

CHAPTER 1: THE NATURE, PURPOSE, AND FUNCTION OF CRIMINAL LAW

HISTORY OF OHIO

Prior to the American Revolution, Ohio was occupied by the British, French, and Native Americans, all of whom were scattered across what was to become the Northwest Territory when the Northwest Ordinance was passed in 1787. After passage, the Ohio Company purchased more than 1.5 million acres of land in what is now Ohio, Indiana, Michigan, Wisconsin, and Minnesota. The company sponsored a forty-eight member expedition to settle the new territory, which eventually was controlled by a group of five individuals appointed by the U.S. Congress -- a governor, a secretary, and three judges. These individuals performed the legislative, executive, and judicial functions in the territory.

Despite the settling of the Northwest Territory, there were tensions between the settlers, the British, and Native Americans. The British promised the Native Americans protection from the settlers, which heightened the strain between the parties. A noted battle in the early 1790s allowed the settlers to broker peace with several Native American tribes and push the British out of the territory. In the Battle of Fallen Timbers (south of Toledo), General Anthony Wayne engaged in a battle with other tribes, defeating them decisively. As a result, the Treaty of Greenville was passed in 1795 to negotiate peace and land transfers between the U.S. and two primary Native American tribes, the Chippewas and the Delawares (see Ohio Secretary of State Website, www.sos.state.oh.us).

CREATION OF OHIO'S GOVERNMENT

Not long after the Treaty of Greenville was signed, the formation of Ohio's government commenced. In 1799, after the number of settlers in Ohio exceeded 5,000, the U.S. Congress informed the settlers that they were allowed to convene and elect congressional representatives. In 1802, Ohio held its constitutional convention. A year later, Ohio's first constitution was ratified and the state was admitted into the Union. In the constitution of 1803, the legislature was the center of power. Called the General Assembly, the legislature was bicameral, with a house of representatives and senate. Although the position of governor was created, this person had no veto power over legislative acts. Additionally, the legislature was to approve all governor appointments and appoint all judges.

The 1803 constitution also created a two-tiered judicial branch consisting of the Ohio Supreme Court and the Courts of Common Pleas. There were no intermediate appellate courts created at this time. The constitution required justices of the Ohio Supreme Court to meet once each year in every county in the state, similar to circuit riding in the federal courts. At first, this was not a huge endeavor, as there were very few counties. Over time, however, this became a burden as the number of counties increased when the population increased (see www.ohiohistorycentral.org).

The 1803 constitution did not remain in its original form; it was heavily revised in 1851; the 1851 constitution exists today in much of its original state. This version allows Ohio voters to elect the governor, other state officials, and judges, taking this power out of the hands of the legislature. Voters can also approve constitutional amendments.

One interesting feature of Ohio's Constitution is that unlike the federal constitution, Article I of Ohio's constitution does not describe the legislative branch; rather this first section contains the state's bill of rights. There are twenty-one total rights listed (with two rights labeled 10 and 10a). A fair number deals with criminal law and procedure:

- § 5 – trial by jury
- § 8 – habeas corpus
- § 9 – right to bail except for capital crimes and public safety risks,
- § 10 – grand jury, right to defend oneself, counsel, speedy, public, impartial trial, self-incrimination, double jeopardy, compulsory process, face witnesses
- § 10a – victim’s rights (added in 1994)
- § 12– local jury
- § 14– search warrants
- § 15– no prison for debt
- § 16– due process

Interestingly, section nine states that some defendants have a right to bail, something that is not guaranteed by the Bill of Rights found in the Federal Constitution. However, even though the Ohio Constitution can guarantee Ohioans more rights than the Federal Constitution, pursuant to principles of federalism, it cannot offer them fewer rights. For example, section 10 of the Ohio Bill of Rights provides that:

No person shall be compelled, in any criminal case, to be a witness against himself; but his failure to testify may be considered by the court and jury and may be made the subject of comment by counsel.

However, in *Griffin v. California* (1965), the Federal Supreme Court ruled that pursuant to the self-incrimination clause of the Fifth Amendment to the Federal Constitution, prosecutors and judges cannot comment to the jury about a defendant’s refusal to testify at trial. Thus, even though the Ohio Constitution would allow prosecutors and judges to make such comments, they cannot do so without violating a defendant’s federal rights.

Articles II, III, and IV of Ohio’s constitution describe the legislative, executive, and judicial branches, respectively. With regard to criminal law and procedure, the legislative branch is given the power to make laws, but there are some other sections of Article II that concern the criminal law. Section thirty-two states that the legislature cannot exercise any judicial power unless that power is expressly listed. Section thirty-nine allows the legislature to regulate expert testimony in criminal trials (added in 1912). Finally, section forty-one indicates that the legislature can regulate prison labor (added in 1912). Article III gives the executive branch (the governor) the power to grant reprieves, commutations, and pardons, and Article IV describes the makeup and role of the judicial branch (see Ohio’s Constitution, www.legislature.state.oh.us/constitution.pdf).

HISTORIC THEMES IN OHIO LAW Slavery/Civil Rights

Although slavery was prohibited in Ohio’s 1803 and 1851 constitutions, Blacks did not receive the same rights and protections as Whites, such as voting rights. Fearful of economic competition from Blacks, legislators passed Black Laws in 1807 to discourage Black migration into Ohio from southern states. These laws required Blacks to prove that they were not slaves and to post a \$500 bond. This discouraged many Blacks from settling in the state. Nonetheless, many passed through Ohio along the Underground Railroad, a network of secret hiding places used to assist slaves escape to freedom in Canada. Nearly 3,000 miles of Underground Railroad routes criss-crossed Ohio, the most famous of which was referred to as African Road. Ohioans who manned the Underground Railroad risked fines and imprisonment because Federal laws, including the Federal Fugitive Slave Act of 1850, imposed severe penalties upon persons assisting fugitive slaves. (see <http://www.dnr.state.oh.us/parks/tabid/80/Default.aspx>)

After the Civil War, the Fourteenth Amendment to the Federal Constitution was passed in 1868. The Amendment includes a clause that prohibits a state from denying any person within its jurisdiction the equal protection of the law. As a result, Ohio passed the Public Accommodations Law in 1884 which

prohibited discrimination in public buildings. Additionally, the Ohio Civil Rights Law was passed in 1894 to reinforce the Public Accommodations Law; it also made it illegal to discriminate in public businesses and buildings. Despite this, law enforcement officials rarely enforced the laws and businesses continued to discriminate against Blacks.

Due to the non-enforcement of these laws, the Ohio legislature enacted the Civil Rights Act of 1959. It prohibited employment discrimination based on "...race, color, religion, national origin, or ancestry" as well as provided for fair access to public facilities and private businesses. The Act also created the Ohio Civil Rights Commission to enforce the provisions of the Act. Both the Act and Commission are still in place today (see www.ohiohistorycentral.org).

Temperance

During the 1800s and early 1900s, religious and temperance groups in the U.S. felt that society was losing its moral compass and pointed to alcohol as partly to blame. In Ohio, so-called Blue Laws were passed during this time to prohibit the sale of alcohol on Sundays. These laws are still in place today, though they are a bit relaxed. The sale of alcohol can now take place during specified periods on Sundays, provided the seller obtains a special permit allowing it to do so. (see <http://codes.ohio.gov/orc/4301.22>)

In 1883, the Pond Law was passed, which levied a tax on saloons. This law lasted only two months, however, as it was struck down by the Ohio Supreme Court as unconstitutional. In 1886, the Dow Law was passed, which permitted the state to tax and regulate trafficking of alcohol in the state. Saloon owners were required to pay fees in order to operate their businesses, but local governments were permitted to prohibit sales in their own towns. In 1908, the Rose Law was enacted to allow communities to put Prohibition on the ballot and to stop saloons from operating in their cities. Although it appears that Ohio was vigorous in zeal to regulate alcohol, the temperance movement's work was sporadic throughout the state (see www.ohiohistorycentral.org).

SOURCES OF LAW IN OHIO

There are multiple sources of law in Ohio (see Textbook, page 8-14). The highest source of law is constitutional law; state constitutions are the highest sources of law in the state, but all state constitutions (and all state and federal laws) must abide by the provisions in the U.S. Constitution.

The most common source of law in Ohio is statutory law, passed by the state legislature and found in the Ohio Revised Code. The Code features twenty-six sections on topics ranging from agriculture to real estate. The Code has multiple sections for criminal law and procedure. Titles 19, 21, 23, and 25 deal with the structure and jurisdiction of the courts; for example,

The municipal court has jurisdiction of the violation of any ordinance of any municipal corporation within its territory...a judge of a municipal court does not have the authority to dismiss a criminal complaint, charge, information, or indictment solely at the request of the complaining witness and over the objection of the prosecuting attorney... (Ohio Revised Code, §1901.20 (A)(1)(2), 1998, available at <http://codes.ohio.gov/orc/1901.20>)

Title 29 contains the bulk of criminal law and procedure, focusing on defining crimes and punishments. The following is an example for the crime of menacing:

No person shall knowingly cause another to believe that the offender will cause physical harm to

the person or property of such other person, such other person's unborn, or a member of the other person's immediate family...Whoever violates this section is guilty of menacing, a misdemeanor of the fourth degree (Ohio Revised Code, §2903.22 (A),(B), 2001, available at <http://codes.ohio.gov/orc/2903.22>).

Title 29 also provides for victims' rights and outlines criminal procedure from arrest through sentencing and appeal:

A victim in a case may be present whenever the defendant or alleged juvenile offender in the case is present during any stage of the case against the defendant or alleged juvenile offender that is conducted on the record, other than a grand jury proceeding, unless the court determines that exclusion of the victim is necessary to protect the defendant's or the alleged juvenile offender's right to a fair trial (Ohio Revised Code, §2930.09, available at <http://codes.ohio.gov/orc/2930.09>)

When, after arrest, the accused is taken before a court or magistrate...the court or magistrate shall, before proceeding further...[i]nform the accused of the nature of the charge against him and the identity of the complainant and permit the accused or his counsel to see and read the affidavit or complaint or a copy thereof... (Ohio Revised Code, §2937.02 (A), available at <http://codes.ohio.gov/orc/2937.02>).

In addition to the criminal procedure outlined in the Ohio Revised Code, Ohio has a number of "Rules of Procedure" that apply to civil, criminal, appellate, juvenile, and claims courts and "Rules of Evidence" that were created by the Ohio Supreme Court. In 1968, Ohio voters approved the Modern Courts Amendment, which allowed the Ohio Supreme Court to create rules that govern all courts in Ohio. Although not statutory in nature, the Ohio Rules of Criminal Procedure is a supplement to the criminal procedure provisions found in the Ohio Revised Code.

Municipalities may also create statutory law, called ordinances. Ordinances are usually a duplication of the state code regarding some offenses, but ordinances only cover violations that call for less than one year incarceration or fines.

An interesting facet of Ohio's statutory criminal law involves the definitions of felonies and misdemeanors. In many states, felonies are defined as those offenses involving more than one year in prison, while misdemeanors are defined as those involving less than one year in jail (see Textbook, page 6). In Ohio, felonies are typically offenses involving more than six months in prison, while misdemeanors are typically those involving less than six months in jail.

A third source of law in Ohio is administrative law. Administrative law is outlined in the Ohio Administrative Code and is established by administrative agencies. The Code encompasses a wide range of topics from hunting and fishing to public health. Although administrative agencies are responsible for administrative law, adoption of new laws and regulations must be subject to multiple steps, including public hearings. Public hearings in Ohio are announced at <http://www.registerofohio.state.oh.us/>

Finally, common law exists in Ohio but only with regard to civil law. Ohio is a "code only" state. The legislature has abrogated all common law offenses. Nonetheless, courts can look to the common law when interpreting offenses that have been created by statute. (See Ohio Revised Code, §2901.03, available at <http://codes.ohio.gov/orc/2901.03>)

STRUCTURE OF THE OHIO COURT SYSTEM

Ohio's court system is comprised of four levels – courts of limited jurisdiction, courts of general jurisdiction, intermediate appellate courts, and a state supreme court. These are discussed below and further information can be found at the Ohio Supreme Court's website at www.sconet.state.oh.us.

Among Ohio's courts of limited jurisdiction, there are four primary courts. The first, Mayor's courts, generally have jurisdiction over local ordinances and traffic cases. Mayor's Courts are not part of the judicial branch, but they must report to the Ohio Supreme Court. They are present in areas with more than 100 residents and where there is no municipal court.. Upon election or appointment, new mayors must undergo training to conduct procedures in the mayor's courts; they are not required to be lawyers. (see <http://codes.ohio.gov/orc/19>) Municipal courts are found in most, but not all, counties in Ohio. These courts are generally found in more populated cities and have jurisdiction over misdemeanors, traffic cases, and civil cases up to \$15,000. There may be multiple municipal courts in one county. (see <http://codes.ohio.gov/orc/1901>) Where a municipal court has jurisdiction over an entire county, no county court is needed. However, where a municipal court covers only part of a county, county courts exercise jurisdiction over the other parts. County courts have much of the same subject matter jurisdiction as municipal courts, but only in those geographical areas that are not subject to a municipal court's physical jurisdiction. (see <http://codes.ohio.gov/orc/1907>) Finally, claims courts have jurisdiction in all lawsuits against the state for personal injury, property damage, contracts, and wrongful death.

Ohio's courts of general jurisdiction are comprised of four divisions, but all are called courts of common pleas, a name that is a holdover from early common law. The general division of the common pleas courts handles civil and criminal cases as well as appeals from most administrative agencies. The domestic relations division has jurisdiction over divorces and child custody. The juvenile division has jurisdiction over juvenile cases and most paternity actions. Finally, the probate division handles estates, mental illness cases, adoptions, and marriage licenses.

Ohio's eighty-eight counties are divided into twelve districts; these districts represent the jurisdiction of the twelve courts of appeal in Ohio. Working in three-judge panels, the courts of appeal have appellate review of the judgments of the common pleas courts as well as the municipal and county courts. They also have original jurisdiction in some cases, including those dealing with habeas corpus (allegations of unlawful confinement) and mandamus (compelling a public official to perform a required act).

The Ohio Supreme Court is the highest court in the state of Ohio. It is presided over by a Chief Justice and six associate justices. According to its website, the Ohio Supreme Court, is the court of last resort in Ohio. Most of its cases are appeals from the [12 district courts of appeals](#). The Court may grant leave to appeal felony cases from the courts of appeals and may direct a court of appeals to certify its record in any civil or misdemeanor case that the Court finds to be "of public or great general interest."

The Supreme Court also has appellate jurisdiction in cases involving questions arising under the Ohio or United States Constitutions, cases originating in the courts of appeals, and cases in which there have been conflicting opinions on the same question from two or more courts of appeals. The Supreme Court hears all cases in which the death penalty has been imposed...Finally, the Supreme Court's appellate jurisdiction extends to review of the actions of certain administrative agencies, including the Public Utilities Commission and the Board of Tax Appeals.

<http://www.supremecourt.ohio.gov/SCO/jurisdiction/default.asp>

Like Ohio's courts of appeal, the Ohio Supreme Court's original jurisdiction encompasses issues such as habeas corpus and mandamus, among others.

In recent years, the Ohio Supreme Court has tackled some controversial criminal law issues. For example, in 1996, the Ohio General Assembly passed Senate Bill 2, which altered sentencing policies in the state. Among the policies was a form of punishment called “bad time,” which allowed prison officials to prosecute, convict, and punish prisoners for criminal violations that occurred during the course of the prisoner’s incarceration. In effect, prison officials could form a judicial function and add time to a prisoner’s existing sentence if convicted of the criminal violation. The Ohio Supreme Court ultimately struck down this provision, stating that prison officials, as part of the executive branch, were performing a judicial function; this violates the doctrine of separation of powers under the Ohio constitution (see *State ex rel. Bray v. Russel*, 729 N.E.2d. 359, 2000).

In addition, the Ohio Supreme Court recently ruled on the extent to which juries can consider a defendant’s damaging childhood when deciding whether to impose a death sentence. Under Ohio law, childhood experience was a mitigating factor at sentencing, but only if the defendant suffered from some form of mental illness. In *State v Tenace*, however, the Ohio Supreme Court ruled that childhood experience, in that case, the horrific and traumatic childhood of the defendant, must be considered at sentencing, regardless of presence of mental illness. This case marked the first time, in over two hundred death penalty decisions, that the Ohio Supreme Court reversed a death sentence based on the troubled childhood of the defendant, stating that a traumatic childhood alone could justify a life sentence rather than the death penalty (see *State v. Tenace*, 109 Ohio St.3d 255, 2006).

Primary Actors in the Ohio Court System Judges

Judges in Ohio are elected by voters in a non-partisan election. Judges at all court levels are elected (or re-elected) every six years and there are no term limits. The minimum requirements for all judgeships are 1) at least six years experience in the practice of law and 2) a resident of the county (for common pleas courts) or district (for courts of appeal). Although there are no term limits, there is an age limit of 70 for all judges.

The entire state elects the justices on the Ohio Supreme Court, residents of each district elect their respective courts of appeal judges, and residents of each county elect the judges of the common pleas courts. In the event of a vacancy, the governor appoints a judge who then must be elected by voters during the next election cycle.

In 1996, the General Assembly passed Senate Bill 2 to establish, among other things, determinate sentencing throughout the state for most felony offenses. This greatly limited the discretion that judges enjoyed during the previous indeterminate sentencing years in a number of ways, including requiring them to engage in judicial fact-finding before imposing more than the minimum sentences, imposing maximum sentences, or imposing consecutive sentences. However, in *State v. Foster*, the Ohio Supreme Court followed the U.S. Supreme Court’s lead in *Blakely* and *Booker*, and held that if a state increases a defendant’s punishment based upon a finding of fact, that finding must be made by a jury. Otherwise, the increase violates the defendant’s Sixth Amendment right to a jury trial. Accordingly, the Ohio Supreme Court held that Ohio’s guidelines were merely advisory and that judges have full discretion to impose a sentence within a statutory range for that offense and no longer need to make findings or give reasons for imposing any sanction falling within that range. More discussion of this issue is found in Chapter 3.

Prosecutors

Under Ohio law, county prosecutors are elected every four years and must be licensed to practice law in the state. There are no term limits for prosecutors. Each county's voters elect their respective chief prosecuting attorney. The Ohio Revised Code also provides for the selection of assistant prosecutors by each county's chief prosecuting attorney. The state attorney general, though considered the chief law enforcement officer of the state, is actually the chief prosecutor in the state, although the attorney general has no direct supervisory power over the county prosecutors.

The structure of each county's prosecuting offices varies depending on the size of the county and the caseload. In Cuyahoga County (Cleveland), for instance, the prosecutor's office is comprised of six different units: Adult Criminal, Juvenile Justice, General Civil, Child Support Enforcement, Children and Family Services, and Real Estate Tax Foreclosure. The Adult Criminal Unit consists of eight divisions, including the Grand Jury, Major Trial, General Felony, Community Based Prosecution, Major Drug Offenders, Economic Crimes, Appeals, and Cold Case Divisions.

(see <http://prosecutor.cuyahogacounty.us/Default.aspx>)

Other, less populated counties, such as Wood County for instance, only contain a few units or divisions: criminal, civil, juvenile, youth services, and victim assistance. (see <http://www.woodcountyprosecutor.org/>)

Defense Attorneys

As in other states, defense attorneys in Ohio are either retained or assigned. The appointed counsel system in Ohio contains a mixture of public defenders and court-appointed counsel. Ohio has a Public Defender System, established in 1976, which establishes rules and guidelines for counties that utilize a public defender system. The Ohio Public Defender Commission is a nine-member body appointed by the governor and the Ohio Supreme Court to oversee the Ohio public defender system. Although it provides assistance to the counties, the Ohio Public Defender System's primary focus is appeals and post-conviction cases; approximately one-half of its staff and resources is devoted to death penalty cases.

In more populated counties, a public defender system is utilized; currently, twenty eight counties utilize a public defender system that is locally administered. In eleven other counties, assigned counsel is contracted out through the Ohio Public Defender System. Eight counties contract with non-profit organizations for indigent defense services. The remaining forty-one counties do not have a public defender office and use court appointed counsel exclusively. The type of defense system utilized in the counties is determined by each county's Board of Commissioners (see the Ohio Public Defender's website at <http://www.opd.ohio.gov/AboutUS/About.htm>)

Jurors

Jurors are often overlooked as court actors, yet they make critical decisions every day in the courtroom. In Ohio, defendants have a right to a trial by jury if they face possible incarceration. Bench trials are also allowed if the defendant wishes it.

According to Rule 23 of the Ohio Rules of Criminal Procedure, capital and other felony trials utilize twelve jurors, while misdemeanor trials utilize eight jurors. Rule 31 provides that verdicts for all trials must be unanimous. Jurors are chosen based on voter registration and driver's license lists maintained by each county. Once called for jury service, jurors are subject to voir dire, where they are subject to being challenged by the prosecutor or defense. Rule 24 outlines fourteen types of challenges for cause:

A person called as a juror may be challenged for the following causes:

- 1) That he has been convicted of a crime which by law renders him disqualified to serve on a jury.
- 2) That he is a chronic alcoholic, or drug dependent person.
- 3) That he was a member of the grand jury which found the indictment in this case.
- 4) That he served on a petit jury drawn in the same cause against the same defendant, and such jury was discharged after hearing the evidence or rendering a verdict thereon which was set aside.
- 5) That he served as a juror in a civil case brought against the defendant for the same act.
- 6) That he has an action pending between him and the State of Ohio or the defendant.
- 7) That he or his spouse is a party to another action then pending in any court in which an attorney in the cause then on is an attorney, either for or against him
- 8) That he has been subpoenaed in good faith as a witness in the case.
- 9) That he is possessed of a state of mind evincing enmity or bias toward the defendant or the state; but no person summoned as a juror shall be disqualified by reason of a previously formed or expressed opinion with reference to the guilt or innocence of the accused, if the court is satisfied, from the examination of the juror or from other evidence, that he will render an impartial verdict according to the law and the evidence submitted to the jury at the trial.
- 10) That he is related by consanguinity or affinity within the fifth degree to the person alleged to be injured or attempted to be injured by the offense charged, or to the person on whose complaint the prosecution was instituted, or the defendant.
- 11) That he is the person alleged to be injured or attempted to be injured by the offense charged, or the person on whose complaint the prosecution was instituted, or the defendant.
- 12) That he is the employer or employee, or the spouse, parent, son, or daughter of the employer or employee, or the counselor, agent, or attorney, of any person included in subsection (11).
- 13) That English is not his native language, and his knowledge of English is insufficient to permit him to understand the facts and the law in this case.
- 14) That he is otherwise unsuitable for any other cause to serve as a juror.

(see

<http://www.sconet.state.oh.us/LegalResources/Rules/criminal/CriminalProcedure.pdf>)

In addition to challenges for cause, Rule 24 allows jurors to be disqualified through the use of peremptory challenges. In capital cases, prosecutors and defense attorneys each have six peremptory challenges. In felony cases, each may utilize four; in misdemeanor cases, each side has three peremptory challenges.

LANDMARK FEDERAL CASES ORIGINATING IN OHIO

Mapp v. Ohio 367 U.S. 643 (1961)

Police were searching for a person of interest regarding a recent bombing and the possession of “policy paraphernalia.” Police tracked the person to a two-family dwelling in Cleveland; Dollree Mapp was living on the top floor of the dwelling. Police asked to enter the dwelling without a warrant and Ms. Mapp refused them entry. Hours later, police forcibly entered the dwelling with a piece of paper they claimed was a warrant. Ms. Mapp grabbed the paper and shoved it into her blouse. After the police handcuffed her and retrieved the paper, they proceeded to search the entire dwelling for the suspect and policy paraphernalia. Police found obscene materials in a trunk in the basement and arrested Ms. Mapp for

possession of those materials. At trial, the state could not prove the existence of a warrant. Nonetheless, the trial court allowed the prosecution to introduce evidence of the obscene materials. On appeal, Ms. Mapp claimed that police did not have authority to enter the dwelling without a warrant and the U.S. Supreme Court agreed. Moreover, it found that, “[a]ll evidence obtained by searches and seizures in violation of the Federal Constitution is inadmissible in a criminal trial in a state court.” Thus, the trial court should have excluded the obscene materials as evidence that Ms. Mapp violated the state’s obscenity statute. This case extended the federal exclusionary rule to the states.

Terry v. Ohio 392 U.S. 1 (1968)

Officer McFadden of the Cleveland Police Department was patrolling the streets when he witnessed three suspicious individuals whom he believed were “casing a job, a stick-up.” Upon approaching the individuals, Officer McFadden asked them questions, to which they “mumbled something.” Fearing for his safety, Officer McFadden proceeded to frisk each individual’s outer clothing, finding a firearm on two of the individuals. The individuals objected to the officer’s actions, claiming that they were not doing anything illegal and that the officer’s actions amounted to an illegal search and seizure. The U.S. Supreme Court disagreed, explaining that Officer McFadden had the ability to briefly question an individual if he had a reasonable suspicion that criminal activity was afoot. After the inquiry, if he had a reasonable suspicion that the person was armed and dangerous, he had the authority to conduct a pat down of the outer clothing of the individuals to search for weapons. This case was important because it established that police can conduct a “stop and frisk” on the basis of a reasonable suspicion, even though they cannot perform an arrest without probable cause.

Jacobellis v. Ohio 378 U.S. 184 (1964)

Jacobellis was the manager of a movie theatre in Cleveland Heights and was charged with possessing and showing an obscene film, "Les Amants" ("The Lovers"), in violation of the Ohio Revised Code. The question in this case was whether the film was, in fact, obscene according to the First Amendment’s protection of free expression. The U.S. Supreme Court ruled that the movie was not obscene, prompting Justice Stewart to declare that the First Amendment protects all but “hard-core pornography.” Further, Justice Stewart noted: “I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description; and perhaps I could never succeed in intelligibly doing so. But I know it when I see it, and the motion picture involved in this case is not that.” The U.S. Supreme Court has since articulated a clearer standard regarding the test used to determine whether materials are obscene, and thus do not enjoy First Amendment protection. Pursuant to that test, very few items are categorically considered obscene. Nonetheless, child pornography remains one of the few exceptions. However, questions have arisen about even that category of obscene material, and criminal liability for possessing it, with advent of “virtual” child pornography.

REFERENCES

Ohio Revised Code - <http://codes.ohio.gov/>

Griffin v. California, 380 U.S. 609 (1965)

Jacobellis v. Ohio, 378 U.S. 184 (1964)

Mapp v. Ohio, 367 U.S. 643 (1961)

State ex rel. Bray v. Russel, 729 N.E.2d. 359, 2000

State v. Foster, 109 OhioSt.3d, 1 (2006).

State v. Tenace, 109 OhioSt.3d255, 2006

Terry v. Ohio, 392 U.S. 1 (1968)

REVIEW QUESTIONS

1. What is the Treaty of Greenville?
 - a. A treaty between the British and Native Americans to fight against Ohio settlers
 - b. A treaty signed after the Battle of Fallen Timbers between Ohio settlers and Native Americans to acquire lands and make peace
 - c. A treaty between temperance groups and saloon owners to regulate alcohol sales on Sunday
 - d. A treaty between Ohio settlers and the British to eradicate Native Americans in the Northwest Territory

2. What is the name of Ohio's trial courts of general jurisdiction?
 - a. Mayor's courts
 - b. Municipal courts
 - c. Common Pleas courts
 - d. County courts

3. Most of Ohio's criminal law and procedure is found in which of the following?
 - a. Ohio constitution
 - b. Ohio bill of rights
 - c. Ohio Revised Code
 - d. Ohio Administrative Code

4. How are judges selected in Ohio?
 - a. elected by voters
 - b. selected by the legislature
 - c. selected by the governor's advisory panel
 - d. elected by county prosecutors

5. How did *Mapp v. Ohio* affect criminal procedure?
 - a. it established the practice of "stop and frisk" for police procedures
 - b. it extended the exclusionary rule for illegally-seized evidence to the states
 - c. it stated that prosecutors are not allowed to comment on a defendant's refusal to testify
 - d. it established rules for determining obscenity

DISCUSSION QUESTION

As stated in this text, pursuant to principles of federalism, the Ohio constitution can provide a defendant

with more rights than the Federal Constitution. When it does so, however, it may mean that a defendant in Ohio gets more rights than a defendant in another state. What potential benefits does such a mixed system offer? What are the potential problems?

WEB RESOURCES

- www.sos.state.oh.us – website for the Ohio Secretary of State, contains information about Ohio’s history
- www.ohiohistorycentral.org – provides a detailed history of Ohio on a wide range of topics
- www.lsc.state.oh.us/statusreport.html - website of the Ohio Legislative Services Commission, providing reports on legislation in Ohio
- <http://www.legislature.state.oh.us/today.cfm> - website of the Ohio General Assembly
- www.legislature.state.oh.us/constitution.pdf - a link to a current version of Ohio’s constitution
- <http://www.supremecourt.ohio.gov/>– website of the Ohio Supreme Court, with links to information about the Ohio judicial system at all levels
- <http://www.governor.ohio.gov/> - website for Ohio’s Office of the Governor
- www.ohio.gov/ohio/ohiolaws.html - website of the Ohio state government, with links to the Ohio Revised Code
- www.ohioabar.org – website of the Ohio Bar Association, with information about many aspects of Ohio law, including sources of law and structure of the Ohio court system
- http://opd.ohio.gov/us/US_AboutUS..htm - website of the Ohio Public Defender for information about Ohio’s appointed counsel system and yearly reports regarding the performance of the OPD
- <http://www.ag.state.oh.us/> - website of the Ohio Attorney General’s Office for information about Ohio’s chief legal counsel
- http://www.publicsafety.ohio.gov/odps_ocjs/- website for Ohio’s Office of Criminal Justice Services for statistics about Ohio’s Criminal Justice System
- www.findlaw.com – website for public access to state and federal court decisions