**Adamson v. California**

Setting- desire fo Court to "modernize Bill of Rights"

Facts: Defendant convicted by a jury of 1st degree murder; Sentenced to death. Section of challenged law permit the failure of a defendant to explain or to deny evidence against him to be commented upon by Court and counsel and to be considered by court and jury.

This forces an accused who is a repeated offender to choose between the risk of having his prior offenses disclosed to the jury or of having it draw harmful inferences from uncontradicted evidence that can only be denied or explained by the defendant.

Arguments

Adamson States

1. D/P violated by Cal Stat Right to comment does not

in that req self incrim violate 14th

 Twining held right agst

 self-incrim not incorporate

2. Cal Stat violates 14th

notion of fair public trial

3. Pros used prejudicial 14th does not require an

evidence error free trial.

Issue: Does 14th incorporate 5th privilege against self/incrim

Holding: No. Privilege is not part of P & I or D/P

Judgment: Affirmed

Justice Reed:

1.D argues: self/incrim a fundamental national immunity or p & i of 14th.

2. d/p of 14th

3. Assume that permission by law to the court and jury to comment upon and consider the failure of D to explain or to deny is testimony any evidence or facts in the case against him would infringe defendant's privilege against self incrimination under the 5th.

4. "This reading of the Federal Constitution has heretofore found favor with the majority of this court as a natural and logical interpretation. It accords with the constitutional doctrine of federalism by leaving to the states the responsibility of dealing with the privileges and immunities of their citizens except those inherent in national citizenship It is the construction placed upon the amendment by justice whose own experience had given them contemporaneous knowledge of the purposes that led to the adoption of the Fourteenth Amendment. This construction has become embedded in our federal system as a functioning element in preserving the balance between national and state power. We affirm the conclusion of **Twining** and **Palko** cases that protection against self-incrimination is not privilege and immunity of national"

5. A right to fair trial is a right protected by the d/p of 14th. The d/p of 14th does not draw all the rights of the federal B/R under its protection. Contention made and rejected in **Palko.**

6. For a state to require testimony from an accused is not necessarily a breach of a state's obligation to give a fair trial. Must examine the effect of the California law as applied to this trial to see whether the comment on failure to testify violates the protection against state action that the due process clause does grant an accused.

7. Argument over the commenting; General such comments are forbidden in American jurisdiction; some reasons for allowing it.

8. *We are of the ...that a state may control such a situation accordance with its own ideas of the most efficient administration of criminal justice. (omitted by book's editors)The purpose of d/p is not to protect an accused against proper conviction but against an unfair conviction. When evidence is before jury that threatens convictions, does not seem unfair to require him to answer it or make a choice between answering and then answering other questions or not answering at all. Witnesses also have to make these choices.*