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刑事诉讼程序全书

COMPREHENSIVE CRIMINAL PROCEDURE

[美] 罗纳德·杰伊·艾伦 (Ronald Jay Allen)
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刑事诉讼程序全书

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Preface

Comprehensive Criminal Procedure provides a set of materials suitable for any criminal procedure course beyond those that focus primarily on state law issues. Many modern American law schools provide two mainstream criminal procedure courses. One course focuses primarily on right to counsel, fourth amendment, self-incrimination, and related areas, while the second course focuses primarily on post-arrest, trial, and appellate issues. Other law schools offer the first but not the second of these, and some offer a single survey course combining both the investigative and adjudicative aspects of the subject matter. This book should work well for any of these courses.

The book opens with a wide-ranging set of readings about the criminal justice system, combining hard data with expert commentary. The nature of due process adjudication is then introduced, because so much of this field either has been constitutionalized or operates within the shadow of the Constitution. With one exception, the book follows the criminal process chronologically from investigation to appeal; that exception is Chapter 3, which contains a thorough examination of the right to counsel. Counsel is the linchpin of criminal procedure, obviously so with respect to its constitutional aspects but even more critically so with respect to its statutory and common law aspects. Without adequate counsel, a suspect or defendant is, with rare exceptions, lost. The most elaborate procedural protections courts can devise are of little value to one who neither knows what those protections are nor how they can be used to best advantage.

Following the right to counsel is a chapter chronicling the history of *Boyd v. United States*. We think it fair to say that the Supreme Court of the United States has been reacting to the *Boyd* case for the last century, and that the present law of search and seizure and the right to be free from compelled self-incrimination cannot be understood without a grounding in *Boyd* and its aftermath. The remainder of the book then unfolds in the promised chronological order.

Criminal procedure is one of the most fascinating and important fields of legal study. More than any other area of law, criminal procedure determines the relationship between government and citizen, and thus defines the legal system's stance toward the demands of autonomy, privacy, and dignity. It often does so through adversarial legal processes. Thus, the study of criminal procedure leads naturally to fundamental problems of reasoning, decision-making, and political and social theory, quite in addition to standard law school questions about the meaning of a constitutional or statutory provision, or the implications of a precedent. The subject demands, and we have tried to bring, intellectual rigor to these materials; we do not shy away from addressing intractable problems. Moreover, much of the present law reflects its past, and thus we have tried to give a picture not only of the law today but also of its history.

In addition to the careful attention given to the historical roots of modern law, we develop four other subthemes while pursuing the overarching theme to this book—that the criminal process significantly forms the boundary between the government and the citizen. First, we draw attention to the real-world implications of alternative regulatory regimes. All too common in this field is the notion that if there is a problem, the courts should remedy it. Often courts are unable to remedy problems, and sometimes their solutions are worse than the initial problem addressed. Second, the subject matter is criminal procedure, but procedure interacts in complex, profound ways with substance. In appraising any procedural matter, especially one involving a judicial determination of a procedural right, the power of legislatures to indirectly eliminate the right through changes in substantive criminal law (or directly through statutory changes to the procedure in question) must be analyzed. Third, much of the modern law of criminal procedure is a direct consequence of the effort to eliminate racial discrimination in the United States, and can only be understood in that context. Last, the implications of limited resources must constantly be kept in mind. Another point all too often neglected is that criminal procedure is instrumental to the construction of a civilized society, and a dollar spent here is a dollar that cannot be spent somewhere else. One can have more expensive criminal procedure or one can have more hospitals, roads, or welfare programs. One cannot, however, have it all.

We have endeavored to keep editing of cases at a minimum, opting at times for textual description over a series of edited excerpts. Editing is unavoidable, however. In all cases and materials reproduced here, we have kept the original footnoting sequence. Wherever our own footnotes might be confused with those of the primary material, our own footnotes are identified by the legend “—Eds.” This book contains Supreme Court and lower court cases and legislative materials current through July 2000.

Finally, we would like to acknowledge our very many debts to those who have assisted us in the preparation of these materials. Joann Thompson and Diane Cronk were indefatigable in the many secretarial tasks that manuscript preparation entails. We are also greatly indebted to Kristy Mace, Jamie Elizabeth LeVin, Ross Rosenberg, and Ken Sugarman for excellent research assistance. We are indebted to the editorial staff of the publisher for having provided invaluable assistance throughout the preparation of the book.

Ronald J. Allen
William J. Stuntz
Joseph L. Hoffmann
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- Ronald J. Allen and Ross M. Rosenberg, *The Fourth Amendment and the Limits of Theory: Local Versus General Theoretical Knowledge*, 72 St. John's L. Rev. 1149, 1194, 1197-1200 (1998). Reprinted with permission.
- Albert W. Alschuler, *Implementing the Criminal Defendant's Right to Trial: Alternatives to the Plea Bargaining System*, 50 U. Chi. L. Rev. 931, 932-936, 1048-1050 (1983). Copyright © 1983. Reprinted with permission.
- Akhil Reed Amar, *The Future of Constitutional Criminal Procedure*, 33 Am. Crim. L. Rev. 1123, 1123-1125, 1128-1129, 1132-1134 (1996). Reprinted with permission of the publisher, Georgetown University and *American Criminal Law Review* (1996).
- Anthony Amsterdam, *Speedy Criminal Trial: Rights and Remedies*, 27 Stan. L. Rev. 525, 527-728 (1975). Copyright 1975 by Stanford Law Review. Reproduced with permission of Stanford Law Review in the format textbook via Copyright Clearance Center.
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- Arizona Rules, Rule 17.4 (g) and Rule 10.1 from Arizona Rules of Criminal Procedure, West Group. Reprinted with permission.
- David L. Bazelon, *The Realities of Gideon and Argersinger*, 64 *Geo. L.J.* 811 (1976). Reprinted with permission of the publisher, Georgetown University and Georgetown Law Journal © 1976.
- Abraham Blumberg, *The Practice of Law as Confidence Game: Organizational Co-optation of a Profession*, 1 *Law & Soc'y Rev.* 15, 18-26, 29-31 (No. 2 1967). Reprinted by permission of the Law and Society Association.
- Craig Bradley, *Murray v. United States: The Bell Tolls for the Warrant Requirement*, 64 *Ind. L. J.* 907, 917-918 (1989). Reprinted with permission.
- William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 *Harv. L. Rev.* 489-497, (1977). Copyright © 1977 by The Harvard Law Review Association. Reprinted with permission.
- Steven J. Burton, *Comment on 'Empty Ideas': Logical Positivist Analyses of Equality and Rules*, 91 *Yale L. J.* 1136-1141, 1144-1147 (1982). Reprinted by permission of The Yale Law Journal Company and William S. Hein Company from The Yale Law Journal, Vol. 91, pages 1136-1152.
- Paul Butler, *Racially Based Jury Nullification: Black Power in the Criminal Justice System*, 105 *Yale L. J.* 677, 714 (1995). Reprinted by permission of The Yale Law Journal Company and William S. Hein Company from The Yale Law Journal, Vol. 105, pages 677-725.
- Paul Chevigny, *Edge Of The Knife*, pp. 101-102 (1995) New Press. Copyright © 1995. *Edge of the Knife: Police Violence in the Americas* by Paul Chevigny. Reprinted by permission of The New Press.
- Robert Dawson, *Joint Trials of Defendants in Criminal Cases: An Analysis of Efficiencies and Prejudices*, 77 *Mich. L. Rev.* 1379, 1383-1386 (1979). Reprinted from *Michigan Law Review*, June 1979, Vol. 77, No. 6. Copyright 1979 by The Michigan Law Review Association. Reprinted with permission of the author.
- Alan M. Dershowitz, excerpt from *The Best Defense*, pp. xxi-xxii. Copyright © by Alan M. Dershowitz. Used by permission of Random House, Inc.
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- Robert Ellickson, *Controlling Chronic Misconduct in City Spaces: Of Panhandlers, Skid Rows, and Public-Space Zoning*, 105 *Yale L. J.* 1165, 1247-1248 (1996). Reprinted by permission of The Yale Law Journal Company and William S. Hein Company from The Yale Law Journal, Vol. 105, pages 1165-1248.
- George Fisher, *Plea Bargaining's Triumph*, 109 *Yale L. J.* 857, 864-868 (2000). Reprinted by permission of The Yale Law Journal Company and William S. Hein Company from The Yale Law Journal, Vol. 109, pages 857-1086.
- Caleb Foote, *Vagrancy-Type Law and Its Administration*, 603, *U. Pa. L. Rev.* 603, 613-615 (1956). Reprinted with permission of the University of Pennsylvania Law Review and William S. Hein & Company.
- Charles Fried, *Reflections on Crime and Punishment*, 30 *Suffolk U. L. Rev.* 681, 682-683, 685-688, 692-693, 694-695 (1997). Copyright © 1997. Reprinted with permission.
- Russell Galloway, *The Intruding Eye: A Status Report on the Constitutional Ban Against Paper Searches*, 25 *Howard L. J.* 367, 382-385 (1982). Copyright © 1982 by the Howard Law Journal. Reprinted with permission.
- Joseph D. Grano, *Ascertaining the Truth*, 77 *Cornell L. Rev.* 1061, 1062-1064 (1992). Copyright © 1992. Reprinted with permission.

- Milton Heumann, *Plea Bargaining: The Experiences of Prosecutors, Judges, and Defense Attorneys*, pp. 49-50, 57-59, 61-63, 76-78, 89, 100-103, 105-106, University of Chicago Press, 1978. Copyright © 1978 by the University of Chicago Press. Reprinted with permission.
- Pamela Karlan, *Discrete and Relational Criminal Representation: The Changing Vision of the Right to Counsel*, 105 *Harv. L. Rev.* 670, 709-710 (1992). Copyright © 1992 by the Harvard Law Review Association. Reprinted with permission.
- Randall Kennedy, *Race, Crime and the Law*, pp. 157-159 (1997) Vintage Books. Copyright © 1997 by Randall Kennedy. Reprinted by permission of Pantheon Books, a division of Random House, Inc.
- Michael Klarman, *The Racial Origins of Modern Criminal Procedure*, 99 *Mich. L. Rev.* 48-97 (2000). Copyright © 2000 by Michigan Law Review.
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- Wayne LaFave, 'Case-by-Case Adjudication' versus 'Standardized Procedures': The *Robinson* Dilemma, 1974 *Sup. Ct. Rev.* 127, 141-143. Copyright © 1974 by the University of Chicago Press. Reprinted with permission.
- Wayne LaFave, Jerold Israel, and Nancy King, *Criminal Procedure: Criminal Practice Series*, Vol. 4, pp. 58-59, Section 13.4(c), 1999, with permission of the West Group.
- John H. Langbein, *Understanding the Short History of Plea Bargaining*, 13 *Law & Soc'y Rev.* 261-270 (No. 2 1979). Reprinted with permission of the Law and Society Association.
- Barry Latzer, *Toward the Decentralization of Criminal Procedure: State Constitutional Law and Selective Incorporation*, 87 *J. Crim. L. & Criminology* 63, 63-66, 68 (1996). Reprinted by special permission of Northwestern University School of Law, *Journal of Criminal Law and Criminology*.
- Andrew Leipold, *Why Grand Juries Do Not (And Cannot) Protect the Accused*, 80 *Cornell L. Rev.* 260, 265-267 (1995). Copyright © 1995. Reprinted with permission.
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- Debra Livingston, *Police Discretion and The Quality of Life in Public Places: Courts, Communities, and the New Policing*, 97 *Colum. L. Rev.* 551, 557, 558-561, 621-623, 632-633, 654-657, 670-671 (1997). Copyright © 1997 by Columbia Law Review. Reprinted with permission of the publisher and author.
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- Gary Lowenthal, *Joint Representation in Criminal Cases: A Critical Appraisal*, 64 *Va. L. Rev.* 939, 941-942 (1978). Reprinted with permission.
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- Kenneth Mann, *Defending White-Collar Crime: A Portrait of Attorneys at Work*, Yale University Press, 1985, pp. 6-8, 137-138, 249-250. Copyright © 1985 by Yale University Press. Reprinted with permission.
- Gary T. Marx, *Undercover: Police Surveillance in America*, pp. 22, 33-35, 47. Copyright © 1988 Twentieth Century Fund. Permission granted by the Regents of the University of California and the University of California Press.
- Marc Mauer and Tracy Huling, *Young Black Americans and the Criminal Justice System: Five Years Later*, pp. 7-9, *The Sentencing Project* (1995). Reprinted with permission of The Sentencing Project.
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- Note, *Formalism, Legal Realism, and Constitutionally Protected Privacy Under the Fourth and Fifth Amendments*, 90 *Harv. L. Rev.* 945, 985-988 (1977). Copyright © 1977 by the Harvard Law Review Association.
- Charles E. O'Hara, *Fundamentals of Criminal Investigation*, Charles C. Thomas, Publisher, 1956, pp. 99, 105-106, 112. Courtesy of Charles C. Thomas, Publisher, Ltd., Springfield, Illinois.
- Herbert Packer, *The Courts, The Police, and the Rest of Us*, 57 *J. Crim. L., Criminology & Pol. Sci.* 238, 239 (1966). Reprinted by special permission of Northwestern University School of Law, *Journal of Criminal Law and Criminology*.
- Eric Rasmusen, *Mezzanatto and the Economics of Self-Incrimination*, 19 *Cardozo L. Rev.* 1541, 1551 (1998). Reprinted with permission from the *Cardozo Law Review*.
- Frank Read, *Lawyers at Lineups: Constitutional Necessity or Avoidable Extravagance?*, 17 *UCLA L. Rev.* 339, 388-393 (1969). Reprinted with permission.
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- Daniel C. Richman, *Grand Jury Secrecy: Plugging the Leaks in an Empty Bucket*, 36 *Am. Crim. L. Rev.* 339, 341, 355 (1999). Reprinted with permission of the publisher, Georgetown University and *American Criminal Law Review* © 1999.
- Dorothy E. Roberts, *Foreword: Race, Vagueness, and the Social Meaning of Order-Maintenance Policing*, 89 *J. Crim. L. & Criminology* 821, 827-828 (1999). Reprinted by special permission of Northwestern University School of Law, *Journal of Criminal Law and Criminology*.
- Dorothy E. Roberts, *Crime, Race and Reproduction*, 67 *Tul. L. Rev.* 1945, 1945-1947 (1993). Originally published in 67 *Tul. L. Rev.* 1945-1977 (1993). Reprinted with the permission of the *Tulane Law Review Association*, which holds the copyright.
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- William Schwarzer, *Dealing With Incompetent Counsel—The Trial Judge’s Role*, 93 *Harv. L. Rev.* 633, 637, 642-656, 659-666 (1980). Copyright © 1980 by the Harvard Law Review Association. Reprinted with permission.
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- Louis Michael Seidman, *Points of Intersection: Discontinuities at the Junction of Criminal Law and the Regulatory State*, 7 *J. Contemp. Legal Issues* 97, 97-98, 100-102, 127 (1996). Reprinted with permission of the author.
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- Carol S. Steiker, *Counter-Revolution in Constitutional Criminal Procedure? Two Audiences, Two Answers*, 94 *Mich. L. Rev.* 2466, 2466-2470, 2536, 2543 (1996). Reprinted from *Michigan Law Review*, August 1996, Vol. 94, No. 8. Copyright 1996 by The Michigan Law Review Association. Reprinted with permission.
- William J. Stuntz, *Warrants and Fourth Amendment Remedies*, 77 *Va. L. Rev.* 881, 881-883 (1991). Copyright © 1991 by the Virginia Law Review. Reprinted with permission.
- William J. Stuntz, *Privacy’s Problem and the Law of Criminal Procedure*, 93 *Mich. L. Rev.* 1016, 1075-1076 (1995). Reprinted from *Michigan Law Review*, March 1995, Vol. 93, No. 5. Copyright 1995 by The Michigan Law Review Association.
- William J. Stuntz, *Lawyers, Deception, and Evidence Gathering*, 79 *Va. L. Rev.* 1903, 1940-1942 (1993). Copyright © 1993 by the Virginia Law Review. Reprinted with permission.

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- William J. Stuntz, *Waiving Rights in Criminal Procedure*, 75 *Va. L. Rev.* 761, 798-799 (1989). Copyright © 1989 by the Virginia Law Review. Reprinted with permission.
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- Deanell Reece Tacha, *Serving This Time: Examining the Federal Sentencing Guidelines After a Decade of Experience*, 62 *Mo. L. Rev.* 471 (1997). U.S. Sentencing Commissioner 1994-1998. Reprinted with permission.
- Peter Tague, *Multiple Representation and Conflicts of Interest in Criminal Cases*, 67 *Geo. L. J.* 1075, 1086-1087, 1094-1095 (1979). Reprinted with permission of the publisher, Georgetown University and Georgetown Law Journal © 1979.
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- Robert Verhaik, *New Law Will Force Juries to Give Reasons for Verdicts*, *The Independent*, August 25, 2000, available on-line at <http://www.independent.co.uk/news/UK/Legal/2000-08/reason250800.shtml>. Reprinted with permission.
- Silas Wasserstrom and Louis Michael Seidman, *The Fourth Amendment as Constitutional Theory*, 77 *Geo. L. J.* 19, 34-35 (1988). Reprinted with permission of the publisher, Georgetown University and Georgetown Law Journal © 1988.
- Peter Westen, *The Three Faces of Double Jeopardy: Reflections on Government Appeals of Criminal Sentences*, 78 *Mich. L. Rev.* 1001, 1006-1007, 1018 (1980). Reprinted from *Michigan Law Review*, June 1980, Vol. 78, No. 7. Copyright 1980 by The Michigan Law Review Association.
- Peter Westen, *The Empty Idea of Equality*, 95 *Harv. L. Rev.* 537, 539-540, 543-50 (1982). Copyright © 1982 by the Harvard Law Review Association.
- Paul Wice, *Chaos in the Courthouse: The Inner Workings of the Urban Criminal Courts*, pp. 21-24, 63-65 (1985) Prager Publishers. Copyright © 1985 by Prager Publishers. Reproduced with permission of Greenwood Publishing Group, Inc., Westport, CT.

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