

CHAPTER
1

Criminal Trials

KEY POINTS

- Criminal procedure law sets out the process that the courts and criminal justice system actors are to follow when handling criminal matters.
- Among the constitutional rights analyzed in criminal procedure law are those found in the Fourth, Fifth, Sixth, and Fourteenth Amendments.
- The Fourth Amendment provides for protections against unreasonable searches and seizures of persons, their houses, and personal effects.
- The Fifth Amendment provides for protections of due process and the right of a person not be to a witness against himself or herself.
- The Sixth Amendment provides for the right to counsel and a fair trial.
- The Fourteenth Amendment provides for the due process rights of persons against violations by the state.

INTRODUCTION

Criminal procedure is an essential aspect of the processing of a person accused of crime. Understanding the law in contemporary society requires attention to critical cases that have revolutionized police practices. The

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U.S. Supreme Court has been continually redefining what the police can and cannot do when investigating crimes and apprehending individuals for their violation. As the new century dawns, it is time to reinvestigate the core Supreme Court cases that emerged over the past century and understand how they affect police and court processes today.

The power of the state to take action against a criminal suspect is to be balanced against the right of the people to be left alone. In order to determine how to balance these seemingly contradictory interests, our legal system gives the judiciary the responsibility of determining whether a police action has exceeded accepted practices. The focus of this book is the legal rules that restrict police action but also provide them with enough latitude to investigate crime and apprehend offenders.

THE CONSTITUTION AND ITS AMENDMENTS

The U.S. Constitution was signed in 1787 by state delegates to the Constitutional Convention, which met in Philadelphia. However, it was not ratified until the following year, when an agreement was reached to amend the document with provisions to protect individual freedoms. These amendments became known as the Bill of Rights. States realized that if a federal government was to function, they had to create one governmental system that could provide oversight on matters pertaining to national interests shared among the states. However, some states were concerned that if the federal government was too powerful, then state powers and individual liberties would be diminished. The Constitution has two main components: its body, which creates the governmental structure with three branches of government, and its amendments, which limit governmental power. The unique characteristics of the Constitution make it appear to be a living document that can respond to changing social, economic, and political issues. In the years since its ratification, the number of amendments has increased from the initial 10 (the Bill of Rights) to 27. Ratified in 1992, the last amendment places limits on congressional pay increases.

Among the amendments of primary interest to this text are those that address law enforcement and criminal procedure law. The Fourth, Fifth, Sixth, and Fourteenth Amendments provide for a variety of individual

liberties to be protected from governmental action. Among the most salient features of these amendments are the following protections:

- Fourth Amendment: Provides protection for individuals against governmental intrusions in relation to searches and seizures.
- Fifth Amendment: Provides protection for individuals against self-incrimination during custodial police interrogations.
- Sixth Amendment: Supports individual liberty by providing individuals with the right to counsel.
- Fourteenth Amendment: Provides protection against state governmental actors infringing on an individual's due process rights.

CRIMINAL PROCEDURE

Criminal procedure in the United States is organized around issues of federalism and separation of powers. These issues present unique challenges for understanding and interpreting cases decided by the U.S. Supreme Court. Federalism is the division of responsibility between the federal government and the states. Separation of powers is the division of responsibility among the three branches of government: the executive, the judicial, and the legislative branches.

Federalism

The U.S. Supreme Court is empowered under the U.S. Constitution to decide cases and controversies that arise under it. Until the 20th century and the Court's interpretation of the Fourteenth Amendment, the U.S. Supreme Court's rulings applied only to issues pertaining to the federal government. In the first 10 amendments, the Bill of Rights, our Founding Fathers set out the rights held by individuals that cannot be infringed upon or denied by the federal government. They believed that our governmental structure, as set out in the Constitution, should be one where states have the right to enact and enforce their own laws. Thus, we have a system of *federalism*. Federalism means that we have a vertical system of government: state governments and a superior federal government.

The Founding Fathers initially met in Philadelphia during the Constitutional Convention to revise the Articles of Confederation. When

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the convention was under way, they realized that entirely separate state systems weakened the national government too much and then set out to create the federal system with powers reserved for the states. Each state that joins the union must have a compatible state constitution, but each state can vary its own laws. The U.S. Constitution forms the centralized form of government that enables the states to function cooperatively. For example, the uniform system of coinage under our constitutional government allows for easy trade between states.

After the Civil War, the Fourteenth Amendment was enacted. This amendment has three provisions:

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.

Two provisions in this amendment impact state powers: the due process clause and the equal protection clause. Throughout the 20th century, the U.S. Supreme Court heard cases in which state citizens claimed that various state actions infringed on their due process and equal protection rights. In order to determine if the Fourteenth Amendment was violated—that is to say, deprived a person of “life, liberty, or property” without due process—the Court began to selectively incorporate the Bill of Rights. Incorporation means that the Court used the Bill of Rights as a template for understanding individual freedom as juxtaposed against the federal government’s powers. On a case-by-case basis, the various interpretations of the Bill of Rights were then applied to state actions; this case-by-case approach is called “selective incorporation.” Not all of the first 10 amendments apply to the states. States can, for example, determine if they wish to have a grand jury proceeding (Fifth Amendment) or if persons have a right to have bail if they are detained upon an arrest (Eighth Amendment).

When a state case comes to the U.S. Supreme Court, the appellant (person bringing the appeal) must show that there is a federal question. Most of the time when the U.S. Supreme Court is interpreting the Bill of Rights, the Court’s decision applies to both federal and state actors. Due to federalism, however, states can determine that their state constitutions protect individual rights to a greater extent than does the U.S. Constitution. The U.S. Constitution provides a floor; states cannot

infringe on a person's basic rights as set out in the Constitution but can provide more rights and liberties. The federal question is usually whether the Fourteenth Amendment and specific Bill of Rights provision (e.g., the privilege against self-incrimination) were violated by the state actor (e.g., the police officer) during some action taken by that state actor. As a matter of simplicity, we say we are looking at the Bill of Rights provision when analyzing a state police officer's conduct in regard to the liberty interest of a person, but in reality we are looking at both the Bill of Rights and the Fourteenth Amendment.

The main provisions of the Bill of Rights that apply to state and federal actors in regard to criminal procedure law are the Fourth, Fifth, Sixth, and Eighth Amendments. The Fourth Amendment focuses on the right of individuals to be free from unreasonable searches and seizures. The Fifth Amendment focuses on the right of an individual to have due process of law and not to be compelled to give incriminating evidence against himself or herself. The Sixth Amendment provides for fair trials and the right to counsel. The Eighth Amendment (which is not the focus of this text) provides for prohibitions against cruel and unusual punishment for persons convicted of crimes.

Separation of Powers

Separation of powers is the division among the branches of government. Each branch is given a particularized function to perform. The executive branch enforces the laws, and this branch includes not only the head of the government (e.g., the president of the United States or the governor of a state) but his or her executive offices. These offices also include law enforcement entities. The legislative branch writes the laws (statutes and codes) that the people are to obey or follow. At both the state and federal levels, the statutory codes form the primary basis for the penal law. The legislature and U.S. Congress write and pass laws that indicate what behaviors will be proscribed (prohibited) and what the punishments for their violation will be. The judicial branch interprets the law and determines if the executive or legislative action has violated the Constitution.

Understanding the role of the branches of government is important because sometimes a case decision is about the proper role of government. The Founding Fathers intended to set up a system of checks and balances so that no one branch would become too powerful. Each branch has a form of responsibility to ensure that the Constitution and,

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hence, our individual liberties are protected. If laws or executive actions violate the Constitution, then they must be overturned; if the laws or executive actions are within the powers assigned to them by the Constitution, then they will be upheld. Sometimes difficulty arises when one branch of government claims that its actions are constitutional; because it is the role of the Court to interpret the Constitution, it will have the “last word” on the specific matter. However, the last word does not mean that the executive or legislative branch is without any further action or recourse. For example, if a court determines that a statute violates the Constitution, the state or federal agency cannot enforce the law, and the statute is void. If the issue is important to the state, however, the legislature can go back and rewrite the statute to comply with constitutional principles.

INTERPRETING THE CONSTITUTION

The U.S. Supreme Court has the responsibility of interpreting federal law and the federal constitution. Which legal source is more important, statutes or the Constitution? In 1803, in *Marbury v. Madison*, 5 U.S. 137, the Court determined that the Constitution is superior to statutory codes. As part of the Court’s legal powers, derived from the U.S. Constitution, the Court is solely responsible for “deciding cases and controversies.” In this case, the Court held that any act of Congress that is contrary to the Constitution is void. This ability of a court to overturn legislation is termed the “power of judicial review.” The Court also has the power to overturn acts of the executive branch (see *United States v. Nixon*, 418 U.S. 683 [1974]).

MARBURY V. MADISON, 5 U.S. 137 (1803)

Opinion by MARSHALL.

Facts: As one of his last acts in office, President John Adams named 42 persons to be justices of peace and another 16 persons to be justices on a new circuit court. Some of these commissions, though signed by the president, were not delivered prior to the end of Adams’s presidency. After

President Thomas Jefferson refused to confer one of these undelivered commissions on Marbury, Marbury filed a suit against Madison in the U.S. Supreme Court. Madison, as secretary of state, was responsible for ensuring delivery of judicial appointments. The suit was based on the Judiciary Act of 1783, which granted the U.S. Supreme Court original jurisdiction to issue writs of mandamus “to any courts appointed, or persons holding office, under the authority of the United States.”

Issue: Does the U.S. Supreme Court have the power to review the constitutionality of acts of Congress?

Rationale and Decision: The question, whether an act, repugnant to the constitution, can become the law of the land, is a question deeply interesting to the United States; but, happily, not of an intricacy proportioned to its interest. . . . That the people have an original right to establish, for their future government, such principles as, in their opinion, shall most conduce to their own happiness, is the basis on which the whole American fabric has been erected. The exercise of this original right is a very great exertion; nor can it nor ought it to be frequently repeated. The principles, therefore, so established are deemed fundamental. And as the authority, from which they proceed, is supreme, and can seldom act, they are designed to be permanent.

This original and supreme will organizes the government, and assigns to different departments their respective powers. It may either stop here; or establish certain limits not to be transcended by those departments. The government of the United States is of the latter description. The powers of the legislature are defined and limited; and that those limits may not be mistaken or forgotten, the constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing; if these limits may, at any time, be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished, if those limits

do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed are of equal obligation. It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it; or, that the legislature may alter the constitution by an ordinary act.

Between these alternatives there is no middle ground. The constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and like other acts, is alterable when the legislature shall please to alter it.

If the former part of the alternative be true, then a legislative act contrary to the constitution is not law: if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power in its own nature illimitable.

Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be, that an act of the legislature repugnant to the constitution is void.

This theory is essentially attached to a written constitution, and is consequently to be considered by this court as one of the fundamental principles of our society. It is not therefore to be lost sight of in the further consideration of this subject.

If an act of the legislature, repugnant to the constitution, is void, does it, notwithstanding its invalidity, bind the courts and oblige them to give it effect? Or, in other words, though it be not law, does it constitute a rule as operative as if it was a law? This would be to overthrow in fact what was established in theory; and would seem, at first view, an absurdity too gross to be insisted on. It shall, however, receive a more attentive consideration.

It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the

rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each. So if a law be in opposition to the constitution: if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law: the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.

If then the courts are to regard the constitution; and the constitution is superior to any ordinary act of the legislature; the constitution, and not such ordinary act, must govern the case to which they both apply. Those then who controvert the principle that the constitution is to be considered, in court, as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the constitution, and see only the law. This doctrine would subvert the very foundation of all written constitutions. It would declare that an act, which, according to the principles and theory of our government, is entirely void, is yet, in practice, completely obligatory. It would declare, that if the legislature shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is in reality effectual. It would be giving to the legislature a practical and real omnipotence with the same breath which professes to restrict their powers within narrow limits. It is prescribing limits, and declaring that those limits may be passed at pleasure.

That it thus reduces to nothing what we have deemed the greatest improvement on political institutions—a written constitution, would of itself be sufficient, in America where written constitutions have been viewed with so much reverence, for rejecting the construction. But the peculiar expressions of the constitution of the United States furnish additional arguments in favour of its rejection.

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The judicial power of the United States is extended to all cases arising under the constitution. It is also not entirely unworthy of observation, that in declaring what shall be the supreme law of the land, the constitution itself is first mentioned; and not the laws of the United States generally, but those only which shall be made in pursuance of the constitution, have that rank.

Thus, the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void, and that courts, as well as other departments, are bound by that instrument.

The rule must be discharged.

Activism and Restraint

An important part of understanding judicial decision making is the degree to which a court views its role in making or interpreting law. Judicial activism is the willingness of a court to create a new rule or law, and judicial restraint is the unwillingness of a court to create new policy or law. An activist court is willing to interpret the Constitution so that the court has the power to enact a new policy or legal practice without a statutory rule. A restraintist court believes that it must not impose new policy and instead defers to the executive and legislative branches to make policy and law.

Activism and restraint are sometimes viewed interchangeably with liberal and conservative decision making. A liberal outcome is one where a court decides in favor of the accused; a conservative outcome is one where a court decides in favor of the state. But activism and restraint provide a different measure than whether a court is more likely to favor the accused or the state. Activism and restraint are about how the court views its role in regard to making law. Some U.S. Supreme Courts have been liberal and activist, and others have been conservative and activist. The Warren Court, 1953–1969, is viewed as one that issued many liberal decisions and created new laws and is thus both activist and liberal. The Rehnquist Court, 1985–2005, is viewed as one that issued many

conservative decisions (favoring the state). Yet it also is viewed as activist because it made new laws or policies by overturning prior established legal practices.

The question is the proper role of the court. Should a court be able to broadly interpret the Constitution beyond its “plain” words? If the legislature is empowered to create law, then some argue that the court should refrain from usurping legislative power by interpreting the Constitution beyond its plain meaning. Activist courts are viewed as ones that take on too much power and, as such, overshadow the proper role of the other branches of government. If the courts have the power of judicial review that enables them to overturn statutes, then what is the check on judicial power when the court creates its own laws? In short, what is to restrain the U.S. Supreme Court from dictating what laws can be written, what laws can be enforced, and what laws will be interpreted in favor of an accused or in favor of the state at any given time?

The short answer to these questions is that our system of federalism does put some checks on the judiciary. The executive branch appoints judges to the federal bench, and judges who do not fulfill their judicial function in accordance with high ethical and legal standards can be impeached. Also, it might be argued that some of the decisions from the Rehnquist Court are a self-correcting measure in response to decisions from the Warren Court. The ability of a court to decide “cases and controversies” enables it to either broadly interpret law or view it as a narrow response to the facts and law as it currently exists.

When the constitutional rights of an accused are juxtaposed against the power of the state to enact laws and enforce them, then the ideals of a democratic state are placed into conflict. How the court handles the juxtaposition, narrowly or broadly, may determine whether the decision will be viewed with disdain or accepted. Sometimes, a court will narrow its decision so as to limit the impact that might occur from its implementation. But if a decision is not clearly articulated, then following the court’s ruling can be difficult. In the cases discussed in this text, the U.S. Supreme Court has articulated rulings on criminal procedure law that have either broadened individual liberty or restricted it in such a way as to change police practices. By looking at these decisions in terms of the legal outcome, activism or restraint, liberal or conservative, students will be better able to understand the changing constitutional demands placed upon the police in modern society.

ORGANIZATION OF THE BOOK

This criminal procedure law book will infuse major U.S. Supreme Court cases with an understanding of the contemporary social constraints that underscore the case and its impact on policing, the courts, and individuals accused of crime. The focus of the cases will follow police work from investigations, to stops, to arrests, to interrogations and searches. Each chapter will explain the social context of policing in light of the Fourth, Fifth, and Sixth Amendments. Critical cases will be integrated into the chapters with critical analysis of the dilemmas solved by subsequent court cases. The integration of the cases will resemble briefed cases so that students can readily read the Court's text and understand its impact given the legal issue and facts that gave rise to the litigation. Each chapter will end with a major social issue that remains to be resolved or that shows current trends in criminal procedure law analysis.

Criminal procedure law requires students to understand the constitutional rights of individuals under the Fourth, Fifth, Sixth, and Fourteenth Amendments. These amendments form the primary focus of this book, and the following chapters will discuss main or leading cases that have supported or changed criminal justice processing of the accused prior to trial.

The chapters are organized along the process of a police investigation: stops through preliminary pretrial processes. Each chapter will have a summary of the development of the law pertaining to police processes and end with an examination of a contemporary criminal procedure law issue facing our society.

- Chapter 1 provides a basic overview of the main issues pertaining to contemporary criminal procedure law and the police in the United States.
- Chapter 2 discusses the preliminary investigatory processes when officials either have been informed about a crime or suspect that individuals may be involved in criminal activity.
- Chapter 3 analyzes when officers may legitimately stop someone on the street and ask questions. During these stops, officers may be allowed to frisk an individual, but only if they have reason to suspect that their own safety may be threatened.
- Chapter 4 moves the police investigatory process further along and analyzes the parameters of a lawful arrest, the time period when

a person is not free to leave police custody and is charged with a criminal offense.

- Chapter 5 presents one of the most controversial decisions by the U.S. Supreme Court, *Miranda v. Arizona*. Most persons know what their *Miranda* rights are, but do not understand the particular context when the rights must be asserted or what the police must do to prevent their violation.
- Chapter 6 begins the analysis of searches under the Fourth Amendment. Another controversial decision by the U.S. Supreme Court was *Mapp v. Ohio*, in which the Court articulated the exclusionary rule. The exclusionary rule has been the subject of much analysis by commentators. The Court continues to provide answers about the ability of the police to seize evidence and the rights of individuals to their privacy.
- Chapter 7 focuses the discussion of the Fourth Amendment on searches of people, and it also analyzes when the police may search a person and their immediate surroundings.
- Chapter 8 extends the Fourth Amendment discussion to residences and real property and explains when search warrants are required.
- Chapter 9 looks at the ability of the police to search other personal effects of an individual, such as their automobile.
- Chapter 10 completes the criminal justice pretrial process by analyzing other constitutional limitations for pretrial investigations, discussing, among other matters, the right to counsel and lineups.

Briefing Cases

To understand the cases highlighted and discussed in this book, students should know how to “brief” them. Briefing a case is a method for students to summarize the key parts of a court case and is useful when attempting to discern the importance of the legal decision. The main parts of a case brief are: case name, facts, legal issue, decision, rationale, and holding.

Facts

In a short paragraph, indicate what happened. It is important to note critical time periods when events occurred and what people said or did.

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It may also be important to note what the lower courts decided. The court decision from the trial court might be different from that of the appellate courts, and the U.S. Supreme Court might be asked to determine whether the trial or appellate court was correct on an issue of U.S. constitutional law.

Legal Issue

In a question format, indicate what the U.S. Supreme Court is to decide. The legal issue is the particular constitutional challenge that the Court must address. For example, “Did the state violate the defendant’s constitutional right to counsel under the Sixth and Fourteenth Amendments when the state refused to allow counsel to participate during the pre-indictment lineup?”

Decision

The ultimate conclusion by the Court: affirmed, reversed, remanded. Did the Court affirm the lower court, overturn the lower court, affirm the lower court in part, or overturn it in part? It is important to know what the particular decision of the immediate court below was. If the decision is coming from a state high court or the federal Court of Appeals, then it is that appellate court’s decision which the U.S. Supreme Court is affirming or overturning. Some students confuse the decision by thinking that an affirmation is always a decision to uphold a conviction from a trial court; rather, an affirmation to uphold a conviction occurs if the lower appellate court also upheld the trial court’s conviction decision. If the Court overturns a decision, the holding might be listed as remanded. In remanded cases, the appellate court has the case returned to it so that it may correct the constitutional errors, or to make further legal determinations. In some cases, this means that the trial court will also have the case returned to it for a retrial, which will correct errors that might have unfairly affected the trial’s outcome.

Rationale

A concise summary of the main legal points that the Court used to explain or justify the decision. Understanding the legal principles, precedent, statutory language, and the constitutional law’s development that the decision rests upon must be presented. The rationale explains the legal decision.

Holding

The holding is the legal outcome of the case. When affirming or rejecting the decision from the court below, the holding is the statement of law to be followed by subsequent courts. It is important to know what the immediate lower court (e.g., a state high court for the U.S. Court of Appeals) decided in order to understand what the Court is doing when issuing its holding.

SUMMARY

The criminal justice system aims to provide a systematic processing of persons charged with crimes. To determine if the methods employed by the police when investigating crimes and making arrests are acceptable, it is important to consider how the U.S. Supreme Court has interpreted important constitutional rights under the Fourth, Fifth, Sixth, and Fourteenth Amendments.

Some criminal procedure law cases have been controversial because the proper role and function of the Court have been challenged. When the U.S. Supreme Court has been activist, challenges to its legitimacy have been raised. It is not simply whether the Court favored the state action or the accused; it is whether the Court has exceeded its authority by establishing practices not literally authorized by the Constitution.

GLOSSARY

Federalism: the vertical division of power between the states and federal government. Each state and the federal government are empowered to enact and enforce their own laws.

Individual liberty: The right, privilege, or immunity of people to be free from governmental intrusion.

Judicial activism: Describes a court decision that results in the creation of new law or policy.

Judicial restraint: Describes a court decision that refrains from the creation of new law or policy.

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Power of judicial review: The power of a court to declare a legislative action or statute or an executive action unconstitutional.

Separation of powers: The division of power among the three branches of government; each branch is empowered to fulfill different functions. The executive branch enforces the law, the judicial branch interprets the law, and the legislative branch creates the law.

ADDITIONAL READINGS

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- Epps, G. (2006). *Democracy reborn: The Fourteenth Amendment and the fight for equal rights in post-Civil War America*. New York: H. Holt.
- Kmiec, K. D. (2004). The origin and current meanings of “judicial activism.” *California Law Review*, 92, 1441–1477.