

SUPREME COURT OF THE UNITED STATES

No. 92-833

KEVIN ALBRIGHT, PETITIONER v. ROGER
OLIVER, ETC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT
[January 24, 1994]

JUSTICE SCALIA, concurring.

One can conceive of many abuses of the trial process (for example, the use of a patently biased judge, see *Mayberry v. Pennsylvania*, 400 U. S. 455, 465-466 (1971)), that might cause a criminal sentence to be a deprivation of life, liberty or property *without due process*. But here there was no criminal sentence (the indictment was dismissed), and so the only deprivation of life, liberty or property, if any, consisted of petitioner's pretrial arrest. I think it unlikely that the procedures constitutionally "due," with regard to an arrest, consist of anything more than what the Fourth Amendment specifies; but petitioner has in any case not invoked "procedural" due process.

Except insofar as our decisions have included within the Fourteenth Amendment certain explicit substantive protections of the Bill of Rights—an extension I accept because it is both long established and narrowly limited—I reject the proposition that the Due Process Clause guarantees certain (unspecified) liberties, rather than merely guarantees certain procedures as a prerequisite to deprivation of liberty. See *TXO Production Corp. v. Alliance Resources Corp.*, 509 U. S. ___, ___-___ (1993) (SCALIA, J., concurring). As I have acknowledged, however, see *Michael H. v. Gerald D.*, 491 U. S. 110, 121 (1989) (opinion of SCALIA, J.), this Court's current jurisprudence is otherwise. But that jurisprudence rejects "the more

generalized notion of `substantive due process'" at least to this extent: it cannot be used to impose additional requirements upon such of the states' criminal processes as are already addressed (and left without such requirements) by the Bill of Rights. *Graham v. Connor*, 490 U. S. 386, 395 (1989). That proscription applies here. The Bill of Rights sets forth, in the Fifth and Sixth Amendments, procedural guarantees relating to the period before and during trial, including a guarantee (the Grand Jury Clause) regarding the manner of indictment. Those requirements are not to be supplemented through the device of "substantive due process."

92-833—CONCUR

ALBRIGHT v. OLIVER

For these reasons, in addition to those set forth by the CHIEF JUSTICE, the judgment here should be affirmed.