

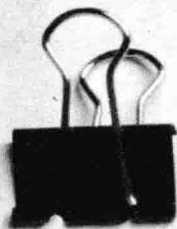
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FOURTH EDITION

Criminal Procedure

LAW AND PRACTICE

Rolando V. del Carmen



Criminal Procedure Law and Practice

FOURTH EDITION

Rolando V. del Carmen

SAM HOUSTON STATE UNIVERSITY



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To my wife, Josie, and my daughter, Jocelyn, and to my colleagues and students at the Criminal Justice Center

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Preface to the Fourth Edition

Law enforcement is essentially what the term literally says—the enforcement of the law by duly authorized agents of the state—the police. As the term indicates, knowledge of the law is central and essential to law enforcement. Without it, an officer loses sight of the proper framework for “policing a free society”; with it, the officer becomes a trusted agent of the immense power of the state over people’s lives and property. It is important that law enforcement officers know the law and adhere to it. Without knowledge of and adherence to law, public confidence wanes and the public feels betrayed by those sworn to protect them.

This text acquaints the reader with the various aspects of criminal procedure. Laws that govern policing are based primarily on the United States Constitution, United States Supreme Court decisions, and statutes passed by the United States Congress and state legislatures. This text focuses on these sources. Lower court decisions and agency policies are also given attention, particularly if they limit what officers can do.

This book covers basic topics relevant to law enforcement, from court systems to constitutional rights. The last chapter, chapter 13, discusses a persistent concern in law enforcement—legal liabilities of police officers. Court decisions, in some cases leading to huge damage awards, have had an immediate impact on the daily workings of law enforcement agencies. Sensational incidents involving the police will continue to attract media attention and cause public concern. Legal liabilities must be studied and understood if they are to be minimized.

The study of law can be complex and tedious. It can also be confusing and frus-

trating, particularly when no authoritative guidelines are given by court decisions or statute. These realities must be recognized and accepted as an integral, albeit disturbing, part of criminal justice. The confusion and frustration are experienced not only by students and law enforcement personnel but also by judges, lawyers, and other professionals in the arena of criminal justice. The imperfections of the criminal justice system are pervasive and a matter of common knowledge. There is no perfect system in the search for ideal justice. One wonders whether justice itself is attainable to the satisfaction of all, particularly the victim and the accused.

Judges, prosecutors, defense lawyers, and court personnel have developed terms and concepts that are part of criminal justice process. Law enforcement officers must learn and understand them. Any law-oriented text written primarily for students and in-service personnel must present legal terms and concepts clearly and precisely without yielding to oversimplification. That daunting task is attempted in this text. Whether it succeeds or fails is to be judged by the reader. The text presents criminal procedure in a format and language designed to meet the needs and interests of nonlawyers and yet preserve the meaning and content of the law as interpreted by the courts.

The fourth edition of this book differs from the third edition as follows:

- New cases and materials have been added.
- Court cases are current as this book goes to press.
- There are thirteen chapters in this edition instead of fourteen, as in the third edition.

- Chapter 13 of the third edition (“Sentencing, Appeal, and Habeas Corpus”) has been taken out to give more space to materials directly related to law enforcement work.
- The chapters on “Probable Cause” and “The Exclusionary Rule,” which were chapters 4 and 3 in the third edition, have been switched. “Probable Cause” is chapter 3 and “The Exclusionary Rule” is chapter 4 in the fourth edition.
- Chapter 11 of the third edition (“Line-ups and Other Pretrial Identification Procedures”) has been moved and is chapter 7 of the fourth edition.
- The section on “The Use of Force during Arrest,” which was in chapter 6 of the third edition, has been transferred to chapter 13 of the fourth edition (“Consequences of Police Misconduct: Civil Lawsuits and Other Sanctions”).
- Chapter 13 of the fourth edition was chapter 14 in the third edition and has been retitled “Consequences of Police Misconduct: Civil Lawsuits and Other Sanctions.”
- Some topics in the various chapters have been eliminated and new topics introduced; others have been rearranged for better sequence.
- The “Key Terms” section at the beginning of each chapter in the third edition has been transferred to the end of each chapter and retitled “Key Terms and Definitions.”
- Appendix C of the third edition (“Selected Amendments to the Constitution of the United States of America”) has been expanded to include the entire United States Constitution.

These changes were made in response to suggestions from reviewers of the third edition and in the interest of better structure, sequence, and substance. It is hoped

that these changes will enhance the quality of the book and make it a better learning source.

This text has several features that should help students understand the law and retain legal concepts:

- frequent use of examples and illustrations
- analysis and comparison of leading court cases
- a chapter outline at the beginning of each chapter
- presentation of topics in outline form
- use of tables, figures, and highlights
- use of sample police forms
- definitions of legal terms used in each chapter (at the end of the chapter)
- a list of cases used in the chapter and what the court held
- case briefs of two or three leading cases at the end of each chapter

There are various paths to learning, none of which works equally well for everybody. Legal material, however, is perhaps best learned and retained through mastery of concepts reinforced by examples. As frequently as possible, this text defines a concept and then further clarifies it with an example. No two situations in law enforcement are ever exactly alike; hence, students must learn to apply legal principles to actual situations that sometimes involve great personal risk. If legal concepts are understood well, their application to actual field situations becomes easier. Memorizing a legal definition is much less important than understanding and applying it to day-to-day situations.

The topics in each chapter are arranged so they are easy to follow. The definitions of terms and the concise listing of principles of cases at the end of each chapter should reduce the need for note-taking

and make it easier to review the chapter. The chapter summaries are useful in retaining the material in compact form; the discussion questions focus on important segments of the book; and the in-text highlights call attention to statements or information deserving of special note.

Although the United States comprises fifty-two different court jurisdictions (the fifty states, the federal government, and the District of Columbia), criminal procedure rules apply nationwide and transcend state boundaries. The rules governing law enforcement have been “nationalized” and made applicable to all jurisdictions through United States Supreme Court decisions. Nonetheless, variations in procedures abound, particularly where such variations do not violate constitutional rights of the suspect or the accused. The legal doctrines and principles discussed in this text apply throughout the United States, except where state law, local ordinance, or agency policy declare otherwise and such variations are consistent with court decisions or the Constitution.

This text is written for a national audience and not for a particular state. It is also stressed that knowing the content of this text is no substitute for knowledge of specific state law or agency policy. That may be obtained from agency legal counsel or local lawyers.

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Few texts are written without the help of colleagues and friends. The author would like to thank the following for contributions to this book: Jerry Dowling, Michael Smith, and Phillip Lyons of Sam Houston State University; John Scott Blonien, Senior Assistant Attorney General of the State of Washington; Michael S. Vaughn of Georgia State University; Jeffery Walker

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I owe special thanks to the reviewers of the fourth edition. As in the previous editions, the changes made in this edition are primarily in response to the perceptive and thoughtful comments of the reviewers. Chosen by the editors, they obviously knew whereof they wrote; they have all taught courses on criminal procedure and civil liberties for years. Their suggestions reflected a common concern that the book be made even more user-friendly and yet preserve accuracy. In alphabetical order, they are: William Castleberry of the University of Tennessee-Martin, Lorie Fridell of Florida State University, Robert L. Hardgrave Jr. of the University of Texas at Austin, Robert L. Pagnani of Columbia Green Community College, Pamella A. Seay of Edison Community College, and Roger D. Turner of Shelby State Community College. Their reviews, suggestions, and comments have been invaluable. To them I express deepest appreciation for their contributions to this book.

I will continue to rely on colleagues, administrators, students, and reviewers for ideas and advice. Thank you for your help.

Rolando V. del Carmen
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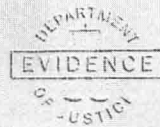
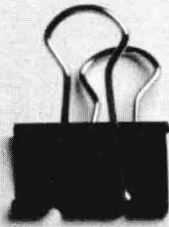
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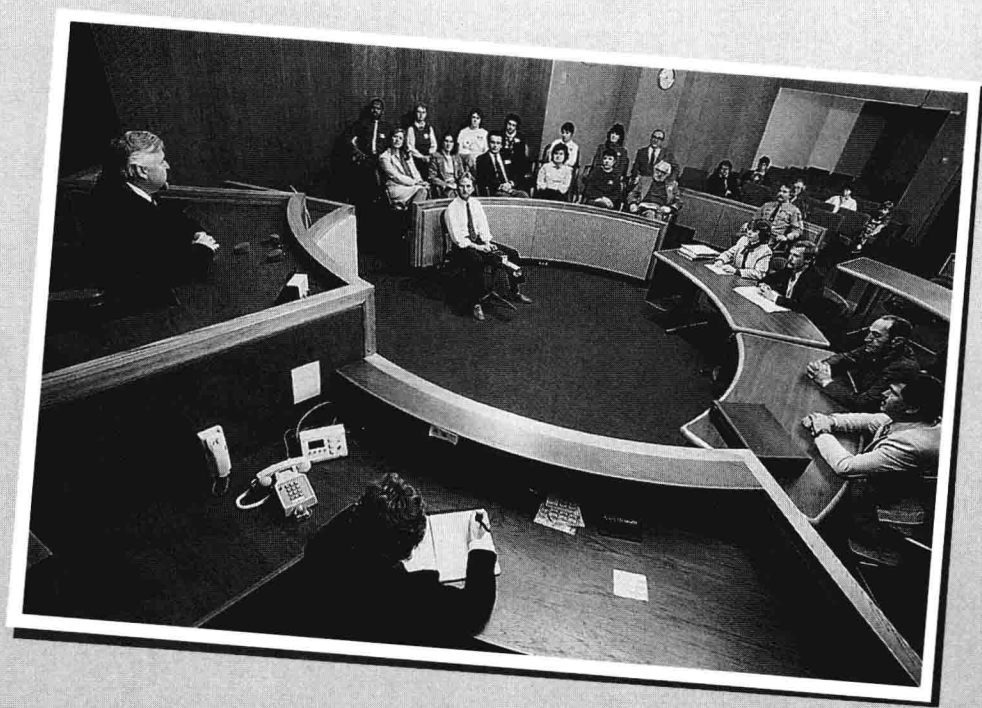
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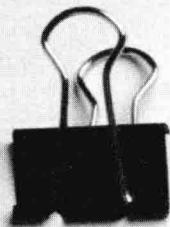
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