

ASPEN COURSEBOOK SERIES

CASES ON CRIMINAL PROCEDURE

2013-2014

ROBERT M. BLOOM



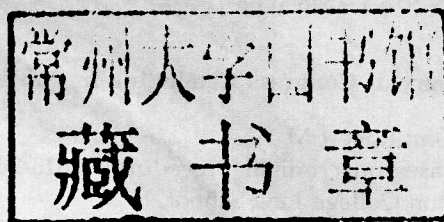
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Cases on Criminal Procedure 2013-2014

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Professor of Law
Boston College Law School



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**To my wife, Tina, my children, Martha, David, and Stephanie,
my grandchildren, Liam and Matthew, and to the memory of my parents,
Henry and Martha.**

R.M.B.

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Preface

Nowhere are differences in constitutional decision making by the United States Supreme Court in a confined period of time (the past 50 years) more graphic than in criminal procedure. Criminal procedure offers a rich opportunity to compare and contrast Supreme Court decisions on police practices involving the Fourth, Fifth, and Sixth Amendments to the United States Constitution. *Cases on Criminal Procedure* demonstrates the different approaches taken initially by the Warren Court and then later by the Burger, Rehnquist, and Roberts Courts as they sought to achieve a balance between individual rights and the ability of police to solve crime. So that students can graphically observe how the justices have undertaken to balance those issues in their decision making, the book sets forth the voting alignment for each case and also includes a chart of the makeup of the Court, allowing readers to monitor the individual justices involved in each decision.

The differences in approaches taken by the Supreme Court are considered not only for comparative purposes but also to identify approaches taken by many states as they interpret their own laws. In recent years, the present Supreme Court has interpreted the United States Constitution in a way that curtails individual rights. As a result, some states have turned to their own constitutions to provide greater individual rights, those that were previously provided by the Warren Court. Some characterize this approach as the “new federalism.” In addition, societal challenges such as the war on drugs and the war on terror have influenced Court decisions and can explain the curtailment of individual rights since the Warren Court. The cases in this book have been arranged with such themes in mind.

Each chapter opens with a brief introduction describing the relevance of each case presented. Students will observe that the cases during the Warren Court often were more protective of the individual and restrictive of police power. Subsequent Supreme Courts have often somewhat limited individual rights and have been more permissive with regard to police power. I deliberately refrain from significant analysis of the cases presented so that teachers can have maximum range and authority in their pedagogical approach. The number of cases included is expansive, to provide teachers with the flexibility to select the particular cases that best fit their teaching.

The book can also be used as a reference tool for study and application of the Fourth, Fifth, and Sixth Amendments.

To introduce the different approaches taken by the Supreme Court, the cases in Chapter 1 deal with the exclusionary rule, the principal remedy for addressing constitutional violations. The chapter illustrates how the rule has evolved and outlines how its application has been cut back in recent years. The cases that are included present a road map to the Court's attitudes toward the power of law enforcement and the rights of individuals as well as to the differences between the Warren Court and subsequent Courts.

Because the book focuses on the Constitution and its effect on governmental practices, Chapters 2 through 6 address relevant police practices. Chapters 2 through 4 deal with searches and seizures and their Fourth Amendment implications. The subject of Chapter 5 is interrogation, which the Court analyzes using the Fifth Amendment protection against self-incrimination, the Sixth Amendment right to counsel, and the due process clause in the Fifth and Fourteenth Amendments. Chapter 6 deals with eyewitness identification, a process that raises potential Sixth Amendment and due process issues. Taken together, the chapters of this book open a key perspective on the range and variety of Supreme Court approaches to ensuring some of our most fundamental rights and goals as a society.

Robert M. Bloom
October 2012

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Pertinent Amendments to the Constitution of the United States

AMENDMENT IV—Search and Seizure (1791)

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V—Trial and Punishment, Compensation for Takings (1791)

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI—Right to Speedy Trial, Confrontation of Witnesses (1791)

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

AMENDMENT XIV—Citizenship Rights (1868)

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Justices of the Supreme Court from 1930 to the Present

