A J fiasco: a reprise. A. Scalia. U Chi L Rev 47:57-80 Fall '79

Appellate justices: a crisis in Virginia? G. C. Lilly, A. Scalia. Va L Rev 57:3 F '71

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1973 court cases involving rule-making; implications for federal regulation. Introductory remarks. G. Burditt, A. Scalia; Views on Supreme Court/FDA decisions. P. B. Hutt; Over-the-counter drugs. G. H. Weil; Thoughts for food. R. H. Becker; Prescription drugs. J. E. Hoffman; Business and trade practices. R. M. Dietrich; Impact of recent court decisions on the future of FDA regulations: an impromptu response to the remarks of the speakers. P. B. Hutt; Morning question and answer session. Introductory remarks. C. B. Kennedy; Uniformity in administrative procedures. R. F. Guthrie; The Federal trade commission and the future role of rule making. E. A. E. Gellhorn; The new era in administrative law. R. W. Hamilton; Informal decision making. W. J. Lockhart; Judicial review of rule making. H. E. Shapiro; Afternoon question and answer session. Food Drug Cosm L J 28:661-728, 732-70 N-D '73

1976 bicentennial institute—oversight and review of agency decisionmaking. Introductory remarks. J. S. Williams, C. B. Kennedy; Pt 1, March 18—C. B. Kennedy, presiding. Morning session. R. M. Hills, T. E. Kauper, J. E. Robson; Luncheon address. W. H. Rehnquist; Afternoon session. A. D. O'Neal, R. E. Wiley, M. F. Butler; Pt2, March 19—C. J. Collier, presiding. Morning session (Rowden, Levitas, Scalia, Cutler, Ablard) Luncheon address. J. D. Dingell; Afternoon session. J. R. Quarles, jr, J. L. Kirk. Ad Law Rev 28:569-742 Fall '76

Procedural aspects of the consumer product safety act. A. Scalia, I. Goodman. UCLA L Rev 20:899-982 Je '73

Proceedings of the National conference on federal regulation: roads to reform—September 27-28, 1979, Washington, D.C. Introductory remarks. W. W. Ross, E. J. Grenier, jr, J. J. McCloy; The administration's regulatory reform program: an overview. R. M. Neustadt; Panel 1: A fresh look at federal regulatory strategies (Smith, Breyer, MacAvoy, Aranson, Baram, Thrower, Karmel, Kennedy) Panel 2: Sunset review—effective oversight tool or new political football? (Lifland, Evans, Flowers, Iiloch, Keatinge) Questions and answers. Luncheon with John J. McCloy, E. J. Grenier, jr; Panel 3: Managing the regulatory process (Cutler, McGowan, Bredhoff, Costle, Rosenblum, Morrison) Questions and answers. Panel 4: Improving the administrative process—time for a new APA? D. Ginsburg; Pt A: Revised procedures for rulemaking and adjudication—can we improve administrative efficiency while preserving fairness? (Leventhal, Wegman, Neustadt, Breyer) Pt B: Improving the process—views from the agencies (Bernstein, Pitofsky, Anderson, Byse) Questions and answers. Luncheon with Lloyd N. Cutler, J. Barbash; Panel 4 (cont): Time for a new APA? Pt C: Role of the administrative law judge: should he manage rule-making proceedings? Should his term be limited to a fixed number of years? Should his decision be given a greater degree of finality? (Wagner, jr, Litt, Miller, jr, Josephson, Scalia) Questions and answers. Panel 5: The "revolving door"—should it be stopped? (Allen, Cohen, Kahn, Kneedler) Questions and answers. Ad Law [illegible]

Quest for equality: a symposium. Foreword: equality, the elusive value. R. G. Dixon, jr—Philosophy of equality—The philosophy of equality. P. A. Freund; Commentary. T. Nagel; Panel discussion—Equality in American history—The quest for equality. O. Handlin; Panel discussion. J. Hexter—Racial preferences and scarce resources: implications of the Bakke case—The Bakke problem—allocation of scarce resources in education and other areas. E. N. Griswold; Commentary. D. S. Days, III; N. Glazer; J. Gerard; Panel discussion—Equal employment opportunity—Preferential remedies and affirmative action in employment in the wake of Bakke. H. T. Edwards; Commentary. H. H. Kay; A. Scalia; Panel discussion—Sexual equality under the fourteenth and equal rights amendments—Sexual equality under the fourteenth and equal rights amendments. R. B. Ginsburg; Commentary. T. Sowell; W. W. Van Alstyne; Panel discussion. Wash U L Q 1979:5-206 Wint '79

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Five on the Circuit. (Profiles of five appellate judges previously affiliated with U. Chicago Law School)
U. Chi. L. Sch. Rec. 28 14-16 Fall 1982
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Scalia - Appeals Court

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**DOCUMENT 1**
UNITED STATES v. BYERS, C.A.D.C.,1984. ~
~
Opinion filed by Circuit ~Judge SCALIA,~ in which Circuit Judges TAMM, ~
WILKEY, GINSBURG, BORK and Senior Circuit Judge MacKINNON Join. ~
~
.....
~SCALIA, Circuit Judge: ~~
~
.....
At arraignment counsel informed the court that appellant's defense to the~
charges would be insanity and moved pursuant to D.C.Code # 24-301(a) for ~
an order committing appellant to St. Elizabeths Hospital for examination ~
to determine both competency to stand trial and capacity, at the time of ~
the offense, to form an intent to commit the ~crimes~ with which he was ~
charged. /1/ 11/2/76 Tr. 3, 6-7. ~
.....
~
Rather, he contends that the Government forced from his lips (via the ~
compelled examination) the evidence to negate his defense of insanity and~
thereby proved, indirectly through rebuttal, that he was of the necessary~
mind to commit the ~crimes. ~ ~,
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~
A ~criminal~ defendant, who neither initiates a psychiatric ~
evaluation nor attempts to introduce any psychiatric evidence, may ~
not be compelled to respond to a psychiatrist if his statements can~
be used against him at a capital sentencing proceeding. ~
.....
~
And although "the Constitution does not forbid 'every government-imposed ~
choice in the ~criminal~ process that has the effect of discouraging the ~
exercise of constitutional rights,' " Jenkins v. Anderson, 447 U.S. 231, ~
236, 100 S.Ct. 2124, 2128, 65 L.Ed.2d 86 (1980), quoting from Chaffin v. ~
Stynchombe, 412 U.S. 17, 30, 93 S.Ct. 1977, 1984, 36 L.Ed.2d 714 (1973), ~
it is doubtful whether such a "waiver" could meet the high standard ~
required for a voluntary, "free and unconstrained," Culombe v. ~
Connecticut, 367 U.S. 568, 602, 81 S.Ct. 1860, 1879, 6 L.Ed.2d 1037 ~
(1961), relinquishment of the Fifth Amendment privilege. ~
.....
~
Appellant and amici would have us believe that the mere availability ~
of cross-examination of the defendant's experts is sufficient to provide ~
the necessary balance in the ~criminal~ process. ~,
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Our Judgment that these practical considerations of fair but effective~
~~~

"criminal" process affect the interpretation and application of the Fifth "
Amendment privilege against self-incrimination is supported by the long "
line of Supreme Court precedent holding that the defendant in a "criminal" "
or even civil prosecution may not take the stand in his own behalf and "
then refuse to consent to cross-examination. See, e.g., Fitzpatrick v. "
United States, 178 U.S. 304, 20 S.Ct. 944, 44 L.Ed. 1078 (1900) "(criminal""
osecution); "
. . . . . "
In addition to the Fifth Amendment objection, appellant claims that "
his Sixth Amendment guarantee of assistance of counsel /10/ was violated "
when he was examined at Springfield, without his lawyer present, after "
commencement of "criminal" proceedings. "
. . . . . "
On a number of occasions, however, we have faced, but found it "
unnecessary to decide, the claim that a "criminal" defendant's Sixth "
Amendment rights were violated by failure to permit his attorney to "
attend psychiatric staff conferences leading to an evaluation (for ",
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subsequent introduction at trial) of his mental state at the time of the"
"crime. ""
. . . . . "
Nor is he expert in the relevant sense-that is, expert in 'the "
intricacies of substantive and procedural "criminal" law.' Kirby v. "
Illinois, 406 U.S. 682, 689, 92 S.Ct. 1877, 1882, 32 L.Ed.2d 411 (1972) "
(plurality opinion). "
. . . . . "
.t is enough, as far as the constitutional minima of the "criminal" process"
are concerned, that the defendant has the opportunity to contest the "
accuracy of witnesses' testimony by cross-examining them at trial, and "
introducing his own witness in rebuttal. "
. . . . . "
The function of a "criminal" trial is to seek out and determine "
the truth or falsity of the charges brought against the defendant. "
. . . . . "
One is whether the Government contravened the Sixth Amendment by "
conducting Byers' court-ordered psychiatric examination in the absence of"
his lawyer and without recording his interviews with the ",
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governmentally-employed psychiatrist. /1/ Byers argues that these "
omissions eviscerated his right to assistance of counsel by stripping his"
attorney of any meaningful opportunity to cross-examine the psychiatrist "
at trial. /2/ The second issue proffered is whether the Fifth Amendment "
was infringed by testimony of the psychiatrist which significantly "
impeded Byers' attempt to negate "criminal" charges by establishing an "
nsanity defense. /3/"
. . . . . "
The third objection came at the close of trial when, in support of a "
motion for a new trial, Byers contended that the District Court had "
admitted Dr. Kunev's testimony /9/ in violation of a statute admonishing "
that statements made by an accused to his psychiatrist during an "

into evidence against the accused on the issue of guilt in any "criminal" "
proceeding."

.....

Federal "Criminal" Rule 51 directs a party not only to "make( ) known to"
the court the action which he desires the court to take or his objection "
"n the action of the court," but also to explicate "the grounds ",
JRKING

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therefor."

.....

II. Application of Federal "Criminal" Rule 52(b): "

.....

Since Byers did not advance his constitutional claims in the District "
Court, we are not at liberty to consider them on appeal unless the record"
discloses "plain error" within the meaning of Federal "Criminal" Rule 52("
b). "

.....

In its opinion, the Court made clear that a psychiatric examination is"
a "critical stage" in a "criminal" proceeding, /64/ and that as such it "
might warrant Sixth Amendment protections, albeit other than presence of "
counsel. /65/ Despite this subsidiary pronouncement, however, I regard "
Estelle, viewed in light of its primary holdings, as not a significant "
doctrinal clarification helpful to the position Byers espouses. In the "
first place, the Court expressly limited its decision to "criminal" cases "
in which the defendant, unlike Byers, does not offer psychiatric evidence"
in his own behalf. /66/ The Court suggested that a defendant who "
"terposes an insanity defense has no right to remain silent during a ",
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psychiatric examination ordered to afford the Government a fair chance to"
oppose the defense. /67/ I think this rationale seriously undermines "
Byers' Sixth Amendment claim. "

.....

In addition, I believe that the testimony should have been excluded in "
the exercise of our supervisory power over the administration of "criminal""
justice. "

.....

The Fifth Amendment bars compulsory self-incrimination in "any"
"criminal" case." It is clear, and the plurality agrees, that the "
privilege against self-incrimination has presumptive application in"
"criminal" cases where sanity is the only issue in dispute. "

.....

The Fifth Amendment guarantees that the compelled testimonial "
statements of the accused shall not be used to incriminate him in any"
"criminal" case. "

.....

"d they are used to defeat an insanity defense and thus secure a"
"criminal" conviction. ",
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.....

The privilege against self-incrimination is not violated every time "
he government compels the "criminal" defendant to provide incriminating "
vidence. "

.....

First, sanity is a condition of "criminal" guilt. /62/ Except in the "
case of strict liability offenses, the government must prove not only "
that the defendant committed the acts charged, but also that he had the "
requisite mental state when he committed the acts. /63/ Whatever the "
burden of proof, /64/ the insanity defense remains inseparable from the "
concept of culpable mental state. /65/ In the words of Mr. Justice "
Frankfurter's oft-quoted maxim, "a muscular contraction resulting in a "
homicide does not constitute murder"; "

.....

The Supreme Court has invoked the Fifth Amendment in post-conviction "
contexts in which the only issue was the "criminal" sanction to be applied."
/67/ In Estelle v. Smith, the Court refused to distinguish between the "
guilt and sentencing phases of the accused's capital trial. "

.....

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"

/68/ In a trial in which the insanity defense is raised, what is at stake"
is a "criminal" sanction. "

.....

Based upon these considerations, I am forced to conclude that the "
privilege against self-incrimination applies in a "criminal" trial on the "
issue of sanity, whether such a trial is conceived of as a determination "
of guilt or of sanction. "

.....

our unwillingness to subject those suspected of "crime" to the "
cruel trilemma of self-accusation, perjury or contempt; our "
preference for an accusatorial rather than an inquisitorial system "
of "criminal" justice; "

.....

The information elicited-thoughts, dreams, fantasies, anxieties-is often "
that which the conscious mind tries to repress. /76/ The articulation of "
these previously hidden thoughts may be profoundly threatening to the "
individual. /77/ Far more than the police interrogation, which seeks "
objective facts of a "crime," the psychiatric examination probes the core "
of the 'inviolab(le) ... ",
WORKING

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"

.....

)7/ This distrust stems from an awareness that individuals are unlikely "
to incur freely the sanction of a "criminal" conviction. "

.....

The privilege against self-incrimination also seeks to safeguard a "
fair balance of advantages in the "criminal" process. "

The plurality disputes this conclusion, arguing simply that it would be unfair to allow a "criminal" defendant who presents expert testimony on the issue of sanity to refuse to undergo a state-requested examination.

I dare to venture that a "criminal" defendant subject to a court-ordered clinical interview, knowing that none of what he says will be kept in confidence in any event, will be less likely to be "inhibited" by the presence of a recording device than a patient or client who fears an intrusion into an otherwise private and trusting relationship.

The Fifth Amendment's concerns for reliability and for preventing "the cruel, simple expedient of forcing" a confession of "criminal"

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129. See Rochin v. California, 342 U.S. 165, 173, 72 S.Ct. 205, 210, 96 L.Ed. 183 (1952) ("Use of involuntary verbal confessions in State "criminal" trials is constitutionally obnoxious not only because of their unreliability.

Fersch, Ethical Issues for Psychologists in Court Settings (paper prepared for American Psychological Association's Task Force on the Role of Psychology in the "Criminal" Justice System), in Who is the Client?,"

cf. Bazelon, Should the Psychiatrist Have a Role in the "Criminal" Justice System?,"

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DOCUMENT 2

UNITED PRESBYTERIAN CHURCH IN THE U.S.A. v. REAGAN, C.A.D.C.,1984.

Opinion for the Court filed by Circuit "Judge SCALIA.

"SCALIA, Circuit Judge:

Appellants seek to challenge the legality of a number of features of the order, some of which are new but most of which are carried forward from the prior order on the same subject, Executive Order No. 12036, 3 C.F.R. 112 (1979), reprinted in 50 U.S.C. § 401 note (Supp. III 1979). The order prescribes that nothing it contains "shall be construed to authorize any activity in violation of the Constitution or statutes of the United States," § 2.8, 3 C.F.R. at 213 (1982), and requires agency heads to "(r)eport to the Attorney General possible violations of federal "criminal" laws by employees," § 1.7(a), 3 C.F.R. at 204 (1982), and to "(r)eport to the Intelligence Oversight Board ..."

Nothing in this Order shall be construed to apply to or interfere with any authorized civil or "criminal" law enforcement responsibility of any

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department or agency. ~
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**DOCUMENT 3** ~
POINDEXTER v. F.B.I., C.A.D.C.,1984. ~
~
Opinion concurring in part and dissenting in part filed by Circuit~
~Judge SCALIA. ~~
..... ~
~SCALIA, Circuit Judge,~ concurring in part and dissenting in part: ~
..... ~
Lawyers have long served in state and federal practice as appointed ~
counsel for indigents in both ~criminal~ and civil cases. ~
..... ~
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UNITED STATES v. COHEN, C.A.D.C.,1984. 733 F.2d 128. ~
~
Opinion for the Court filed by Circuit ~Judge SCALIA,~ in which Circuit ~
Judges TAMM, WILKEY, GINSBURG, BORK and Senior Circuit Judge MacKINNON ~
join. ~
..... ~
~SCALIA, Circuit Judge: ~~
We hold today that procedures enacted by Congress for automatic ~
commitment to mental institutions of federal ~criminal~ defendants ~
successfully asserting the insanity defense do not violate the equal ~
protection component of the due process clause of the Fifth Amendment ~
merely because they are applicable only to persons charged in the ~
District of Columbia. ~
..... ~
Its central provisions-establishing a special verdict of 'not guilty by ~
reason of insanity' applicable to all cases in which an insanity defense ~
is raised, /2/ and providing that a person acquitted by such verdict be ~
automatically committed to a hospital for the mentally insane /3/ ~,
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-represented a conscious and direct congressional response to our opinion~
in Durham v. United States, 214 F.2d 862 (D.C.Cir.1954), where we ~
~~~

abandoned the venerable M'Naghten rule and adopt[illegible] that the Durham test establish "criminal" insanity. Congress believed that the Durham test would " 'result in a flood of acquittals by reason of insanity and fear(ed) that these defendants would be immediately set loose.' "

.....

This ruling (Bolton) permits dangerous "criminals" ... to win acquittals of serious "criminal" charges on grounds of insanity by raising a mere reasonable doubt as to their sanity and then to escape hospital commitment because the government is unable to prove their insanity following acquittal by a preponderance of the evidence. "

.....

Outside of the District of Columbia things are quite different. Several states have enacted automatic "criminal" commitment procedures similar to D.C.Code § 24-301, /7/ but they are applicable only to persons charged with state offenses. /8/ There is no comparable federal statutory authority for the commitment of defendants who have successfully ",
WORKING

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presented an insanity defense to a federal "criminal" charge in United States District Courts in the several states.

.....

He argued that, to avoid constitutional doubt, the statute should not be interpreted "to apply to federal as well as D.C.Code offenses," Appellant's Brief at 27, and should govern "only proceedings involving local "criminal" offenses," id. at 30.

.....

In any event, the legislative history of the provision and decisions of this court indicate its intended application to federal "crimes. ""

.....

nor is the strict scrutiny normally applicable to laws abridging the "fundamental right" to travel, Shapiro v. Thompson, supra, reduced to a rational basis test merely because the deprivation at issue is a nonfundamental entitlement to government benefits, cf. Zobel v. Williams, 457 U.S. 55, 102 S.Ct. 2309, 72 L.Ed.2d 672 (1982). If this focus of inquiry were adopted in the present case, the appellant would of course have no arguable claim to a strict scrutiny standard, since the activity at issue (commission of a federal "crime" while insane) is hardly ",
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a fundamental or even a legitimate one.

.....

It is, in any case, clear that the Supreme Court and this court have consistently applied the ordinary rational basis test in their opinions analyzing equal protection problems raised in the civil commitment of "criminal" defendants acquitted by reason of insanity.

.....

ommission of an act resulting in "criminal" prosecution in the District of Columbia is hardly an involuntary or immutable attribute.

.....

This group consists principally of those who commit "crimes" within the District, a class within which some of the (assertedly politically

powerless) District residents are likely to be included, but within which
many residents of other states, particularly Virginia and Maryland, are
likely to be included as well-and within which the most politically
powerful members of society are particularly likely to be included.

.....

Foote, A Comment on Pre-Trial Commitment of "Criminal" Defendants, 108 U.
Pa.L.Rev. 832 (1960)....
JRKING

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.....

Once the Federal Government takes on the task of caring for the
dangerously mental (sic) ill that become involved in the Federal"
"criminal" system, Congress would most likely be asked to expand the
Federal role even further.

.....

And even if the responsibility were nationally uniform, there would be
special reason to exercise that responsibility with regard to confinement"
of the insane prone to "criminal" acts within the Nation's Capitol.

.....

so also in the present case, there is no doubt that the treatment of
individuals acquitted on grounds of insanity in "criminal" trials within
the District of Columbia need not be extended to defendants similarly
acquitted in federal trials elsewhere.

.....

First, Congress previously faced exactly the same dilemma, and made
the same choice, when considering the Assimilative "Crimes" Act, /1/ which
has been upheld as constitutional. /2/ By passing the Assimilative "Crimes""
ct Congress decreed that defendants in a federal court brought there by",
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reason of "crimes" committed on a federal enclave would be treated the same"
as defendants accused of the same "crime" brought into the courts of the
state in which the enclave is located. There are many state "crimes" which"
are not ordinarily federal offenses, but which are made federal offenses
if committed on federal reservations. The Assimilative "Crimes" Act
incorporates the state procedure, bail, penalties, and felony/misdemeanor"
classifications of, for example, New Mexico, into federal trials for"
"crimes" committed on federal reservations in New Mexico. Similarly, the
penalties, etc., for "crimes" on a Government reservation in Alaska are
made the same as for those "crimes" committed elsewhere in Alaska and
brought before an Alaska state court. This has the result of affording
intrastate equal treatment to offenders in New Mexico or in Alaska, but
creates an interstate difference between offenders brought into the
federal courts in New Mexico and Alaska, since the Assimilative "Crimes"
Act incorporates divergent state statutes.

.....

Congress could have said that for all federal reservations throughout the"
and there would be a uniform common law "crime" system governing "criminal"
activities on Government reservations, and thus insured uniform and equal",
WORKING

"""

treatment for all defendants in all federal courts in 51 jurisdictions, "
but Congress did not choose to do this. "
. . . . . "
.or example, it has never been argued that the "criminal" provisions of the"
District of Columbia Code should govern the federal enclaves now "
regulated by the Assimilative "Crimes" Act. "
. . . . . "
The second is the decision to leave to the states the question of how to "
deal with individuals who have been absolved, by reason of insanity, of"
"criminal" liability for that conduct. "
. . . . . "
As a result, if Congress' initial choice to create such a bifurcated "
statutory scheme-in which certain activity is made a federal "crime" but in"
which treatment for those incapable of being held criminally responsible "
for that activity is left to the states-is constitutionally permissible, "
Section 301 must per force survive equal protection attack, for Congress "
is the "local" legislative body that must implement such a choice in the "
District of Columbia. "
Distilled to its essence, Cohen's dispute is thus not with Section 301",
WORKING

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"

itself but rather with the constitutionality of the policy decision to "
leave to the states the treatment of federal "criminal" defendants who have"
een acquitted by reason of insanity. "
. . . . . "
Having decided to define certain activity as "criminal," Congress and "
Congress alone, according to Cohen, is empowered to prescribe the "
substantive and procedural nature of, inter alia, the punishments and "
defenses entailed in the application of such a statute. "
. . . . . "
Congress often determines that federal interests warrant defining certain"
activity as a federal "crime," but then leaves to the states the task of "
filing the interstices of that cause of action. As Judge Wilkey points "
out in concurrence, that is the theory underlying the Assimilative "Crimes""
Act, 18 U.S.C. # 13 (1982), in which "crimes" on federal enclaves are "
defined by reference to state law. See United States v. Sharpnack, 355 "
U.S. 286, 78 S.Ct. 291, 2 L.Ed.2d 282 (1958) (upholding the Act against "
delegation challenge). It is also the approach taken in the recent "
Racketeer Influenced and Corrupt Organization Act (RICO), 18 U.S.C. ## "
1961-1968 (1982), which defines "racketeering activity" as acts or ",
WORKING

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"

threats involving particular state law "crimes. ""
. . . . . "
As an extreme example, Congress might define the intentional and "
premeditated killing of a federal officer to be a federal "crime," but then"
mandate that state homicide statutes govern the punishment of that "crime.""
If Congress, in its capacity as local sovereign, enacted the death "

penalty in the District of Columbia for local murders, the fact that the federal "crime" of murdering a federal officer could then be punished by death in the District but only by life imprisonment in a state like Wisconsin, would not, in my mind, transgress the equal protection component of the Fifth Amendment.

. . . . . .

See generally Johnson v. United States, 225 U.S. 405, 417, 32 S.Ct. 748, 52, 56 L.Ed. 1142 (1912) ("There is certainly nothing anomalous in punishing the "crime" of murder differently in different jurisdictions.

. . . . . .

District and non-District insanity acquittees are not similarly situated for commitment purposes, even when it is federal statutory law that defines their conduct as "criminal" and federal common law that provides ",
WORKING

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their insanity defense, as long as Congress has chosen to leave to the states the procedural and substantive rules by which such acquittees are subsequently committed to mental institutions. Should a state desire to extend its mandatory commitment statute to those found not guilty of federal "crimes" by reason of insanity, I see no constitutional barrier to its doing so.

. . . . . .

To return to the death-penalty hypothetical discussed above, suppose Congress now defines murder of a federal officer to be a federal "crime" and proscribes a penalty of 30-100 years imprisonment for that offense. If Congress were to engraft onto that statute a provision that provided the death penalty for the offense only for the District of Columbia, I ould certainly have to pause before concluding that such selective treatment of the District were constitutional.

. . . . . .

as a result, state legislatures were left equally free to define local "crimes," to require that such "crimes" be tried before state courts (which, of course, are not Article III courts), and to mandate that collateral relief from "criminal" convictions be pursued first in the state's ",
WORKING

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non-Article III courts.

. . . . . .

See Palmore v. United States, 411 U.S. 389, 390-91, 93 S.Ct. 1670, 1672-73, 36 L.Ed.2d 342 (1973) ("In this respect, the position of the District of Columbia defendant is similar to that of the citizen of any of the 50 states when charged with a violation of state "criminal" law:

. . . . . .

At the time of Durham, however, the United States District Court for the District of Columbia, unlike other federal district courts, had concurrent jurisdiction over many local "criminal" matters.

. . . . . .

f, for example, a defendant stipulated to commission of all the underlying acts that constituted a federal "crime" and offered in defense only the plea of insanity, see, e.g., United States v. Harper, 460 F.2d 705, 706, 707 n. 2 (5th Cir.1972), a general verdict of not guilty could be used by a state to automatically commit the defendant to a local

--- U.S. ---, 103 S.Ct. 3043, 77 L.Ed.2d 694 (1983) (legislature may ~
presume that one who is found to have been insane at the time he engaged ~,
WORKING

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in ~criminal~ conduct continues to be mentally ill for at least 50 days ~
after that finding). ~

~
.....

The situation presented in this case is thus very different from one in ~
which Congress had barred the states from automatically committing ~
federal insanity acquittees or had ordered federal courts outside the ~
District to use only general verdicts in ~criminal~ cases. ~

~
.....

~
"Because the government can only act 'unequally' with respect to two ~
classes if it has identical power to act upon them and refuses to act ~
equally, the contention that equal protection is denied raises the ~
important question of whether Congress has constitutional authority to ~
enact automatic ~criminal~ commitment procedures to apply to all defendants~
charged with United States Code offenses who are tried in United States ~
district courts outside the District and found not guilty solely by ~
reason of insanity....~

~
.....

~
"A serious question exists as to whether Congress possesses the ~
constitutional power to enact a nationwide federal commitment procedure ~,
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for all persons acquitted of federal ~crimes~ who raised an insanity ~
defense. Congress has already legislated to confer upon the federal ~
courts a residual, emergency authority to commit persons, accused or ~
convicted of committing federal offenses, to the custody of the Attorney ~
General in the event that suitable arrangements with the person's state ~
of residence for his care cannot be made. /19/ This expressly limited ~
residual authority granted to the federal courts has never been extended ~
to allow the commitment of persons acquitted of federal ~crimes. ~ Because ~
the power to act in the general field of lunacy is a power reserved to ~
the states under the Tenth Amendment, /20/ and that full responsibility ~
has been traditionally exercised by every state, it may be seriously ~
doubted whether the federal police power legitimately could or should be ~
extended to encompass every person acquitted on an insanity defense of ~
federal ~crimes....~~

~
.....

~
While the care of insane persons is essentially the function of ~
the states in their sovereign capacity as parens patriae, and while~
the federal government has neither constitutional nor inherent ~
power to enter the general field of lunacy, Congress has the power ~~,
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become temporarily insane while in custody of the United States ~
awaiting trial upon ~criminal~ charges, and to make provision for the~
care and treatment of federal prisoners who become mentally ~
incompetent during their incarceration after conviction. ~
~
. . . . . .
~
If the accused's mental disability appears not to be a ~
transitory condition, but in all likelihood he will, because of his~
insanity, never be brought to trial, it would seem that as a ~
general rule the federal government should not assume ~
responsibility for his hospitalization merely because he has been ~
accused (but not convicted) of a federal ~crime. ~~
~
. . . . . .
~
On the facts of this case, I agree that the challenged procedures enacted~
by Congress for 'commitment' of federal ~criminal~ defendants in the ~
District of Columbia do not violate the equal protection component of the~
due process clause of the Fifth Amendment. ~
~
. . . . . .
~
9. There is nothing in the text or history of the subsequently enacted~,
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District of Columbia Court Reform and ~Criminal~ Procedure Act of 1970, ~
Pub.L. No. 91-358, 84 Stat. 473, to support appellant's contention that ~
it was meant to alter the application of § 24-301, and our later ~
decisions do not support that contention. ~
~
. . . . . .
~
It seems to us undeniable that Congress has prescribed for defendants ~
ried for federal ~crimes~ within the District a treatment that is ~
different, in fundamental and significant respects, from the treatment ~
which the states have the power to impose upon defendants tried for ~
federal ~crimes~ elsewhere: ~
~
. . . . . .
~
If that is the only permissible basis for federal action in this field, ~
then once the ~criminal~ custody is terminated, which may occur at the ~
moment the defendant is acquitted, see Note, Federal Commitment of ~
Defendants Found Not Guilty by Reason of Insanity-Proposed Legislation, ~
52 Iowa L.Rev. 930 (1967), the constitutional underpinnings of federal ~
treatment may also dissolve. ~
~
. . . . . .
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~
AIR NEW ZEALAND LTD. v. C.A.B., C.A.D.C.,1984. 726 F.2d 832. ~
~
Opinion for the Court filed by Circuit ~Judge SCALIA. ~~
~SCALIA, Circuit Judge: ~~
~
. . . . . .
~
Moreover, the impact of the regulations was to require the plaintiffs ~
either to withdraw products from the market pending expensive FDA ~
clearance procedures or risk civil and ~criminal~ penalties and public ~
opprobrium. ~

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DOCUMENT 6
RAMIREZ DE ARELLANO v. WEINBERGER, C.A.D.C.,1983. 724 F.2d 143. "
"
Opinion for the Court filed by Circuit "Judge SCALIA. ""
.....
"SCALIA, Circuit Judge: ""
.....
74. See Samuels v. Mackell, 401 U.S. 66, 69-74, 91 S.Ct. 764, 766-768,"
27 L.Ed.2d 688 (1971) (when state "criminal" prosecution had begun prior to"
federal suit, injunctive and declaratory relief had same effect and must "
be judged by the same standards). "
.....
"
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DOCUMENT 7
CHANEY v. HECKLER, C.A.D.C.,1983. 718 F.2d 1174. "
"
Dissenting opinion filed by Circuit "Judge SCALIA. ""
.....
"SCALIA, Circuit Judge," dissenting: "
.....
The quoted statement was made in the context of a discussion dealing "
largely with the enforcement discretion of "criminal" prosecutors, which "
had previously been asserted to be not merely (as the cases establish "
with regard to the enforcement discretion of administrative agencies) "
generally unreviewable, but entirely so. As a refutation of that bald "
proposition, whether applied to "criminal" or administrative enforcement, "
Davis's statement is entirely accurate. But neither the statement, nor "
the cases upon which it relies, support any general presumption of "
reviewability in the sense at issue here. "
.....
"
Most of the "criminal" code is cast in such mandatory terms, and yet "
prosecutors' discretion not to indict is the archetype of unreviewable ",
WORKING

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"
"
JURIS DISPLAY/PRINT SET IS "16" SEARCH PREFIX IS "F2D.OPINION " JURIS"
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enforcement discretion. "
.....
"
 his is a statute that bears "criminal" penalties, and it is simply not "
possible to disregard this qualification entirely, as the majority would "
do. "
.....
"
It cannot seriously be thought that the householder who administers a "

bottle on his medicine shelf to administer later for an approved use, ~
violates the ~criminal~ provisions of the Food, Drug, and Cosmetic Act. ~
~
.....
The Circuit Court, in Bachowski v. Brennan, 502 F.2d 79 (3d Cir.1974), ~
had advanced two rationales for holding that the Secretary's decision ~
should not be viewed as unreviewable prosecutorial discretion. First, ~
the doctrine of prosecutorial discretion should be limited to those ~
civil cases which, like ~criminal~ prosecutions, involve the vindication of~
societal or governmental interest, rather than the protection of ~
individual rights.'~
.....
~,

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~

SEC v. Tiffany Industries, Inc., 535 F.Supp. 1160 (E.D.Mo.1982), simply ~
did not involve judicial review of the propriety of an agency's exercise ~
of enforcement discretion. Newman v. United States, 382 F.2d 479 (D.C.~
Cir.1967), involved the prosecutorial discretion of a United States ~
Attorney in a ~criminal~ matter, a discretion that has always received the ~
maximum degree of judicial deference. ~
~
.....
The first, Goldberg v. Hoffman, 225 F.2d 463, 466 (7th Cir.1955), ~
involved not agency discretion but the pure prosecutorial discretion of a~
United States Attorney in a ~criminal~ matter. ~
~
.....
~,

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DOCUMENT 8
ENSIGN-BICKFORD CO. v. OCCUPATIONAL SAFETY & HEALTH, C.A.D.C.,1983. 717 ~
F.2d 1419. ~
~
Dissenting opinion filed by Circuit ~Judge SCALIA. ~~
~
.....
~SCALIA, Circuit Judge,~ dissenting: ~
~
.....
This stands in sharp contrast to the civil and ~criminal~ penalties ~
provided for in the Act. See 29 U.S.C. # 666. ~
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.....
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**DOCUMENT 9**
RYAN v. BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, C.A.D.C.,1983. 715 F.2d~
644. ~
~
Opinion for the Court filed by Circuit ~Judge SCALIA. ~~
~~~

"SCALIA, Circuit Judge: ""

. . . . . "

See 26 U.S.C.A. # 6103(i)(2)(C) (West Supp.1983), captioned "Taxpayer "
identity," which provides that "(f)or purposes of this paragraph "
(concerning disclosure of return information to federal officers for use "
 "criminal" investigations) a taxpayer's identity shall not be treated as"
taxpayer return information.""

. . . . . "

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DOCUMENT 10

NAT. COALITION TO BAN HANDGUNS v. BUREAU OF A.T.F., C.A.D.C.,1983. 715 "
F.2d 632. "

Opinion for the Court filed by Circuit "Judge SCALIA. ""
"SCALIA, Circuit Judge: ""

. . . . . "

We agree with the district court that in light of the reasonable "
congressional expectation and intent that proper implementation of the "
GCA would "provide support to Federal, State, and local law enforcement "
officials in their fight against "crime" and violence," GCA # 101, 82 Stat."
at 1213, 18 U.S.C. # 921 note, at least appellant Edward Morrone, Chief "
of Police of New Haven, Connecticut, has alleged, Jt.App. at 100, a " "
'distinct and palpable injury,' " Gladstone, Realtors v. Village of "
Bellwood, 441 U.S. 91, 100, 99 S.Ct. 1601, 1608, 60 L.Ed.2d 66 (1979) "
 quoting Warth v. Seldin, 422 U.S. 490, 501, 75 S.Ct. 2197, 2206, 45 L."
Ed.2d 343 (1975)), not " 'shared in substantially equal measure by all or"
a large class of citizens,' " Gladstone, supra, 441 U.S. at 100, 99 S.Ct."
at 1608 (quoting Warth, supra, 422 U.S. at 499, 95 S.Ct. at 2205), and " ",
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'likely to be redressed by a favorable decision,' " Valley Forge "
Christian College v. Americans United for Separation of Church and State,"
454 U.S. 464, 472, 102 S.Ct. 752, 758, 70 L.Ed.2d 700 (1982) (quoting "
Simon v. Eastern Kentucky Welfare Rights Organization, 426 U.S. 26, 38, "
96 S.Ct. 1917, 1924, 48 L.Ed.2d 450 (1976)). "

. . . . . "

This section modified the short-lived provision of the Omnibus "Crime" "
Control and Safe Streets Act of 1968 (OCCSSA), Pub.L. No. 90-351, 82 "
Stat. 197, enacted earlier that year: "

. . . . . "

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DOCUMENT 11

Opinion for the Court filed by Circuit Judge SCALIA.

SCALIA, Circuit Judge:

. . . . . .

and (3) whether Larry Medley's deposition statement that he had been charged with "criminal" assault in connection with the incident was properly admitted at trial.

. . . . . .

Appellees assert that if objection to the inquiry concerning "criminal" charges had been made at the time of the deposition, the inquiry could have been limited to "criminal" convictions.

. . . . . .

that in a case where he is defending against a claim of civil assault, evidence that he was charged by authorities with "criminal" assault would unduly prejudice the jury against him.

. . . . . .

(10-12) The traditional common-law rule is that even a "criminal"

conviction is not admissible in a civil trial to establish the occurrence of the act to which the conviction pertained.

. . . . . .

2 S. Gard, Jones on Evidence # 12:25 (6th ed. 1972), to our knowledge no court has suggested that a mere "criminal" charge can be admitted for that purpose. It is well established that evidence of arrest or indictment is inadmissible for the purpose of impeaching a witness in "criminal" cases.

. . . . . .

6. Kotteakos, a "criminal" case, acknowledges that although the "substantial rights" test applies to both civil and "criminal" cases, that "does not mean that the same criteria shall always be applied" to those separate categories.

. . . . . .

DOCUMENT 12

UNITED STATES v. RICHARDSON, C.A.D.C.,1983. 702 F.2d 1079.

Dissenting opinion filed by Circuit Judge SCALIA.

. . . . . .

This case highlights the tension created by the intersection of a "criminal" defendant's double jeopardy right to avoid the risors and embarrassment of an unnecessary second trial and the long-standing rule that a "criminal" defendant has no constitutional right to an appeal. Because the present appeal does not fit within the scope of our appellate jurisdiction, we hold that the defendant cannot appeal the trial court's double jeopardy ruling at this time even though he may be required needlessly to endure the strains of a second trial.

. . . . . .

Instead, citing Burks v. United States, /4/ in which the Supreme Court held that a "criminal" defendant could not be retried after an appellate

legally insufficient, he contends that "no matter what the jury did (he) "
cannot be retried since the evidence was insufficient to submit to the ",
WORKING

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jury in the first instance."

.....

(1) In determining the appealability of an issue arising in a federal"
"criminal" proceeding, it is important to remember that in a "criminal" case"
"there is no constitutional right to an appeal."

.....

This rule was first recognized in Cohen v. Beneficial Industrial Loan "
Corp. /9/ and was reiterated in the context of a "criminal" case in Abney "
v. United States. /10/"

.....

/14/ This is because the ultimate question in a "criminal" trial is whether"
the defendant is guilty of the "crime" charged. A defendant who chooses to"
go to trial is not guilty unless the prosecution is able to prove beyond "
a reasonable doubt that the defendant committed the "crime." /15/ If the "
evidence presented at the first trial was legally insufficient, "
Richardson is automatically not guilty. "

.....

Three circuits have held that a "criminal" defendant can challenge the "
sufficiency of the evidence presented at his first trial (which resulted ",
WORKING

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in a hung jury) when appealing his conviction at the second trial. /17/ "
Indeed, in the present case the government concedes that Richardson's "
insufficiency claim will not be lost if it is not reviewed at this time, "
noting that "in the event he is convicted, (Richardson) can raise (the "
insufficiency claim) on appeal from that conviction."

.....

The entire purpose of the finality requirement of section 1291 is to "
"discourage undue litigiousness and leaden-footed administration of "
justice, particularly damaging to the conduct of "criminal" cases." /26/ "
That purpose would be greatly undermined if a "criminal" defendant could "
interrupt the trial proceedings to seek appellate review of the trial "
court's ruling on the sufficiency of evidence presented. "

.....

among them a "criminal" defendant's interest "in avoiding multiple "
prosecutions even where no final determination of guilt or innocence has "
been made." /32/ This is an interest which is "wholly unrelated to the "
propriety of any subsequent conviction."

.....

As noted above, it cannot be argued that the double jeopardy clause -",
WORKING

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requires the appellate court to review Richardson's insufficiency claim
after the second trial. /41/ But at the same time, while it seems logical
to conclude that the need to avoid the disruptions caused by
interlocutory appeals in "criminal" cases justifies postponing review of
Richardson's insufficiency claim (thereby increasing the possibility that
Richardson's less-than-absolute interest in avoiding the rigors of a
econd trial will be infringed), we refuse to believe, at least in the
bsence of clear evidence to the contrary, that Congress intended to
preclude review of that issue when the result would have been to increase
the likelihood that Richardson's absolute right to avoid an
unconstitutional conviction would be violated.

.....

Richardson presents us with an appeal from the trial court's denial of
two motions based on his argument that the evidence presented against him
at his "criminal" trial was insufficient.

.....

> Bearing the discomfiture and cost of a prosecution for "crime"
> even by an innocent person is one of the painful obligations of
> citizenship.
>
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"SCALIA, Circuit Judge," dissenting:

.....

It thus produces a result that will bring the "criminal" law process into
greater public disrepute than the exclusionary rule, while at the same
time doing "criminal" defendants an evident injustice. The exclusionary
ule ordinarily does its work before a verdict of guilty has been
pronounced;

.....

> Moreover, the very nature of a double jeopardy claim is such
> that it is collateral to, and separable from, the principal issue
> at the accused's impending "criminal" trial, i.e., whether or not the
> accused is guilty of the offense charged.
>
> .....
>
> Finally, the rights conferred on a "criminal" accused by the
> Double Jeopardy Clause would be significantly undermined if
> appellate review of double jeopardy claims were postponed until
> after conviction and sentence.
>
> .....
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The only answer to these questions contained in the majority
opinion-and, concurrently, its only pragmatic basis for distinguishing
Abney-is the threat of " 'leaden-footed administration of justice,
particularly damaging to the conduct of "criminal" cases.' "

.....

n my view, this is well outweighed by the dual threat of destroying
public confidence in the judicial "criminal" process, and of denying the
defendant effective vindication of a constitutional guarantee.

.....

the whole proceeding is nullified, and nothing remains which can benefit

accused," 22 C.J.S. Criminal Law § 280 at 881 (1961)," ~
~ ..... ~
Such an approach-denying not only a constitutional double jeopardy ~
claim but even a statutory right to appeal insufficiency of the evidence ~
at an earlier trial-does not threaten to produce an inequitable ~criminal~ ~
justice system in the future any more than it has in the several hundred ~
ears past. ~
~ ..... ~
In fact, from the point of view of overall impact upon the system of ~,
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~ ~

~criminal~ justice, prosecutorial error in failing to produce sufficient ~
evidence is less demanding of the massive sanction of invalidating a ~
subsequent conviction. ~
~ ..... ~
And because the even-handedly offensive consequences of the majority's ~
jurisdictional holding render it most unlikely that that obstacle to ~
immediate appeal will long endure, the opinion foreshadows a regime in ~
which ~criminal~ cases resulting in hung juries will routinely be appealed ~
for sufficiency-of-evidence review. ~
~ ..... ~
8. 'Final Judgment in a ~criminal~ case means sentence. ~
~ ..... ~
The dissent reproves us because we suggest that appellate courts can ~
vindicate the constitutional rights of a ~criminal~ defendant after he has ~
been convicted. ~
~ ..... ~
he dissent may really be expressing disapproval of Congress' decision to~
give a ~criminal~ defendant the right to appeal his conviction since every ~
time an appellate court reverses a ~criminal~ conviction it sets the ~,
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~ ~

'guilty' ~criminal~ free, or, in some cases, creates the possibility that ~
he will be set free. ~
~ ..... ~
Finally, the dissent may have a basic disagreement with the rule ~
reiterated by the Supreme Court in Jackson v. Virginia, 443 U.S. 307, 99 ~
S.Ct. 2781, 61 L.Ed.2d 560 (1979), that regardless of what the jury does,~
a ~criminal~ defendant is not guilty unless the prosecution presents ~
evidence from which a rational juror could conclude beyond a reasonable ~
doubt that the defendant had committed the ~crime. ~ In any event, we ~
refuse to shy away from the result we feel is compelled by law merely ~
because it permits a ~criminal~ defendant to argue at the appellate level ~
after a second trial that his conviction was obtained under ~
constitutionally impermissible circumstances. ~
~ ..... ~
In McQuilkin appellants appealed from a district court order vacating ~
heir ~criminal~ contempt convictions before a magistrate because the first~
trial was improperly conducted without a jury, and remanding for a new ~
trial. ~
~ ..... ~,
WORKING

n order to accept that argument, the Supreme Court would have had to ~
overrule the traditional rule that a ~criminal~ defendant has no ~
constitutional right to an appeal. ~
. . . . . ~
Such delays are especially undesirable in ~criminal~ proceedings. See ~
Dibella v. United States, 369 U.S. 121, 126, 82 S.Ct. 654, 657, 7 L.Ed.2d~
614 (1962) ('the delays and disruptions attendant upon intermediate ~
appeal are especially inimical to the effective and fair administration ~
of the ~criminal~ law.'); Cobbledick v. United States, 309 U.S. 323, 325, ~
60 S.Ct. 540, 541, 84 L.Ed. 783 (1940) ('encouragement of delay is fatal ~
to the vindication of the ~criminal~ law'). ~
. . . . . ~
On the other hand, if the defendant is unjustifiably convicted at the ~
second trial the injury increases in magnitude because he is then subject~
to the punishment prescribed for the ~crime. ~~
. . . . . ~
In the civil field as in the ~criminal,~ however, opinions denying ~
interlocutory review of the adequacy of the evidence after hung juries ~
are wont to justify their denial by asserting that the issue may later be~,
WORKING

aised if plaintiff ultimately prevails. ~
. . . . . ~
~,
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DOCUMENT 13
DRUKKER COMMUNICATIONS, INC. v. N.L.R.B., C.A.D.C.,1983. 700 F.2d 727. ~
~
Opinion for the court filed by Circuit ~Judge SCALIA. ~~
~SCALIA, Circuit Judge: ~~
. . . . . ~
Cf. Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194, 1196, 10 L.Ed.2d ~
215 (1963) (suppression by ~criminal~ prosecutor of evidence favorable to ~
an accused violates due process). ~
. . . . . ~
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DOCUMENT 14
UNITED STATES v. DONELSON, C.A.D.C.,1982. 695 F.2d 583. ~

Before TAMM, Circuit "Judge, SCALIA, Circuit Judge," and GASCH, /*/ "
District Judge for the United States District Court for the District of "
Columbia. "
Opinion for the Court filed by Circuit "Judge SCALIA. ""
"SCALIA, Circuit Judge: ""
"
. . . . . "
.here, we found no reason to equate the length of a Youth Corrections Act"
sentence with the length of an ordinary "criminal" sentence, because of its"
different purpose (its 'basic theory ...'"
"
. . . . . "
And we found sentences of potentially greater length than ordinary"
"criminal" sentences permitted by 'the clear language of the Act.'"
. . . . . "
We therefore do not discern, in the general structure of this system "
of "criminal" trial and sentencing before magistrates, any denial of equal "
protection. ",
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"
JURIS DISPLAY/PRINT SET IS "16" SEARCH PREFIX IS "F2D.OPINION " JURIS"
SET/16 DOCUMENT 14"
PAGE 2 OF 2"
. . . . . "
(7) Defendants elisible for Youth Corrections Act sentencing who are "
convicted in "criminal" proceedings before magistrates might argue that the"
threat of receiving a longer Youth Corrections Act sentence "
unconstitutionally coerced their waiver of right to trial before an "
Article III Judge. "
. . . . . "
2. We might also have noted in this regard that the service of a Youth"
Corrections Act sentence brings with it the possibility of expungement of"
the "criminal" conviction. "
. . . . . "
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"313FQ - BEGINNING OR END OF SET REACHED; NO MORE DOCUMENTS AVAILABLE "
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Scalia – Four

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JURIS DISPLAY/PRINT SET IS "17" SEARCH PREFIX IS "F2D.OPINION " JURIS"
ET/17 DOCUMENT 1" PAGE 1 OF 2"

DOCUMENT 1

UNITED STATES v. BYERS, C.A.D.C.,1984. "

Opinion filed by Circuit "Judge SCALIA," in which Circuit Judges TAMM, WILKEY, GINSBURG, BORK and Senior Circuit Judge MacKINNON Join. "

.....

"SCALIA, Circuit Judge: ""

.....

The values assigned to the competing interests do not change because a court has elected to analyze the question under the supervisory power instead of the "Fourth Amendment. ""

.....

One can hardly consider that enough to comply with the Supreme Court's instruction that the "exclusionary rule" should be 'restricted to those areas where its remedial objectives are thought most efficaciously served.'"

.....

90. The Supreme Court has held that a state prisoner may not seek habeas corpus relief on the ground that unconstitutionally obtained ",

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JURIS DISPLAY/PRINT SET IS "17" SEARCH PREFIX IS "F2D.OPINION " JURIS"
ET/17 DOCUMENT 1"

PAGE 2 OF 2"

evidence was introduced at his trial if the state has provided an opportunity for full and fair litigation of a "Fourth Amendment" claim. Stone v. Powell, 428 U.S. 465, 481-482, 96 S.Ct. 3037, 3046, 49 L.Ed.2d 1067, 1080 (1976). "

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JURIS DISPLAY/PRINT SET IS "17" SEARCH PREFIX IS "F2D.OPINION " JURIS"
SET/17 DOCUMENT 2"

PAGE 1 OF 1"

DOCUMENT 2

CARTER v. DUNCAN-HUGGINS, LTD., C.A.D.C.,1984. 727 F.2d 1225. "

Dissenting opinion filed by Circuit "Judge SCALIA. ""

.....

In Halperin v. Kissinger, 606 F.2d 1192 (D.C.Cir.1979), aff'd per curiam by an equally divided Court, in part, cert. dismissed, in part, 452 U.S. 713 (1981), a case involving a substantive "fourth amendment" search and seizure claim, this circuit explained the reach of Carey. "

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"SCALIA, Circuit Judge," dissenting: "

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" JURIS"
JURIS DISPLAY/PRINT SET IS "17" SEARCH PREFIX IS "F2D.OPINION "
SET/17 DOCUMENT 3"
PAGE 1 OF 1"
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DOCUMENT 3
AMIREZ DE ARELLANO v. WEINBERGER, C.A.D.C.,1983. 724 F.2d 143. "
"

Opinion for the Court filed by Circuit "Judge SCALIA. ""
"
.....
"SCALIA, Circuit Judge: ""
"
.....
See United States v. Hensel, 699 F.2d 18 (1st Cir.1983), cert. denied, "
--- U.S. ----, 103 S.Ct. 2431, 77 L.Ed.2d 1317 (1983) (Collaboration with"
Canadian authorities does not shield U.S. officials from claims alleging "
a violation of the "Fourth Amendment" by a search and seizure in Canadian "
waters.); "
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JURIS DISPLAY/PRINT SET IS "17" SEARCH PREFIX IS "F2D.OPINION " JURIS"
SET/17 DOCUMENT 4"
PAGE 1 OF 1"
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DOCUMENT 4
UNITED STATES v. RICHARDSON, C.A.D.C.,1983. 702 F.2d 1079. "
"

Dissenting opinion filed by Circuit "Judge SCALIA. ""
"
.....
"SCALIA, Circuit Judge," dissenting: "
"
.....
It thus produces a result that will bring the criminal law process into "
greater public disrepute than the "exclusionary rule," while at the same "
time doing criminal defendants an evident injustice. The "exclusionary "
rule" ordinarily does its work before a verdict of guilty has been "
pronounced; "
"
.....
Thus, it is not only true that the majority's disposition will (as noted "
at the outset) more certainly release the guilty than does the"
"exclusionary rule; ""
"
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"313FQ - BEGINNING OR END OF SET REACHED; NO MORE DOCUMENTS AVAILABLE "
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