Seven Deadly Sins
Seven Deadly Sins

Constitutional Rights and the Criminal Justice System

David R. Lynch
Molly Sween
Mark Denniston
Bruce Bayley

 Carolina Academic Press
Durham, North Carolina
Dedication Page

David Lynch
With much thanks as always from Dave to his best friend, Kathy.

Molly Sween
Thank you to my family (Brad, Evelyn, and Amber) for your love and support.

Mark Denniston
A special thank you to my wife Christie for being the rock of support in my life. Also, thank you to the retired Iowa Supreme Court Justice, Jerry L. Larson, for his wisdom.

Bruce Bayley
Thank you to my family.
Contents

Introduction xviii

Chapter One · Intolerance 3

Intolerance was a vice that the drafters of the Constitution could not “tolerate.” Hence, in the very first amendment, they quickly provided protections for unpopular speech, minority religions, unpopular assemblies, and disliked media. Legislators sometimes try to make criminal acts of ideas or groupings which they and their constituents find to be highly offensive. Such statutory prohibitions are almost always constitutionally taboo.

Unpopular Speech 4
  People v. Rokicki 4
  Texas v. Johnson 6
  Snyder v. Phelps 7
  Miller v. California 9
  Brandenburg v. Ohio 12

Unpopular Religion 13
  Reynolds v. United States 14
  Wisconsin v. Yoder 16
  Elane Photography v. Willock 19

Unpopular Assemblies 20
  People ex rel. Gallo v. Acuna et al. 21

Unpopular Media 22
  Near v. Minnesota 23

Chapter Key Terms 25
Chapter Two · Intolerance in Law Enforcement and Corrections

Law Enforcement
Sheriff Joe Arpaio 28
Warm Sands Sex Sting 30
Be Wary of Christians and Fundamentalists 32
UC Davis Pepper Spray Incident 33
Ogden Gang Injunction 36

Corrections
Bradley or Chelsea 38
Satanism Behind Bars 40
Infant Inmates 42
“Illegal” Corrections Officers 44
Criminal or Client? 46
Incarcerating the Mentally Ill 48

Chapter Key Terms 50
References 50

Chapter Three · Subterfuge

The Constitution generally requires criminal justice actors to act with transparency. Officials are generally expected to avoid concealment, deception, evasion and non-accountability. They are expected to refrain from subterfuge. This value finds expression in such practices as the recitation of Miranda warnings, the “articulable facts” doctrine regarding police justification for stops, improper use of trickery to obtain confessions, mandated toleration of inmates acting as “jail-house lawyers” on behalf of others, and judicial hostility to attempts to cut-off inmate communication with lawyers and others in the outside world.

Subterfuge and the Police
Miranda v. Arizona 56
Schneckloth v. Bustamonte 58
Maryland v. Garrison 60
United States v. Pavelski 61
Miller v. Fenton 63

Subterfuge in Corrections
Johnson v. Avery 67
Procunier v. Martinez 68
Wolff v. McDonnell 70
The Constitution conveys concerns regarding governmental intrusiveness when it prohibits compulsory self-incrimination, unreasonable searches and seizures, the criminalization of elective abortions, and the outlawing of gay sex. Sources of constitutional resistance to governmental intrusiveness are located in the Fourth and Fifth Amendments, as well as in the ever-controversial “general right to privacy” found in the shadow of the Bill of Rights.

The Privilege Against Self-Incrimination
  Murphy v. Waterfront Commission

Freedom from Unreasonable Searches
  Katz v. United States
  California v. Greenwood
  Florida v. Jardines
  Riley v. California
We may want our criminal justice officials to play hard but we also want them to play fairly. We want them to be smart but not too crafty, sly, clever or cunning in getting the job done. The Constitution teaches us that abusive tactics like entrapment, suggestive line-ups, selective prosecution, double jeopardy, inflaming juror passions, or taking advantage of children as defendants are not to be tolerated. Fairness is an age-old ethical value.
Chapter Eight · Craftiness in Law Enforcement and Corrections

Law Enforcement
- Operation Blue Shepherd
- Entrapped Autistic Teen
- Coerced Confessions
- Duke Lacrosse Rape Case
- Picking Cotton

Corrections
- Random Drug Tests
- Inmate Segregation
- Body Scanners
- Global Positioning Systems
- Drug Dogs
- Officer Corruption

Chapter Nine · Favoritism

Like a parent, the government is expected to have no “favorites.” The Constitution requires the criminal justice system to treat all people equally without regard to race, ethnicity, sex, religion, sexual orientation or social class. All are to be given “equal protection” of law.

Criminal Law and Courts
- Craig v. Boren
- Michael M. v. Superior Court of Sonoma County
<table>
<thead>
<tr>
<th>Chapter Ten · Favoritism in Law Enforcement and Corrections</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Law Enforcement</strong></td>
</tr>
<tr>
<td>KFC Robber 244</td>
</tr>
<tr>
<td>Sitting While Black 246</td>
</tr>
<tr>
<td>Show Me Your Papers 248</td>
</tr>
<tr>
<td>Calling the Cops on the Cops 250</td>
</tr>
<tr>
<td>Use Your Own Bathroom 252</td>
</tr>
<tr>
<td><strong>Corrections</strong></td>
</tr>
<tr>
<td>School to Prison Pipeline 254</td>
</tr>
<tr>
<td>Private Probation Officers as Debt Collectors 256</td>
</tr>
<tr>
<td>Powder vs. Crack Cocaine Sentencing 259</td>
</tr>
<tr>
<td>Racial Segregation in Prison 262</td>
</tr>
<tr>
<td><strong>Chapter Key Terms</strong></td>
</tr>
<tr>
<td><strong>References</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter Eleven · Cruelty</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>The Constitution teaches us the value of avoiding cruelty by prohibiting modes of punishment that are barbaric, sentences that are disproportionately long, conditions of confinement that are too substandard, and executions that are unnecessarily torturous. This area of law teaches us the necessity of humaneness in our pursuit of justice.</em></td>
</tr>
<tr>
<td><strong>Evolving Standards of Decency</strong></td>
</tr>
<tr>
<td>Trop v. Dulles 271</td>
</tr>
<tr>
<td>Baze v. Rees 274</td>
</tr>
</tbody>
</table>
Chapter Twelve · Cruelty in Law Enforcement and Corrections 295

Law Enforcement 295
- Multiple Anal Probes 296
- Terrorist Interrogations 297
- Cleveland Police and Excessive Force 300
- Rodney King 303
- Freddie Gray 305

Corrections 307
- The Death Penalty and Lethal Injection 307
- Tasers 309
- Restraint Chairs 311
- Stun Cuffs 312
- Shackling Pregnant Offenders 314
- Executing Juveniles 316

Chapter Key Terms 318
References 318

Chapter Thirteen · Subservience 325

The Drafters of the Constitution had a healthy dislike of authority. Subservience to the government was seen more as a vice than as a virtue. This reaction against subservience can be seen in constitutional guarantees to legal counsel (including even free counsel), trial by one’s peers, jury nullification of unpopular laws, and the heavy burden of proof beyond a reasonable doubt. Some would even argue that the right to bear arms includes elements of this desire to avoid having to become too subservient.

At Home and on the Street 325
- D. C. v. Heller 326
- Glik v. Cunniffe 329
### Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before and During Trial</td>
<td>331</td>
</tr>
<tr>
<td><em>Gideon v. Wainwright</em></td>
<td>333</td>
</tr>
<tr>
<td><em>Crawford v. Washington</em></td>
<td>335</td>
</tr>
<tr>
<td>Jury Deliberations</td>
<td>338</td>
</tr>
<tr>
<td><em>Duncan v. Louisiana</em></td>
<td>338</td>
</tr>
<tr>
<td><em>In re Winship</em></td>
<td>341</td>
</tr>
<tr>
<td><em>Sullivan v. Louisiana</em></td>
<td>343</td>
</tr>
<tr>
<td><em>Victor v. Nebraska</em></td>
<td>345</td>
</tr>
<tr>
<td><em>State v. Smith-Parker</em></td>
<td>348</td>
</tr>
<tr>
<td>Chapter Key Terms</td>
<td>349</td>
</tr>
</tbody>
</table>

### Chapter Fourteen · Subservience in Law Enforcement and Corrections  

#### Law Enforcement
- Eric Garner  
- Walter Scott  
- Video Recording the Police  
- Waco Siege  
- Denver Jury Nullification Fliers

#### Corrections
- Defense Attorneys Now Social Workers  
- Inmates Defending Themselves  
- Beat Up Squads

### Chapter Key Terms

### References

### Chapter Fifteen · Botched Justice: Poorly Decided Legal Cases of the Past

*Lessons in constitutional principles come not only from cases supposedly decided correctly but also from cases in the past that now clearly constitute bad decisions. The Supreme Court normally seems to do a good job at protecting American constitutional values but it has not always gotten its ethics right.*

- *Johnson v. M’Intosh*  
- *Dred Scott v. Sanford*  
- *Ruffin v. Commonwealth*  
- *Bradwell v. Illinois*
<table>
<thead>
<tr>
<th>Contents</th>
<th>xv</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Plessy v. Ferguson</strong></td>
<td>385</td>
</tr>
<tr>
<td><strong>Buck v. Bell</strong></td>
<td>388</td>
</tr>
<tr>
<td><strong>Minersville School District v. Gobitis</strong></td>
<td>390</td>
</tr>
<tr>
<td><strong>Korematsu v. United States</strong></td>
<td>392</td>
</tr>
<tr>
<td><strong>Bowers v. Hardwick</strong></td>
<td>395</td>
</tr>
<tr>
<td>Chapter Key Terms</td>
<td>399</td>
</tr>
<tr>
<td>Index</td>
<td>401</td>
</tr>
</tbody>
</table>
Introduction

Imagine legislators who create criminal statutes that go too far in suppressing vulgar and offensive expressions. Imagine a judge who secretly meets with a prosecutor to discuss a case. Or, consider a police officer who is by nature very intrusive. Consider a jailer who is cruel. Picture a juror that is racist or a cunning prosecutor who gets a conviction by fighting dirty. Imagine a juror that is subservient to authority figures. These negative attributes—in toleration, subterfuge, intrusiveness, cruelty, favoritism, craftiness, and subservience to authority—are what could be termed “the seven deadly sins” of the American criminal justice system.

On the other hand, imagine a criminal justice professional who believes in always being humane and tolerant, and knows that he or she must act with transparency. Imagine further that this same person values privacy rights, fair play, and equality. Further imagine that this person is sensitive to the corrupting nature of power, though she and her system colleagues are given extraordinary powers over life, liberty and property. The person just mentioned could be described as adhering successfully to American Constitutional criminal justice values.

Constitutional rights constitute a set of values to which nearly everyone in our society can agree. If America has a “civic religion,” its doctrine would be found in the Constitution. There may be some in our society who do not like even broad constitutional principles (specific and debatable interpretations aside), but such people seem to be exceedingly rare. In any event, the Constitution does not constitute a set of suggestions for those who work in the domain of criminal justice, but rather constitutes a set of mandates.

Properly approached, the study of constitutional rights can be ethically enlightening because it involves much more that the mere mechanical memorization of a body of black letter rules and definitions. The careful
examination of U.S. Supreme Court and other appellate opinions reveals not only the courts’ final rulings on various matters, but provides in detail the (often moral) reasoning behind the courts’ decisions. In explicating their rationales, judicial opinion writers typically address the opposite point of view before going on to explain why they sided the way they did. In the process of examining such decisions, students discover a court’s ethical reasoning behind its ruling. Such cases make for excellent class discussion, and students often wind up teaching one another while making moral sense of the case with the instructor.

With this background, let us now begin our book-length journey of looking closely at many core justice system values housed in the U.S. Constitution. Each of these values shall span two chapters. One chapter per value shall be devoted to case law that will help to identify and illustrate the value in a constitutional sense. Then, a companion chapter shall provide a series of true stories that provide practical examples of the value being played out in the real world of police and corrections.

Seven core values in all will be examined in the chapters that follow. These virtues will be introduced via their mirror opposites, which we call the “seven deadly constitutional sins” of the criminal justice system. Once again, these negative attributes or “sins” are intolerance, subterfuge, intrusiveness, craftiness, favoritism, cruelty, and subservience to authority.