

# Preface

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No area of the law evokes more passionate debate about the tension between the prerogatives of government and the liberty of the individual than constitutional criminal procedure. The social and political history of the United States in the past six decades has been written in significant part by the opinions of the Supreme Court, adjusting and readjusting this balance.

As the Court under Chief Justice Earl Warren gave definition to the 1960s with landmark civil liberties decisions like *Mapp* and *Miranda*, so the Burger, Rehnquist, and Roberts Courts reflect the conservative shift of the political landscape in their decisions since the 1980s, lifting many constraints on the police in their “wars” on crime, drugs, and terrorism. Particularly noteworthy are those cases that have put the viability of the exclusionary rule, the remedy for unconstitutional police action, in question. With the curtailment of protections by the U.S. Supreme Court, state courts in recent years have turned to their own constitutions to reassert safeguards against the excesses of law enforcement, what some have dubbed the “new federalism.”

While there is undeniably an ideological dimension to the cases in the criminal procedure area, there is also a wealth of legal doctrine and concepts that must be assimilated by both student and practitioner. It is the purpose of this book to facilitate this mastery, while at the same time keeping the reader focused on the overarching policy issues raised in the cases.

The book’s functional organization is designed to assist in the critical task of problem solving. This is accomplished by breaking down the constitutional analysis of police conduct into component issues. The “search and seizure” chapters of the book are organized to pose first the threshold issue of whether the Fourth Amendment applies, and then deal with the discrete questions of justification and the requirement for a warrant. The chapters on interrogation and confessions sequentially follow the questions that must be resolved to determine the admissibility of a statement obtained by the police from the suspect.

The format is a combination of text, examples, and explanations. Each chapter begins with an accessible summary of the controlling law, followed by a set of examples of increasing difficulty that explore the basic concepts and then challenge the reader to apply them in situations (frequently derived from reported cases) in the ever-present gray areas. The explanations

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permit students to check their own understanding of the material and provide additional insights not developed in the text. The goal is to convey the richness of the evolving case law, while at the same time helping to demystify this highly complex domain of law. We aim, in short, to simulate the Socratic classroom at its best.

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