



JOSHUA DRESSLER
GEORGE C. THOMAS, III

Criminal Procedure

Investigating Crime

THIRD EDITION

THOMSON
★
WEST

CRIMINAL PROCEDURE: INVESTIGATING CRIME

**[from CRIMINAL PROCEDURE:
PRINCIPLES, POLICIES AND
PERSPECTIVES, THIRD EDITION]**

By

Joshua Dressler

*Frank R. Strong Chair in Law
Michael E. Moritz College of Law
The Ohio State University*

George C. Thomas III

*Distinguished Professor of Law
Judge Alexander P. Waugh Sr. Distinguished Scholar
Rutgers University School of Law
Newark, New Jersey*

AMERICAN CASEBOOK SERIES®

THOMSON
—★—™
WEST

Thomson/West have created this publication to provide you with accurate and authoritative information concerning the subject matter covered. However, this publication was not necessarily prepared by persons licensed to practice law in a particular jurisdiction. Thomson/West are not engaged in rendering legal or other professional advice, and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.

American Casebook Series and West Group are trademarks registered in the U.S. Patent and Trademark Office.

© West, a Thomson business, 2003

© 2006 Thomson/West

610 Opperman Drive
P.O. Box 64526
St. Paul, MN 55164-0526
1-800-328-9352

ISBN-13: 978-0-314-16664-7

ISBN-10: 0-314-16664-5



TEXT IS PRINTED ON 10% POST
CONSUMER RECYCLED PAPER



West's Law School Advisory Board

JESSE H. CHOPER

Professor of Law,
University of California, Berkeley

DAVID P. CURRIE

Professor of Law, University of Chicago

YALE KAMISAR

Professor of Law, University of San Diego
Professor of Law, University of Michigan

MARY KAY KANE

Chancellor, Dean and Distinguished Professor of Law,
University of California,
Hastings College of the Law

LARRY D. KRAMER

Dean and Professor of Law, Stanford Law School

WAYNE R. LaFAVE

Professor of Law, University of Illinois

JONATHAN R. MACEY

Professor of Law, Yale Law School

ARTHUR R. MILLER

Professor of Law, Harvard University

GRANT S. NELSON

Professor of Law,
University of California, Los Angeles

JAMES J. WHITE

Professor of Law, University of Michigan

To Dottie, my life's partner, for everything
To Sandy Koufax for one thing in particular: not pitching on Yom Kippur

— J.D.

To Gretchen, for our love and friendship, and for traveling along with me.

— G.T.

*

Preface

Criminal Procedure: Investigating Crime

This book is a complete, unchanged reprint of Chapters 1-10 and 14 of Dressler & Thomas, *Criminal Procedure: Principles, Policies and Perspectives* (3d ed. 2006).

It is a pleasure to teach Criminal Procedure. Much of the course features constitutional law, with its fascinating questions about theories of interpretation and about fidelity to text and history. Criminal procedure also brings students face to face with fundamental policy questions about the appropriate balance between protecting us *from criminals* and protecting us *from the government*. We want the criminal process to solve and prosecute crime but we also want controls that protect our privacy and autonomy. (The aftermath of the September 11 attacks, and recent disclosures about telephone surveillance by the government, make this point all too well.) Most students have had contact with the police, if only to receive a traffic ticket. Even minor events like traffic stops can lead to a search of the car and can manifest racial profiling or other abuses of police authority. Students also “know” about policing from television shows like the late *NYPD Blue* and the endless variations of *Law and Order*.

Television shows over the years have also featured the criminal trial process and the role of lawyers in it. Think of *Perry Mason* in black and white, *Perry Mason* in color, *Law and Order*, and the real-life drama of O.J. Simpson and countless other actual trials. From these shows, and news accounts, the country has acquired a set of beliefs and attitudes about the prosecution, defense, and adjudication of criminal defendants. The focus at this stage of the process shifts to finding the right balance between convicting the guilty in an efficient manner and providing fairness to all and freeing the innocent. Fundamental policy issues underlie much of the doctrine here as well. Does due process permit non-unanimous verdicts or exclusion of jurors on the basis of race? Does due process require prosecutors to turn over all favorable evidence to the defense or only that evidence likely to produce an acquittal?

If criminal procedure is as topical as today’s newspaper or a *Court TV* show, it is also deeply steeped in history. Criminal trials appear in Roman law and Hebrew law. The right to counsel surfaces in Roman law and reappears in the twelfth century laws of Henry I. English history is filled with criminal procedure controversies, from the dispute between Henry II and Thomas Becket in 1168 over the authority of church courts, to the Magna Carta, the reign of Henry VIII, and the Reformation. A study of

criminal procedure is not just a search of now but also of our past. In our past, we find the enduring values that shape court decisions today.

A casebook cannot be all things to all people, but it should offer sufficient flexibility to accommodate diverse teaching goals and pedagogical methods. We include materials that encourage students to think about constitutional theory and judicial craftsmanship as they read cases and learn doctrine. In the selection of cases, less can be more. We have chosen not to edit cases down to their bones in order to include more cases. We offer broad coverage but also give students and professors the chance to dig deep into the important constitutional cases.

Professor Anthony Amsterdam famously observed about Supreme Court jurisprudence, that “once uttered, these pronouncements will be interpreted by arrays of lower appellate courts, trial judges, magistrates, commissioners and police officials. *Their* interpretation * * * for all practical purposes, will become the word of god.” Anthony G. Amsterdam, *The Supreme Court and the Rights of Suspects in Criminal Cases*, 45 N.Y.U. L. Rev. 785, 786 (1979). We seek the “word of god” by including empirical research data where it exists, political science analyses, and news accounts that illuminate how law works “in the trenches.”

We believe that students should learn early, and think often, about the overarching principles of the subject matter they are learning. In Chapter 1 we display failures of the criminal process as a way to get students to identify appropriate goals for a criminal process. Then we invite them to return again and again to those goals to understand, and sometimes to critique, Supreme Court doctrine. Why does the Sixth Amendment require appointed counsel in almost every case while the Fourth Amendment receives a grudging interpretation? We believe this, and many other, interpretational issues are illuminated by considering the importance that a criminal process places on accurate outcomes, a goal that is inevitably hindered when limitations are placed on the power of government to seek evidence.

As much as we would like the law to be neutral, we are realistic enough to know that it does not always achieve that goal. And we think it important for students to realize the ways in which law fails to achieve neutrality. Thus, we do not skirt—in fact, we confront—the effects of racism and other malignant -isms in the criminal process.

A casebook need not be forbidding to inspire students to display high standards of thought, analysis, and criticism. Users of our book will discover some informality, even humor (heresy!), in places. For us, this style has worked well. We seek balance between principal cases and the Notes and Questions that illuminate or expand on the principal cases. Thus, professors who want to teach the cases can rely on the Notes and Questions to facilitate a more traditional classroom discussion. Those who like the problem method will find enough Problems in conjunction with the Notes and Questions to keep a lively class discussion going. And those,

like Dressler and Thomas, who blend the traditional case analysis with the problem method, will find the book especially well suited to that approach.

Outside reading materials. There are many useful sources for additional reading. Among the excellent general resources are Joshua Dressler & Alan C. Michaels, *Understanding Criminal Procedure* (4th ed. 2006); Wayne R. LaFave, Jerold H. Israel & Nancy J. King, *Criminal Procedure* (4th ed. 2004); and Charles Whitebread & Christopher Slobogin, *Criminal Procedure* (4th ed. 2000). For those who want even more coverage of the Fourth Amendment, nothing can compare to Wayne R. LaFave, *Search and Seizure* (4th ed. 2004), an incredible six-volume treatise. We have also cited and quoted from other excellent books and articles throughout the casebook.

Editing policies. We prefer students to read judicial opinions in largely intact form. Nonetheless, deletions are necessary. Because the goal of this book is pedagogy, we have not followed all scholarly conventions in identifying omissions from the extracted materials. We have applied the following rules of thumb to extracted materials.

1. Most footnotes and citations have been omitted, always without use of ellipses to indicate their omission. Asterisks have been used, however, to indicate deletions of other textual materials.
2. Numbered footnotes are from the original materials and retain their original numbering. Our “editors’ footnotes” are designated by letter.

Personal acknowledgments. Many people assisted us in producing this edition or its predecessors, or all three, including many colleagues on our respective faculties and throughout the United States and United Kingdom as well as members of the Bar and judiciary. We name a few people here: Phil Bates, Robert Batey, Doug Berman, Susan Brenner, Neil Cohen, Stan Cox, Thomas Davies, Michiael Dimino, John G. Douglass, Jim Ellis, Arnold Enker, Barry Feinstein, Stanley Z. Fisher, Clifford Fishman, Gary Francione, Jeffrey Froelich, Adam Gershowitz, Mark Godsey, Stuart Green, Kenneth Graham, David Harris, Stephen Henderson, Peter J. Henning, Charles Jones, Andy Leipold, Rory Little, Gerard Lynch, Michael Mannheimer, Bernie McShane, Alan Michaels, Sam Pillsbury, and Michael Vitiello.

We also want to credit our student research assistants who assisted us in one or more of the editions of this casebook. At McGeorge, appreciation goes to Kristine Byron, Michael Kuzmich, and most especially, Allison Martin. At Ohio State, we thank Nathan DeDino, Jennifer Dutcher, and Leigh Anne Williams. At Rutgers, we thank Jennifer Alonso, Peter Berger, Art Nalbandian, Barbara Schweiger, Gail Spence, Rebekah Wanger and, especially, Chris Alliegro, Kegan Brown, and Michael Mulligan.

Author Thomas thanks Rutgers faculty support staff, especially Michele Babij, and Rutgers Law Librarian Paul Axel-Lute for often emergency assistance with this edition. He also thanks co-author Dressler for his unflagging attempts to force discipline on the project, some of which succeeded.

Author Dressler thanks Dean Nancy Rogers for the support she provided in preparing this casebook. And, he offers heartfelt thanks to co-author George for his seemingly unlimited good humor, which was put to the ultimate test by Dressler's compulsive need to send thousands of e-mail messages raising endless manuscript issues.

JOSHUA DRESSLER

Michael E. Moritz College of Law
The Ohio State University
Columbus, Ohio

GEORGE C. THOMAS III

Rutgers University School of Law
Newark, New Jersey

October, 2006

Acknowledgments

- Janet E. Ainsworth, *The Pragmatics of Powerlessness in Police Interrogation*, 103 Yale Law Journal 259 (1993). Copyright © 1993, The Yale Law Journal Company, Inc. Reprinted by permission of the Yale Law Journal Company and Fred B. Rothman & Company from *The Yale Law Journal*, Vol. 103, pages 259-322.
- Albert W. Alschuler, *Preventive Pretrial Detention and the Failure of Interest-Balancing Approaches to Due Process*, 85 Michigan Law Review 510 (1986). Copyright © 1986, Michigan Law Review Association. Reprinted by permission.
- Albert W. Alschuler, *The Changing Plea Bargaining Debate*, 69 California Law Review 652 (1981). Copyright © 1981 by California Law Review, Inc. Reprinted from California Law Review, Vol. 69, No. 3, pp. 652-723.
- Akhil Reed Amar, *Terry and Fourth Amendment First Principles*, 72 St. John's L. Rev. 1097 (1998). Copyright © 1998, St. John's Law Review. Reprinted by permission.
- Akhil Reed Amar, *Fourth Amendment First Principles*, 107 Harvard Law Review 757 (1994). Copyright © 1994 by the Harvard Law Review Association. Reprinted by permission.
- Akhil Reed Amar, *The Bill of Rights and the Fourteenth Amendment*, 101 Yale Law Journal 1193 (1992). Copyright © 1992, Yale Law Journal Company, Inc. Reprinted by permission of The Yale Law Journal Company and Fred B. Rothman & Company from *The Yale Law Journal*, Vol. 101, pages 1193-1284.
- Vivian O. Berger, *The Supreme Court and Defense Counsel: Old Roads, New Paths—A Dead End?*, 86 Columbia Law Review 9 (1986). Copyright © 1986 by the Directors of the Columbia Law Review Association. This article originally appeared at 86 Colum. L. Rev. 9 (1986). Reprinted by permission.
- Craig M. Bradley, *Murray v. United States: The Bell Tolls for the Search Warrant Requirement*, 64 Indiana Law Journal 907 (1989). Copyright © 1989, by the Trustees of Indiana University. Reprinted by permission.
- Craig M. Bradley, *Two Models of the Fourth Amendment*, 83 Michigan Law Review 1468 (1985). Copyright © 1985, Michigan Law Review Association. Reprinted by permission.
- Susan W. Brenner, *The Voice of the Community: A Case for Grand Jury Independence*, 3 Virginia Journal of Social Policy & Law 67 (1995). Copyright © 1995, Virginia Journal of Social Policy & Law. Reprinted by permission.

- Stephen Breyer, *The Federal Sentencing Guidelines and the Key Compromises Upon Which They Rest*, 17 Hofstra Law Review 1 (1988). Copyright © 1988, by the Hofstra Law Review Association. Reprinted with the permission of Hofstra Law Review.
- Alvin J. Bronstein, *Representing the Powerless: Lawyers Can Make a Difference*, originally published in the Maine Law Review, 49 Maine Law Review 1, 5-7, 12-13 (1997). Copyright © 1997, University of Maine School of Law. Reprinted by permission.
- Paul D. Butler, *Race-Based Jury Nullification: Case-in-Chief*, 30 John Marshall Law Review 911 (1997). Copyright © 1997, The John Marshall Law School. Reprinted with permission from The John Marshall Law Review, Volume XXX, Issue 4 (Summer 1997).
- Gerald M. Caplan, *Questioning Miranda*, 38 Vanderbilt Law Review 1417 (1985). Copyright © 1985, Vanderbilt Law Review. Reprinted by permission.
- Morgan Cloud, *The Dirty Little Secret*, 43 Emory Law Journal 1311 (1994). Copyright © 1994, Emory Law Journal. Reprinted by permission.
- Sherry F. Colb, *What Is a Search? Two Conceptual Flaws in Fourth Amendment Doctrine and Some Hints of a Remedy*, 55 Stan. L. Rev. 119 (2002). Copyright © 2002 by the Board of Trustees of the Leland Stanford Junior University. Reprinted by permission.
- David Cole, *No Equal Justice* (1999). Copyright © 1999, by David Cole. Reprinted by permission of the author.
- Thomas Y. Davies, *Recovering the Original Fourth Amendment*, 98 Michigan Law Review 547 (1999). Copyright © 1999, Michigan Law Review Association. Reprinted by permission of the author.
- John G. Douglass, *Confronting the Reluctant Accomplice*, 101 Columbia Law Review 1797 (2001). Copyright © 2001 by the Directors of the Columbia Law Review Association. This article originally appeared at 101 Colum. L. Rev. 1797 (2001). Reprinted by permission.
- Joshua Dressler, *Understanding Criminal Law* (Fourth edition 2006). Reprinted with permission. Copyright © 2006 Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved.
- Joshua Dressler & Alan C. Michaels, *Understanding Criminal Procedure* (Fourth Edition 2006) (Vols. 1-2). Reprinted from Understanding Criminal Procedure Vols. 1-2, 4th Ed. with permission. Copyright © 2006 Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved.
- Donald Dripps, *Living with Leon*, 95 Yale Law Journal 906 (1986). Copyright © 1986, Yale Law Journal Company, Inc. Reprinted by permission of the Yale Journal Company and Fred B. Rothman & Company from The Yale Law Journal, Vol. 95, pages 906-948.

- Sam J. Ervin, Jr., *Foreword: Preventive Detention—A Step Backward for Criminal Justice*, 6 Harvard Civil Rights-Civil Liberties Law Review 291 (1971). Copyright © 1971 by the President and Fellows of Harvard College. Reprinted by permission.
- Martha A. Field, *Assessing the Harmlessness of Federal Constitutional Error—A Process in Need of a Rationale*, 125 University of Pennsylvania Law Review 15 (1976). Copyright © 1976 by the University of Pennsylvania. Reprinted by permission.
- Barry Friedman, *A Tale of Two Habeas*, 73 Minnesota Law Review 248 (1988). Copyright © 1988, Minnesota Law Review Foundation. Reprinted by permission.
- Ann Fagan Ginger, editor, *Minimizing Racism in Jury Trials* (1969). Copyright © 1969, Ann Fagan Ginger. Reprinted by permission of the editor.
- Abe Fortas Papers, Manuscripts and Archives, Yale University Press. Used with permission.
- Steven H. Goldberg, *Harmless Error: Constitutional Sneak Thief*, 71 Journal of Criminal Law & Criminology 421 (1980). Copyright © 1980, Northwestern University School of Law. Reprinted by special permission of Northwestern University School of Law, Journal of Criminal Law and Criminology, volume 71, pp. 421, 429-30 (1980).
- James Goodman, *Stories of Scottsboro*, Random House Times Book (1994). From *Stories of Scottsboro* by James Goodman. Copyright © 1994 by James E. Goodman. Reprinted by permission of Pantheon Books, a division of Random House, Inc.
- Joseph D. Grano, *Probable Cause and Common Sense: A Reply to the Critics of Illinois v. Gates*, 17 University of Michigan Journal of Legal Reform 465 (1984). Copyright © 1984, by the University of Michigan Journal of Law Reform. Reprinted by permission.
- Bruce A. Green, *Lethal Fiction: The Meaning of "Counsel" in the Sixth Amendment*, 78 Iowa Law Review 433 (1993). Copyright © 1993, by the University of Iowa (Iowa Law Review) (reprinted with permission).
- Sandra Guerra, *The Myth of Dual Sovereignty: Multijurisdictional Drug Law Enforcement and Double Jeopardy*, 73 North Carolina Law Review 1159 (1995). Copyright © 1995, North Carolina Law Review. Reprinted by permission.
- Peter J. Henning, *Prosecutorial Misconduct in Grand Jury Investigations*, 51 South Carolina Law Review 1 (1999). Copyright © 1999, South Carolina Law Review. Reprinted by permission.
- Lenese C. Herbert, *Can't You See What I'm Saying? Making Expressive Conduct a Crime in High-Crimes Areas*, 9 Georgetown Journal on Poverty Law & Policy 135 (2002). Reprinted with permission of the publisher, Georgetown Journal on Poverty Law & Policy © 2002.

- Lawrence Herman, *The Supreme Court, the Attorney General, and the Good Old Days of Police Interrogation*, 48 Ohio State Law Journal 733 (1987). Copyright © 1987, Ohio State Law Journal
- Graham Hughes, *The Decline of Habeas Corpus*, (NYU Center for Research in Crime and Justice, 1990). Copyright © 1990, NYU Center for Research in Crime and Justice. Reprinted by permission.
- Randolph N. Jonakait, *Restoring the Confrontation Clause to the Sixth Amendment*, 38 UCLA Law Review 557 (1988). Originally published in 35 UCLA L. Rev. 557. Copyright © 1988, The Regents of the University of California. All rights reserved. Reprinted by permission.
- Sanford H. Kadish, *Fifty Years of Criminal Law: An Opinionated Review*, 87 Calif. L. Rev. 943 (1999). Copyright © 1999 by Sanford H. Kadish. Reprinted by permission of the author.
- Michael J. Klarman, *The Racial Origins of Modern Criminal Procedure*, 99 Michigan Law Review 48 (2000). Copyright © 2000, Michigan Law Review Association. Reprinted by permission.
- Charles Krauthammer—The Truth about Torture: It's Time To Be Honest About Doing Terrible Things, The Weekly Standard, 12/05/2005, Volume 011, Issue 12. Copyright © 2005, by Charles Krauthammer. Reprinted with permission.
- Richard B. Kuhns, *The Concept of Personal Aggrievement in Fourth Amendment Standing Cases*, 65 Iowa Law Review 493 (1980). Copyright © 1980, by the University of Iowa (Iowa Law Review). Reprinted with permission.
- Gerald B. Lefcourt, *Responsibilities of a Criminal Defense Attorney*, 30 Loyola of Los Angeles Law Review (1996). Copyright © 1996, Loyola of Los Angeles Law Review. Reprinted by permission.
- Andrew D. Leipold, *Race-Based Jury Nullification: Rebuttal (Part A)*, 30 John Marshall Law Review 923 (1997). Copyright © 1997, The John Marshall Law School. Reprinted with permission from The John Marshall Law Review, Volume XXX, Issue 4 (Summer 1997).
- Andrew D. Leipold, *Why Grand Juries Do Not (and Cannot) Protect the Accused*, 80 Cornell Law Review 260 (1995). Copyright © 1995, Cornell Law Review. Reprinted by permission.
- Erik Luna, *Gridland: An Allegorical Critique of Federal Sentencing*, 96 Journal of Criminal Law & Criminology 25 (2005). Copyright © 2005, Northwestern University School of Law. Reprinted by special permission of Northwestern University School of Law, The Journal of Criminal Law and Criminology.
- Tracey Maclin, *Terry v. Ohio's Fourth Amendment Legacy: Black Men and Police Discretion*, 72 St. John's Law Review 1271 (1998). Copyright © 1998, St. John's Law Review. Reprinted by permission.
- Tracey Maclin, *When the Cure for the Fourth Amendment Is Worse Than the Disease*, 68 Southern California Law Review 1 (1994). Copyright

- © 1994, University of Southern California. Reprinted with the permission of the Southern California Law Review.
- Tracey Maclin, "*Black and Blue Encounters*"—*Some Preliminary Thoughts About Fourth Amendment Seizures: Should Race Matter?*, 26 Valparaiso University Law Review 243 (1991). Copyright © 1991, by Valparaiso University Law Review. Reprinted with the permission of the publisher and author.
- Michael S. Moore, *Act and Crime*, Oxford University Press (1993). Copyright © 1993, Oxford University Press. Reprinted by permission of Oxford University Press.
- Robert B. Mosteller, *Remaking Confrontation Clause and Hearsay Doctrine Under the Challenge of Child Sexual Abuse Prosecutions*, University of Illinois Law Review 691 (1993). Copyright © 1993. The copyright to the University of Illinois Law Review is held by The Board of Trustees of the University of Illinois.
- Charles E. Moylan, Jr., *Hearsay and Probable Cause: An Aguilar and Spinelli Primer*, 25 Mercer Law Review 741 (1974). Copyright © 1974, Walter F. George School of Law, Mercer University. Reprinted by permission.
- Eric L. Muller, *Solving the Batson Paradox: Harmless Error, Jury Representation, and the Sixth Amendment*, 106 Yale Law Journal 93 (1996). Copyright © 1996, The Yale Law Journal Company. Reprinted by permission of The Yale Law Journal Company and Fred B. Rothman & Company from The Yale Law Journal, Volume 106, pages 93-150.
- William J. Powell & Michael T. Cimino, *Prosecutorial Discretion Under the Federal Sentencing Guidelines: Is the Fox Guarding the Hen House?*, 97 West Virginia Law Review 373 (1995). Copyright © 1995, West Virginia Law Review. Reprinted by permission.
- Ric Simmons, *Re-examining the Grand Jury: Is There Room for Democracy in the Criminal Justice System?*, 82 Boston University Law Review 1 (2002). Copyright © 2002, Boston University Law Review. Reprinted by permission.
- David Simon, *Homicide, A Year on the Killing Streets* (1991). Abridged from *Homicide: A Year on the Killing Streets*. Copyright © 1991 by David Simon. Reprinted by permission of Houghton Mifflin Co. All rights reserved.
- Abbe Smith, *Defending Defending: The Case for Unmitigated Zeal on Behalf of People Who Do Terrible Things*, 28 Hofstra L. Rev. 925 (2000). Copyright © 2000 by the Hofstra Law Review Association. Reprinted with the permission of the Hofstra Law Review Association.
- Potter Stewart, *The Road to Mapp v. Ohio and Beyond: The Origins, Development and Future of the Exclusionary Rule in Search-and-Seizure Cases*, 83 Columbia Law Review 1365 (1983). Copyright © 1983 by the Directors of the Columbia Law Review Association, Inc.

This article originally appeared at 83 Colum. L. Rev. 1365 (1983). Reprinted by permission.

Kate Stith and José A. Cabranes, *Fear of Judging: Sentencing Guidelines in the Federal Courts* (1998). Copyright © 1998, University of Chicago Press. Reprinted by permission.

Louis Stokes, *Representing John W. Terry*, 72 St. John's L. Rev. 727 (1998). Copyright © 1998, St. John's Law Review. Reprinted by permission.

William J. Stuntz, *Terry and Substantive Law*, 72 St. John's L. Rev. 1362 (1998). Copyright © 1998, St. John's Law Review. Reprinted by permission.

William J. Stuntz, *Miranda's Mistake*, 99 Michigan Law Review. 975 (2001). Copyright © 1999, Michigan Law Review Association. Reprinted by permission.

Scott E. Sundby, *Fallen Superheroes and the Brady Mirage*, 33 McGeorge Law Review 643 (2002). Copyright © 2002, McGeorge Law Review. Reprinted by permission of the author and journal.

Scott E. Sundby, *An Ode to Probable Cause: A Brief Response to Professors Amar and Slobogin*, 72 St. John's Law Review 1133 (1998). Copyright © 1998, St. John's Law Review. Reprinted by permission.

Scott E. Sundby, "Everyman's" *Fourth Amendment: Privacy or Mutual Trust Between Government and Citizen?*, 94 Columbia Law Review 1751 (1994). Copyright © 1994 by the Directors of the Columbia Law Review Association. This article originally appeared at 94 Colum. L. Rev. 1751 (1994). Reprinted by permission.

Scott E. Sundby, *A Return to Fourth Amendment Basics: Undoing the Mischief of Camara and Terry*, 72 Minnesota Law Review 383 (1988). Copyright © 1988, Minnesota Law Review Foundation. Reprinted by permission.

George C. Thomas III, *Reclaiming Innocence From Judicial Neglect* (Ann Arbor: The University of Michigan Press, forthcoming). Copyright © 2006, The University of Michigan Press. Reprinted by permission.

Sandra Guerra Thompson, *The Non-Discrimination Ideal of Hernandez v. Texas Confronts a "Culture" of Discrimination: The Amazing Story of Miller-El v. Texas*, 25 Chicano-Latino L. Rev. 97 (2005). Copyright © 2005, Chicano-Latino Law Review. Reprinted by permission.

H. Richard Uviller, *Evidence from the Mind of the Criminal Suspect: A Reconsideration of the Current Rules of Access and Restraint*, 87 Columbia Law Review 1137 (1987). Copyright © 1987 by the Directors of the Columbia Law Review Association, Inc. This article originally appeared at 87 Colum. L. Rev. 1137 (1987). Reprinted by permission.

Thomas Weigend, *Germany*. From *Criminal Procedure: A Worldwide View*, edited by Craig M. Bradley (1998). Copyright © 1998, Carolina Academic Press. Reprinted by permission of Carolina Academic Press, telephone (919) 489-7486, website www.cap-press.com.

*

Table of Cases

The principal cases are in bold type. Cases cited or discussed in the text are roman type. References are to pages. Cases cited in principal cases and within other quoted materials are not included.

- Abela v. Martin, 380 F.3d 915 (6th Cir. 2004), 668
- Adams v. People of State of New York, 192 U.S. 585, 24 S.Ct. 372, 48 L.Ed. 575 (1904), 59
- Adams v. Williams, 407 U.S. 143, 92 S.Ct. 1921, 32 L.Ed.2d 612 (1972), 354, 388, 389
- Adamson v. People of State of California, 332 U.S. 46, 67 S.Ct. 1672, 91 L.Ed. 1903 (1947), 30, 39
- Agnello v. United States, 269 U.S. 20, 46 S.Ct. 4, 70 L.Ed. 145 (1925), 211
- Aguilar v. State of Tex., 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed.2d 723 (1964), 140, 141, 154
- Alabama v. Shelton, 535 U.S. 654, 122 S.Ct. 1764, 152 L.Ed.2d 888 (2002), 945, 946
- Alabama v. White**, 496 U.S. 325, 110 S.Ct. 2412, 110 L.Ed.2d 301 (1990), 196, **383**, 387, 388
- Alderman v. United States, 394 U.S. 165, 89 S.Ct. 961, 22 L.Ed.2d 176 (1969), 434, 435, 436, 437
- Andresen v. Maryland, 427 U.S. 463, 96 S.Ct. 2737, 49 L.Ed.2d 627 (1976), 190, 191
- Apodaca v. Oregon, 406 U.S. 404, 92 S.Ct. 1628, 32 L.Ed.2d 184 (1972), 40
- Application of (see name of party)**
- Argersinger v. Hamlin, 407 U.S. 25, 92 S.Ct. 2006, 32 L.Ed.2d 530 (1972), 944, 945, 946
- Argueta v. State, 136 Md.App. 273, 764 A.2d 863 (Md.App.2001), 640
- Arizona v. Evans, 514 U.S. 1, 115 S.Ct. 1185, 131 L.Ed.2d 34 (1995), 483
- Arizona v. Fulminante, 499 U.S. 279, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991), 532, 534
- Arizona v. Hicks**, 480 U.S. 321, 107 S.Ct. 1149, 94 L.Ed.2d 347 (1987), 130, 132, **292**, 297
- Arizona v. Roberson, 486 U.S. 675, 108 S.Ct. 2093, 100 L.Ed.2d 704 (1988), 664
- Arkansas v. Sanders, 442 U.S. 753, 99 S.Ct. 2586, 61 L.Ed.2d 235 (1979), 275, 276, 277, 285
- Arthur v. Commonwealth, 24 Va.App. 102, 480 S.E.2d 749 (Va.App.1997), 677
- Ash, United States v., 413 U.S. 300, 93 S.Ct. 2568, 37 L.Ed.2d 619 (1973), 753
- Ashcraft v. State of Tenn., 322 U.S. 143, 64 S.Ct. 921, 88 L.Ed. 1192 (1944), 535
- Aspinall, People v., 194 Misc.2d 630, 756 N.Y.S.2d 397 (N.Y.Sup.2003), 750
- Atwater v. City of Lago Vista, 532 U.S. 318, 121 S.Ct. 1536, 149 L.Ed.2d 549 (2001), 233, 236, 246
- Avery, United States v., 128 F.3d 974 (6th Cir.1997), 249
- Avila, People v., 89 Cal.Rptr.2d 320 (Cal. App. 4 Dist.1999), 715
- Banks, United States v., 540 U.S. 31, 124 S.Ct. 521, 157 L.Ed.2d 343 (2003), 198
- Barron v. City of Baltimore, 32 U.S. 243, 8 L.Ed. 672 (1833), 26
- Behrel v. State, 151 Md.App. 64, 823 A.2d 696 (Md.App.2003), 160
- Bennett, State v., 30 Utah 2d 343, 517 P.2d 1029 (Utah 1973), 647
- Berger v. State of N.Y., 388 U.S. 41, 87 S.Ct. 1873, 18 L.Ed.2d 1040 (1967), 82
- Berkemer v. McCarty**, 468 U.S. 420, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984), **633**, 639, 640
- Berryhill, United States v., 352 F.3d 315 (6th Cir.2003), 447
- Betts v. Brady, 316 U.S. 455, 62 S.Ct. 1252, 86 L.Ed. 1595 (1942), 25, 931, 935, 936, 937
- Blackburn v. State of Ala., 361 U.S. 199, 80 S.Ct. 274, 4 L.Ed.2d 242 (1960), 526
- Blanco, State v., 237 Wis.2d 395, 614 N.W.2d 512 (Wis.App.2000), 174
- Blockburger v. United States, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1932), 715, 717
- Board of Education of Independent School District No. 92 of Pottawatomie County