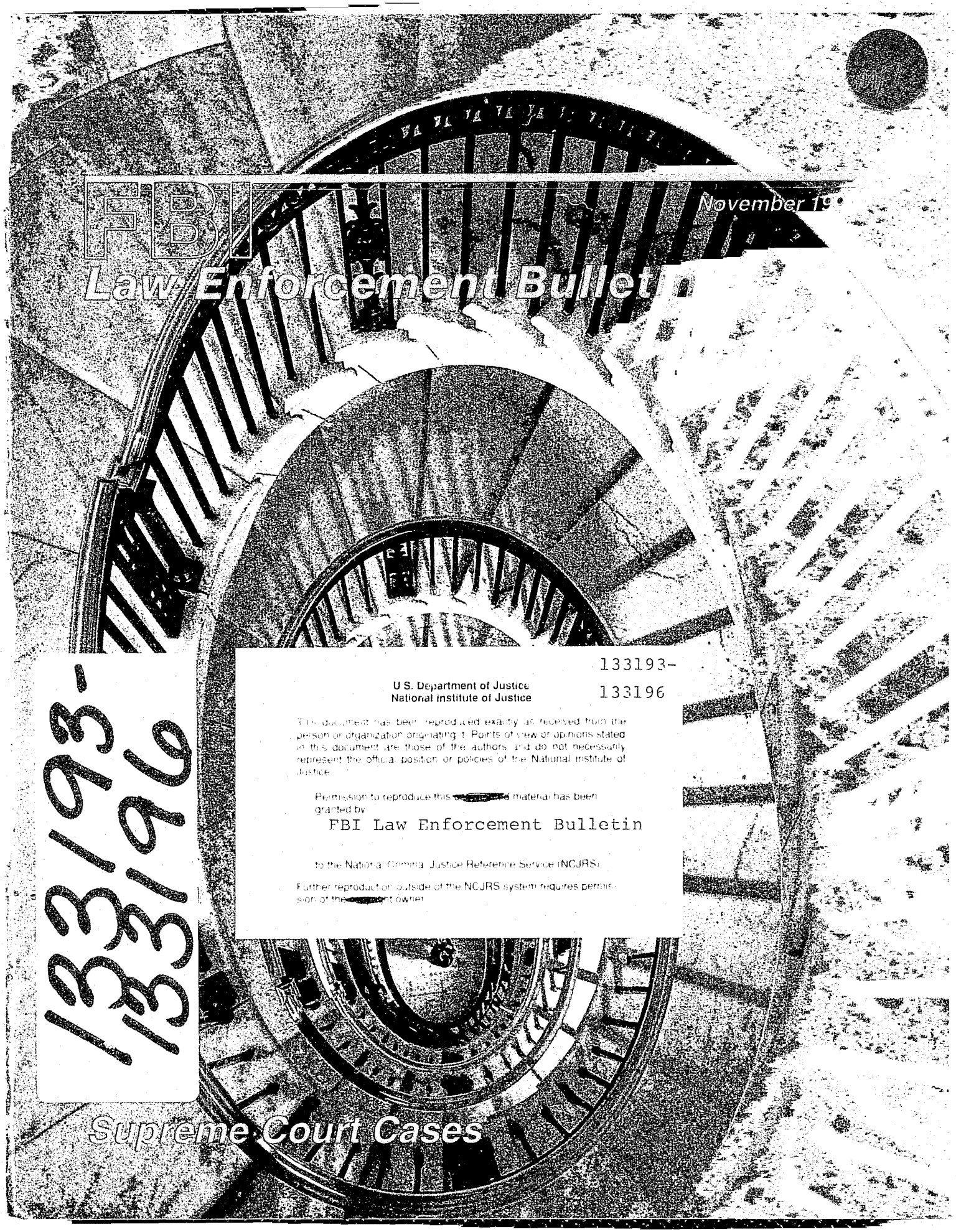

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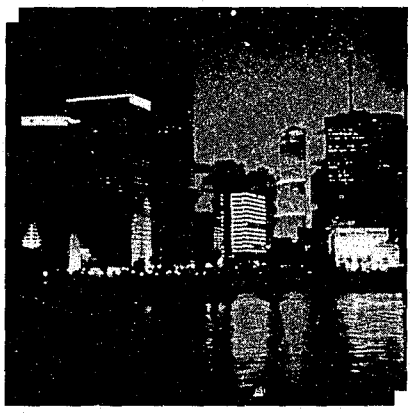

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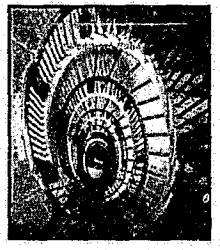

The Cover: *This month's Legal Digest addresses recent Supreme Court decisions of particular importance to law enforcement officers. Featured on the cover is the spiral staircase located in the Supreme Court Building in Washington, DC.*

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William S. Sessions, Director

Editor—Stephen D. Gladis, D.A.Ed.
Managing Editor—Kathryn E. Sulewski
Art Director—John E. Ott
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Production Manager—Andrew DiRosa
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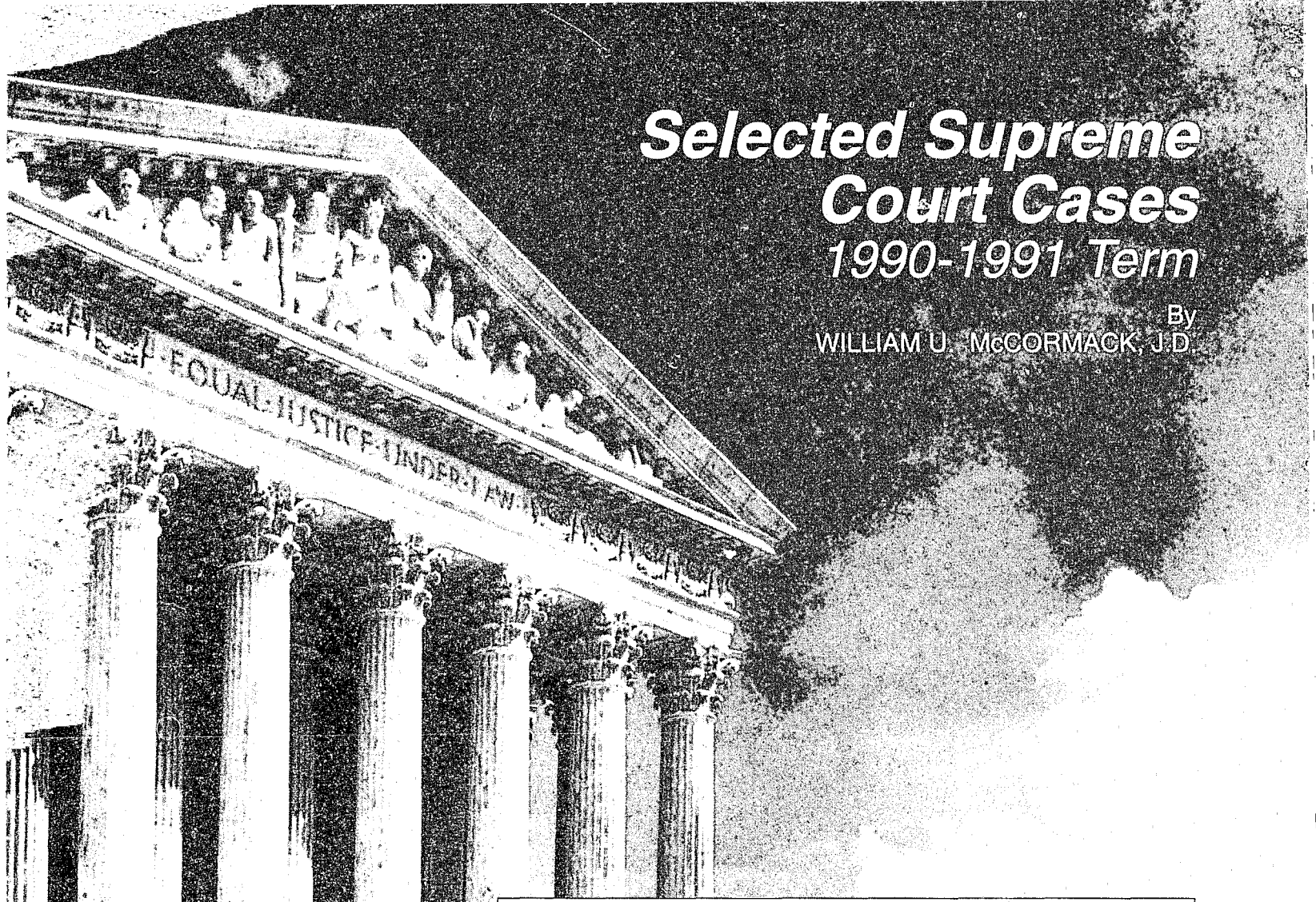


Selected Supreme Court Cases
1990-1991 Term

By
WILLIAM U. McCORMACK, J.D.

During its 1990-1991 term, the Supreme Court ruled on eight cases of particular importance to law enforcement officers. These cases, which are summarized below, addressed issues covered by the fourth and fifth amendments to the U.S. Constitution.

Specifically, the Court ruled on the circumstances under which fourth amendment seizures can occur when an officer approaches a bus passenger or when a fleeing citizen is chased on foot by an officer. It also decided on the length of time officers can maintain custody of a citizen arrested without a warrant before the citizen is constitutionally entitled to a judicial probable cause determination. Other Court decisions resulted in a modification in the constitutional standards governing the warrantless search of a package containing evidence of crime that is placed in a vehicle and a clarification of the permissible scope of a vehicle search based on consent.

With regard to fifth amendment issues, the Court considered the effect on interrogation practices of a request for counsel in response to *Miranda* warnings and the extent to which an appearance at a judicial

hearing with counsel is sufficient to invoke the *Miranda* right to counsel. It also determined whether a promise by an informant inmate to protect a fellow inmate from other prisoners renders a subsequent confession involuntary.

FOURTH AMENDMENT

Florida v. *Bostick*, 111 S.Ct. 2382 (1991)

In *Bostick*, the Court ruled that law enforcement officers who approach a seated bus passenger and request consent to search the passenger's luggage do not necessarily seize the passenger under the fourth amendment. The test applied in such situations is whether a reasonable passenger would feel free to decline the request or otherwise terminate the encounter.

The defendant in this case was on a bus traveling from Miami, Florida, to Atlanta, Georgia. When the bus stopped in Fort Lauderdale, two police officers involved in drug interdiction efforts boarded the bus, and without reasonable suspicion, approached the defendant. After asking to inspect his ticket and identification, they then requested and were given consent to search defendant's luggage for drugs. During the search of the luggage, the officers found cocaine.

The Florida Supreme Court ruled that the cocaine had been seized in violation of the fourth amendment. In doing so, the court noted that the defendant had been illegally seized without reasonable suspicion and that an impermissible seizure necessarily results any time police board a bus, approach passengers without reasonable suspicion, and request consent to search luggage.

The U.S. Supreme Court reversed and held that this type of drug interdiction effort may be permissible so long as officers do not convey the message that compliance with their request is required. The Court noted that previous cases have permitted police, without reasonable suspicion, to approach individuals in an airport for the purpose of asking questions, verifying identification, and requesting consent to search luggage.

The Court recognized that the defendant, who was seated on a bus on an ongoing trip, may not have felt free to leave. However, the Court rejected a "free-to-leave" test for determining whether a fourth amendment seizure occurs in cases such as this in which defendants, who are in the midst of an ongoing trip, would not feel free to leave whether the police were present or not. Instead, the Court ruled that the proper question to determine whether an impermissible seizure occurs is whether a reasonable person would feel free to decline the officers' request or otherwise terminate the encounter.

The Supreme Court remanded the case back to the Florida courts to determine whether the defendant chose to permit the search of his luggage.

Special Agent McCormack is a legal instructor at the FBI Academy.

California v. *Hodari D.*, 111 S.Ct. 1547 (1991)

In *Hodari D.*, the Court ruled that a fourth amendment seizure does not occur when law enforcement officers are chasing a fleeing suspect, unless the officers apply physical force or the suspect submits to an officer's show of authority.

In this case, police encountered four or five youths, including the defendant, huddled around a red sports car in a high crime area of Oakland, California. The youths scattered when they saw the officers. One officer gave chase on foot. The defendant, who was apparently looking over his shoulder, emerged from an alley and unknowingly ran toward the pursuing officer. When he saw that the officer was 10 to 20 feet away and that he was approaching him, the defendant discarded some crack on the ground and was arrested. The California Court of Appeals concluded that the defend-

This issue's cover photo and all of the photos accompanying this article are courtesy of the Supreme Court Historical Society and Panorama .

ant was seized without reasonable suspicion and that the crack he discarded was, therefore, the fruit of an illegal seizure.

The U. S. Supreme Court reversed and ruled that a fourth amendment seizure occurs only when a fleeing person yields to a show of authority or is physically grasped by an officer. The Court noted that "a show of authority" is defined in terms of whether a reasonable person would have believed that he or she was not free to leave. Even assuming that the officer's act of running toward the defendant was a sufficient show of authority for a seizure, the Court concluded that since the defendant did not comply with or submit to that show of authority, he was not seized until he was actually tackled. Therefore, the drugs that the defendant discarded before being tackled were not seized under the fourth amendment and should not be excluded from evidence.

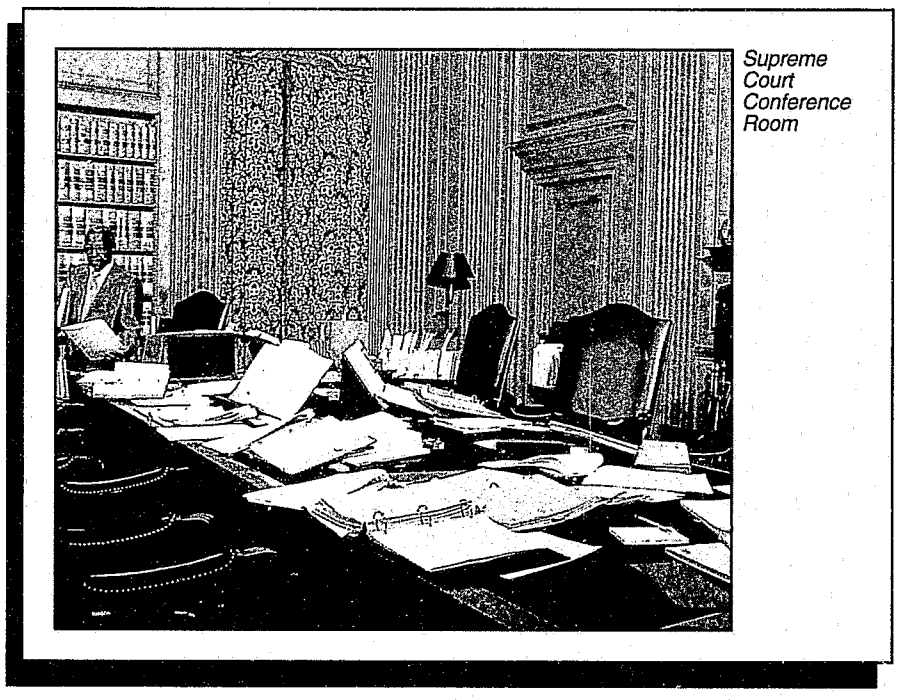
County of Riverside v. *McLaughlin*, 111 S.Ct. 1661 (1991)

In *County of Riverside*, the Court ruled that a person arrested without a warrant must generally be provided with a judicial determination of probable cause within 48 hours after arrest, including intervening weekends or holidays.

In this case, an arrestee alleged he did not receive a prompt judicial probable cause determination following his warrantless arrest as required by the fourth amendment. A Federal district court issued an injunction requiring probable cause determinations within 36 hours of arrest, which was upheld on appeal by the U. S. Court of Appeals for the Ninth Circuit.

The U. S. Supreme Court vacated that judgment and held that a judicial determination of probable cause within 48 hours of arrest will, as a general matter, be constitutional, unless an arrestee can prove the probable cause determination was delayed unreasonably. It analyzed the competing interests that exist between the need for flexibility on the part of State judicial systems and the unfair burden that prolonged detention places on a person whose arrest may be based on incorrect or unfounded suspicion.

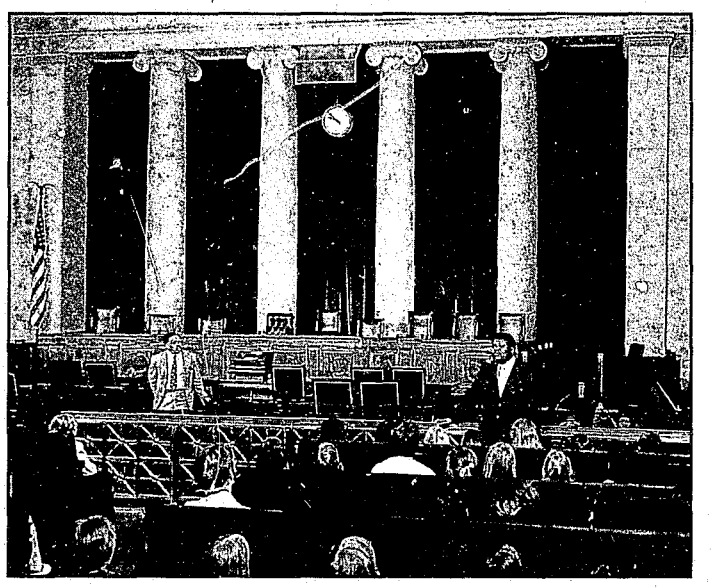
The Court concluded that States should be allowed flexibility to experiment with combining a judicial probable cause determination with other judicial proceedings, such as bail hearings or arraignments. However, in order to provide some degree of certainty in this area, the Court adopted 48 hours as a general rule of reasonableness, while making clear that this period may be less if the Government delays such determinations for the purpose of gathering additional evidence to justify the arrest or if delays are based on ill will.



Supreme Court Conference Room

California v. *Acevedo*, 111 S.Ct. 1982 (1991)

In *Acevedo*, the Court overruled its prior decision in *Arkansas*



Supreme Court Chamber

v. *Sanders*, 442 U.S. 753 (1979), and upheld, under the automobile exception to the warrant requirement, the warrantless search of a container placed into a vehicle, even though the probable cause to search was focused exclusively on that container.

In this case, police observed the defendant leave an apartment carrying a brown paper bag, which they had probable cause to believe contained marijuana, and place the paper bag in the trunk of a car. As the defendant started to drive away, police officers stopped him, opened the trunk, and searched the bag which did, in fact, contain marijuana. The California Court of Appeals ruled that the marijuana should be suppressed in light of the *Sanders* rule, since the probable cause to search was directed specifically at the bag and the warrantless search of the bag exceeded the scope of the automobile exception.

The U. S. Supreme Court reversed and held that containers placed into vehicles may be searched without a warrant, even when probable cause to search focuses solely on those containers. The Court offered the following reasons in support of its decision to overturn the *Sanders* rule, which would have required a warrant to search the bag:

1) The *Sanders* rule afforded, at most, minimal protection to privacy interests and has confused courts and police officers;

2) The *Sanders* rule may have encouraged some law enforcement officers to articulate that probable cause existed to search for evidence in the whole vehicle, resulting in searches of an entire vehicle without a warrant; and

3) Even where the *Sanders* rule applied, officers could still seize packages found in a vehicle and wait for a search warrant, which could be obtained in the vast majority of cases.

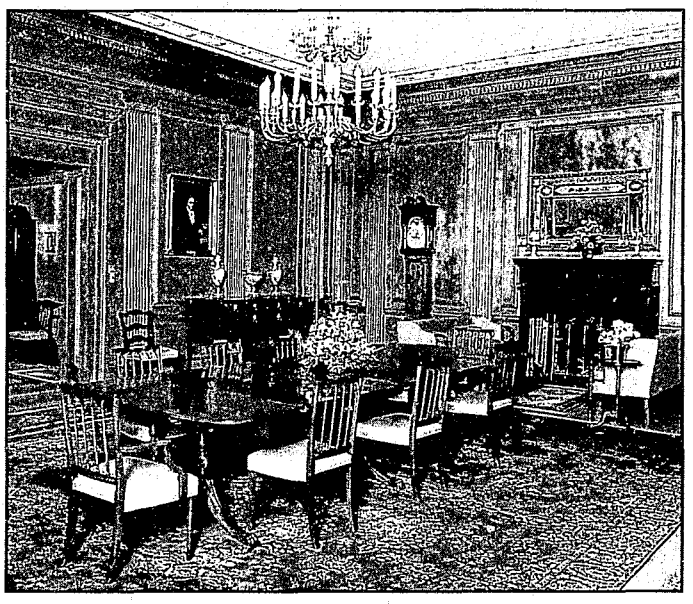
The Court emphasized that since the police did not have probable cause to believe that contraband was hidden in any other part of the car other than in the paper bag, a search of the entire car would have been without probable cause and in violation of the fourth amendment.

Florida v. _Jimeno_, 111 S.Ct. 1801 (1991)

In *Jimeno*, the Court held that a person's general consent to search the interior of a car includes, unless otherwise specified by the consenter, all containers in the car that might reasonably hold the object of the search.

In this case, a police officer followed the defendant's car after overhearing what he thought might be a drug transaction. After observing the car make an illegal turn, the officer stopped the car and told the defendant that he suspected him of carrying drugs in his car and asked for permission to search the car. The defendant consented, and on the car's floorboard, the officer found and opened a brown paper bag containing a kilogram of cocaine.

The U. S. Supreme Court held that it was objectively reasonable for the officer to conclude that a general consent to search defendant's car for drugs included consent



Supreme Court Dining Room

to search a paper bag lying on the floor of the car. The Court stated that the objective reasonableness test used to determine the scope of a consent search assesses what the typical reasonable person would understand, based on the exchange between the officer and the suspect. The Court concluded that when an officer has obtained a consent to search for drugs, it is objectively reasonable to search in containers in a car that might hold drugs, since contraband is rarely strewn across the trunk or floor of a car.

It is important to note, however, that the Court distinguished this case from a case in which police are given consent to search the trunk of a car for drugs and encounter a locked briefcase in the trunk. Since it is, for the most part, unreasonable to think that a suspect who consented to the search of his trunk has agreed to the breaking open of a locked briefcase within that trunk, the Court cautioned that a consent to search the trunk of a car for drugs would not allow police to pry open a locked briefcase found in the trunk.

FIFTH AMENDMENT

Minnick v. *Mississippi*, 111 S.Ct. 486 (1990)

In *Minnick*, the Court ruled that once a custodial suspect requests counsel in response to *Miranda* warnings, law enforcement officers may not attempt to reinterrogate the suspect unless the suspect's counsel is present or the suspect initiates the contact with law enforcement.

In this case, the defendant escaped from jail in Mississippi and was, thereafter, involved in two murders. The defendant was eventually arrested in California on a Friday and interviewed the next day by two FBI agents. After the FBI agents gave the defendant his *Miranda* warnings, he provided the agents with some information, but then told them to come back Monday when he had a lawyer. After the FBI interview, the defendant met several times with his appointed attorney. On Monday, after the defendant talked to his attorney, a deputy sheriff from Mississippi interviewed the defendant. After again being advised of his *Miranda* rights, the defendant described in detail to the deputy sheriff his escape and participation in the murders. The trial court did not suppress defendant's statements to the deputy sheriff, and the Mississippi Supreme Court upheld the trial court's ruling.

The U. S. Supreme Court reversed the Mississippi Supreme Court, which had admitted the defendant's statements to the deputy sheriff. The Court held that after an in-custody accused invokes the right to counsel, *Miranda* bars law enforcement officers from initiating interrogation of the accused, unless the accused has counsel at the time of questioning. Since the defendant's attorney was not present when the deputy sheriff again contacted the defendant, the Court ruled that the subsequent waiver was invalid and the confession to the deputy sheriff was taken in violation of *Miranda*.

In its decision, the Court interpreted the meaning of the phrase "until counsel has been made available, which it had used in *Edwards* v. *Arizona,* 451 U.S. 477 (1981), to

describe when recontact with an in-custody suspect was permissible after a suspect requested counsel in response to *Miranda* warnings. The Court stated that in light of the purpose of the *Miranda* decision, and to provide clear and unequivocal guidelines to law enforcement, recontact with an in-custody suspect would not be permissible unless the suspect has counsel with him at the time of questioning. It also noted that a valid waiver of *Miranda* may be obtained after counsel has been requested, if the accused initiates a conversation or contact with law enforcement officers.

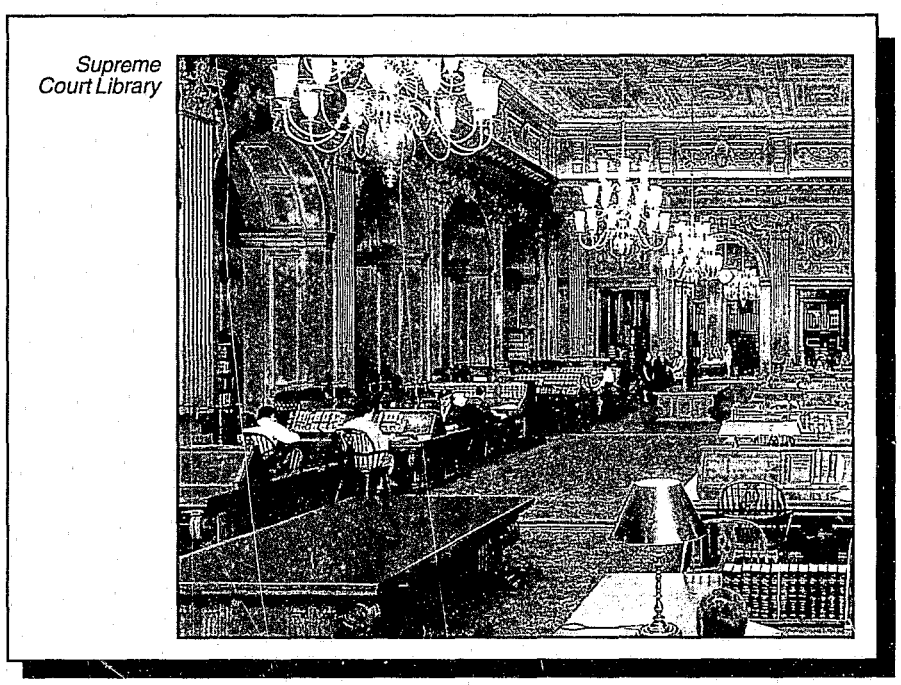
McNeil v. *Wisconsin*, 111 S.Ct. 2204 (1991)

In *McNeil*, the Court held that an in-custody suspect who requests counsel at a judicial proceeding, such as an arraignment or initial appearance, is only invoking the sixth amendment right to counsel as to the charged offense and is not invoking the *Miranda* fifth amendment-based right to have counsel present during custodial interrogations. Thus, officers are not prohibited from later approaching that in-custody suspect for interrogation about uncharged crimes.

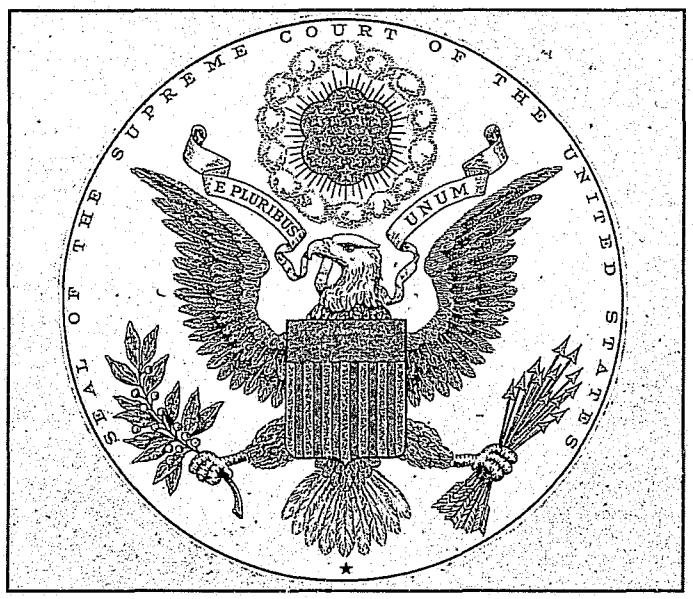
In this case, the defendant was arrested for an armed robbery committed in West Allis, Wisconsin, and was represented by counsel at his subsequent initial appearance. Later the same day, a detective visited the defendant in jail in order to question him about a separate incident involving a murder and armed burglary in Caledonia, Wisconsin. After the detective advised defendant of his *Miranda* rights, the defendant waived those rights and provided accounts of his involvement in the Caledonia murder and armed burglary.

The Wisconsin Supreme Court refused to suppress defendant's incriminating statements. The court found that his appearance with counsel at the initial appearance hearing concerning the West Allis armed robbery did not constitute an invocation of his fifth amendment *Miranda* right to counsel so as to prevent police questioning on the unrelated and uncharged offenses committed in Caledonia.

The U. S. Supreme Court agreed with the Wisconsin Supreme Court and ruled that a defendant who appears at a formal judicial proceeding with counsel, or requests counsel at such a proceeding, is invoking solely the sixth amendment right to counsel, which prohibits police-initiated interrogation without the accused's counsel present only concerning the charged offense. The Court reviewed the purpose and nature of an invocation of counsel under *Miranda* and restated that a request for counsel in response to *Miranda* by an in-custody suspect prohibits police-initiated recontact for the purpose of obtaining a confession concerning any criminal matter, unless the suspect's counsel is present. The Court concluded that if the sixth amendment right to counsel invoked by the defendant in this case was defined to be non-offense specific, effective law enforcement would be seriously impeded, since most suspects in



Supreme Court Library



Supreme Court Seal

pretrial custody suspected of involvement in other crimes would be unapproachable by police.

Arizona v. *Fulminante*, 111 S.Ct. 1246 (1991)

In *Fulminante*, a divided Court decided that a confession between prison inmates was involuntary and inadmissible in this case. However, the Court also noted that in certain cases, the admission into evidence of an involuntary confession may be harmless error, if the involuntary confession's admission is harmless beyond a reasonable doubt.

In this case, the defendant, who was incarcerated after being convicted for possession of a firearm by a felon, was also a suspect in the murder of his daughter. However, no charges had been filed against him concerning the murder. While in prison, the defendant befriended a fellow cellmate, who was an FBI informant masquerading as an organized crime figure. The informant cellmate questioned the defendant about rumors that he was suspected of killing a child, but the defendant denied any involvement.

Thereafter, the informant cellmate told the defendant that he had heard he was starting to get rough treatment from the other inmates because of the rumors about the child murder. The informant then offered to protect the defendant from his fellow inmates, but only if defendant told the informant about the murder. Defendant then admitted to the informant that he had choked, sexually assaulted, and shot his daughter. The Arizona Supreme Court ruled that the confession to the informant should have been suppressed because it was involuntary and that the admission of an involuntary confession can never be harmless error.

The U. S. Supreme Court upheld the Arizona Supreme Court's decision that the confession was involuntary and also that its admission was not harmless error. However, the Court overruled the Arizona Supreme Court's finding that the admission of an involuntary confession is always error and ruled that the admission into evidence of an involuntary confession may in certain circumstances be harmless error.

Using a totality of circumstances test to determine the voluntariness of the defendant's confession, the Court found that there was a credible threat of physical violence against the defendant unless he confessed and compared this case to a case in which a law enforcement officer promised to protect an accused from an angry lynch mob gathered outside the jail if the accused confessed. Additional factors supporting a finding of involuntariness included: 1) The defendant possessed low average to average intelligence and dropped out of school in the fourth grade; 2) he was short in stature and slight in build; and 3) he had previous psychological problems dealing with the stress of prison life. LEB