A SUPREME COURT SAMPLER

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I. The work of the Supreme Court (1976 Term)

A. Limitation of Access to the Court:
   1. Maness v. Wainwright
   2. Jones v. Hildebrant
   3. Briscoe v. Bell
   4. Codd v. Velger

B. Further restriction on rights alleged by criminal defendants.
   1. The legacy of Stone v. Powell
   2. Patterson v. New York
   3. Double Jeopardy cases.

C. Greater sustaining of state interference with individuals.
   1. Whalen v. Roe
   2. Ward v. Illinois
   3. But see Moore v. City of East Cleveland

D. Entanglement of Church and State
   1. Wolman v. Walter

E. Capital Punishment
   1. Coker v. Georgia

II. A year of subtle change (?)

III. A sampling of the cases

A. Caveat: not all are included, obviously.

B. Some predictions:
   1. Criminal law: Greater emphasis on state procedures, with little remedy at the federal level.
   2. Elimination of diversity jurisdiction.

(See A. J. Keefe, "Current Legal Literature," 63 ABAJ (1977) and May 28, 1977, issue, Saturday Review.)

Such an order falls within the "collateral order" exception to the final judgment rule announced in Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541 (1949). It constitutes a complete, formal, and, in the trial court, a final rejection of an accused's double jeopardy claim. Its nature is that it is collateral to and separable from the issue of whether the accused is guilty of the offense.

Defendants were charged with one count, but conspiracy and an attempt to violate the Hobbs Act, and found guilty. They say it is impossible to determine the basis of the general verdict against them. Thus, the jury might have acquitted them on the conspiracy charge. Held: It is assumed the jury found defendants guilty of both, so Double Jeopardy clause is no bar to retrial.

Brown v. Ohio, 21 Cr. L. 3137 (1977). Double Jeopardy Clause bars the defendant from being prosecuted for auto theft after he has been convicted of joy riding, because state courts say that auto theft includes joy riding. This makes the two crimes the same statutory offense for double jeopardy purposes. See Blockburger v. U.S., 284 U.S. 299 (1932).

Jeffers v. U.S., 21 Cr. L. 3130 (1977). A drug defendant was charged on two indictments and demanded separate trials. This demand deprived him of Double Jeopardy protection, even though a conviction under a conspiracy charge (21 U.S.C. 846) would be a lesser included offense in a charge of continuing criminal enterprise (21 U.S.C. 848). Held:

Defendant was solely responsible for the successive trials and his action deprives him of any right he might have had against successive trials.

Harris v. Oklahoma, 21 Cr. L. 3211 (1977). The defendant was convicted of felony murder. He was subsequently charged with robbery with a firearm. But the felony murder statute required proof of the underlying felony, robbery with a firearm, hence the prior murder conviction included a conviction of the robbery offense and the Double Jeopardy Clause protected defendant against that.
U.S. v. Martin-Linen Supply Co., 21 Cr. L. 3001. The jury was hung. The Court entered a judgment of acquittal (Federal Rules, Criminal Procedure, 29 (c): "If the jury . . . is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed within 7 days . . ." Held: For Double Jeopardy purposes this is just as much an acquittal as a not guilty verdict.

Caution: the court noted the district court's action was substantive as well as procedural. "The District Court in this case evaluated the Government's evidence and determined that it was legally insufficient to sustain a conviction."

(Caveat: distinguish between this kind of judgment and an appeal of a pretrial order. Serfass v. U.S., 420 U.S. 377.)

Lee v. U.S., 21 Cr. L. 3113. The Government presented its evidence and the defendant moved to dismiss on the grounds that the information was defective. Retrial. Held: The dismissal is just like a mistrial declaration that contemplates retrial.

In U.S. v. Jenkins, 420 U.S. 358, the Court had held that retrial is barred when the proceedings are dismissed in the defendant's favor.

Finch v. U.S., 21 Cr. L. 3210. Double Jeopardy Clause bars appeal by the government from dismissal of a charge upon stipulated facts and prior to a declaration of guilt or innocence.

Search & Seizure:

U.S. v. Chadwick, 45 L.W. 4797 (1977). After defendants arrived by train in Boston from San Diego, they, their car and their footlockers were taken to headquarters where, 1 1/2 hours later, with neither a warrant nor consent, the locker was opened. Much marijuana was found, the defendants being indicted for possession with intent to distribute. Held: 4th Amendment safeguards individuals from unreasonable government intrusions into their legitimate privacy interests. Defendants had an expectation that material in double-locked box would be free from intrusion. The automobile exception does not fit here, since the exception of privacy in the locker is greater than in a car. Further, there was no danger that the locker, under the exclusive control of the government, was going anywhere. Further, the search was not incident to a lawful arrest, since it was remote in time and place. (Burger Opinion!)
Miranda Warnings:

Oregon v. Mathiason, 97 S. Ct. 711 (1977). A suspect in a burglary voluntarily went to the police station where he was falsely told his fingerprints were found at the scene. He admitted guilt, but before he was given his Miranda warnings. The pre-Miranda confession was critical to the state's case, but the trial court would not exclude it.

The Oregon Supreme Court reversed the conviction, stating that it took place in a coercive atmosphere. Held: Miranda applies to custodial questioning, i.e., that which takes place after arrest or deprivation of freedom. Here the defendant came to the station freely and was told he was not under arrest, and was released and allowed to go home after the interrogation. The lie to defendant, the Court said in a per curiam opinion, had nothing to do with whether defendant was in custody for Miranda purposes.

Due Process and Right to Counsel:

Weatherford v. Bursey, 97 S. Ct. 837 (1977). This 42 U.S.C. 1983 action alleged a conspiracy to deprive plaintiff of a right to counsel and due process. Plaintiff and Weatherford committed burglary, but Weatherford was an informer who notified the police. Bursey asked Weatherford to meet with him and his lawyer, to help in plotting defense strategy. Weatherford did not expect to testify at trial nor did he discuss defense tactics with the prosecution.

Held: Since the trial court had found that Weatherford had communicated nothing to the prosecution, and since he was not really a part of the prosecution, no tainted evidence or no purposeful intrusion by Weatherford, there was no violation of Sixth Amendment rights.

Habeas Corpus:

Wainwright v. Sykes, 45 L.W. 4807 (1977). At the defendant's murder trial, inculpatory statements were admitted. He did not challenge on the basis that he did not understand his Miranda rights. After conviction he did not challenge admissibility in state appeal, although he did in a motion to vacate and in a state habeas corpus proceeding. This 28 U.S.C. 2254 habeas proceeding asserted the inadmissibility of the statements because defendant did not understand his rights. Held: Failure to make a timely objection under Florida's contemporaneous objection rule, absent a showing of cause for the noncompliance and some showing of actual prejudice bars federal habeas relief. (The "cause" and "prejudice" standards are not defined).
Self Incrimination:

Lefkowitz v. Cunningham, 45 L.W. 4634. A New York statute requires political party officials to testify before grand juries ousting them from office and making them ineligible to serve for five years if they refuse. This appellee refused to testify before the grand jury. He brought a declaratory judgment action. Held: The statute violated his Fifth Amendment right to be free of compelled self-incrimination.

(Note: Burger takes a pop at the state's transactional immunity statute, holding that a use immunity statute would permit the state to compel testimony without forfeiting the opportunity to prosecute on the basis of evidence derived from other sources.)

Contraceptives and the First Amendment:

Carey v. Population Services International, 97 S. Ct. 2010 (1977). New York law classified three crimes: 1) selling contraceptives to minors; 2) distribution of same by other than pharmacists; 3) advertising or displaying contraceptives (cf. R.R.S. 71-1105 ff). Held: all of them are unconstitutional. (cf. Griswold v. Connecticut, 381 U.S. 479 (1965). Restricting distribution of non-prescription contraceptives to licensed pharmacists "clearly imposes a significant burden on the right of individuals to use (them) if they (want to)." On the ad question, "the fact that protected speech may be offensive to some does not justify its suppression."

Prisoners:

Medical Care

Estelle v. Gamble, 97 S. Ct. 285 (1976). An inmate complained of the medical treatment he had received after an accident. Held: Elementary Eight Amendment principles require that the government provide medical care for those in prison. But the question of whether there was deliberate indifference to the medical needs of prisoners is critical and can be determined by reference to the record.

Legal "Care"

Bounds v. Smith, 97 S. Ct. 1491 (1977). Three North Carolina prisoners charged they had been denied access to the courts because the state failed to provide legal research facilities. Held: Prisoners have a 14th Amendment right of access to courts. Either law libraries
or other forms of legal help prisoners are minimum requirements. Cf. Younger v. Gilmore, 401 U.S. 15 (1971) holding that there is an affirmative constitutional duty to provide some sort of assistance to inmates, be it libraries or even para-legals.

Obscenity:

Ward v. Illinois, 45 L.W. 4623. In Miller v. California, 413 U.S. 15, the Supreme Court did not list sado-masochistic materials among examples of matter which may be regulated. This defendant was convicted prior to Miller of selling sado-masochistic materials, and challenges the conviction for failure to conform to Miller standards. Held: The statute is not vague since the defendant had ample guidance from People v. Sekara, 204 N.E. 2d 768 (1965) making it clear that his conduct did not conform to law. Furthermore, Mishkin v. New York, 383 U.S. 502 (1966) held that sado-masochistic materials could be proscribed. (Query: what are the contemporary community standards for sado-masochism?)

U.S. v. Lovasco, 45 L.W. 4627. More than 18 months after the alleged commission of the acts complained of, defendant was indicted. He claimed the delay was prejudicial to him, and that material defense evidence was lost. Held: To prosecute a defendant following good-faith investigative delay does not deprive him of due process.

(Speedy Trial Clause of the 6th Amendment is applicable only after a person has been accused of crime. See U.S. v. Marion, 404 U.S. 307 (1971)

Smith v. U.S., 97 S. Ct. 1956 (1977). Iowa had no law banning the distribution of obscenity to adults. But Smith, an Iowan, was convicted of the violating the federal ban on such mailings, under 18 U.S.C. 1461. Held: The Miller v. California, 413 U.S. 15 (1973), standards could be applied by the jury without reference to state legislative findings, denying that the decision had the effect of nullifying state law. "We only hold that the Iowa statute is not conclusive as to the issue of contemporary community standards for appeal to prurient interest and patent offensiveness. . . . Those are questions for the jury to decide, in its traditional role as fact finder."

Splawn v. California, 97 S. Ct. 1987 (1977). A California man challenged his conviction, stating that a jury instruction was flawed on two grounds: 1) it allowed the triers to consider whether the film was being sold as sexually provocative; 2) it was given pursuant to a statute which was
passed after the sales (an ex post facto complaint). Held (per Rehnquist): evidence of pandering is relevant in determining whether the material is obscene (Hamling v. U.S., 418 U.S. 87 (1974), Ginzburg v. U.S., 383 U.S. 463 (1966)). On the ex post facto issue: The instruction didn't create a new substantive offense but merely declared the type of evidence which could be considered; besides, California courts had determined that that procedural change did not violate the ex post facto provision and they should be given great weight.

Privacy:

Whalen v. Roe, 45 L.W. 4166 (1977). State statute requires that prescriptions for dangerous drugs must be filed with the state, but access to the information is limited and public disclosure of a patient's name is forbidden. Held: The identification requirement is a reasonable exercise of state police powers and no right of liberty or privacy is invaded by the law.

First Amendment:

Linmark Associates, Inc. v. Township of Willingboro, 97 S. Ct. 351 (1977). The city fathers, in an attempt to stop panic selling, banned "for sale" signs from yards in this community near Ft. Dix, N.J., which was experiencing rapid white flight and black ingress. Held: Those who have a desire to sell houses have a strong interest in communicating their desire. In addition, there is a societal interest in the free flow of commercial information. Moreover, this was not an "aesthetic protection," since all lawn signs were not banned.


Wooley v. Maynard, 97 S. Ct. 1428 (1977). After a Jehovah's Witness had paid a fine and spent time in jail for covering the "Live Free or Die" motto on his New Hampshire car license place, he sought injunctive and declaratory relief.

Rejecting the plaintiff's "symbolic speech" argument, the Supreme Court nevertheless granted relief, holding that he could not be compelled to participate in spreading an idea he didn't agree with.

Mount Health City School District Board of Education v. Doyle, 97 St. Ct. 568 (1977). Once a teacher shows that at least part of his conduct is protected under the First Amendment (here, sending a school dress code to a radio station), the burden is shifted to the school board which fires him to show that it would have done so without reference to the protected conduct.

Discrimination:

International Brotherhood of Teamsters v. United States, 97 S. Ct. 1843 (1977). U.S. sued on behalf of minority drivers under Title VII complaining of job discrimination, and challenging the seniority system. Under the system, when a local driver became a long distance driver, he lost his seniority. Held: The seniority system is protected by the statute (42 U.S.C. 2000e-2(a)). Congress considered the impact of these seniority systems and decided to exempt them.

Texas Motor Freight System, Inc. v. Rodriguez, 97 S. Ct. 1891 (1977). In this case, alleging discrimination against non-whites as drivers, a class action was brought, but certification of the class was not moved for. Held: these drivers lacked the qualifications to be long-distance drivers and therefore could not be members of a class properly alleging injury. "Thus, they could have suffered no injury as a result of the alleged discriminatory practices, and they were, therefore, simply not eligible to represent a class of persons who did allegedly suffer injury."

United Airlines, Inc. v. Evans, 97 S. Ct. 1885 (1977). A stewardess who was married in 1968, before the policy against married flight attendants was held to violate Title VII, was later rehired and sued to recoup her full seniority rights. Holding that the system is neutral in its operation, the Court stated, "She has not alleged that the system discriminates against former female employees or that it treats former employees who were discharged for a discriminatory reason any differently than former employees who resigned or were discharged for a nondiscriminatory reason."

Trans World Airlines v. Hardison, 97 S. Ct. 2294 (1977). A clerk in an operation which required round-the-clock employees joined a religion which forbade sabbath work and was originally accommodated. However, he was transferred to a new building where he was low on the seniority roster requiring him to work on Saturdays since he was the only available clerk. Refusing to work, he was fired for insubordination. He exhausted his administrative remedies and sued, claiming he was the subject of religious dis-
crimination. Held: Everything had been done to accommodate the complainant within the seniority system. No volunteers came forward to relieve him and this meant that a person with greater seniority would have to be deprived of his shift preference. Reasonable accommodation does not mean that an employer must deny the shift and job preferences and contract rights of some employees in order to accommodate or prefer the religious needs of others. The dissent said that the company had not really tried to accommodate the clerk and that the burden under the statute was upon it to demonstrate that it had.

Craig v. Boren, 97 S. Ct. 451 (1976). Under Oklahoma law, males under 21 years of age, but not women, could not legally buy 3.2 beer. Even though the state interest involved here was alleged to be traffic safety, the Supreme Court was not impressed and held that such motive was not a sufficiently important state interest for the prohibition. See Reed v. Reed, 404 U.S. 71 (1971).

What about the twenty-first Amendment problems?
Held: "The operation of the Twenty-first Amendment does not alter the application of equal protection standards that otherwise govern this case." On Standing: Even though the male had reached 21 and was, thus, mooted out, a tavern owner who was affected by possible loss of license, was in the case.

Apportionment:

United Jewish Organizations of Williamsburgh v. Carey, 45 L. W. 4221. Hasidic Jews sued to attack a New York Reapportionment plan, which removed them from one assembly district and one senate district, splitting their community between districts. Held: "The Constitution does not prevent a State subject to the Voting Rights Act from deliberately creating or preserving black majorities in particular districts in order to ensure that its reapportionment plan complies with §5."

Civil Rights Act of 1964:

While employed at G. E., women became pregnant and claimed benefits under the company insurance plan, which were denied. Question: Is this discrimination based on sex? Held: No gender based discrimination here simply because women who get pregnant aren't covered by the plan. Pregnancy may be excluded from benefits because it is voluntary. (Even though the plan covers cosmetic surgery).
Schools:

Ingraham v. Wright, 97 S. Ct. 1401 (1977). The Eighth Amendment protections against cruel and unusual punishment does not reach school discipline of a corporal nature, nor is a student entitled to notice and an opportunity to be heard before he is punished.

Forty-eight states permit corporal punishment. The Eighth Amendment was intended to apply to criminal cases. But under common law rules, a student may recover for excess injury.

Cook v. Hudson, 45 L.W. 4041 (1976). Certiorari had been granted to consider whether a public school board may terminate employment of teachers who send their children to private, segregated schools. Because Runyon v. McCrory prohibits private, commercial, nonsectarian schools from denying admission to Negroes (42 U.S.C. 1981), held, the writ was improvidently granted.

Equal Protection:

Alexander v. Fioto, 97 S. Ct. 1345 (1977). This reservist served from 1933 to 1940 and then from 1947 to 1967 and claimed retirement pay, as against a statute which forbids such pay to those who do not serve in war time. Held: The discrimination in the statute is deliberate to avoid benefits to those who drop out of the reserves to avoid wartime service.

Fiallo v. Bell, 97 S. Ct. 1473 (1977). Under statute, special immigration preference is given to illegitimate children of mothers, but not of fathers. Held: The legislative history reflects an intentional choice not to provide preferential immigration status by virtue of the relationship between an illegitimate child and his natural father.

Trimble v. Gordon, 97 S. Ct. 1459 (1977). An Illinois statute permitted only legitimate children to inherit from a father who died intestate. The statute provided that the bastard is the heir of its mother. Held: The statute is unconstitutional. It bears only the most attenuated relationship to the asserted goal of promoting the family unit.

Cf: Labine v. Vincent, 401 U.S. 532 (1971), a case sustaining a Louisiana statute cutting off bastards from a share in their fathers' estates along with legitmates. Brugger, Stewart, Blackmun and Rehnquist say this case is indistinguishable in their dissent.
Schools:

**Nyquist v. Mauclet**, 45 L.W. 4655. A New York statute provides that student assistance may only be given to those who: 1) are citizens; 2) are applicants for citizenship; 3) if not eligible for citizenship, affirm their intent to apply for citizenship; or 4) are of a class of refugees paroled by the U.S. Attorney General under his parole authority pertaining to the admission of aliens. Held: classifications based on alienage are inherently suspect and subject to close judicial scrutiny. *(Graham v. Richardson, 403 U.S. 365 (1971).)* "Resident aliens are obligated to pay their full share of the taxes that support the assistance programs. There thus is no real unfairness in allowing resident aliens an equal right to participate in programs to which they contribute on an equal basis."

Labor:

**United Steelworkers of America v. Usery**, 97 S. Ct. 611 (1977). Although only 23 of 660 members satisfied a union rule which limited election of officers to those who had attended more than half the meetings for three years, the union argued that the rule served valid union purposes. Held: the rule violates Sec. 401 (e) of the Labor-Management Reporting and Disclosure Act of 1959 which states that "every member in good standing shall be eligible to be a candidate and hold office."

Federal Courts:

**Juidice v. Vail**, 97 S. Ct. 1211 (1977). This is a 42 U.S.C. 1983 class action brought on behalf of all judgment debtors subjected to the provisions of New York's contempt proceedings following unsuccessful efforts to collect a judgment. Under **Younger v. Harris**, 401 U.S. 37 (1971) and **Huffman v. Pursue, Ltd.**, 420 U.S. 592 (1975) the federal courts should not interfere with the state's contempt process. If the complaining parties had an opportunity to present their federal constitutional claims in state courts, that is enough to invoke abstention.

**Jones v. Rath Packing Co.**, 97 S. Ct. 1305 (1977). A state inspector removed from sale packages whose average weight was less than the net stated on them. These contained bacon and flour. The state scheme permitted less shrinkage than federal law and regulations. Held: In the case of the bacon, the state law was pre-empted by the Wholesome Meat Act, 21 U.S.C. 601 ff. In the case of the flour, while the Court found that there was no express conflict between the statutes, the state scheme was an obstacle to the accomplishment of one congressional purpose, facilitation value comparisons among goods.
Kremens v. Bartley, 97 S. Ct. 1709 (1977). A class action was filed. A class action was brought challenging the juvenile commitment law in Pennsylvania. After suit was initiated, the rules were altered to guarantee greater procedural protection. Held: A new statute mooted the case for the claimants and all those 14 years of age and older. For the rest of the class, the Court held there was an obvious lack of homogeneity.

Indians:

U.S. v. Antelope, 97 S. Ct. 1395 (1977). Enrolled Indians robbed and killed a woman on a Reservation and were tried under 18 U.S.C. 1111 for felony murder. On appeal they challenged the federal jurisdiction and argued that non-Indians who would be subject to state prosecution only could not face felony murder charges. Held: No impermissible racial classification in the federal legislation dealing with Indians, because Indian tribes are expressly provided for in the Constitution.

Rosebud Sioux Tribe v. Kneip, 97 S. Ct. 377 (1977). Indians sought declaratory relief that five, not one, South Dakota counties were within the boundaries of their reservation. The five counties were included in the original treaty, but later Congressional action diminished the rights of the Indians. Held: The case is controlled by Lone Wolf v. Hitchcock, 187 U.S. 553 (1903) which states that Congress has power to abrogate unilaterally the provisions of an Indian treaty.

Antitrust:

Illinois Brick Co. v. Illinois, 45 L. W. 4611 (1977). The state and 700 local governments brought a treble damages action under §4, Clayton Act, alleging that the concrete block manufacturers conspired to price fix in violation of the Sherman Act. Held: Hanover Shoe, Inc. v. United Shoe Machinery Corp., 392 U.S. 481 (1968), is applied to bar the governments' attempt to use the "pass on" theory (overcharges were passed on to them)

Continental T.V., Inc. v. GTE Sylvania Incorporated, 45 L.W. 4828 (1977). GTE limited the number of retail franchises granted for any given area and required the franchise to sell its products only. The retailer brings this action claiming the policy violates §1 of the Sherman Act. Held: vertical restrictions will be judged by the rule of reason as articulated in Northern Pac. R. Co. v. U.S., 356 U.S. 1, (1958), rather than the per se violation rule found in U.S. v. Arnold, Schwinn & Co., 388 U.S. 365 (1967), which is overruled.
Social Security:

Califano v. Goldfarb, 45 L.W. 4237 (1977). Under the Social Security Act, benefits based on the earnings of a dead husband are payable to his widow, regardless of dependency, but benefits based on earnings of the wife are payable to the husband only if he was receiving at least half of his support from her. Held: The gender-based distinction violates the due process clause. Cf. Frontiero v. Richardson, 411 U.S. 677 (1973).

Contract Clause:

United States Trust Co. of New York v. New Jersey, 431 U.S. 1 (1977). Is the repeal of a covenant between two states, limiting the uses which could be made of certain revenues of a political body, the Port Authority, violative of the contract clause? Held: Yes. The covenant limited the deficits and protected the general reserve fund of the Authority and its repeal eliminated a security provision, thus impairing the obligation of the States' contract.

Taxes:

United States v. Consumer Life Insurance Co., 97 S. Ct. 1440 (1977). Appellant insurance companies wrote both life and health & accident insurance and sought determination that unearned premium reserves should be treated as those from life insurance companies. Held: Congress intended to allow an insurance company to shelter this income under Section 820 of the 1959 Internal Revenue Code.

Complete Auto Transit, Inc. v. Brady, 45 L.W. 4259 (1977). Mississippi taxed the privilege of doing business, in contravention of the Spector Motor Service v. O'Connor, 340 U.S. 602 (1951) prohibition against state taxation of the privilege of engaging in commerce. Held: Where the interstate activity has a substantial nexus with the state, is fairly apportioned and does not discriminate against commerce, it is constitutional. Spector overruled.