

# Criminal Procedure and the Supreme Court

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*A Guide to the Major Decisions on  
Search and Seizure, Privacy, and  
Individual Rights*

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on Search and Seizure, Privacy,  
and Individual Rights

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AND CRAIG EMMEN



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# Criminal Procedure and the Supreme Court

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# Introduction

## **THE PURPOSE OF THIS STUDY**

As any faculty and student know, criminal-procedure books in criminal justice abound with cases and topics relevant to how suspects and defendants are processed en route to punishment. In these tomes numerous cases are cited and their holdings summarized, but few are discussed in great depth. By contrast, criminal-procedure books used in law schools feature full-length cases but are woefully short on case discussion or updates. Students are left to themselves to ascertain the significance of each case and where it stands in importance in the hierarchy of all cases on a topic. This book seeks to combine both approaches, choosing the most significant cases in criminal procedure, ranking them, discussing the decision in totality (including dissenting and concurring opinions), and updating and then placing them in perspective. It features a vertical rather than a horizontal approach to learning criminal procedure. The result is fewer cases under review but greater author guidance and in-depth coverage of leading decisions. This approach to learning is different but effective and fills a need.

Ranking cases is a novel approach to studying United States Supreme Court decisions. There is no compelling justification for it except that it arouses curiosity and can lead to further reflection and inquiry. There is, however, a mundane excuse for the use of rankings even in the halls of academe: The reality is that we live in a world of lists. Newspapers, magazines, and even academic journals are often replete with rankings of the Top However Many Somethings of whatever category is under discussion. Colleges and universities are assigned status based

on perceived prestige, as are undergraduate and graduate programs among the various disciplines. Academic priorities in educational institutions are ranked, as are academic journals. Sports teams are rated each week, just as professional firms and practitioners are on a yearly basis. Lists and rankings are ubiquitous in a media-driven society and invite attention in an age of information overload. The upside of lists is that they fill a need to quickly assess the importance of something based on somebody else's perception or study; the downside is that they are usually judgmental and can be misleading, if not downright flawed. Properly used, however, rankings constitute a starting point for inquiry but should not be considered the final word. They can be useful tools for discussion and debate but should not be proxies for personal informed choices.

This book features a list and discussion of the top twenty cases in criminal procedure. These cases are placed in context, analyzed, and updated. Criminal procedure is governed by United States Supreme Court decisions and is "nationalized," meaning that the core of criminal-procedure rules is similar from one state or jurisdiction to another. The United States Supreme Court has decided hundreds of cases on criminal procedure since the Court's creation in Article Three of the United States Constitution. These cases differ in importance and impact regarding how defendants are processed and eventually punished. Twenty cases, ranked in importance, is an acceptable beginning and challenges the reader to better understand the way the police and courts deal with suspects and defendants. This selection of cases is, however, merely the tip of the iceberg, so to speak, in a sea of cases in American criminal procedure. There are a lot more to be studied and analyzed, as would be true in any area of law.

## HOW THE CASES WERE CHOSEN

Subjectivity is inevitable in any nonquantified list. The list in this book is subjective and based mainly on our teaching backgrounds and collective experience—we each hold a number of law degrees and have years of teaching experience on the graduate and undergraduate levels. We chose each case based on its perceived impact on police work and daily police interaction with the public. For example, *Miranda v. Arizona* is considered case number one because it impacts policing in a meaningful way every day as no other case does. Law-enforcement officers are all familiar with Miranda warnings, of necessity, as is most of the public. In fact, every case in this list of twenty is (or should be) familiar to police officers and the public in principle, though the specifics may not be well understood. For example, *Carroll v. United States* (case number seven) defines the limits of motor-vehicle searches, a daily occurrence in the United States. Although nei-

ther the police nor the public may be aware of the specifics of this case, *Carroll*'s prescribed principles for motor-vehicle searches have been in use since 1925, when the case came before the Court. And while the editors' specific case rankings may differ among scholars and law-enforcement personnel, there should be little doubt that every case in this list has had a significant effect on policing and court procedure and thus deserves to be studied closely.

Any such list inevitably omits cases that may be more significant in the judgment of others. The choices in this book are explained by three considerations: (1) our subjective, perhaps flawed, judgment has led us to omit or include a case, (2) an omitted important case may recently have been overruled and is no longer the authority after having been the leading case for a long time, or (3) the decision may be recent, and its impact on policing has yet to be determined and hence is unsuitable for extended discussion. Exemplars for the latter two considerations are the cases *New York v. Belton* and *Arizona v. Gant*. The first case, *Belton*, decided in 1981, held that the "police may search the passenger compartment of a vehicle and any containers therein as a contemporaneous incident of a recent occupant's lawful arrest." That case had an immediate massive impact on police-public contact because it greatly expanded the power of the police to search motor vehicles. *Belton* remained authoritative for twenty-eight years before being either repealed (according to the dissent) or at least narrowed (according to the majority) by *Gant*, which was decided on April 21, 2009. Because this more recent case covers police searches of motor vehicles, *Gant* will likely influence police behavior in the immediate future, but how extensively and for how long remains to be seen (the case was decided on a four-to-one-to-four vote in the Supreme Court). Thus *Belton* and *Gant* are not included among the top twenty.

The terrorist attacks in New York City, Washington, D.C., and Pennsylvania on September 11, 2001, and subsequent global events placed national security in the forefront of domestic concerns. Hence national security has more recently merited inclusion as a topic in criminal-procedure books. No case on that topic, however, is included in this book for two reasons: (1) thus far most United States Supreme Court decisions on national security have addressed the issue of court jurisdiction (where suspects are to be tried and by what court), a peripheral concern in policing cases, and (2) the domestic "war on terror," although doubtless crucial, is primarily the responsibility of the national government and not of state or local police. In some cases, national-security agents and the police do interact and collaborate, but that is still the exception rather than the rule. This area of law, however, may increase in importance if federal-state collaboration increases in the effort to stamp out domestic terrorism.

## BOOK ORGANIZATION

As the table of contents shows, the twenty cases are divided sequentially into eight parts, as follows:

Part I: Reasonable Expectation of Privacy and Probable Cause

Part II: The Exclusionary Rule

Part III: Stop and Frisk

Part IV: Arrest

Part V: Searches of Places and Things

Part VI: Motor Vehicles

Part VII: Interrogation and Lineups

Part VIII: Police Liability

This grouping mirrors the usual table of contents in textbooks on criminal procedure. It starts with the cases on reasonable expectation of privacy and probable cause because these legal concepts pervade criminal procedure. Reasonable expectation of privacy has assumed greater importance in an age of electronics and ever-changing technological advances. *Probable cause* is arguably the most important term in policing and must be thoroughly understood by law-enforcement officials in order for them to perform their job properly; similarly, it must be understood by the public, who seek to protect their rights and civil liberties when in contact with the police. The exclusionary rule is basic in policing and applies when a case comes to court. The rule was extended to state criminal proceedings in *Mapp v. Ohio* (1961), which is, arguably, the second-most important case in criminal procedure after *Miranda v. Arizona*. The eight parts close with a case addressing police liability, a topic of relatively recent origin but of constant concern to police officers and departments. Taken together, the twenty cases discussed and their eight categorizations constitute the core of legal issues in policing.

## CHAPTER ORGANIZATION

To achieve a degree of uniformity in chapter format, the writers in this book organize their chapters, whenever feasible, as follows:

## Case Introduction

The Facts

The Issue before the Court

The Court's Holding

The Majority Opinion

The Dissenting Opinion

Case Significance

## Further Analysis

### Update Cases

The Current Scope of Police or Court Authority on the Topic

Other Considerations

The Future

Conclusions

Nonetheless, variation in chapter organization exists but has been minimized to every extent possible. Each chapter also includes suggested titles for further reading, and a brief biography of the writer of the majority opinion is included in the appendix. Although judicial decision making is often a complex process and results from professional interaction, it is hard to deny that a justice's ideological and personal background sometimes influences the outcome of cases despite protestations to the contrary. Reading a brief biography of the majority-opinion writer humanizes the decision and puts a face on an otherwise abstracted and impersonal process.

We hope that focusing on these top twenty cases helps readers understand these decisions and how they have shaped and refined important aspects of criminal procedure. This case-centered approach is unique among current criminal-justice books. Our aim is to enhance each reader's appreciation of the role of the Supreme Court in law enforcement and the importance of case law in expanding the scope of or setting limits on law enforcement in the American system of criminal justice.

Rolando V. del Carmen  
Craig Hemmens



# I

## REASONABLE EXPECTATION OF PRIVACY AND PROBABLE CAUSE





# *Katz v. United States*

SUE CARTER COLLINS

## INTRODUCTION

In the twenty-first century, technology reigns supreme. The advent of computers, cellular telephones, and Internet technology has made the ability to engage in electronic communications commonplace. With just a few keystrokes on a computer it is possible to be in instant contact with someone on the other side of the world. Through the use of Internet service providers like Yahoo! one can send instant messages and use voice over Internet protocol (VoIP) to bypass the traditional telephone system and communicate electronically with others. Although the U.S. Postal Service still delivers some pieces of mail, the use of electronic-mail (e-mail) communications is rapidly replacing it. Not only can a person send and receive e-mail instantly, for both the environmentally conscious and the criminal element there is the added benefit of being able to avoid a paper trail by storing information in cyberspace.

Although these technological advances bring with them great freedoms, they have been accompanied by significant governmental erosion of individual rights. For instance, have you ever wondered if the “private” conversations that you have on your cell phone are constitutionally protected? Have you considered whether there is a constitutional right to privacy in your e-mail communications or instant messages? If you are the subject of a criminal investigation, can law-enforcement agencies access electronically stored messages that have been password protected?