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## Choosing a Criminal Procedure Casebook: On Lesser Evils and Free Books

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## CHOOSING A CRIMINAL PROCEDURE CASEBOOK: ON LESSER EVILS AND FREE BOOKS

BEN TRACHTENBERG\*

### I. INTRODUCTION

Among the more important decisions a law teacher makes when preparing a new course is what materials to assign. Criminal procedure teachers are spoiled for choice, with legal publishers offering several options written by teams of renowned scholars. This Article considers how a teacher might choose from the myriad options available and suggests two potentially overlooked criteria: weight and price. The Article then explores the possibility of providing criminal procedure casebooks to law students for much less money than is currently charged, taking advantage of the public domain status of Supreme Court opinions, which form the backbone of most criminal procedure syllabi.

### II. WHY DOES THIS COURSE DIFFER FROM MOST OTHER COURSES?

Criminal procedure casebook authors face special difficulties compared to the authors of texts for most law school subjects.<sup>1</sup> For many subjects, including common law courses such as contracts and torts, there is no single source of law that students must master to be considered proficient. For example, a contracts course cannot teach “the” rule concerning the availability of specific performance as a remedy for breach of contract because state law varies on the question. While some effort is usually devoted to teaching the majority rule on major questions, the authors of a contracts law casebook enjoy a fair amount of discretion. Someone who believes that a so-called “efficient breach” is anything but efficient can spend relatively less time mulling hot law-and-economics takes on old legal questions. At the same time, another author can cite fewer ancient English precedents and devote more pages to economic theory. Similarly, different authors can sensibly give varying amounts of attention to the Uniform Commercial Code and its departures from common

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1. In this Article, I use “criminal procedure” to refer to courses concerning constraints imposed on police and prosecutors by the Constitution of the United States, often called the “investigation” portion of criminal procedure (as opposed to the “adjudication” or “bail-to-jail” course).

law doctrine. Other courses in this category would include family law, property, and criminal law.

By contrast, many other subjects do have a primary source of law that students are expected to learn. In civil procedure, the Federal Rules of Civil Procedure guide the syllabus. In evidence, again, the Federal Rules reign supreme. Professional responsibility students focus on the Model Rules of Professional Conduct. Yes, professors can and do stray from these core topics,<sup>2</sup> and some material beyond the “code” must be covered in a plausibly comprehensive course.<sup>3</sup> Nonetheless, it is the rare “code course” instructor who does not devote the bulk of her reading assignments and class time to the codes that set forth the primary law for their disciplines as well as cases illustrating key code provisions. Other courses in this category would include sales, secured transactions, federal income tax, and bankruptcy.

Criminal procedure differs importantly from both of these broad categories of courses. Like evidence and civil procedure, criminal procedure has a primary source of law: the Bill of Rights, especially the Fourth, Fifth, and Sixth Amendments to the Constitution. Unlike those “code courses,” however, the primary law undergirding a criminal procedure syllabus does not appear in an actual code. Instead, the law consists of court opinions interpreting the brief constitutional provisions at issue. While the Federal Rules of Evidence define terms such as “hearsay,” the Fourth Amendment omits any definition of “search.” Further, unlike in common law courses such as torts,<sup>4</sup> in which the opinions of many diverse courts might reasonably be chosen for inclusion in a casebook, in criminal procedure only one court really counts. The Supreme Court of Missouri opines from time to time on what is an “unreasonable search” under the Fourth Amendment, as does the United States Court of Appeals for the Eighth Circuit, but only the Supreme Court of the United

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2. Civil procedure courses can explore equitable remedies in depth, briefly, or hardly at all. Evidence courses can focus more or less on important state law variations from the Federal Rules of Evidence. Professional responsibility texts can discuss with more or less explanation how some states have declined to adopt certain Model Rules.

3. In civil procedure, the Supreme Court cases on the limits of personal jurisdiction (long-arm statutes) are commonly assigned. In evidence, recent Confrontation Clause jurisprudence demands attention. In professional responsibility, sources of law unrelated to professional discipline (such as common law malpractice) should not be ignored.

4. I am using “common law” loosely here to include courses in which instructors aim to provide a broad understanding of a subject largely regulated by state law (so long as the relevant state law is not based upon a document—like the Uniform Commercial Code or the Model Rules of Professional Conduct—adopted by the overwhelming majority of states). Accordingly, a course like criminal law would qualify, even if the instructor spends almost no time on common law offenses (e.g. the distinction between larceny, embezzlement, and false pretenses) and moves directly to modern statutes (which often put all such thievery into the same offense).

States can really decide.<sup>5</sup> The tort of negligence and the contracts defense of unconscionability vary from state to state. The Due Process Clauses of the Fifth and Fourteenth Amendments read the same nationwide. As a result, decisions by state courts and “inferior” federal courts receive scant attention in many criminal procedure casebooks, serving mostly to illustrate the occasional unsettled question. After all, the *Miranda* rule and the *Terry* doctrine do not appear in the Bill of Rights. Although they may be grounded in the Constitution, the content of the constitutional rules was created by Supreme Court justices and set forth in Supreme Court opinions. Criminal procedure instructors recognize this and generally require that their students read a bunch of Supreme Court cases, which then become the basis of lectures and class discussion.

### III. THE PROBLEMS CAUSED BY THE PRIMACY OF SUPREME COURT OPINIONS

Because Supreme Court opinions are, with limited exceptions, the only things deemed worthy of inclusion in many criminal procedure syllabi, casebook authors confront a serious problem. Put simply, the content of their books will read only as well as the opinions written by the justices. Further, if the opinions in important cases run long,<sup>6</sup> casebook authors must choose between taking a hatchet to the text (in an effort to create books a student can carry without getting a hernia) or leaving the text relatively intact (risking the production of massive tomes). The more one boils down the text of court opinions by editing, the more one’s casebook comes to resemble a “hornbook”—that is, a simple recitation of the black letter law one might find useful when studying for the bar examination.

The problem of casebook weight is not theoretical. According to Amazon.com, which includes shipping weight among the “product details” listed about books for sale, various casebooks currently on offer weigh in at 5.6 pounds,<sup>7</sup> 5.2 pounds,<sup>8</sup> and 5.8 pounds.<sup>9</sup> Books weighing 6 pounds<sup>10</sup> and 6.4 pounds<sup>11</sup> are also quite popular.

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5. A similar reality guides the content of other courses devoted to constitutional law, including introductory courses with names like “Constitutional Law” as well as more specialized courses on topics such as free speech and equal protection. Casebooks for those courses are beyond the scope of this Article.

6. The phenomenon of lengthy Supreme Court opinions lacking clarity has long been recognized. *See, e.g.*, Adam Liptak, *Justices Long on Words but Short on Guidance*, N.Y. TIMES, Nov. 18, 2010, at A1, <http://www.nytimes.com/2010/11/18/us/18rulings.html> [<http://perma.cc/3FZB-XNML>]; John F. Davis & William L. Reynolds, *Juridical Cripples: Plurality Opinions in the Supreme Court*, 1974 DUKE L.J. 59.

7. RIC SIMMONS & RENÉE McDONALD HUTCHINS, *LEARNING CRIMINAL PROCEDURE* (2014); *Learning Criminal Procedure (Learning Series) 1st Edition*, AMAZON.COM, <http://www.amazon.com/Learning-Criminal-Procedure-Series/dp/0314286705> [<http://perma.cc/E7SP-87ZK>] (last visited Jan. 2, 2016).

Students enrolled in multiple courses for which heavy casebooks are required risk incurring physical injuries—beyond the eyestrain associated with reading page after page of assigned material. If a student is carrying three five-pound casebooks in addition to a laptop, she is likely exceeding the maximum weight recommended by physicians who have studied backpack-related injuries.<sup>12</sup> A student weighing 150 pounds should not regularly be carrying more than fifteen pounds, so even the lightest laptop would put the backpack over the limit. And students weighing closer to 100 pounds—with an accompanying recommended backpack weight limit around ten pounds—are not unheard of.

Law school administrators concerned about backpack weights might review the convenience of lockers available to students. In the secondary school world, some schools are reducing backpack weight by buying two copies of certain heavy books for each student, one to use at school and one to

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8. JOSHUA DRESSLER & GEORGE THOMAS III, CRIMINAL PROCEDURE: PRINCIPLES, POLICIES AND PERSPECTIVES (5th ed. 2012); *Criminal Procedure: Principles, Policies and Perspectives, 5th (American Casebook Series)*, AMAZON.COM, <http://www.amazon.com/Criminal-Procedure-Principles-Policies-Perspectives/dp/0314279482> [<http://perma.cc/ASC7-HFU3>] (last visited Jan. 2, 2016); ARNOLD H. LOEWY, CRIMINAL PROCEDURE: CASES, MATERIALS, AND QUESTIONS (4th ed. 2015); *Criminal Procedure: Cases, Materials, and Questions (2015) Fourth Edition*, AMAZON.COM, <http://www.amazon.com/Criminal-Procedure-Cases-Materials-Questions/dp/1632815400> [<http://perma.cc/QK5U-Y2DN>] (last visited Jan. 2, 2016).

9. RUSSELL WEAVER ET AL., CRIMINAL PROCEDURE, A CONTEMPORARY APPROACH (2015); *Criminal Procedure, A Contemporary Approach (Interactive Casebook Series) 1st Edition*, AMAZON.COM, <http://www.amazon.com/Criminal-Procedure-Contemporary-Approach-Interactive/dp/1628109661> [<http://perma.cc/S89Y-UMZR>] (last visited Jan. 2, 2016).

10. YALE KAMISAR ET AL., MODERN CRIMINAL PROCEDURE: CASES, COMMENTS AND QUESTIONS (13th ed. 2012); *Modern Criminal Procedure: Cases, Comments and Questions (American Casebook Series) 13th Edition*, AMAZON.COM, <http://www.amazon.com/Modern-Criminal-Procedure-Comments-Questions/dp/0314911677> [<http://perma.cc/7X4Z-DZCT>] (last visited Jan. 2, 2016). The fourteenth edition of Kamisar has slimmed down to 5.8 pounds. *Modern Criminal Procedure, Cases, Comments, & Questions (American Casebook Series) 14th Edition*, AMAZON.COM, <http://www.amazon.com/Criminal-Procedure-Comments-Questions-American/dp/1634591607> [<http://perma.cc/9PRJ-2PGP>] (last visited Jan. 2, 2016).

11. STEPHEN A. SALTZBURG & DANIEL J. CAPRA, AMERICAN CRIMINAL PROCEDURE: CASES AND COMMENTARY (10th ed. 2014); *American Criminal Procedure: Cases and Commentary, 10th (American Casebook Series)*, AMAZON.COM, <http://www.amazon.com/American-Criminal-Procedure-Commentary-Casebook/dp/0314285571> [<http://perma.cc/6Y8M-S2XM>] (last visited Jan. 2, 2016).

12. See Linda Grant, *Backpack Weight: How Heavy Is Safe?*, 18 AAP GRAND ROUNDS 10, 10 (July 2007) (“[T]he investigators support a recommendation that backpack weight not exceed 10% of a student’s body weight for all grades and ages.”); June Mung Yuing Hu & Karen Jacobs, *Backpack Usage and Self-Reported Musculoskeletal Discomfort in University Students*, 52 PROC. HUM. FACTORS & ERGONOMICS SOC’Y ANN. MEETING 702, 704 (Sept. 2008) (“This study confirmed the prevalence (85%) of self-reported musculoskeletal discomfort or pain in university students.”).

take home.<sup>13</sup> Unfortunately, the price of criminal procedure books makes this tactic impractical for law students who buy their own books. A few of the casebooks already mentioned are currently priced at \$205,<sup>14</sup> \$187,<sup>15</sup> \$206,<sup>16</sup> and \$215.<sup>17</sup>

Law teachers wishing to kill two birds with one stone might consider assigning “split” versions of a casebook, which cost less and weigh less than full-sized counterparts. Several popular casebooks are available in two separate portions, generally divided into “investigation” and “adjudication,” or something similar. For example, Professors Chemerinsky and Levenson have edited a criminal procedure casebook weighing 5.2 pounds and offered on Amazon for \$182.<sup>18</sup> (The publisher’s website offers the book for \$233.<sup>19</sup>) They also edit a volume titled *Criminal Procedure: Investigation*, containing roughly the first half of the full-sized book, which weighs 4 pounds and sells for \$126.<sup>20</sup> Unless one is either teaching a full-year course or coordinating with another teacher who will teach the other half of your chosen book, assigning

13. See *Walking and Bicycling to School and the Heavy Backpack*, SAFE ROUTES TO SCH. NAT’L PARTNERSHIP (Feb. 2008), [http://saferoutespartnership.org/sites/default/files/pdf/The\\_Heavy\\_Backpack\\_Final.pdf](http://saferoutespartnership.org/sites/default/files/pdf/The_Heavy_Backpack_Final.pdf) [<http://perma.cc/EAB8-LHZ4>].

14. SIMMONS & HUTCHINS, *supra* note 7. Prices were checked on Amazon.com on January 2, 2016 and rounded to the nearest dollar. Prices are those actually on offer from Amazon, which are often a bit lower than the “list price.” Because Amazon’s prices and offers fluctuate, readers may find different prices and offers today.

15. DRESSLER & THOMAS, *supra* note 8.

16. LOEWY, *supra* note 8.

17. WEAVER ET AL., *supra* note 9.

18. ERWIN CHEMERINSKY & LAURIE L. LEVENSON, CRIMINAL PROCEDURE (2d ed. 2013); *Criminal Procedure, Second Edition (Aspen Casebooks)*, AMAZON.COM, <http://www.amazon.com/Criminal-Procedure-Second-Aspen-Casebooks/dp/145480694X> [<http://perma.cc/F6L5-3RWY>] (last visited Jan. 2, 2016).

19. *Criminal Procedure, Second Edition*, WOLTERS KLUWER LEGAL EDUC., [http://www.wklegaledu.com/aspen-casebook-series/id-5321/Criminal\\_Procedure\\_Second\\_Edition](http://www.wklegaledu.com/aspen-casebook-series/id-5321/Criminal_Procedure_Second_Edition) [<http://perma.cc/H73X-EZSM>] (last visited Jan. 2, 2016).

20. ERWIN CHEMERINSKY & LAURIE L. LEVENSON, CRIMINAL PROCEDURE: INVESTIGATION (2d ed. 2013); *Criminal Procedure: Investigation, Second Edition (Aspen Casebook)*, AMAZON.COM, <http://www.amazon.com/Criminal-Procedure-Investigation-Edition-Casebook/dp/145480713X> [<http://perma.cc/WZ5W-Z66Z>] (last visited Jan. 2, 2016). For similar options, see JOSHUA DRESSLER & GEORGE THOMAS III, CRIMINAL PROCEDURE: INVESTIGATING CRIME (5th ed. 2012); *Criminal Procedure: Investigating Crime, 5th (American Casebook Series)*, AMAZON.COM, <http://www.amazon.com/Criminal-Procedure-Investigating-American-Casebook/dp/0314279512> [<http://perma.cc/T58D-J7CE>] (last visited Jan. 2, 2016) (cost: \$167, weight: 2.8 pounds); STEPHEN A. SALTZBURG & DANIEL J. CAPRA, AMERICAN CRIMINAL PROCEDURE, INVESTIGATIVE: CASES AND COMMENTARY (10th ed. 2014); *American Criminal Procedure, Investigative: Cases and Commentary 10th (American Casebook Series)*, AMAZON.COM, <http://www.amazon.com/American-Criminal-Procedure-Investigative-Commentary/dp/0314285598> [<http://perma.cc/U23D-LT57>] (last visited Jan. 3, 2016) (cost: \$176, weight: 3.8 pounds).

the full-sized volume is likely rarely necessary. If a syllabus contains almost all its material from one half of a full-sized book, students could be well served by an instructor who assigns the “split” casebook and then instructs the students to find the stray cases on their own. Supreme Court opinions are, after all, freely available online and are also collected in case reporters maintained by law school libraries.

#### IV. A PROPOSAL SURE TO MAKE ME MANY FRIENDS IN THE ACADEMY

Now the real problem is exposed more clearly. Even if one assigns a “split” casebook, a criminal procedure teacher essentially requires that students spend thousands of dollars to obtain material in the public domain. If all sixty students in my Fall 2015 criminal procedure class purchased the assigned “split” volume by Professors Chemerinsky and Levenson, they will collectively have spent \$7560 for access to Supreme Court opinions. The recommended supplement<sup>21</sup> would add another \$2640, bringing the total above \$10,000 for the class.<sup>22</sup> Because I taught the course in Spring 2015, too, my criminal procedure students in Columbia, Missouri were assigned about \$20,000 in casebooks during the calendar year. (Had I assigned the full-sized version of Chemerinsky and Levenson, the figure would have been still higher.)

If one assumes that the three other law schools in Missouri also teach criminal procedure—and that a comparable number of students at each school are assigned similar casebooks to buy—we are approaching \$80,000 in annual casebook costs for this single subject alone.<sup>23</sup> Throwing in two law schools

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21. ERWIN CHERMERINSKY & LAURIE L. LEVENSON, CRIMINAL PROCEDURE: 2015 CASE AND STATUTORY SUPPLEMENT; *Criminal Procedure: 2015 Case and Statutory Supplement*, AMAZON.COM, <http://www.amazon.com/Criminal-Procedure-2015-Statutory-Supplement/dp/1454859377> [<http://perma.cc/4J9X-BJDN>] (last visited Jan. 2, 2016).

22. Speaking of supplements, much money can be saved by students who choose to forgo supplements in favor of tracking down recent cases themselves. I have begun listing case names in parentheses on my syllabi whenever I assign pages from the supplement to assist students who are cutting costs. A few copies of the supplement, placed on reserve in the law library, can also help.

23. By “this subject,” I am including only the investigation portion of criminal procedure. *See supra* note 1. Also, I believe my estimates are conservative because Mizzou is a fairly small law school. *See infra* note 26. Saint Louis University, Washington University, and the University of Missouri-Kansas City have in recent years enrolled more students than we have. *See Compare 84-85-86-87*, STARTLAW.COM, <http://law-schools.startclass.com/compare/84-85-86-87/University-of-Missouri-Columbia-vs-University-of-Missouri-Kansas-City-vs-St-Louis-University-vs-Washington-University> [<http://perma.cc/3M8N-WFV4>] (last visited Jan. 7, 2016) (click the “details” link for each school, under “Admissions” select “historical acceptance” tab, and mouseover the bar graph for specific enrollment numbers from 2011–2015; Mizzou’s highest enrollment is lower than the lowest enrollment of any of the other schools).

each from Iowa, Nebraska, and Kansas, we end up with ten law schools and a combined \$200,000 or so in assigned criminal procedure materials.

I suspect that if the ten MINK law schools offered a \$100,000 annual salary (just half of the combined expense figure),<sup>24</sup> we could hire someone to produce an excellent criminal procedure casebook. Recall that casebooks are not recreated from whole cloth every year, so our intrepid editor would receive, say, \$300,000 over three years for preparing the book. New editions would issue every three years, and the editor would also find time to prepare a supplement during the two “off-years” in the three-year cycle. The book could then be made available to our students for the cost of printing, with PDF versions available gratis.

This thought experiment illustrates how much money is transferred from law students to casebook authors and publishers every year. I realize that I may have overestimated the per-school expenses because not every criminal procedure student buys a new copy of the assigned book, much less the book and the supplement. But I also limited my data set to four Midwestern states, not including Illinois, which is home to eight ABA-approved law schools. Law students spend hundreds of thousands of dollars each year on criminal procedure materials. If two hundred law schools<sup>25</sup> each have one hundred students taking criminal procedure annually<sup>26</sup> (that’s 20,000 students), an average expense of \$50 per student yields \$1 million in student costs (again, for just this one subject). With new casebooks retailing for around \$200, an estimate of \$50 per student likely severely underestimates the true collective cost.<sup>27</sup>

If American law schools coordinated our efforts, we could produce top-quality casebooks for our students at a fraction of the price currently paid. We

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24. “MINK” refers to the quad-state area comprising Missouri, Iowa, Nebraska, and Kansas.

25. The American Bar Association currently lists 204 law schools that grant juris doctor degrees as “approved.” See *ABA-Approved Law Schools*, AM. BAR ASS’N, [http://www.americanbar.org/groups/legal\\_education/resources/aba\\_approved\\_law\\_schools.html](http://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools.html) [<http://perma.cc/LE8T-KG99>] (last visited Jan. 3, 2016).

26. In 2013, ABA-approved law schools reported a total of 39,674 1L matriculants, nearly 200 per school. See AM. BAR ASS’N, *ABA-APPROVED LAW SCHOOL 1L ENTERING CLASS DATA: FALL 2013 (2014)*, [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/statistics/2013\\_fall\\_aba\\_approved\\_law\\_school\\_entering\\_class\\_information.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2013_fall_aba_approved_law_school_entering_class_information.authcheckdam.pdf) [<http://perma.cc/3JW7-5QS2>]. If criminal procedure is required for graduation, then about 200 students should take the course each year at the average school. Although not every law school requires the course, my guess of 100 students per school is likely a lowball estimate.

27. The economies of scale explored here are even more evident in undergraduate courses, such as introductory economics, in which hundreds of students at a single school are assigned the same textbook. Yet greater economies might be found in the K–12 curriculum; a good algebra book available for the marginal cost of printing could save school districts an extraordinary amount of money.



face a collective action problem because each casebook author has a financial incentive to sell books, and law schools under the current scheme spend no money at all on the production and provision of casebooks to students. If Missouri hires me to edit a book made freely available online, other schools might free ride, and our students might resent paying for what their counterparts elsewhere get for nothing. But the problem should be soluble. Perhaps a team of criminal procedure teachers could get a grant to fund the writing of a casebook that will be distributed for the marginal cost of production. (I suspect I could put a team together for far less than the \$100,000 of annual compensation imagined above.) Perhaps a single law school, or a few schools working together, would fund the effort to demonstrate their concern for students' financial well-being. Summer research grants—normally restricted to scholarship that does not include casebooks—could be directed to faculty willing to assist.<sup>28</sup> Or a few faculty could finance the effort themselves, charging what they believe to be a fair price for their efforts, perhaps even giving the book away after sufficient money had been collected.<sup>29</sup>

Once such a book was available, criminal procedure teachers would remain free to assign whatever course materials they wished. Those choosing to assign a book costing \$200, however, might be expected to justify the burden imposed upon students who otherwise could obtain very inexpensive (or even free) materials.

#### V. SENSIBLE OBJECTIONS

Some casebook authors, as well as “adopters” of their books, will correctly object that much of their text is not from the public domain. Instead, they interlace court opinions with their own explanations, commentary, and practice problems, yielding a final product that promotes education far better than could be achieved with a mere collection of cases. This may be true. I would respond that with the amount of money our students spend on casebooks, we could save them a vast sum, even if we needed to hire someone willing to produce thoughtful commentary in addition to editing cases. In addition, at least some popular casebooks really do consist almost entirely of Supreme Court opinions, with brief segues guiding the reader from one case to the next. Although

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28. Law schools nervous about deeming casebook authorship as “scholarship” could consider the production of a book, such as the one I propose here, to be a form of service to the law school and legal education more broadly.

29. For an example of a publishing platform that could enable such a project, see *About Semaphore Press*, SEMAPHORE PRESS, <http://www.semaphorepress.com/about.html> [<http://perma.cc/5XWB-7NYC>] (last visited Jan. 11, 2016) (“Semaphore Press provides digital downloads of law school casebooks through its website, asking students to pay a suggested price for the material that is approximately \$1 for each one-hour class session in which the materials are used.”). Electronic distribution on Amazon.com might work, too.

choosing what cases to include requires pedagogical judgment, a review of tables of contents (and tables of cases) from several casebooks (with varying ratios of commentary-to-opinions in their text) has convinced me that most authors are including the same material. When teaching “what is a search,” the same cases are likely to appear.<sup>30</sup>

Others may note that not all teachers have the same style, and a book that works well for one may work poorly for another. Some prefer lots of notes that delve into the weeds and explore the latest news from the lower courts. Some enjoy excerpts from law review articles. Some just want the major cases.<sup>31</sup> Accordingly, the law school world is better off having many casebooks available for criminal procedure teachers to consider assigning. I would respond that with the amount of money our students spend on casebooks, we could save them a vast sum, even if we needed to hire a few groups of authors to produce a few options—each of them excellent in its own way.

## VI. CONCLUSION

Criminal procedure casebooks cost American law students a breathtaking annual amount, and teachers should do what they can to reduce costs. In the short term, teachers can assign “split” casebooks and can assist those students choosing not to purchase annual supplements.<sup>32</sup> With some additional time and

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30. See *Katz v. United States*, 389 U.S. 347, 353 (1967) (phone booth); *United States v. Jones*, 132 S. Ct. 945, 948 (2012) (GPS tracking); *Oliver v. United States*, 466 U.S. 170, 173 (1984) (“open fields” doctrine); *United States v. Dunn*, 480 U.S. 294, 301 (1987) (defining “curtilage”); *California v. Ciraolo*, 476 U.S. 207, 209 (1986) (use of airplanes); *Florida v. Riley*, 488 U.S. 445, 447 (1989) (helicopters); *Kyllo v. United States*, 533 U.S. 27, 29 (2001) (thermal imaging); *California v. Greenwood*, 486 U.S. 35, 37 (1988) (garbage); *Illinois v. Caballes*, 543 U.S. 405, 407 (2005) (dog sniffs). Every one of these cases is included in CHEMERINSKY & LEVENSON, *supra* note 18, as well as in SALTZBURG & CAPRA, *supra* note 11, KAMISAR ET AL., *supra* note 10, and DRESSLER & THOMAS, *supra* note 8.

31. I fall into the camp that mostly wants a criminal procedure casebook to include the leading cases, edited down to a reasonable length (but not too short!), and organized in a sensible fashion. I assign such a casebook and then supplement it with my own material, such as video clips (for example, when teaching “what is a search,” I show advertisements for drone-mounted cameras and thermal imaging devices not widely available when *Florida v. Riley* and *Kyllo v. United States* were decided), case documents (for example, when teaching *California v. Hodari D.*, I show students the transcript of the suppression hearing conducted by the juvenile court), and portions of court opinions that I deem valuable but that my chosen casebook’s authors have cut (for example, footnote 1 from the majority opinion in *Hodari D.*, wherein Justice Scalia quotes the book of Proverbs (“The wicked flee when no man pursueth”), and footnote 4 of Justice Stevens’s dissent in the same case, wherein he discusses why innocent people might run from police). *California v. Hodari D.*, 499 U.S. 621, 624 n.1, 631 n.4 (1991).

32. See *supra* text accompanying notes 18–20 and *supra* note 22. Another short-term solution is for students to rent books. For example, Amazon.com will sometimes rent a copy of the Chemerinsky & Levenson “split” for around \$45. *Criminal Procedure: Investigation, Second Edition (Aspen Casebook)*, *supra* note 20. Renters should return books quickly at the end of the

effort, I hope authors and money can be found to create excellent, inexpensive books and thereby reduce the cost of legal education. If criminal procedure teachers can lead the way, perhaps our colleagues teaching other law school subjects can join in the effort, and together we can perform a significant service to our students.

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semester to avoid high late fees. When I last checked, however, the rental option was not available for this book. For a list of casebooks currently available for rent, see <http://www.amazon.com/Law-New-Used-Textbooks-Books/b?ie=UTF8&node=468222> [<http://perma.cc/B38P-CXZ5>] (last visited Jan. 11, 2016).