



CRIMINAL PROCEDURE

Joel Samaha

Second Edition

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SECOND EDITION

Joel Samaha
University of Minnesota

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▼ About the Author ▼

Professor Joel Samaha teaches Criminal Law, Criminal Procedure, and Introduction to Criminal Justice at the University of Minnesota. He is both a lawyer and a historian whose primary research interest is the history of criminal justice. He received his B.A. (1958), J.D. (1961), and Ph.D. (1972) from Northwestern University. Samaha also studied at Cambridge University, England (1969–70), while doing research for his first book, *Law and Order in Historical Perspective* (1974), a quantitative and qualitative analysis of law enforcement in pre-industrial society.

Professor Samaha was admitted to the Illinois Bar in 1962. He taught at UCLA before coming to the University of Minnesota in 1971. At the University of Minnesota, he served as chairman of the Department of Criminal Justice Studies from 1974 to 1978. Since then he has returned to teaching, research, and writing full time. He has taught both television and radio courses in criminal justice, and has co-taught a National Endowment for the Humanities seminar in legal and constitutional history. He was named Distinguished Teacher at the University of Minnesota, a coveted award, in 1974.

Professor Samaha is an active scholar. In addition to his monograph on pre-industrial law enforcement and a transcription with scholarly commentary of English criminal justice records during the reign of Elizabeth I, he has written numerous articles on the history of criminal justice, published in such scholarly journals as *Historical Journal*, *American Journal of Legal History*, *Minnesota Law Review*, *William Mitchell Law Review*, and *Journal of Social History*. In addition to his best-seller, *Criminal Law*, *Fourth Edition*, he has written two other successful textbooks, *Criminal Justice*, in press for its third edition, and *Criminal Procedure*, now in its second edition.

▼ Preface ▼

The law of criminal procedure establishes the balance between the power and resources of government and the privacy and liberty of citizens. The question of how to provide the government with enough power to enforce the criminal law without invading legitimate privacy and liberty interests fascinates students. This is especially true if they can apply abstract principles to everyday experience. In 1958, at Northwestern University Law School, two distinguished professors, Claude Sowle and Fred Inbau, introduced me to the law of criminal procedure from two perspectives. Professor Sowle, a respected scholar, emphasized the philosophical underpinnings of the law; Professor Inbau, a famous interrogator, spoke from experience in applying abstract principles to everyday practice. In 1968, I began work on *Law and Order in Historical Perspective*, a monograph that reconstructed the criminal process in sixteenth-century England. Since 1972, I have taught criminal procedure to undergraduate, graduate, and law students at the University of Minnesota. *Criminal Procedure*, second edition, like its predecessor, reflects my conviction that the best way to learn criminal procedure is to study general principles as they apply to real problems. It demonstrates that general principles have meaning only in the context of specific reality, and that specific reality makes sense only in the context of general principles.

Themes

Criminal Procedure, second edition, is organized according to the **balance of process and result**, a dominant theme in the law of criminal procedure. The law of criminal procedure emphasizes the need to convict the guilty and free the innocent, but it also promotes the value of enforcing the law according to the rules. In other words, in the law of criminal procedure, the end does not necessarily justify the means.

In practice, several other themes complement the balance of legal interests in process and result. First, the criminal process consists of a series of decision points that result both in increasing deprivations of liberty and privacy to individuals and in increasing expenditures of public resources. Second, formal rules and informal discretion influence decision making in the criminal process. Third, the Constitution requires that facts, not hunch or whim, support government action to enforce the criminal law. Finally, the law of criminal procedure promotes and balances a range of organizational, societal, and political interests, as well as the legal interests in process and result.

Organization

Criminal Procedure, second edition, contains text, carefully edited case excerpts, and charts, tables, graphs, and other materials to provide a balanced presentation of both formal law and its practical application on the street, at the police station, and in the courts. Chapters 1 and 2 provide an overview of the criminal process, the structure of American criminal justice, and the constitutional principles governing the law and practice of American criminal procedure. Students cannot understand the law of search and seizure, of interrogation, of identification, and of trial and postconviction proceedings unless they first grasp firmly the broad underpinnings of the due process clause and of the constitutional structure comprising federalism, separation of powers, and checks and balances.

Chapter 3 surveys the wide range of process and substantive remedies available when government exceeds its power. Criminal procedure cases nearly always include issues of either the exclusion of evidence or some substantive remedy, as in a civil suit for damages. I have found that students fare better in learning the rules of criminal procedure if they first understand why a case is before the court. That is why the chapter on remedies precedes the chapters on the specific stages in the criminal process. I have designed the book, however, so that chapter 3 stands independently. This permits the coverage of remedies before, during, or after the specific subjects examined in chapters 4 through 12. Since the exclusionary rule is the remedy most often taught in criminal procedure courses, it appears first in chapter 3. This is for the benefit of instructors who wish or have time only to cover the exclusionary rule.

The theme of a **series of decision points** accounts for the arrangement of chapters 4 through 12. These chapters arrange the subject matter of criminal procedure roughly as it occurs in practice—with procedures on the street, at the police station, and in court. The only unusual element in this organization is that stop and frisk appears as the first topic in the large subject of search and seizure. Ordinarily, it appears as an exception to the Fourth Amendment warrant requirement. As with chapter 3, however, I have designed chapter 4 to stand alone, so that instructors who wish to do so can teach stop and frisk following either chapter 5 or chapter 6—or anywhere else the logic of their presentation suggests.

Some criminal procedure courses and many criminal procedure texts—particularly undergraduate courses and texts—teach only the law of arrest, searches and seizures, interrogation, and identification procedures. In other words, they focus on police practices or the encounters between citizens and the police on the street and at the police station. *Criminal Procedure*, second edition, lends itself to this type of course. Chapters 4 through 8 stand independently of the remaining chapters. Therefore, instructors can teach the law of police practices, omitting the overreaching principles, remedies, and procedures in court. *Criminal Procedure*, second edition, however, also suits courses that cover the entire criminal process, from the earliest encounters on the street to procedures following conviction. And, for students taking courses that encompass only the law of police procedures, the text should fill the gap if they wish to read the subjects not covered in their formal course work.

Text and Cases

The text and the case excerpts complement each other. The most effective way to use *Criminal Procedure*, second edition, is as a case textbook. The text enriches the understanding of the cases, and the cases enhance the understanding of the text. The cases are not merely examples, illustrations, or attention grabbers, although they are surely all of these. The cases elaborate upon and explain the principles of the law of criminal procedure in the context of real, practical situations.

The case excerpts of *Criminal Procedure*, second edition, present students with the arguments that the courts used to apply the general principles to the facts of specific cases. I have carefully edited the opinions of the cases so that students can understand them and can in each case focus on the central principle and court's reasoning that applies that principle to the facts. The **Case Question** focuses on the major issue in the case, the **Case Background** gives a brief procedural history of the case, and the **Case Discussion** asks questions that not only test whether students got the main points in the case, but also provide a basis for class discussion on the legal and other issues raised in the case.

The case excerpts and text of *Criminal Procedure*, second edition, stand independent of each other. This allows instructors either to emphasize one over the other or to use

either cases or text exclusively. Students could read only the case excerpts with the help of the Case Questions, Case Backgrounds, and Case Discussions. Or they could read only the text, using the case excerpts merely as examples.

Pedagogical Aids

However organized and presented, criminal procedure is a complex subject that contains many technical concepts, terms, and phrases. I have tried to help students work through these complexities, primarily by writing direct, clear prose. In addition, each chapter contains a **Chapter Outline** and a brief numbered list of the **Chapter Main Points**, followed by definitions of the **Chapter Key Terms**. The key terms are bold-faced in the body of the text, and they also appear in the **Glossary** at the end of the book. Each chapter or major section of a chapter ends with a **Summary**. The **Questions for Review and Discussion** at the end of each chapter provide a good test of whether students have identified and understood the main points in the chapter. Students comment that the combination of Chapter Outline, Chapter Main Points, and Chapter Key Terms at the beginning of each chapter and Summary and Questions for Review and Discussion at the end tell them at the outset what they should look for and then reassure them after they have finished reading the chapter that they have found what they should have looked for.

New to the Second Edition

The success of *Criminal Procedure* has provided me the opportunity to improve the text, cases, and other materials. No book is perfect—certainly no first edition. Furthermore, especially in the law of criminal procedure, every Supreme Court term establishes new and often fundamental developments. *Criminal Procedure*, second edition, reflects these new developments. It includes all the leading criminal procedure cases published through June of 1992. But it also includes significant elaborations on the first edition and some entirely new matter. Substantially more **Decision Points**, which are briefer case excerpts than the main case excerpts in the book and are screened for emphasis, focus on the practical applications of principles.

Many new charts and graphs, most developed by me, illustrate, condense, summarize, and focus attention on the most important concepts, cases, and applications of principles and constitutional provisions. All of these derive from handouts I have developed and revised during the past twenty years. A completely new chapter on postconviction proceedings has also been added. To complete the criminal process, students should know something about sentencing, appeal, and habeas corpus proceedings. *Criminal Procedure*, second edition, includes text and cases on these topics.

Acknowledgments

Writing a book always accrues many debts. I acknowledge and appreciate the help the following reviewers provided; their valuable suggestions have improved the book: Robert V. Burns, Robert Chaires, Charles Chastain, Richard E. Givan, David V. Guccione, Robert A. Harvie, Beth Hogan, Finn Hornum, Barton L. Ingraham, Thomas Lenahan, Kenneth K. Marcus, Paul A. Mastriacovo, William Michelek, Harold E. Moore, Jr., Patrick A. Mueller, Charles E. Myers III, Peyton Paxson, Nancy L. Peterson, Robert R. Reinersten, Joseph G. Rish, Neil F. Rogers, James D. Stinchcomb, John J. Sullivan, Thomas D. Todd, James Van Matre, Donald H. Wallace, and Roger Wright.

Jack Call has written an outstanding **Instructor's Manual** with a completely revised test bank that should satisfy even the most demanding instructors.

University of Minnesota students—undergraduates, graduate, law, and professional criminal justice personnel—have asked stimulating questions, participated in lively discussions and told me bluntly, sometimes irreverently, what they liked and disliked about *Criminal Procedure* and the manuscript revisions in *Criminal Procedure*, second edition. The book is better because of all of my students.

My past teachers, without knowing it, have influenced *Criminal Procedure*, second edition. Professors Claude Sowle and Fred Inbau taught me the law of criminal procedure at Northwestern University Law School. They sparked what would become a lifelong fascination with the subject. Sir Geoffrey Elton, Clare College, Cambridge University, England, guided and stimulated my curiosity about the history of criminal procedure and taught me how to conduct disciplined research in the primary sources. Finally, Professor Lacey Baldwin Smith, Northwestern University, the best teacher I ever had, taught me how to transfer my own excitement about the law of criminal procedure to my students and to transform my convoluted English into readable prose.

Many people at West Publishing Company worked behind the scenes to make the book better. They have definitely improved the final product. Poh Lin Khoo lived with, overcame, and surprisingly got me to pay attention to the details I hate, but which distinguish an excellent book from a good book. She did so with humor and patience. Kara ZumBahlen carried the book through its final stages, ensuring that all of us did our work on time, and right. Mary Schiller, as always, encouraged me when I needed it, chided me when I deserved it, cheered me up when I was discouraged, and somehow through it all always knew how to get me to do my best. Happily, I give them the credit they deserve. They did their best. I accept responsibility for the shortcomings always associated with human endeavor.

Joel Samaha
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August 11, 1992

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