STONE V. POWELL: THE FUTURE
OF CRIMINAL APPEALS

by

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ABSTRACT

Predicting the future for governmental entities is difficult; however, given the incremental nature of change in the courts, "enlightened" guesses can often be made. This manuscript examines the Burger Court's move toward disengagement from actively supervising state criminal proceedings and the impact this change in philosophy will have on the criminal appellate process.

Introduction

The United States Supreme Court decided the case of Stone v. Powell (1976), in which the majority of the Court held that state cases given the "opportunity for full and fair litigation" (p.486) need not be reheard in the federal courts. The case was viewed as restricting application of the exclusionary rule postulated in Mapp v. Ohio (1961). Additionally, the decision was directed at limiting the availability of federal habeas corpus relief for state prisoners.

Two questions are immediately raised by a case like Stone v. Powell: what is the immediate impact in terms of state court criminal proceedings and work loads, and what are the implications for federal-state court relations? Answers to both of these questions may reflect on the future of criminal courts and especially on criminal appeals.

The Concept of Federalism

The "traditional" view of federalism distinguishes between the functions and operations of the federal and state courts and thus emphasizes a two-tiered judicial system -- separate, but interrelated. This was essentially the approach taken in developing the American court system by the authors of the Judiciary Act of 1789.

Laurence Tribe (1978) says that federalism is most appropriately viewed as an "institutional interdependence. . . that best summarizes the American ideal of protecting liberty by fragmenting power" (p. 17). Judicial federalism means, in short form, a dual court system with the "existence of two sets of courts, state and federal, with authority to adjudicate questions of state and federal law" (Gunther, 1975, p. 1605).
Some observers believe that the Supreme Court under Chief Justice Burger has been much more cognizant of the "traditional" concept of federalism than was its predecessor, the Warren Court, and thus much more deferential to the state courts. Therefore, it is important to ask: what are the implications of Supreme Court disengagement from an area such as criminal procedure that it has closely supervised for nearly twenty years?

The Changing Nature of Judicial Federalism

With overlapping jurisdictions and responsibilities, the conflict between federal courts and state courts seems inevitable. As a group of experts in judicial administration once noted:

... the differences in the view which state and federal courts respectively take as to the law applicable to the same case result in irritation which has somewhat impaired the usefulness of the federal courts in some localities (Eliot, Storey, Braudeis, Rodenbeck and Pound, 1977, p. 54).

When a Supreme Court is judicially active and interventionist, as was the Warren Court, the problem of "friction" between federal and state courts is exacerbated. As has been noted:

The Warren Court did not speak in terms of "discretion," "comity," and "federalism." Indeed, if any attitude was expressed toward the workings of the state and lower