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■ Thomas E. McClure

■ Thomas E. Eimermann

FUNDAMENTALS OF CRIMINAL PRACTICE

Law and Procedure



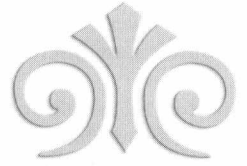
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30809311



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Law and Procedure

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Published by Wolters Kluwer Law & Business in New York.

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Wolters Kluwer Law & Business
Attn: Order Department
PO Box 990
Frederick, MD 21705

Printed in the United States of America.

1 2 3 4 5 6 7 8 9 0

ISBN 978-0-7355-7094-8

Library of Congress Cataloging-in-Publication Data

McClure, Thomas, 1954-

Fundamentals of criminal practice : law and procedure / Thomas McClure,
Thomas E. Eimermann.

p. cm.

Includes index.

ISBN-13: 978-0-7355-7094-8

ISBN-10: 0-7355-7094-9

1. Criminal law—United States. 2. Criminal procedure—United States. 3.
Legal assistants—United States—Handbooks, manuals, etc. I. Eimermann,
Thomas E. II. Title.

KF9219.85.M38 2011

345.73'05—dc23

2011018424



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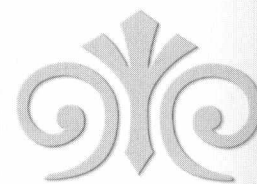
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Preface



This book is designed to be used as a textbook for a paralegal course covering criminal law and procedure. Like most texts on criminal law, it includes general background information on the organization and function of criminal law, it explains the most common types of criminal offenses, and it covers criminal procedures used at the federal and state levels.

Because it is **designed specifically for paralegals**, it describes the various roles played by paralegals and focuses on providing the skills and knowledge students will need to function effectively in jobs related to criminal law. However, the information it covers goes beyond the role that paralegals play in the criminal justice system. It contains discussions of the criminal justice system, the role of police and lawyers, the basic principles of criminal law, constitutional limitations, and trial procedures that **can benefit criminal justice majors, government majors, pre-law students, and anyone wishing to know more about criminal law.**

As with all books of this type, the authors have been faced with the challenge of covering both federal law and variations in state laws. We have tended to focus on federal law because it is relevant to readers in all parts of the country, but we have also discussed how state laws and procedures vary. Because there are so many variations among the states and even between judicial districts within a given state, it is imperative that readers research their own state and local statutes and procedural rules to see how they differ from the ones used as illustrations in this book. This book includes instructions and Application Exercises designed to teach readers how to find and apply the laws and procedures of their own state and/or local area.

Another feature that sets this book apart from many of its competitors is the extent to which we have included discussions of “white-collar” crime. Discussions of criminal codes, the exhibits, and the Application Exercises all include references to these types of crimes. References to juvenile law are also included where relevant.

ORGANIZATION OF THE BOOK

PART 1: CRIMINAL LAW

This book begins with a general overview of the criminal justice system, the major stages of a criminal case, and the roles and responsibilities of the many people who are involved in the day-to-day operation of the system.

Chapter 2 goes on to discuss the underlying principles and concepts reflected in the criminal law, and Chapter 3 provides an overview of the different types of offenses covered by the criminal law. In our discussion of substantive criminal law, we provide a sampling of some of the common offenses included in most criminal codes and examples of charges filed in some highly publicized cases. Special emphasis is placed on learning how to interpret and apply statutory language.

PART 2: CRIMINAL PROCEDURE: FROM COMMISSION OF THE OFFENSE TO PLEA BARGAINING AND DIVERSION

The second section shifts from the substance of the criminal law to criminal procedure. Starting with the discovery and investigation of crimes, we follow the actions of the police, prosecutors, and defense attorneys as the criminal justice system processes those accused of having violated the criminal law. Chapter 4 covers the investigation of crimes and the arrest of the suspected criminals. Chapter 5 focuses on the prosecutor's role and the charging process, and Chapter 6 focuses on the defense attorney's role.

Chapter 7 explores the discovery and disclosure procedures used by both sides to obtain further information about the strengths and weaknesses of their cases. Chapter 8 covers the potential defenses attorneys can assert on their client's behalf.

Chapter 9 includes coverage of pre-trial motions relating to substitution of judges, joinder and severance, competency, and motions to exclude key pieces of evidence. It then goes on to discuss the plea-bargaining process. The chapter ends with a discussion of diversion into specialized treatment programs.

PART 3: CRIMINAL PROCEDURE: TRIALS AND THEIR AFTERMATH

Chapter 10 sets the stage for our coverage of trials, sentencing, and preparation for appeals by reviewing constitutional provisions affecting the conduct of criminal trials and discussing how evidence is presented in trials.

Chapter 11 then discusses the things that attorneys and paralegals do to prepare for a trial. It includes preparation for jury selection and preparation of exhibits, motions, witnesses, and electronic presentations. The actual conduct of the trial itself is covered in Chapter 12, where each stage of the trial is discussed in detail from jury selection to post-verdict motions.

Chapter 13 addresses the sentencing phase of a case. After discussing the various types of punishments courts can impose, it goes on to examine the amount of discretion judges have and the role of sentencing guidelines. From there it goes on to cover sentencing procedures and mechanisms for seeking modification of a sentence.

This section ends with a discussion of appeals in Chapter 14. The focus here is on the process of preparing a case for an appeal rather than on the preparation of the appeal itself. After providing an overview of the appeals process, the chapter discusses the timing of an appeal, the preservation of the record, and alternative methods of challenging criminal convictions.

SPECIAL FEATURES

USE OF LEGAL DOCUMENTS FROM REAL CASES

As in most texts of this type, we will frequently reference statutes and court decisions to explain and illustrate various principles of criminal law and criminal procedure. In addition to including excerpts from featured statutes and cases, we also include arrest reports, mug shots, complaints, and other legal documents from criminal cases that have received national attention.

INTEGRATION OF HYPOTHETICAL CASES

Throughout this text we use four “hypothetical” cases to illustrate how various types of crimes are handled at the various stages of the criminal justice process. One case involves a state reckless homicide charge related to an accident involving a driver who had been drinking alcoholic beverages. The second involves charges related to illegal drugs and weapons. The other two cases involve “white-collar crime.” In one a registered securities agent is charged with misappropriation of customer funds; the other involves corporate insider trading.

These cases are integrated in appropriate chapters throughout the book where they are used to illustrate questions of statutory interpretation as well as criminal procedure. They are also incorporated into some of the Discussion Questions and Application Exercises. Initial facts about the nature of the crimes involved in these cases are presented in a separate section following this Preface that should be read in conjunction with Chapter 2 and then referred to again when reading most of the following chapters.

PRACTICAL SKILL DEVELOPMENT

This book incorporates a variety of pedagogical techniques for developing analytical and drafting skills. Most chapters will include excerpts from statutes, court opinions, investigative reports, or court filings.

Discussion Questions raise controversial issues that require legal analysis and argumentation. The Application Exercises involve legal research and the drafting of various reports and legal documents as well as legal analysis.

STUDY AIDS

This book includes standard reader aids such as marginal definitions of key terms, a chapter summary, and Review Questions.

An instructor’s manual includes suggested answers for all the Discussion Questions, Review Questions, and Application Exercises. A computerized test bank is also available to help teachers make the most effective use of this book.

SPECIAL THANKS

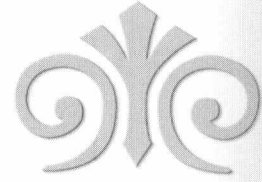
We would like to thank the staff at Aspen Publishers for the excellent support we have received in the preparation of this book and to the reviewers who gave us such positive feedback and useful suggestions.

We would also like to recognize the contributions of the following research assistants from the Department of Politics and Government at Illinois State University: Anthony Nigliaccio, Theodore Mason, and Renee Prunty.

Finally, we also wish to thank our spouses for their continued support and understanding of our professional activities.

Thomas E. McClure
Thomas E. Eimmermann
June, 2011

Acknowledgments



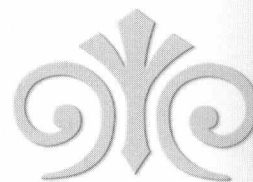
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About the Authors



Thomas E. McClure is the Director of Legal Studies and an Assistant Professor of Political Science at Illinois State University. He teaches Introduction to Paralegal Studies, Introduction to Torts, Investigative Techniques & Evidence, Litigation I & II, and a constitutional law course.

He graduated from Illinois State University in 1976 with a B.S. in Political Science. He received his J.D. from DePaul University where he served as an editor of the *DePaul Law Review*. In 2001, he earned his M.S. in Political Science from Illinois State University.

Following law school, Professor McClure served for two years as a law clerk to an Illinois Appellate Court Justice. He then entered private practice as one of the two principals of Elliott & McClure, a Kankakee County, Illinois law firm. Since 2007, he has served as of counsel to the firm. He specializes in personal injury, criminal defense, family law, and civil rights litigation.

He is a member of the Illinois Bar and admitted to practice before three U.S. District Courts, the Seventh Circuit Court of Appeals, and the United States Supreme Court. When the death penalty was in effect, he was a member of the Illinois Capital Litigation Bar.

Professor McClure has published journal articles on the Supreme Court's approach to *ex post facto* law analysis, the constitutional rights of disabled applicants for public employment, and the effectiveness of court-connected parenting classes.

Thomas E. Eimermann is an Emeritus Professor of Political Science at Illinois State University where he started their paralegal program in 1976 and served as its Director until 2004. During those years he taught the Introduction to Paralegal Studies and the Legal Research and Writing courses as well as constitutional law and administrative law.

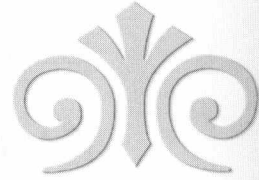
He received his B.A. in Political Science at North Central College, and then went on to earn an M.A. and a Ph.D. in Political Science from the University of Illinois-Urbana/Champaign.

Professor Eimermann was a member of the American Association for Paralegal Education's Board of Directors from 1986-1993 and served as president of that organization in 1991-1992. He has also served in the Certification Board and Specialty Task Force of the National Association of Legal Assistants; as a member of the Illinois State Bar Association Committee on the Delivery of Legal Services; and as a member of the Hearing Board, the Inquiry Board, and the Oversight Committee of the Illinois Attorney Registration

and Disciplinary Commission. As a consultant for the Illinois Department of Corrections, he designed their Uniform Law Clerk Training Program.

Professor Eimmermann's other publications include multiple editions of *Fundamentals of Paralegalism*, *Introduction to Law for Paralegals*, *Introduction to Paralegal Studies*, and *The Study of Law* (the last three co-authored with Katherine Currier). He has also published journal articles on paralegals, jury behavior, and free speech issues.

Introduction to Hypothetical Cases



At various points in this text, we will be referring to four hypothetical cases that are used as illustrations and in Application Exercises. Take a moment now to read the facts given in each of these cases, and then record this information in a notebook or a word processing file in a way that will allow you to organize and add to it as you learn more about these cases in different chapters.

CASE #1: PEOPLE v. COOK

Bud Cook left a pizzeria at 9:30 P.M. to drive home. He consumed a pitcher of beer with his meal but didn't think it would affect his driving. He drove his pickup truck in the northbound direction in the outermost lane on Sumner Drive.

Several blocks north of the pizza parlor, he came upon a woman wearing a black T-shirt and jeans, riding a black bicycle in the northbound outside lane about two feet from the shoulder of the road. Bud did not notice the bicyclist until the right front fender of his pickup struck the rear of the bike, causing the rider to land on top of the hood and hit the windshield. As she hit the windshield, Bud slammed on his brakes, which in turn threw the rider forward across the pavement.

Bud "panicked" and raced home without stopping. When he told his wife Tammy that he had either struck an animal or a man on a bicycle, she called 911 to report the incident. While driving home, a passerby had called 911 to report that there was a human body on the road. When the police arrived, they found that the victim was dead.

CASE #2: UNITED STATES v. TURNER

At two o'clock in the afternoon, local police officer Steve Milner was on a routine patrol when he saw an automobile run a stop sign. Officer Milner activated his overhead lights on his marked squad car and started to pursue the car.

The driver of the car speeded up and then pulled in front of a sandwich shop. The driver, Brandon Turner, got out of the car and began to walk rapidly toward the restaurant. Officer Milner stepped out of his squad car, blew his horn, and yelled at Turner to halt. Turner did not stop and went into the sandwich shop.

Milner saw the Turner go through the restaurant and then into a restroom. He followed Turner into the restaurant and met him at the restroom door when Turner came out after having been in the restroom for less than a minute.

Through a series of searches, police discovered Turner had hid a loaded handgun in the restroom and that there was a bag of cocaine in Turner's car.

CASE #3: UNITED STATES V. EDWARDS

Bill Edwards is a registered representative for a local broker-dealer. He has many high-net-worth clients and is involved in several local social networks. Many prominent individuals in the community are his clients.

Edwards was also involved in several business ventures outside of his employment as a registered representative. Many of these businesses began having financial troubles and could not maintain their operation without an infusion of capital. He also began having personal problems at home and was having difficulty paying alimony and child support.

To resolve these financial woes, Edwards began diverting customer funds and liquidating customer securities and using the proceeds to help these failing businesses. Edwards did this without permission or authority from customers. To help cover up this misappropriations, he issued promissory notes to these customers.

When customers saw that funds or investments were missing from their accounts and asked Edwards what happened, he told them that he had put them in safe investments with guaranteed returns of 12% to 20%. However, when interest on the promissory notes came due, the entities that issued the notes could not make the payment. To keep these customers from complaining and to cover up the fraud, Edwards began misappropriating funds from other customers to make the interest payments owed to the existing customers.

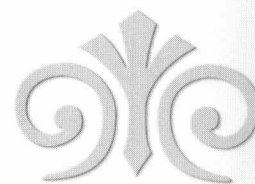
CASE #4: UNITED STATES V. SCHROEDER

Tom Schroeder was retained by Amalgamated Industries, a publicly traded manufacturing company, to represent it in merger negotiations with ABC Batteries. While working in this capacity he learned that ABC had just got a preliminary patent approval for a new type of process that would revolutionize the industry. Schroeder realized that when news of the pending merger and the new patent would be publicly announced the next month, it would greatly increase the value of Amalgamated's stock.

However, he also knew that it would look suspicious in the eyes of the Securities and Exchange Commission if he bought the stock. So the next time Schroeder was playing golf, he pulled aside his good friend, Jim Stevenson, and told him that he had been doing some work for Amalgamated Industries and that it would be a good time to buy some of their stock. The next day, Stevenson placed a market order to purchase 10,000 shares of Amalgamated's stock. He ended up paying \$10 per share.

About a month later, the patent and merger announcements were made on the same day, and a few days after the announcement shares of Amalgamated were selling at \$22.00 per share. Later that month, Stevenson sold his entire position for \$21.00 per share. Later that year, Stevenson paid Schroeder \$60,000 to review his will and set up a simple trust agreement for him.

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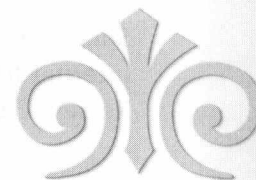
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