

The background of the cover features a photograph of classical architecture. Several tall, fluted columns are visible, and a statue of a person in classical attire is partially seen at the bottom right. The image is slightly out of focus, giving it a soft, artistic feel.

# CRIMINAL PROCEDURE TODAY

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Issues and Cases

SECOND EDITION

CLIFF ROBERSON

# CRIMINAL PROCEDURE TODAY

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ISSUES AND CASES

*Second Edition*

CLIFF ROBERSON, L.L.M., PH.D.

Prentice  
Hall

Upper Saddle River, New Jersey 07458

## Library of Congress Cataloging-in-Publication Data

Roberson, Cliff.

Criminal procedure today : issues and cases / Cliff Roberson.—2nd ed.

p. cm.

Includes bibliographical references and index.

ISBN 0-13-094098-4

1. Criminal procedure—United States. 2. Criminal procedure—

United States—Cases. I. Title.

KF9619.3 .R59 2003

345.73'05—dc21

2002024232

**Publisher:** Jeff Johnston  
**Executive Editor:** Kim Davies  
**Production Editor:** Rosie Jones, Clarinda Publication Services  
**Production Liaison:** Barbara Marttine Cappuccio  
**Director of Production and Manufacturing:** Bruce Johnson  
**Managing Editor:** Mary Carnis  
**Manufacturing Buyer:** Cathleen Petersen  
**Creative Director:** Cheryl Asherman  
**Cover Design Coordinator:** Miguel Ortiz  
**Cover Designer:** Joseph Sengotta  
**Cover Image:** Jerry Driendl, FPG International  
**Editorial Assistant:** Korrine Dorsey  
**Formatting and Interior Design:** The Clarinda Company  
**Printing and Binding:** Phoenix Book Tech Park

Prentice-Hall International (UK) Limited, *London*  
Prentice-Hall of Australia Pty. Limited, *Sydney*  
Prentice-Hall Canada Inc., *Toronto*  
Prentice-Hall Hispanoamericana, S.A., *Mexico*  
Prentice-Hall of India Private Limited, *New Delhi*  
Prentice-Hall of Japan, Inc., *Tokyo*  
Pearson Education Asia Pte. Ltd., *Singapore*  
Editora Prentice-Hall do Brasil, Ltda., *Rio de Janeiro*

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**Prentice  
Hall**

10 9 8 7 6 5 4 3 2  
ISBN 0-13-094098-4

# PREFACE

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**T**his book, now in its second edition, was designed to assist professors in teaching a course in criminal procedure—my purpose being to provide a combination textbook and casebook that will be easily understood by the students, thus enabling instructors to focus on selected criminal procedure issues and topics during class time. Too often textbooks are written at a level that can only be understood by instructors, and thus valuable class time must be used to explain the meaning of the concepts. To overcome this problem, I have followed the example of Ernest Hemingway and used familiar, concrete words and short sentences whenever possible.

One decision that most professors struggle with when deciding how to teach a criminal procedure course is whether to use a casebook or a regular textbook—referred to as “black letter” law, “hornbook,” or treatise by attorneys. There are significant advantages to using either approach. Accordingly, in this book I have used the black letter law approach and the case approach. Each chapter begins with a discussion of the law followed by significant cases in that area. Deciding which cases to include and which to exclude was no easy task. As a long-time student of criminal procedure, there are certain cases which I excluded only reluctantly. To include all relevant cases would have made the text size unmanageable. The cases included have been significantly edited and abridged. For a more in-depth coverage of any case, the reader should refer to the unedited version contained in one of the “reporters.” In addition, since this is an introductory text, I have limited the case citations to a minimum.

For instructors teaching in programs that have a criminal courts course, I recommend that Chapters 1 and 2 be omitted and the course begin with Chapter 3.

Chapter 4 is designed as an overview chapter on the Fourth Amendment. The approach used in this chapter is different from that used in other criminal procedure textbooks and was developed by a former mentor, Justice Charles E. Moylan, Jr. of the Maryland Court of Special Appeals. I found this approach to be very useful in providing students with foundational concepts of the Fourth Amendment. The following three questions are asked of readers:

1. Is the Fourth Amendment applicable? [Open fields, consent, plain view, etc. (if not, evidence is not excluded by reason of the Fourth).]
2. If the Fourth Amendment is applicable, has it been complied with? (If so, evidence is not excluded by reason of the Fourth.)
3. If the Fourth Amendment is applicable and has not been complied with, what sanctions will the court impose? (Exclusionary rule and its exceptions.)

Included in the instructor’s manual is a scenario for a moot court case that instructors may want to use with student role players. The case will contain fact statements for each witness, a police report, and instructions for each role player. Students taking part in the moot court will gain an appreciation for the problems involved in trying or defending a criminal case.



While I am listed as the sole author of this text, it could not have been published without the assistance of many persons, including General William K. Suter, former Judge Advocate General, U.S. Army and presently Clerk, U.S. Supreme Court; Franz Jantzen of the Curator's Office, U.S. Supreme Court; Professors Robert Perez and Harvey Wallace, California State University, Fresno. A special thanks to the manuscript reviewers: Carolyn Brown Dennis, Fayetteville Technical Community College, Fayetteville, NC; K. Lee Derr, J.D., Policy Development & Research Office, Harrisburg, PA; Charles Meyers, Aims Community College, Greeley, CO; James Newman, Rio Hondo Community College, Fresno, CA; and William Kelly, Auburn University, Auburn AL. The text would not have been completed without the continual encouragement and persistence of my editor, Kim Davies.

I would be glad to hear from readers of the book about any suggestions, improvements, or errors noted.

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# 1

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## /INTRODUCTION

### OVERVIEW

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*Let every nation know, whether it wishes us well or ill, that we shall pay any price, bear any burden, meet any hardship, support any friend, oppose any foe to assure the survival and the success of liberty.*

—JOHN F. KENNEDY

The tragic events of September 11, 2001, have affected virtually all phases of our lives. Many well-meaning Americans have called for the restriction of certain of our constitutional rights as a weapon in combating terrorism. An area of concern in this regard is our criminal justice system and in particular, criminal procedure. To assure the survival and the success of liberty, our criminal justice system must remain a system of laws and operate under the rule of law. To operate under the rule of law means that our laws apply to all in a uniform manner. As Betty Blackwell, president of the Texas Criminal Defense Lawyers Association stated, “These are dark times, and there may be darker times ahead, but we must not lose sight of our goal—freedom.”

During the latter half of Chief Justice Warren’s tenure as Chief Justice of the U.S. Supreme Court (1953–1969), the Supreme Court reshaped constitutional criminal procedure. The reshaping became known as the “due process revolution,” or the “criminal procedure revolution.” While the court has retreated on some aspects of that revolution, for the most part the foundational elements governing criminal procedure in both state and federal criminal justice systems remain as constitutional standards.

## Definition and Sources

The study of our system of criminal law and procedure should be viewed not as a set of rules for memorization, but a cluster of ideas, principles, and values about which reasonable persons can and do disagree. The system is not fixed in stone; it is changing and flexible. Understanding our concept of justice requires a thoughtful comprehension of the historical background, social values, moral standards, and political realities that give direction to our system. The key elements are discussed in this book.

Criminal procedure refers to those laws and rules that govern the criminal justice process. Substantive criminal law defines those acts that are crimes. Criminal procedure describes those laws and rules by which crimes are investigated and prosecuted. Conduct that constitutes a crime is covered in substantive criminal law. The rules and regulations by which a crime is investigated and the accused prosecuted are covered in the study of criminal procedure. This text will focus on criminal procedure.

The sources of criminal procedure laws, rules, and regulations include:

1. *Constitutions*—both state and federal.
2. *Statutes*—Both the state and federal governments have enacted statutes to regulate the administration of the criminal justice system. The primary state regulatory statute is the state code of criminal procedure, which regulates procedure in state courts. The primary federal statute that governs the trial of criminal cases in federal court is Title 18, U.S. Code. Except for constitutional issues, federal procedural rules apply only to federal criminal cases. State procedural rules apply only to state trials.
3. *Judicial opinions*—Judicial opinions construe the constitutionality, meaning, and effect of constitutional and statutory provisions. (The Capstone Cases included in each chapter provide examples of the importance of judicial opinions in criminal procedures.)
4. *Court rules*—Court rules consist of the various standard procedures used by the courts, which were developed as the result of a court's inherent supervisory power over the administration of the criminal justice system. Court rules regulate the guilt-determining process in the courts in the areas not regulated by other rules. Most students of criminal procedure fail to consider the importance of court rules in the trial of criminal cases. Statewide court rules are often divided into rules of civil, criminal, and, in some states, legislative approval. Examples of court rules that impact on the criminal justice system follow:

*Los Angeles County Municipal Court Rule 532.6 provides:*

Each judge is required to list [report] all causes [cases] under submission for more than 30 days, with an indication of the length of time each has been pending (30 through 60 days, 61 through 90 days, or over 90 days).

*California Supreme Court Rule 22 [regarding oral arguments before the court] states:*

Unless otherwise ordered: (1) counsel for each party shall be allowed 30 minutes for oral argument, except in a case in which a sentence of death has been imposed each party shall be allowed 45 minutes. . . .

U.S. District Court (EDCA) Rule 5a

(1) The trial of a defendant held in custody solely for purposes of trial on a federal charge shall commence within 90 days following the beginning of continuous custody.

## Goals of the Justice System

Most experts on the justice system agree that the most basic goal of the criminal justice system is to protect society from crime. Beyond that, there is little agreement regarding the goals of the justice system. There are several competing philosophies on the purposes of the justice system, each with their own specific goals for the system. As Donald Newman stated: "The multiplicity of purposes, and of hopes, not

only makes the system controversial, but often adds a dimension of confusion to any attempt to assess or evaluate it.”<sup>1</sup> To help understand some of the more commonly accepted goals of the justice system, the goals are classified as orientation goals, pragmatic goals, abstract goals, or standards.

**Orientation Goals** Criminal justice professionals generally are oriented toward one of two opposite directions—“law and order” or “individual rights.” The “law and order” orientation stresses the need to solve the crime problem. The “individual rights” orientation stresses the need to protect an individual’s rights and considers this need greater than the need to punish offenders. Too great an emphasis on individual rights will restrict law enforcement and allow offenders to escape punishment. Arbitrary police practices that may occur under the “law and order” orientation may infringe on human and constitutional rights. As Chief Justice Earl Warren stated in *Miranda v. Arizona*:<sup>2</sup>

The quality of a nation’s civilization can be largely measured by the methods it uses in the enforcement of the criminal law. . . . All of these policies point to one overriding thought: the constitutional foundation underlying the privilege is the respect a government—state or federal—must accord the dignity and integrity of its citizens. To maintain a fair state-individual balance, the government must shoulder the entire load.

**Pragmatic Goals** The pragmatic goals of the justice system include:

*Preventing crime.* This goal includes providing potential criminals with conventional opportunities for success before they start a career of crime, building stronger social control units such as the family, providing guidance and counseling in our schools, and developing better environmental conditions in the neighborhoods that foster law-abiding behavior.

*Diverting offenders.* This goal refers to the efforts to take offenders out of the system and place them in nonpunitive treatment programs. The purpose of this effort is to correct the offender without placing the stigma of a criminal conviction on the offender.

*Detering crime.* The justice system attempts to deter crime by making potential criminals believe that the punishments received for criminal behavior outweigh any potential benefit (i.e., crime does not pay).

*Controlling criminals.* By this goal, the system attempts to control the behavior of known criminals by incarcerating the more serious offenders and placing the less serious ones in community correction programs.

*Rehabilitating offenders.* An objective of the system is to provide rehabilitation treatment to offenders in order to reduce the likelihood of future involvement in criminal behavior. The goal of rehabilitation was very popular in the 1960s. During the 1980s it has been discounted because of the popular belief that present rehabilitation programs are not effective.<sup>3</sup>

**Abstract Goals** Abstract goals are the underlying principles upon which our justice system is based. The most common abstract goals include:

*Fairness.* The justice system should seek to ensure that all persons involved in the criminal justice system are treated fairly and humanely. More specifically, socioeconomic status and ethnicity should not determine the type of treatment or form of punishment one receives from various criminal justice agencies.

*Efficiency.* The system should be organized and managed in a manner to ensure maximum utilization of personnel and resources.

*Effectiveness.* The goal of effectiveness is that the justice system should operate in an effective and efficient manner.