INTRODUCTION to CRIMINAL EVIDENCE and COURT PROCEDURE

Julian R. Hanley · Wayne W. Schmidt
Ray K. Robbins

Third Edition

INTRODUCTION to CRIMINAL EVIDENCE and COURT PROCEDURE

Third Edition

Julian R. Hanley

County Judge, Retired
Wyoming County, New York

Wayne W. Schmidt

Operating Director of
Americans for Effective Law Enforcement, Inc.

Former Director of the Legal Center,
International Association of Chiefs of Police

Ray K. Robbins

Western Texas College

McCutchan Publishing Corporation
P.O. Box 774, 2940 San Pablo Ave., Berkeley, CA 94702

ISBN 0-8211-0732-1
Library of Congress Catalog Card Number 94-79711

Printed in the United States of America

About the Book

Much of the work of the modern law enforcement officer involves gathering evidence that is admissible in court. Success in this effort requires a thorough knowledge of courts and the rules of evidence. Collection and presentation of legal evidence is the foundation of justice. The manner in which these objectives are attained may seriously affect the life, liberty, and property of others, as well as the reputation of the officers and the agencies they represent. Officers have the responsibility to collect all available evidence in a lawful manner, recognizing that their duty is to secure conviction of the guilty and exoneration of the innocent.

In developing the book, the authors draw from a unique blend of experience as attorney, judge, legal writer, prosecutor, appellate advocate, police officer, criminal investigator, administrator, and teacher.

For the practitioner and the student of criminal justice, this book clearly and concisely presents the rules of evidence that guide the enforcement of criminal law in its two most important stages--investigation and trial.

To Betty
—J.R.H.
To Nancy and Andrew
—W.W.S.
To Geniece and Brandy
—R.K.R.

Preface

Introduction to Criminal Evidence and Court Procedure is a major revision of the popular *Legal Aspects of Criminal Evidence* and reflects significant changes from that earlier edition. Two chapters have been deleted, five chapters have been condensed into two, and five new chapters have been added. This expansion permits a broader overview of the processes involved in the uses of criminal evidence. Most case citations and references are grouped at the back of the book for easy reference. This should facilitate reading and comprehension of the text. Duly significant Supreme Court decisions and selected cases used to illustrate specific legal points are incorporated into the text itself.

The book, presented in a clear, concise, comprehensive, and forceful manner, is organized to address one-semester or two-quarter undergraduate courses in court procedures and criminal evidence.

Designed to further understanding that will assist officers in effectively performing a vital criminal justice function, the book is dedicated to all law enforcement officers—past, present, and future—as well as to students and teachers of the subject, all of whom are involved in service to their fellow man—the most noble and satisfying of all human endeavors.

Contents

1

The American Court System

No other judicial system in the Western world is as complex as the court system in the United States. Part of our courts' complexity in structure and function can be attributed to the fact that the nation's founders established a federal form of government with powers constitutionally divided between two levels of authority. This is the overriding feature of the American system. Because two distinct sets of laws exist—those of the national government and those of the individual states—some arrangement was necessary to handle cases arising from such a system. The solution to this dilemma was to establish a dual court structure, each with its own trial and appellate courts, a unique characteristic of the American system. Additionally, each of the fifty states has its own court organization, personnel, and procedural rules. Constitutionally, the federal and state court systems are autonomous and equal in their particular provinces.

Article III, Section 1, of the United States Constitution provides that the "judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish." Thus, the Supreme Court is the only court specifically established by the Constitution, with other federal courts being products of legislation.

The federal court system is a hierarchy. The United States district courts stand as the base, with federal appellate courts in the middle, and the Supreme Court at the top. United States magistrates and a variety of specialized courts are part of the federal judicial system. Among these specialized courts are the U.S. Court of Military Appeals, the U.S. Court of Claims, and the U.S. Customs Court.

(1.1) The Supreme Court

The United States Supreme Court is comprised of nine justices. They are appointed by the President, subject to approval of the Senate. One member of the Court is appointed to serve as the chief justice, also subject to Senate confirmation. The chief justice, as chairman of the Court, has no formal coercive powers over the associate justices; however, he or she presides over the Court's public sessions, assigns caseloads, directs the writing of judicial decisions, and has supervisory authority over the nation's courts.

Supreme Court justices hold their office "during good behavior," as provided by the Constitution, and can be removed only by voluntary retirement or impeachment. The Constitution even prohibits the Congress from reducing the salaries of the justices. The term of the Court varies; however, statutory law mandates that it begin on the first Monday of October each year. Because no closing date is fixed, the Court continues in session as long as it has business to conduct.

Over the years, the Court's work load has steadily increased with the expansion of the federal and state judiciaries. The principal way in which cases reach the Supreme Court is through the *writ of certiorari*, an order directed to the lower court whose decision is being disputed to send up the records of the case so that the Supreme Court can ascertain if the law has been appropriately applied. Although the Court gets most of its cases on appeal from these courts, the number of justices has not been correspondingly increased to deal with the expanding caseload, which has now reached over three thousand cases annually.

As specified in the Constitution, the Supreme Court is the court of original jurisdiction in cases involving diplomatic officials of foreign nations and in controversies to which a state is a party. Nearly all cases the Court hears under its powers of original jurisdiction involve disputes between states or between a state and the national government.

By far, the greatest amount of the Court's business comes within its appellate jurisdiction. It reviews cases from lower federal courts and state courts when the issues involved pertain to the Constitution or to federal law.

The Court does not have to hear a case unless it wants to. In fact, it has almost absolute power to control its docket, thus allowing it to be highly selective in the cases it reviews and to assume jurisdiction only in those cases that present an issue it wishes to consider. This discretionary power of the Court to decide which cases it will consider allows it to regulate its work load. Over half the cases that reach the Court come from disappointed litigants in the U.S. Courts of Appeals, with most of the remainder coming from the losing parties in state courts of last resort. If the Court accepts jurisdiction in an appeal, it will carefully examine the constitutional question at issue and either sustain the state court's ruling or overrule the decision and release the appellant.

In deciding which cases it will hear, the Court employs the *rule of four*; that is, four of the justices must vote to hear a case before it is placed on the agenda. The Court hears only a small percentage of the requests for appeals. A set of prerequisites has evolved that must first be met before a writ is granted. First, the litigant must have exhausted all other avenues of appeal. Second, the legal issue must involve "a substantial federal question" as defined by the particular court. Thus, state appeals courts' interpretations of state law can be appealed to the U.S. Supreme Court only if there is an alleged violation of either federal law or the U.S. Constitution.

Due in large measure to careful screening by the Court for cases that involve specific issues it wishes to address, the Court reverses rulings in about 60 percent of the cases it hears.

(1.2) The U.S. Courts of Appeals

The United States Courts of Appeals are the intermediate appellate courts below the Supreme Court of the United States. They were created in 1891 to relieve the high court of considering all appeals in the cases originally tried in the federal trial courts. These courts are empowered to review all final decisions and certain interim decisions of the district courts within their circuit except in those very few cases where the law provides direct review by the Supreme Court. They also stand between the U.S. magistrates and the specialized

federal courts and the Supreme Court. They have principal responsibility for reviewing judicial decisions in the lower courts.

Thirteen U.S. Courts of Appeals, including one for the District of Columbia, have jurisdiction over a specific geographical area of the country called a judicial circuit (see Figure 1.1). The number of judges in each court, which varies with the size and population of the area served, ranges from three to fifteen. Decisions are generally made by a three-judge panel, and a minimum of two must sit in each case. Group composition varies from case to case, with the presiding judge in each court making assignments. Occasionally, disagreements on some important point of law may arise among the judges. When this happens, the issue may be resolved by the entire court in an *en banc* decision. The tenure of judges of the U.S. Courts of Appeals, like Supreme Court justices, is during life and good behavior.

(1.3) The United States District Courts

There are ninety-four U.S. District Courts, with eighty-nine in the fifty states and one each in the District of Columbia, Guam, Puerto Rico, and the Virgin Islands (see Figure 1.2). Until 1979, when its sovereignty was turned back to the government of Panama, a U.S. District Court served the Canal Zone. The federal district courts are courts of original jurisdiction. They hear the majority of civil lawsuits arising under federal law, such as postal difficulties, copyright violations, patent rights, and bankruptcy. They are also the trial courts for crimes committed against the federal government (that is, those offenses defined by federal statute and made punishable by the federal government). Each state has at least one U.S. District Court, some with several divisions. Sixteen states have two courts, eight have three, and New York and Texas have four each. Every district court has at least one judge, and some districts have as many as twenty-four, depending on the work load. Trials held in these courts are heard by one judge except in cases involving the constitutionality of federal or state laws. In such cases, three judges must preside at the trial.

(1.4) State and Local Courts

The vast majority of cases are processed by the state courts. The courts in one medium-sized state handle more cases than the entire