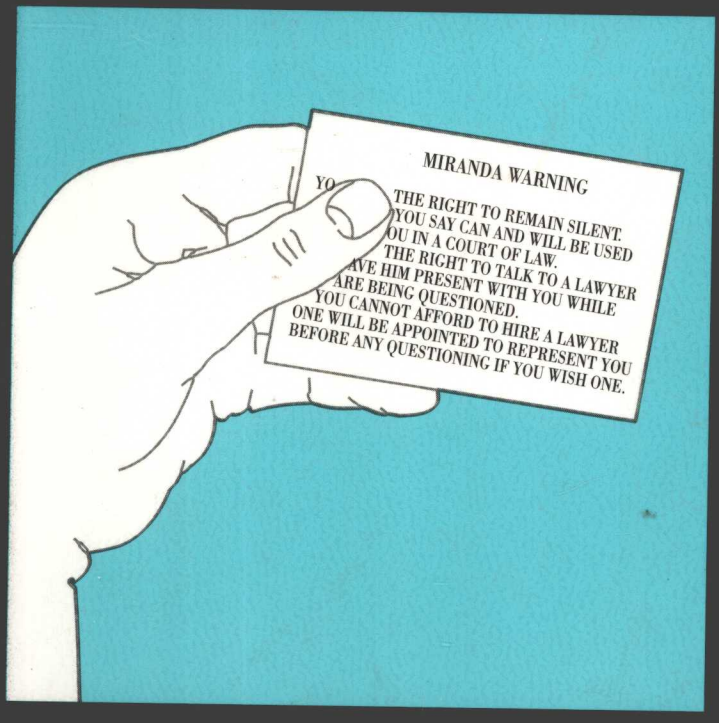
CRIMINAL PROCEDURE *and the* CONSTITUTION



Leading Supreme Court Cases and Introductory Text (2003 Ed.)

Israel • Kamisar • LaFave

CRIMINAL PROCEDURE AND THE CONSTITUTION

LEADING SUPREME COURT CASES AND INTRODUCTORY TEXT

2003 EDITION

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Preface

This collection of leading Supreme Court cases is designed for those instructors who want to cover a wide range of criminal procedure topics but have available only a limited amount of time. In the main, the cases in this book were selected because of their substantial contemporary significance; they reflect the Supreme Court's current position on issues of major importance regarding the operation of our federal and state criminal justice systems. But we have also included some venerable cases that contribute significantly to an understanding of current trends and developments.

These materials differ in important ways from our three other sets of teaching materials in this field, *Modern Criminal Procedure (Modern)*, *Basic Criminal Procedure (Basic)* and *Advanced Criminal Procedure (Advanced)*. Those materials also include a goodly number of lower court cases, many of which focus on state law developments, and contain many authors' Notes and Questions and extracts from books, reports, articles, model codes, and proposed standards. By contrast, the present book is limited to the Supreme Court decisions themselves.

We have, of course, relied on and profited by the rich literature in this field in the course of preparing the introductory comments that appear at the outset of each chapter and at the beginning of most sections of each chapter. But this introductory text does not explore any particular issue in depth. Nor is it contentious, as are many of the law review articles extracted in our other books. The brief introductory comments, rather, are designed only to place the selected cases that follow in general historical and doctrinal perspective.

Although the topics covered in *Basic* are treated in considerable depth, the scope of that book is quite limited. *Basic*'s major emphasis is on police practices, e.g., arrest, search and seizure, police interrogation and confessions, and pre-trial identification procedures; no attention is given to the more formal phases of the criminal process (which are treated separately in *Advanced*). The present volume, on the other hand, not only gives issues involving the police considerable attention but covers a number of other aspects of the criminal process, e.g., criminal discovery, double jeopardy, fair trial/free press, plea bargaining, and the trial. Our "big book," *Modern*, also covers a wide range of topics, but because it explores these topics in much greater depth it is about twice the size of this book. (There is, of course, no law prohibiting an instructor from dipping into *Modern* in order to enrich class discussion of one or more of the issues raised by the materials in this book.)

As is apparent from these comparisons, we envision this collection of leading cases as being used in a course of a distinctly different character than the various possibilities we contemplated with respect to either *Modern* or *Basic*. This book is especially suited to a survey course having as its purpose a critical examination of how the United States Supreme Court has grappled with a range of basic and highly controversial issues that arise at various stages of the criminal process—issues as diverse as when the police should be permitted to "search" or "seize" without prior judicial approval or traditional "probable cause," how far a secret government agent may go in "encouraging" a person

to commit a crime or "tricking" him into making an incriminating statement, when a defense lawyer's performance is so "ineffective" as to vitiate a conviction, when a prosecutor must disclose information in his files, and when a defendant must endure a second trial for the same or a related offense.

In *Modern, Advanced,* and *Basic*, our hope and expectation has been that a student working with those materials descry not only the forest (or in the case of *Advanced* and *Basic*, at least a good-sized grove), but also the trees. Here, by contrast, the emphasis is decidedly sylvan.

It is possible, of course, to produce a thin volume of teaching materials by collecting snippets of many opinions. This approach has been emphatically rejected. The modest size of this volume has been attained, rather, by the judicious selection of leading cases. Those cases that have been selected are set forth at considerable length.

Moreover, because the use of these materials will mark many students' first real exposure to the U.S. Supreme Court as an institution, we have resisted the temptation to delete, or even to summarize, concurring and dissenting opinions. Instead, we have taken pains to set forth the views of *all* members of the Court at considerable length in such cases as *Leon, Mapp* and *Miranda*.

In the main, we have followed a chronological approach in ordering the cases which appear in this book. Following the introductory materials, which include an overview of the criminal justice system and a general consideration of due process, the criminal justice system is examined from arrest and search and "on the street" questioning all the way through to the decision on guilt and imposition of sentence.

We have occasionally departed from the chronological scheme when it seemed appropriate to do so. For example, the right to counsel, "the most pervasive right" of an accused, is first considered in advance of the confession and lineup chapters so that the Court's reliance on the right to counsel in those contexts may be better understood. (Other aspects of the right to counsel, such as the necessary character and quality of representation at trial and in preparing for trial, are considered later in the book.) So too, post conviction review is considered in the context of the review of particular claims rather than in a separate chapter on habeas corpus.

The cases in this book have been edited with the above-stated purposes in mind. We have tried hard—indeed, it would not be an exaggeration to say that we have made heroic efforts—to keep these materials lean and manageable. We have also tried to ensure that within the confines of particular cases the student's attention is focused upon the broader themes and issues.

Case citations and footnotes have been eliminated from the judicial opinions without so specifying. When three asterisks appear, this designates omission of a portion of the opinion deemed inessential to an understanding and appraisal of the issues and holding in that case.

Numbered footnotes are from the original materials; lettered footnotes are ours. We would call particular attention to those lettered footnotes which contain summaries of Supreme Court decisons related to the major cases presented in this book. These footnotes often indicate how the Court later dealt with a problem alluded to in the principal case, or how a comment in the principal case later came to have importance regarding a related issue.

To make our sentence structure as short and direct as possible, we often have not used the phrases "he or she" or "his or her." Where we have used the masculine or feminine pronoun alone, consistent with the traditional rules of construction in legal texts, the pronoun should be read to encompass both male and female actors unless the context clearly indicates otherwise.

The cut-off print for inclusion of Supreme Court cases in this volume was the end of the Court's 2002–2003 term. Citations are to the United States Reports, unless the case had not yet appeared in those reports. In that event, we have used the Supreme Court Reporter citation (if available).

Experience has taught us that there will undoubtedly be some typographical errors in a publication of this length. We would appreciate your calling such errors to our attention, so they can be corrected in the next printing. We would, of course, also appreciate hearing from readers who have criticisms or suggestions regarding the substantive content of the volume.

We are most appreciative of the able secretarial assistance provided, too often under great stress, by Millie Arthur, Carol Haley, Mary Lebert and Carolyn Lloyd, in the preparation of the first edition of this volume.

Dickerson v. United States, the case that reaffirms *Miranda,* is not an easy case to place. In past years we have put it right after *Miranda*. Upon further reflection, we have decided to place it in a new section, Ch. 6, § 5, thereby postponing treatment of the case until students have first read and discussed such cases as *New York v. Quarles, Oregon v. Elstad* and *Withrow v. Williams,* all set forth in Ch. 6, § 4. However, some instructors may still want to take up *Dickerson* immediately after *Miranda*. Of course, they are free to do so.

JEROLD H. ISRAEL
YALE KAMISAR
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July, 2003

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