Court rules

Foster v. Chatman

- For the challenged jurors, the prosecutor gave a “laundry list” of race-neutral reasons—everything from youth to nervousness to job to divorce, etc.
- He even filed a three-page, single-spaced brief with the court outlining his “intricate story.”

Foster v. Chatman



- The lead prosecutor's notes included the following:
 - Referring to the black jurors as "B#1," "B#2," "B#3," and "B#4."
 - Black jurors' names were highlighted in green w/ a legend saying "represents Blacks"
 - A note under one of the Black juror's names saying, "If it comes down to having to pick one of the black jurors, [this one] might be okay."

Foster v. Chatman



Also:

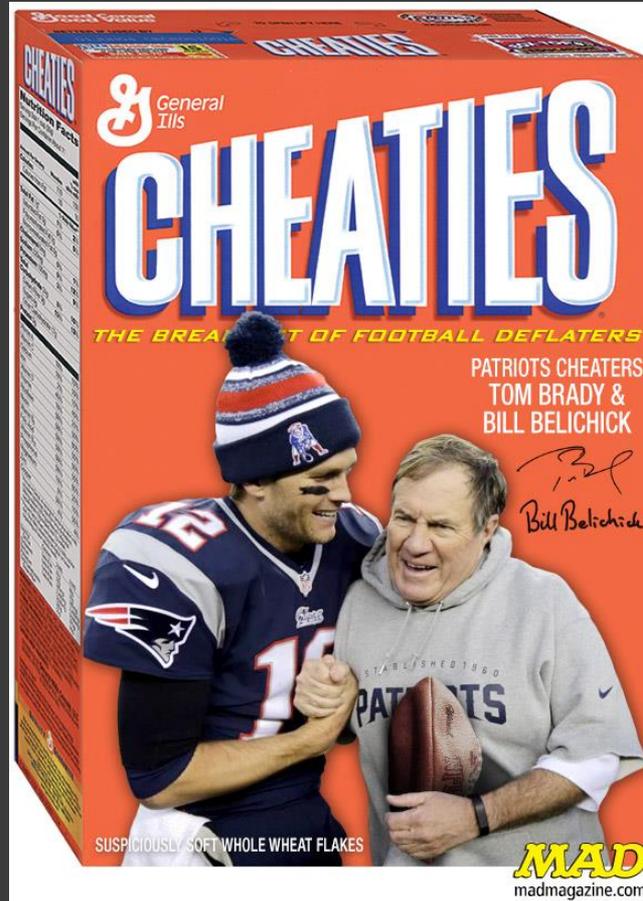
- A peremptory list showing intent to strike all black jurors first
- The first five of six “definite NO’s” on the list were all black
- There was an injunction of “No Black Church.”
- Race had been circled on each of the five’s juror questionnaires

Foster v. Chatman



- ⦿ The prosecutors averred that they did not make the notes or rely on them during jury selection.
- ⦿ But this testimony and the prosecutor's justifications were completely contradicted by (1) the notes, and (2) the prosecutor's not striking white jurors with similar characteristics, see, e.g., *Miller-El v. Dretke* (2005).
- ⦿ “Two peremptory strikes on the basis of race are two more than the Constitution allows.”

Wearry v. Cain



Wearry v. Cain



- ⦿ Wearry and four others shot and ran over the victim
- ⦿ Wearry was convicted and sentenced to death, based primarily on the testimony of two jailhouse witnesses (Scott and Brown) both of whom gave inconsistent accounts of what happened

Wearry v. Cain

◎ *Brady* evidence

- Inmates who cast doubt on Scott's credibility, relating that Scott was vindictive against Wearry, was just trying to get out of jail
- Police twice told Brown that they would "talk to the D.A. if he told the truth"
- One of the State's witnesses who had been present at the scene and crawled into a car to help the victim had undergone knee surgery nine days before the murder



SEEMS LEGIT

motifake.com

Wearry v. Cain

- “Beyond doubt, the newly revealed evidence suffices to undermine confidence in Wearry’s conviction. The State’s trial evidence resembles a house of cards built on the jury’s crediting Scott’s account rather than Wearry’s alibi.”



Wearry v. Cain

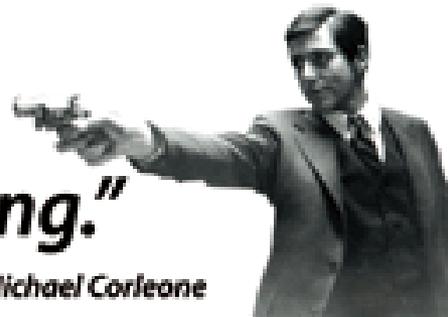
- Bottom line, as always with *Brady* evidence or anything that looks or sounds like it:



McDonnell v. United States

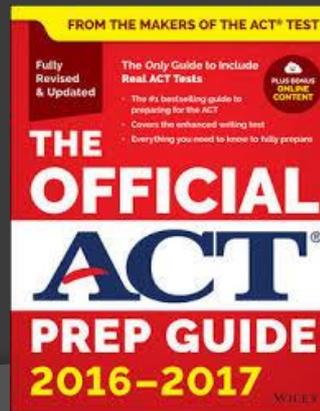
***"Politics and crime -
they're the same thing."***

©BAHOx88kxkxkxkx 177-873-9626 — *Michael Corleone*

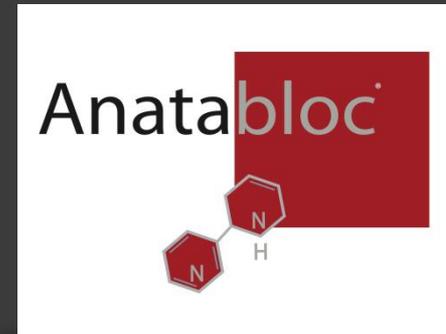


McDonnell v. United States

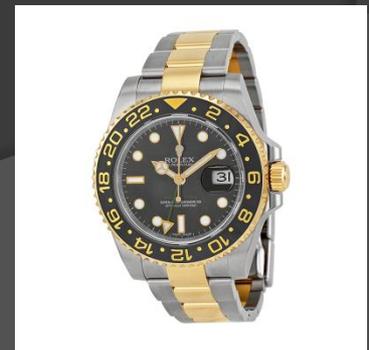
- Question: What qualifies as an “official act” for purposes of federal corruption laws?
- Answer: something that involves the “formal exercise of government power”; that is, an official act of office.



McDonnell v. United States



McDonnell v. United States



McDonnell v. United States

- ⦿ Alleged “official acts”:
 - Arranging meetings with VA officials
 - Hosting Star Scientific events at the Governor’s mansion
 - Contacting other VA officials about potential Star Scientific testing



McDonnell v. United States



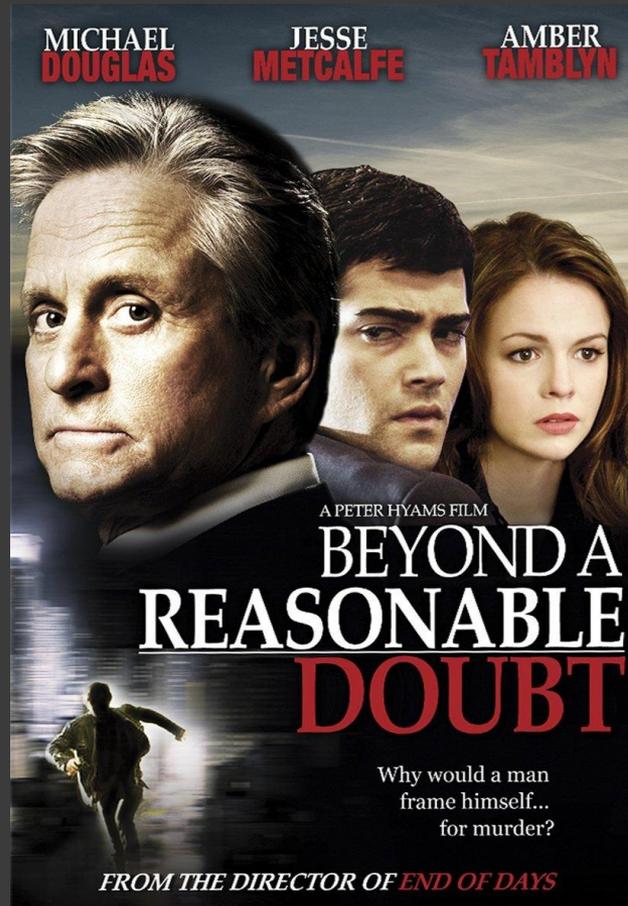
- ⦿ “Official act” is a narrow term; it does not encompass all political activity, but only that relating to “formal exercises” of government power—e.g., voting, executive actions, court decisions, etc.
- ⦿ “[A] typical meeting, call or event arranged by a public official is not of the same stripe as a lawsuit before a court, a determination before an agency, or a hearing before a committee, it does not qualify as an” official act.

McDonnell v. United States



- Evidence of meetings, phone calls, events, etc. is still relevant to the question—and a jury may conclude that they show the existence of an agreement to perform an official act
- Holding these acts in and of themselves illegal whenever a politician gets something would cause “substantial” vagueness/due process and federalism concerns
- Remanded for further proceedings in light of court’s interpretation, error in jury instructions defining “official act”

Kansas v. Carr



Kansas v. Carr

- ◎ Question: **does the Eighth Amendment require, in capital proceedings:**
 - That the sentencing jury be informed that the defendant need not prove mitigators beyond a reasonable doubt? Or
 - Severance of co-defendants?
- ◎ Answer: **nope.**

Kansas v. Carr

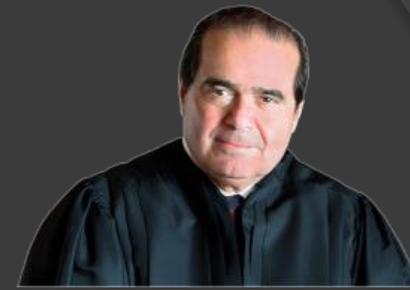
- The “Wichita Massacre”: just about the worst facts you will ever read—multiple killings, torture, forced sex between victims, rape, beating dog to death with a golf club, etc.



Kansas v. Carr

- ⦿ Both brothers were convicted and sentenced to death in a joint trial/sentencing
- ⦿ The Kansas Supreme Court reversed for two reasons:
 - The Eighth Amendment required the jury to be instructed that the mitigators need not be proven beyond a reasonable doubt
 - Joint sentencing should have been severed

Kansas v. Carr



- ◉ “[W]e doubt whether it is even possible to apply a standard of proof to the mitigating factor determination,” which “is largely a judgment call.”
- ◉ In the end, the jury can and will decide whether a death sentence is appropriate, according whatsoever weight they will to aggravators and mitigators
- ◉ As to joint trial/sentencing, the Eighth Amendment does not require severance: “[I]t is not the role of the Eighth Amendment to establish a special ‘federal code of evidence’” governing capital sentencing
 - The Fifth Amendment takes care of any fundamental unfairness
 - Finally, on these facts, there’s no question that the jury’s decision would have been the same

Lynch v. Arizona



Lynch v. Arizona

- ◉ Some background: In *Simmons v. South Carolina* (1994), the court held that if future dangerousness was at issue in a capital sentencing, and the jury's only options were death or LWOP, the jury had to be told that the offender would never be released if not sentenced to death
- ◉ The question in this case is whether a *Simmons* instruction was necessary where there was the possibility of executive clemency

Lynch v. Arizona

- ◎ Answer: executive clemency does not override *Simmons*—you need to give the instruction



Maryland v. Kulbicki



Maryland v. Kulbicki

- In 1993, Kulbicki shot his mistress in the head and killed her. The State's case included testimony that the bullet fragments from the victim were consistent with being fired out of Kulbicki's gun.
- The technique used to compare the bullets was called Comparative Lead Bullets Analysis (CLBA), which was the standard for decades.



Maryland v. Kulbicki

- By the time Kulbicki got to postconviction (11 years later), CLBA had fallen out of favor, and he alleged that his counsel was ineffective for not challenging it while it was the industry standard, because the tools to undermine it were available at the time
- The Maryland Court of Appeals (highest court) agreed

Maryland v. Kulbicki



- The Supreme Court unanimously reversed, emphasizing that counsel's performance is judged from the perspective of counsel *at the time*: "Counsel did not perform deficiently by dedicating their time and focus to elements of the defense that did not involve poking methodological holes in a then-uncontroversial mode of ballistics analysis."
- Even if the report questioning CLBA was in existence, counsel isn't required to hunt for needles in haystacks.

Maryland v. Kulbicki

- Clairvoyance is not required—just reasonable professional assistance
- “The Court of Appeals demanded something close to ‘perfect advocacy’—far more than the ‘reasonable competence’ the right to counsel guarantees.”

Hurst v. Florida



A B C D E F G
H I J K L M N
O P Q R S T
U V W X Y Z



Hurst v. Florida

- Question: Does it violate the Sixth Amendment right to jury trial for a jury to merely recommend a capital sentence, and a judge to weigh aggravators and mitigators in imposing the actual sentence?
- Answer: Yes.

Hurst v. Florida

- In 1998, Hurst worked at a restaurant with the victim; in the course of stealing money from the restaurant, he bound her, gagged her, stabbed her over 60 times, and left her in the freezer.
- The jury convicted and recommended death; the judge weighed factors and imposed death



Hurst v. Florida



- A little background: Capital sentencing involves an “eligibility” phase (whether a death sentence can be imposed) and a “selection” phase (whether a death sentence should be imposed)
- In Utah, the “eligibility” phase is part of the conviction itself—the jury has to find at least one aggravator beyond a reasonable doubt to convicted of agg murder; then it determines whether death is appropriate during sentencing, which is the “selection” phase
- Not all states do it this way; some make the eligibility phase part of sentencing, rather than the conviction

Hurst v. Florida



- ◉ *Apprendi v. New Jersey* (2000) held that the Sixth Amendment required a jury to find any fact that increases a maximum sentence; *Alleyne v. United States* (2013) extended this to minimum sentences
- ◉ *Ring v. Arizona* (2002) extended *Apprendi* to capital sentencing—a jury must find any facts bearing on the eligibility determination
- ◉ In Florida, a the jury’s conviction alone does not make a defendant death-eligible. During sentencing, the jury makes a recommendation, then a judge weighs the aggravating and mitigating factors and independently decides whether to impose a death sentence

Hurst v. Florida



- ⦿ Florida's procedure violates the Sixth Amendment right to jury trial under *Ring*
- ⦿ The jury's recommendation and factual basis for that recommendation are not binding on the judge, even if accorded "great weight"; the judge independently finds facts
- ⦿ Now a court could, consistent with the Constitution, independently select death after a jury made the eligibility finding, but our rules preclude that

Montgomery v. Louisiana



Montgomery v. Louisiana

- Question: *does Miller v. Alabama (2012) apply retroactively?*
- Answer: *Yep.*

Montgomery v. Louisiana

- Montgomery was 17 in 1963 when he killed a cop; he was sentenced to mandatory LWOP



AWAITS VERDICT—Negro Henry (Wolf Man) Montgomery, flanked by two deputies, awaits the verdict in his trial here, charging him with the murder of Deputy Sheriff Charles H. Hurt. The case is in the hands of

a 12-man jury which resumes deliberations Tuesday morning. Guarding Montgomery are Deputies W. T. Bunch, left, and Herman Melancon.

—Staff Photo by John Boss

Montgomery v. Louisiana

- In *Miller*, the Court held that mandatory LWOP for juveniles violated the Eighth Amendment
- Retroactivity: usually, a new decision applies only prospectively, and to cases in the direct appeal pipeline; in retroactivity parlance, cases that are “final.”



Montgomery v. Louisiana



- ⦿ There are exceptions, of course, both under state (e.g., the PCRA) and federal law
- ⦿ Federal law: (*Teague v. Lane*)
 - New “substantive” constitutional rules apply retroactively (e.g., holding that a crime or punishment is categorically invalid)
 - New “watershed” rules of criminal procedure (e.g., *Gideon*) apply retroactively
- ⦿ Held: the first exception applies to state postconviction review, not just federal habeas proceedings (sticking point for conservative justices)
- ⦿ And: because *Miller* held a certain punishment categorically invalid under the Eighth Amendment, it applies retroactively under *Teague*

Lockhart v. United States



Lockhart v. United States

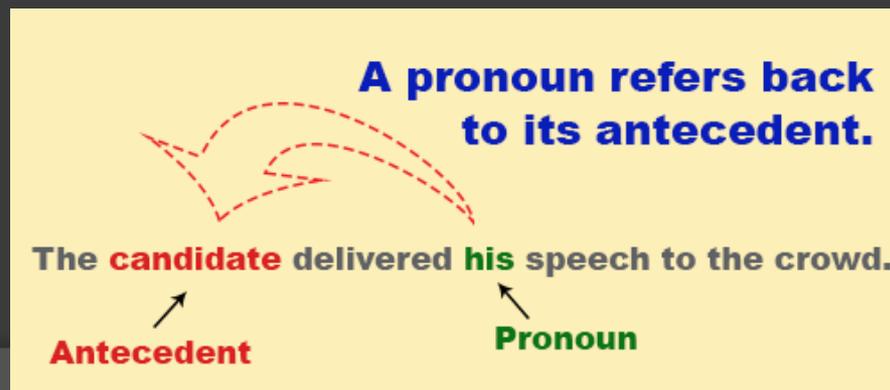
- Bottom line: as in any statutory interpretation case, canons of construction are instructive, but not determinative, especially when they conflict; look to usage, context, legislative history.

Lockhart v. United States



- First canon: **Rule of the Last**

Antecedent: A limiting clause or phrase should ordinarily be read as modifying only the noun or phrase that it immediately follows. If part of a list, it applies only to the most proximate item, not all items.



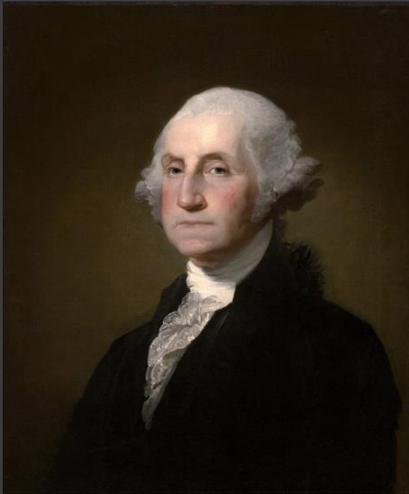
Lockhart v. United States



- ◎ Second canon: **Series-qualifier canon:** where a modifier appears at the end of an integrated list with parallel and related terms, it applies to each term in the list.

Lockhart v. United States

- Last antecedent: “I want to meet a President, a Supreme Court Justice, or an actor **from a Star Wars movie.**”



Lockhart v. United States

- Series qualifier: “I asked my real estate agent to find me a house, condo, or apartment **in New York.**”



- You would probably not want a house or condo in Kansas:



Lockhart v. United States

- 18 U.S.C. § 2252(b)(2): sentencing increase if a defendant has “a prior conviction . . . Under the laws of any state relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward.”

Lockhart v. United States



- ⦿ This is a last-antecedent case—the “involving a minor” language modifies only “abusive sexual conduct,” not “aggravated sexual abuse” or “sexual abuse.”
- ⦿ Example: instructing baseball scouts to find “a defense catcher, a quick-footed shortstop, or a pitcher from last year’s World Champion Kansas City Royals.” The catcher/shortstop could be from another team
- ⦿ The aggravator applied to Lockhart because he was convicted of sexual abuse involving an adult; otherwise, the statute is (even more) redundant
- ⦿ The rule of lenity does not require a different result because it is not ambiguous; the result simply varies with the canon one applies

Lockhart v. United States



- ⦿ The majority's analysis does not conform with everyday usage.
- ⦿ Last-antecedent only applies when the list includes disparate, unrelated items. To revamp an earlier example: "I want to meet a President, a Supreme Court Justice, or an actor **involved with Star Wars.**"
- ⦿ That is not like this statute, which has parallel, closely-related terms all relating to sexual abuse.
- ⦿ The majority's baseball example is confusing—you could forgive a scout for just looking at Royals players.
- ⦿ Besides, all this debate shows that lenity should apply.

Luis v. United States



Luis v. United States



- Question: Can the government freeze all of a defendant's assets in a white-collar case pending the outcome?
- Answer: The Sixth Amendment limits the freeze to "tainted" assets.



Luis v. United States

- Sila Luis committed massive medicare fraud—to the tune of about \$45 million.
- By the time she was charged, she had about \$2 million left; the \$2 million was not traceable to the fraudulent scheme.



Luis v. United States

- The government wanted to freeze her assets, preserve the \$2 million for restitution
- Luis wanted it to pay for counsel of her choice



Luis v. United States



- ◎ 4-1-2-1 (5-3) on result. Plurality:
 - Untainted money “belongs to the defendant, pure and simple. In this respect it differs from a robber’s loot, a drug seller’s cocaine, a burglar’s tools, or other property associated with the planning, implementing, or concealing of a crime.”
 - Look to property law, bankruptcy law, balance government interests. Here, money belongs to Luis.
 - You can still freeze tainted assets, though

Luis v. United States



- ◎ Thomas, concurring in the result:
 - The Sixth Amendment’s history and common law show that untainted assets must be available to a defendant to hire counsel of choice
 - Follows tainted/untainted distinction, but disagrees with balancing government’s interest against a defendant’s right. The Sixth Amendment and history speak clearly—no need for balancing; otherwise, the court might approve of “incidental” burdens on the right to counsel.

Luis v. United States



- ⦿ “[This] unprecedented holding rewards criminals who hurry to spend, conceal, or launder stolen property by assuring them that they may use their own funds to pay for an attorney after they have dissipated the proceeds of their crime.”
- ⦿ Money is fungible—just spend your ill-gotten gains first, and you’re good to go.
- ⦿ “The true winners today are sophisticated criminals who know how to make criminal proceeds look untainted. They do so every day.”



Nichols v. United States



Register Now

Nichols v. United States

- Nichols was a convicted sex offender living in Kansas
- One day, he packed up and headed to the Philippines
- He was arrested and brought back to the States for violating the Sex Offender Registration and Notification Act (SORNA)



Nichols v. United States

- SORNA: sex offenders cannot “knowingly fai[l] to register or update” their registration when they move states. Update must take place within 3 days in “at least one jurisdiction involved”—that is, where he resides, works, or studies.
- The Philippines is not a “jurisdiction involved,” but what about Kansas?

Nichols v. United States



- Kansas is not a “jurisdiction involved” under SORNA, because Nichols was not living, working or going to school there after he left. Because SORNA is phrased in the present tense, it does not apply to the past residence.

Ross v. Blake



Ross v. Blake



Ross v. Blake



Ross v. Blake



Ross v. Blake

- Blake sued both Ross and Madigan for excessive force—Madigan for using it, and Ross for failing to do anything.
- Madigan again lost, but Ross asserted a defense: failure to exhaust administrative remedies.

Ross v. Blake

- The Prisoner Litigation Reform Act (PLRA), like many civil laws, requires a litigant to exhaust administrative remedies
- This includes going to the warden or other administrative process



Ross v. Blake



- Blake didn't do that here, but he claimed that the court should create an exception, because his administrative remedies were so confusing that they were practically unavailable to him.
- The Supreme Court agreed, holding that a failure to exhaust could be excused under three circumstances.

Ross v. Blake

- If it is a “dead end,” “with officers unable or consistently unwilling to provide any relief to aggrieved inmates.”



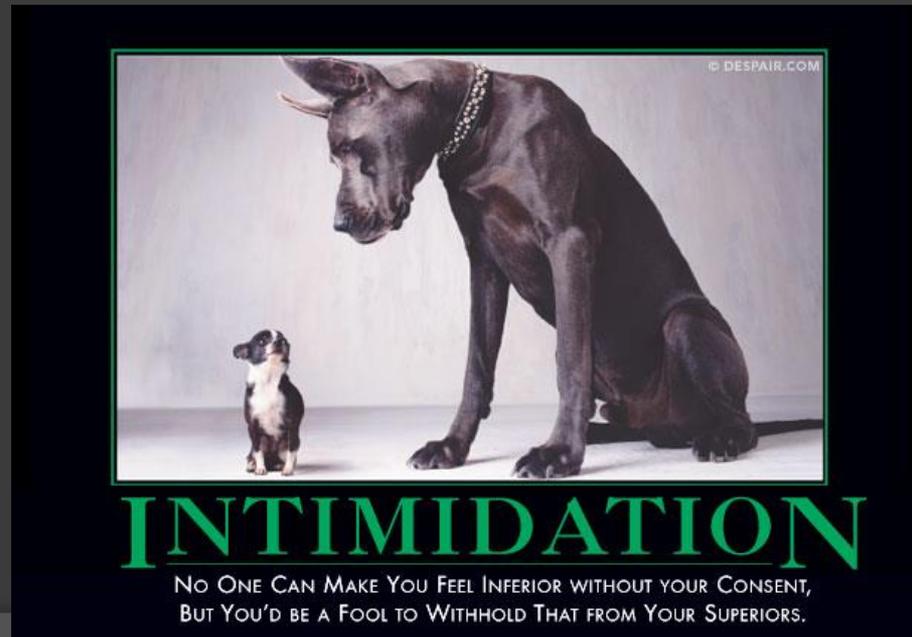
Ross v. Blake

- If it is “so opaque that it becomes, practically speaking, incapable of use.”
Confusing rules, hidden requirements, etc.

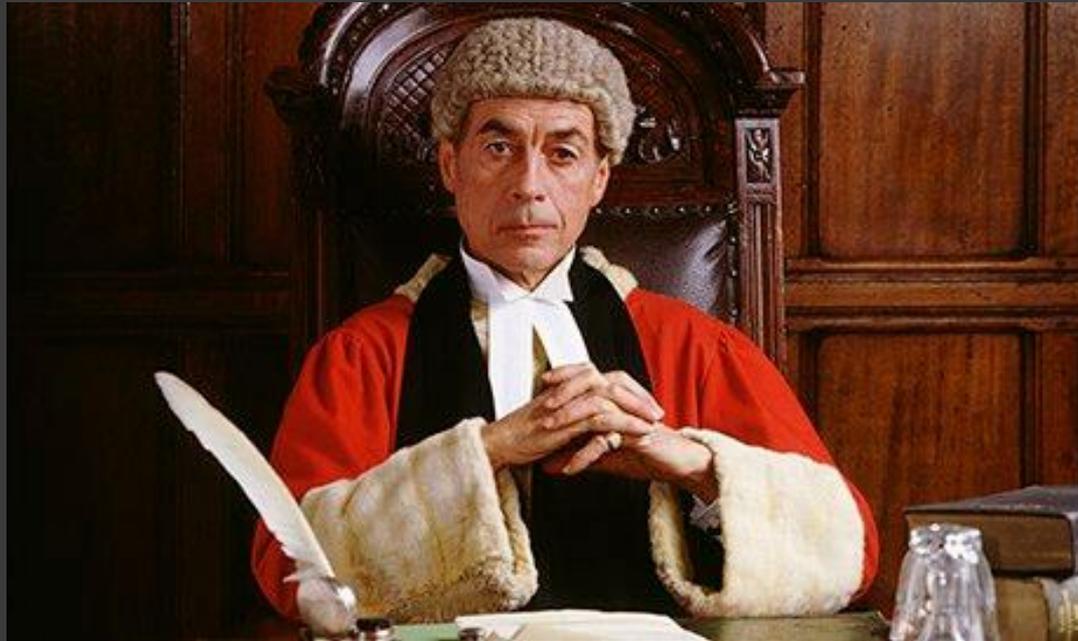


Ross v. Blake

- Finally, if prison administrators “thwart inmates from taking advantage of a grievance process through machination, misrepresentation, or intimidation.”



Williams v. Pennsylvania



Williams v. Pennsylvania



Williams v. Pennsylvania



Williams v. Pennsylvania

- The prosecutor wrote a memo for his approval, outlining the details of the crime, aggravating and mitigating factors, etc. DA Castille wrote on the memo: “Approved to proceed on the death penalty.”



Williams v. Pennsylvania



Williams v. Pennsylvania

⦿ Procedural history:

- 2004: Pennsylvania Supreme Court denies **first** petition for post-conviction relief
- 2006: **Second** petition denied
- 2009: **Third** petition denied
- 2014: **Fourth** Petition denied
 - Alleged *Brady* violation for failing to disclose evidence that Williams killed the victim because the victim molested him as a child
 - Moved for the first time to recuse Chief Justice Castille

Williams v. Pennsylvania

- After 26 years of review, Williams filed a fourth state postconviction petition requesting a new sentencing based on the prosecutor's alleged suppression of *Brady* material (a witness claimed that the prosecutor instructed him to lie about Williams's motive and gave him an undisclosed benefit); the district court granted him a new sentencing
- The State appealed, and Williams sought Castille's recusal. Castille refused, and wrote the opinion for a unanimous Pennsylvania Supreme Court reinstating the death sentence.

Williams v. Pennsylvania



- Castille also wrote a concurrence in which he “denounced what he perceived as the ‘obstructionist anti-death penalty agenda’ of Williams’s attorneys and warned courts throughout Pennsylvania to be “vigilant and circumspect” when dealing with them, because they turned postconviction proceedings “into a circuits where [they] are the ringmasters, with their parrots and puppets as a sideshow.”

Williams v. Pennsylvania



- ◎ The Supreme Court reversed, creating a rule for former prosecutors as judges:
 - The Due Process Clause of the Fourteenth Amendment requires a former prosecutor to recuse him/herself from deciding a case in which he/she “had **significant, personal involvement**” in a “**critical decision** regarding the defendant’s case.”
 - The decision to seek the death penalty is a “critical” one, Castille’s involvement was “personal” (he signed the authorization) and “significant” (the prosecutor could not have sought death without his approval)

Williams v. Pennsylvania



- ⦿ Because Castille's participation tainted the process, the court refused to find harmless error
- ⦿ Though Castille did not cast the deciding vote, the appearance of impropriety infected the entire decisional process
- ⦿ Chief Justice Roberts and Justice Alito didn't necessarily disagree that recusal was appropriate, they just thought the decision ought to be left to the states
- ⦿ Justice Thomas emphasized that the prosecution was over, and this was a civil proceeding

Taylor v. United States

- In 2009, Taylor and other “Southwest Goonz” gang members started targeting and robbing drug dealers in Virginia
- The gang members were charged federally



Taylor v. United States



- ◉ *Wickard v. Filburn* (1942): congress can regulate the production of wheat grown for personal use because it affects interstate commerce in the aggregate
- ◉ *Gonzales v. Raich* (2005): congress can regulate the production of weed grown for personal use because it affects interstate commerce in the aggregate

Taylor v. United States



- Under *Filburn* and *Raich*, if congress can regulate the production of those substances, it can regulate interferences with the market for those substances
- Robbing a drug dealer affects the interstate drug trade, so jurisdiction is proper
- Thomas would hold that the robbery itself has to actually affect interstate commerce—e.g., attacking a shipment of drugs crossing state lines