

Criminal Procedure *and the* Constitution

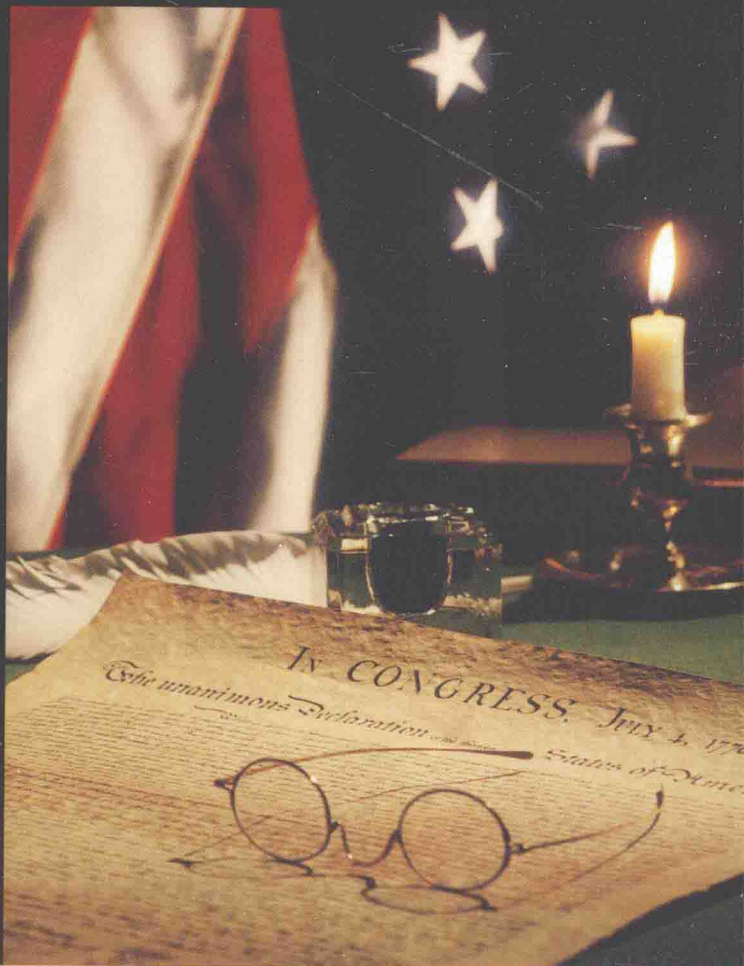
Leading Supreme

Court Cases and

Introductory Text

(2014 Edition)

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**CRIMINAL PROCEDURE
AND THE
CONSTITUTION
LEADING SUPREME COURT CASES
AND INTRODUCTORY TEXT
2014 Edition**

by

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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)* (all co-authored with Orin S. Kerr). 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.

The editorial commentary in this book also is significantly different from that in our other books. 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.

So too, the coverage of this book differs, in particular, from that in our other books. Our focus here is entirely on constitutional regulation, and it extends to the entirety of the criminal justice process. *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

(including non-constitutional regulation), 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.^a 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. Still, we recognize that complete coverage may not be feasible (depending upon the course’s credit-hours) or desirable (depending upon the instructor’s goals). Deletions can be geared to whole chapters, sections within chapters, or cases within sections (as the sections in Chapter 3, 6, and 15, in particular, include collections of more than 5 cases). The case selection has focused on including in each section at least one case that directs the student’s attention to the broader themes and issues presented by the particular subject matter.

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 decisions 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

^a Within each chapter, the organization of the materials rests, in large part, on the experience of a particular coauthor in teaching these materials. Some instructors will undoubtedly want to depart from that organization. Thus, many instructors prefer to treat the exclusionary rule at the end, rather than the start, of Chapter 3. So too, in Chapter 6, *Dickerson v. United States*, the case that reaffirms *Miranda*, is placed in § 5 (where it comes after key pre-*Dickerson* rulings), but in the past, we placed it immediately after *Miranda*. Similarly, because the *Pantane* and *Seibert* cases in § 4 shed light on the meaning of *Dickerson* and *Chavez v. Martinez* (in § 6), the instructor may want to postpone treatment of (or return to) those cases after assigning § 6.

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.

Our collection of cases is updated annually to include decisions from the latest Supreme Court term. The annual editions typically add at least a few decisions from the last term as main cases and often refer to several other cases from that term in the introductory notes or footnotes. At the same time, various deletions are made to ensure that the size of the volume remains roughly the same.

The cut-off point for inclusion of cases in this volume was the end of the Court's 2013–2014 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. Please send your comments and corrections to Israel@law.ufl.edu.

We are most appreciative of the able secretarial assistance provided, too often under great stress, by Katy Morris, Mary Lebert, and Selah Lodge in the preparation of the current edition of this volume.

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