

**U.S. Supreme Court
Review & Preview**

Detroit/Wayne County Criminal Advocacy Program
January 13, 2017
UPDATED: February 10, 2017
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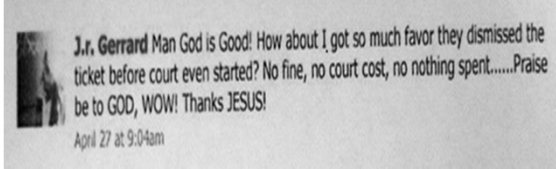
Topics Covered

- First Amendment
 - Sex offender registries and speech
- Fourth Amendment
 - Breath & blood tests, malicious prosecution, exclusionary rule, extraterritorial application
- Fifth Amendment
 - Double jeopardy
- Sixth Amendment
 - Counsel of choice, speedy trial, IAC
- Trial issues
 - *Brady v MD, Batson v KY*
- Appellate & Post-conviction review
 - Due process, AEDPA

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First Amendment

- *Packingham v NC, No. 15-1194*



J.r. Gerrard Man God is Good! How about I got so much favor they dismissed the ticket before court even started? No fine, no court cost, no nothing spent.....Praise be to GOD, WOW! Thanks JESUS!
April 27 at 9:04am

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First Amendment

- *Packingham v NC*, No. 15-1194
- Cert. issue:
 - “Whether, under this Court’s First Amendment precedents, ... a law [that makes it a felony for a registered sex offender to ‘access’ a website if the site is ‘known to allow minors to have accounts’] is permissible, both on its face and as applied to petitioner....”

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Fourth Amendment: Searches

- *Birchfield v ND*, 136 S Ct. 2160 (2016)
- J. Alito:
 - “Because breath tests are significantly less intrusive than blood tests ... we conclude that a breath test, but not a blood test, may be administered as a search incident to a lawful arrest for drunk driving.”

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Fourth Amendment: Searches

- *Birchfield v ND*, 136 S Ct. 2160 (2016)
- J. Alito:
 - “It is another matter ... for a State ... to impose criminal penalties on the refusal to submit to [a blood] test. There must be a limit to the consequences to which motorists may be deemed to have consented by virtue of a decision to drive on public roads.”

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**Fourth Amendment:
Seizures**

- *Manuel v City of Joliet*, No. 14-9496
- Cert. issue:
 - “Whether an individual’s Fourth Amendment right to be free from unreasonable seizure continues beyond legal process so as to allow a malicious prosecution claim based upon the Fourth Amendment.”

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**Fourth Amendment:
Exclusionary Rule**

- *Utah v Strieff*, 136 S Ct 2056 (2016)
- J. Thomas:
 - “The attenuation doctrine evaluates the causal link between the government’s unlawful act and the discovery of evidence, which often has nothing to do with a defendant’s actions. And the logic of our prior attenuation cases is not limited to independent acts by the defendant.”

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**Fourth Amendment:
Exclusionary Rule**

- *Utah v Strieff*, 136 S Ct 2056 (2016)
- J. Thomas:
 - “We hold that the evidence the officer seized as part of the search incident to arrest is admissible because the officer’s discovery of the arrest warrant attenuated the connection between the unlawful stop and the evidence seized incident to arrest.”

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**Fourth Amendment:
Extraterritorial Application**

- *Hernández v Mesa*, No. 15-118



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**Fourth Amendment:
Extraterritorial Application**

- *Hernández v Mesa*, No. 15-118
- Cert. issues:
 - (1) “Whether a formalist or functionalist analysis governs the extraterritorial application of the Fourth Amendment’s prohibition on unjustified deadly force, as applied to a cross-border shooting of an unarmed Mexican citizen in an enclosed area controlled by the United States.”

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**Fourth Amendment:
Extraterritorial Application**

- *Hernández v Mesa*, No. 15-118
- Cert. issues:
 - (2) “Whether qualified immunity may be granted or denied based on facts – such as the victim’s legal status – unknown to the officer at the time of the incident.”

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**Fourth Amendment:
Extraterritorial Application**

- *Hernández v Mesa*, No. 15-118
- Cert. issues:
 - (3) “Whether the claim in this case may be asserted under *Bivens v Six Unknown Federal Narcotics Agents*.”

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**Fifth Amendment:
Double Jeopardy**

- *Puerto Rico v Valle*, 136 S Ct 1863 (2016)
- J. Kagan:
 - “If two entities derive their power to punish from wholly independent sources ..., then they may bring successive prosecutions.”
 - “Conversely, if those entities draw their power from the same ultimate source..., then they may not.”

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**Fifth Amendment:
Double Jeopardy**

- *Puerto Rico v Valle*, 136 S Ct 1863 (2016)
- J. Kagan:
 - “Because the ultimate source of Puerto Rico’s prosecutorial power is the Federal Government – because when we trace that authority all the way back, we arrive at the doorstep of the U.S. Capitol – the Commonwealth and the United States are not separate sovereigns.”

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Fifth Amendment: Double Jeopardy

- *Bravo-Fernandez v US*, 137 S Ct 352 (2016)
- J. Ginsburg:
 - “[The] ... Double Jeopardy Clause [does not] bar the Government from retrying defendants ... after a jury has returned irreconcilably inconsistent verdicts of conviction and acquittal, and the convictions are later vacated for legal error unrelated to the inconsistency.”

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Sixth Amendment: Counsel of Choice

- *Luis v U.S.*, 136 S Ct 1083 (2016)
- J. Breyer:
 - “[T]he pretrial restraint of legitimate, untainted assets needed to retain counsel of choice violates the Sixth Amendment. The nature and importance of the constitutional right taken together with the nature of the assets lead us to this conclusion.”

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Sixth Amendment: Speedy Trial

- *Betterman v MT*, 136 S Ct 1609 (2016).
- J. Ginsburg:
 - “The Sixth Amendment speedy trial right ... does not extend beyond conviction, which terminates the presumption of innocence.”
 - “For inordinate delay in sentencing ... a defendant may have other recourse, including, in appropriate circumstances, tailored relief under the Due Process Clauses of the Fifth and Fourteenth Amendments.”

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**Sixth Amendment:
Ineffective Assistance of Counsel**

- *Lee v U.S.*, No. 16-327
- Cert. issue:
 - “In the context of a noncitizen defendant with longtime legal resident status and extended familial and business ties to the United States, the question ... is whether it is always irrational for a defendant to reject a plea offer notwithstanding strong evidence of guilt when the plea would result in mandatory and permanent deportation.”

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**Trial Issues:
*Brady v Maryland***

- *Turner v U.S.*, No. 15-1503
- *Overton v U.S.*, No. 15-1504
- Cert. issue:
 - “Whether the petitioners’ convictions must be set aside under *Brady v Maryland*, 373 US 83 (1963)?”

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**Trial Issues:
*Voir dire***

- *Foster v Chatman*, 136 S Ct 1737 (2016)
- C.J. Roberts:
 - “The State’s ... prosecutors were motivated in substantial part by race when they struck [two prospective jurors] from the jury 30 years ago.”
 - “Two peremptory strikes on the basis of race are two more than the Constitution allows.”

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Trial Issues:

Voir dire

- *Foster v Chatman*, 136 S Ct 1737 (2016)
- C.J. Roberts:
 - “At a minimum, we are comfortable that all documents in the file were authored by *someone* in the district attorney’s office.”
 - “Any uncertainties concerning the documents are pertinent only as potential limits on their probative value.”

Trial Issues:

Right to Expert Assistance

- *McWilliams v Dunn*, No. 16-5294
- Cert. issue:
 - “When this Court held in *Ake [v Oklahoma]*, 470 US 68 (1986) that an indigent defendant is entitled to meaningful expert assistance for the ‘evaluation, preparation, and presentation of the defense,’ did it clearly establish that the expert should be independent of the prosecution?”

Appellate review:

Retroactivity

- *Montgomery v LA*, 136 S Ct 718 (2016)
- J. Kennedy:
 - “[W]hen a new substantive rule of constitutional law controls the outcome of a case, the Constitution requires state collateral review courts to give retroactive effect to that rule.”
 - “*Miller* announced a substantive rule of constitutional law.”

**Appellate review:
Due Process**

- *Williams v PA*, 136 S Ct 1899 (2016)

*Moys,
Approved to proceed on the
Death & cruelty.
Renald S. Castles*

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**Appellate review:
Due Process**

- *Williams v PA*, 136 S Ct 1899 (2016)
- J. Kennedy:
 - “Where a judge has had an earlier significant, personal involvement as a prosecutor in a critical decision in the defendant’s case, the risk of actual bias in the judicial proceeding rises to an unconstitutional level.”
 - “An unconstitutional failure to recuse [is] structural error even if the judge ... did not cast a deciding vote.”

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**Appellate review:
AEDPA**

- *Buck v Davis*, No. 15-8049
- Cert. issue:
 - “Whether the Fifth Circuit imposed an [incorrect COA] standard ... [where petitioner claims] that his trial counsel was ... ineffective for knowingly presenting an ‘expert’ who testified that petitioner was more likely to be dangerous in the future because he is Black, where future dangerousness was both a prerequisite for a death sentence and the central issue at sentencing?”

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