

CRIMINAL LAW AND PROCEDURE FOR LEGAL PROFESSIONALS

JOHN P. FELDMEIER
FRANK SCHMALLEGER

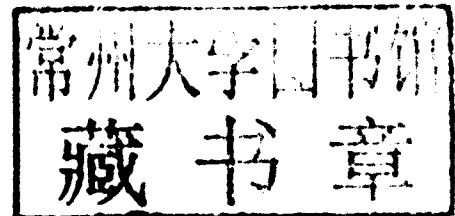
Criminal Law and Procedure for Legal Professionals

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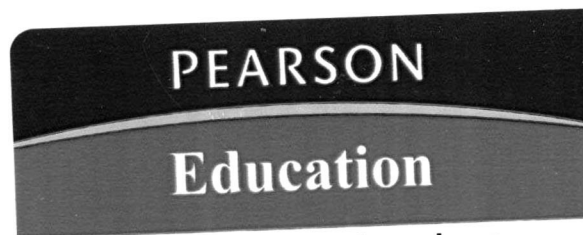
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Dedication

To Emma and Jack, may you never have a personal need for the materials in this book.
John Feldmeier

For Willow
Frank Schmallegger

Preface

This textbook brings together John Feldmeier, a criminal defense attorney and associate professor, and Frank Schmalleger, an acclaimed professor and scholar who has published dozens of textbooks and numerous scholarly articles exploring the highly dynamic world of crime, courts, and the criminally accused, to produce a textbook on criminal law and procedure that is designed for undergraduate and graduate students who are studying to become legal professionals.

In this book, the authors seek to bridge the gap between the theoretical presentations of criminal law and procedure and the practical realities of working in the field. The goal of this book is to help students build a solid knowledge base and the analytical and functional skills they will need to enter the legal field as paralegals, legal assistants, court administrators, and criminal justice professionals, as well as to prepare students for law school.

For many readers, this book will be their first formal introduction to criminal law and procedure. As a result, the text provides readers with a thorough, yet readable, introduction to the essential legal terms, doctrines, cases, and procedures that govern American criminal justice systems. But recognizing that many readers of the text are expecting, or at least hoping, to become criminal justice professionals, the book also illustrates many of the day-to-day realities of working in the field.

For example, a criminal law and procedure book would not be complete without a discussion of the “exclusionary rule” used to assess the legal pedigree of criminal evidence. This legal standard, along with relevant cases, terms, and doctrines, is, of course, thoroughly discussed in the text. But the book also requires students to move beyond the theoretical and into the practical realities of the exclusionary rule by providing actual motions to suppress, so that students can assess how the rule is actually used in legal pleadings. By examining these real-life materials, students can appreciate the realities of situations in which criminal justice professionals regularly find themselves.

This is just one of many opportunities the book provides in an effort to engage students in hypothetical (or even, real-pathetical) cases, requiring them to apply and interact with the book’s material. At the end of each chapter, students are given analytical exercises, research projects, and writing assignments. Many of these items are derived from the actual experiences of real legal professionals in criminal cases, with numerous insights and examples of what legal professionals really do on a day-to-day basis. In addition, the book contains many sections that offer practical insights and daily realities of working in the criminal justice profession. Each chapter also contains excerpts from court opinions, including many of the landmark rulings by the U.S. Supreme Court.

The book covers each of the basic stages of the criminal justice system, from the initial investigation of a crime to the punishment and appellate phases. At each step, the book encourages the reader to appreciate that criminal law and procedure are dynamic processes that are implemented by a range of individuals, who may possess different and often competing values. The book approaches criminal law and procedure from the perspective that words and doctrines do not define themselves and that the values and attitudes of individuals (judges, lawyers, probation officers, and so on) are often the source of meaning within the criminal justice system. In other words, the book appreciates that criminal law and procedure are

very much a part of a social and political process and that professionals within the system often have different and competing values and priorities. To be successful, a legal professional must not only understand the basic elements and procedures of the criminal justice system, but also appreciate the different ways other professionals can interpret and value these elements and procedures.

The book is written in a conversational tone, using language and style that is comfortable for most students. The book provides students with visual learning tools, such as sample documents (motions, warrants, pleadings, and sentencing guidelines), excerpts of landmark court cases, and charts outlining the essential steps in reviewing a criminal case. Students will be invited to review materials and scenarios from actual cases and to make assessments and perform tasks that are regularly performed by those working in the criminal justice profession.

Chapter Topics and Organization

This book is divided into two parts. Part One addresses the basic construction of criminal law. Chapters 1–7 address the nature of criminal law, how criminal statutes are written, the elements of some of the most frequently prosecuted crimes, and the essentials of the most common defenses presented in criminal cases. Part Two examines the processes of criminal cases, looking at the stages, constitutional protections, and basic tasks faced by legal professionals involved in moving cases through the criminal justice system. Chapters 8–14 identify legal standards for criminal procedure, the exclusionary rule, searches and seizures, interrogations, the rights of the accused at trial, and the procedures for appellate and postconviction review.

The first chapter introduces students to the nature, history, and purpose of criminal law by examining the distinguishing features of criminal statutes and explaining how they differ from other types of legal proceedings. In this chapter, students learn about the roots of natural law, positive law, and common law. The chapter also addresses the basic purpose of law, the history of the American legal tradition, and the unique features of criminal law. In addition, criminal law is compared to other methods of regulating human behavior, including morals, ethics, and civil law.

Chapter 2 examines the systems, sources, and semantics of criminal law. This chapter will introduce students to the importance of federalism and separated powers to criminal statutes. Students will also learn about the roles of judges, juries, prosecutors, defense attorneys, law enforcement, paralegals, and other legal professionals in the criminal justice system, and how they shape the meaning of law. This chapter also outlines and explains the different methods used to interpret and apply criminal statutes.

Chapter 3 discusses the fundamental elements of criminal statutes and the core nature of criminal liability. The chapter reviews the concepts of *mens rea*, *actus reus*, strict liability, and inchoate offenses. The chapter also examines the standards of evidentiary proof, the elements of causation and harm, and the theory of conspiracy and accomplice liability.

Chapter 4 introduces the elements of crimes involving harm to persons. This chapter reviews criminal liability standards for homicide, assault and battery, sexual offenses, and other personal crimes. The chapter also explains the different levels or degrees of these criminal offenses and how legal professionals go about proving or disproving their requisite elements.

Chapter 5 addresses crimes against property. In this chapter, students learn about such offenses as theft, burglary, robbery, arson, and identity theft. The chapter also explores the very dynamic world of computer-related or “cyber” crime.

Chapter 6 reviews the most common criminal statutes used to promote public morality and the administration of justice. This chapter looks at the criminal offenses of prostitution, gambling, and nudity. The chapter also examines offenses involving public intoxication, disorderly conduct, and curfew violations.

Chapter 7 addresses the most common defenses and justifications available to defendants facing criminal charges. This chapter looks at theories and realities of using self-defense, duress, entrapment, insanity, and other claims as methods to avoid criminal liability. Included in this section are examples of contemporary and creative defenses attempted by defendants.

Chapter 8 explores the legal fundamentals of criminal procedure by discussing the legal hierarchy in the American criminal justice system, as well as the multiple sources, layers, and branches for criminal procedures. This chapter gives an overview of the American federal system and how it impacts the process of criminal procedure. It also provides details on constitutional, statutory, and administrative standards that impact how criminal cases are handled.

Chapter 9 examines the different ways that criminal cases are initiated. Recognizing that a criminal case can begin in many different ways—investigation, grand jury hearing, arrest, criminal complaint—the chapter stresses the reality that there is no one-size-fits-all beginning to a criminal case. Students learn the basics about the intake process, grand juries, indictments, and writing/reviewing criminal complaints.

Chapter 10 discusses the many procedures that can be used during the pretrial stage of a criminal case. Appreciating that most criminal cases never go to trial, this chapter takes up the most likely reality for criminal justice professionals—that the case will be disposed of prior to a trial. Students examine the exclusionary rule, motions to suppress, and the elements of plea negotiations. This chapter also introduces students to the discovery process before criminal trials, where evidence is acquired and, at times, shared between the parties. Because the success of a criminal case largely depends on the nature and extent of evidence, this chapter emphasizes the importance of the discovery phases of criminal proceedings.

Chapter 11 takes up the subject of searches and seizures. In this chapter, students learn how to approach situations where law enforcement takes evidence from defendants and seeks to use it during a criminal trial. The chapter discusses how courts determine whether a search and seizure is reasonable and otherwise satisfies the requirements of the Fourth Amendment. The chapter also reviews search warrant applications, search warrants, and warrantless searches.

Chapter 12 analyzes the constitutional and practical challenges that come with confessions and other pretrial incriminating evidence sought by prosecutors and offered by defendants. Starting with the Fifth Amendment protection against compulsory self-incrimination, this chapter reviews the constitutional limitations on interrogating or otherwise interfacing with criminal suspects and defendants. In this chapter, students are introduced to the well-known *Miranda* warnings, learn about the stages of the criminal process where these warnings apply, and are exposed to the limitations and exceptions to the constitutional protection against self-incrimination.

Chapter 13 reviews the fundamental issues and procedures of a criminal trial. In this chapter, students will learn about the procedural issues that come with preparing a criminal case for trial. This includes discussions of jury selection, the right to counsel, preparing jury instructions, and the constitutional parameters for

a fair and effective trial. This chapter also addresses jury and prosecutorial misconduct, ineffective assistance of counsel, confrontation clause matters, and issues associated with double jeopardy.

Finally, Chapter 14 examines the procedural and legal issues facing professionals after a defendant is convicted. This chapter addresses sentencing hearings, the appellate process, and other postconviction proceedings, including habeas corpus petitions. The chapter also presents examples of a motion to withdraw a plea, motion for judgment of acquittal, and a motion for new trial. Students will learn about the United States Sentencing Guidelines, appellate brief writing, the appellate standards used to review trial court proceedings, and habeas corpus petitions.

Text Features

Throughout the text, the term **legal professionals** is used to refer to a variety of individuals who might be involved with criminal cases. This term is intended to be inclusive in nature, encompassing the many roles that students might eventually play in the criminal justice system, including paralegals, legal assistants, legal secretaries, probation officers, and students preparing for law school.

The text is **flexible in its design**, allowing for use in combined courses on criminal law and criminal procedure or separate classes on each topic.

The book's **writing style** and language are intended to challenge but not overwhelm students. When legal terms are used, they are defined. And there are many examples provided throughout each chapter. In addition, **key terms** are cited and defined in the margins of the text and a running **glossary** is included at the end of each chapter. These tools further reinforce the understanding of legal concepts and doctrines.

Excerpts of criminal cases are also placed within each chapter. While each case has been well edited, we have been careful to retain the material needed to accomplish our pedagogical objectives, which include reinforcing the black letter law presented in our narrative, developing analytical skills, and exposing students to judicial writing. To remain true to our flexibility objective, we have designed the text so the cases may be omitted without losing any black letter learning. For those who want access to full-length opinions, the book provides links to many opinions on its companion website. But these abbreviated cases also provide briefing opportunities for those students who want to engage in this traditional practice used for legal research and writing projects. And at the end of each excerpt, the authors provide questions for students to initiate discussion and ponder future application of the standards and concepts found within the court's ruling.

Illustrations, charts, pleadings, and photos appear throughout the text. At times, the doctrines and tests used by courts to interpret and apply principles of criminal law and procedure can seem dense, confusing, and even contradictory, especially for those who are just learning about them. Within each chapter, the book provides organizational charts, directional diagrams, photos, sample pleadings, and other visual aids to help students understand complex topics and to provide an analytical framework to address future situations in criminal law and procedure.

In the Field is a special feature designed to make students aware that criminal law and procedure is more than a set of abstract and theoretical concepts. Throughout each chapter, the book offers practical insights and advice regarding working on criminal cases. These features help introduce students to the realities of criminal practice and the role some of the theories, cases, and concepts play in day-to-day cases.

Ethical Principles is a segment within each chapter that highlights a particular ethical rule or ethical consideration for legal assistants, paralegals, and other legal professionals. These principles are taken from the ethical canons and rules offered by the American Bar Association, the American Alliance of Paralegals, the National Federation of Paralegal Associations, Inc., and the National Association of Legal Assistants. Then at the end of each chapter, students are asked to consider and apply the featured ethics rule or standard to a factual scenario in which they may find themselves as a legal professional.

Law Line is another feature running throughout the book that connects students to primary sources—statutes, cases, and other texts—that illustrate core concepts of criminal law and procedure. Within each chapter, there are multiple references to the text’s companion website, where students can go and find full-length cases, criminal statutes, constitutional provisions, and other materials that highlight the realities of working in the criminal justice profession.

Each chapter contains a **Summary** section that outlines the main concepts and doctrines found within text of the chapter. This section allows students to assess whether they have captured the primary points and principles after reading the full-length materials.

Questions for Discussion also appear at the end of each chapter. These require students to provide a short answer or explanation to basic questions involving the core concepts, doctrines, and cases addressed within the chapter. There are also more reflective questions that ask the student to consider the implication of concepts and cases for future cases.

Appendices include the United States Constitution, and directions for researching and briefing legal materials.

Developing Your Legal Analysis Skills

This section at the end of each chapter provides students with real-life exercises and assignments that reflect the work of legal professionals in criminal law and procedure. These might include preparing a legal memorandum, outlining the courtroom rules for a given jurisdiction, or locating a client within the Bureau of Prisons. Students are then asked to complete the assignments within the parameters of the instructions given by a hypothetical supervisor within an office setting. These assignments require students to apply key legal and procedural principles to tangible situations, using the knowledge gained from the chapter.

There are four types of assignments provided in this feature. The first is called **The Law Where You Live**, which contains assignments asking students to locate and apply the standards of criminal law and procedure within their own state or local jurisdiction. This section allows students to tailor their general understanding of criminal law and procedure to their home courts. The second area of assignments is called **Inside the Federal Courts**. This section provides assignments based on federal standards, rules, and requirements. It is designed to allow students to appreciate the fundamental differences of legal practice in the federal system. The third type of assignment is called **Cyber Sources**, which asks students to use electronic research methods and resources to complete a task that might be assigned to a legal professional in the criminal justice field. And finally, there is an assignment on **Ethics and Professionalism** that requires the students to apply the ethical principles for legal professionals, which are outlined in the chapter or otherwise referenced in the text, to a hypothetical situation in a criminal justice setting.

Resources for Students

Companion Website

Students can access a variety of study aids at www.prenhall.com/Schmalleger including **Law Line**, featuring up-to-date and full-length cases and many other supplemental materials that allow the text to grow with the ever-changing dynamics of criminal justice, along with chapter-specific resources including self-grading test-prep quizzes.

Resources for Instructors

Instructor's Manual

The Instructor's Manual includes content outlines for classroom discussion, teaching suggestions, and answers to end-of-chapter questions from the text.

Test Generator

The test bank is arranged by chapter, containing a variety of question formats such as true/false, multiple choice, completion, short answer, and essay.

PowerPoint Lecture Presentation

A PowerPoint presentation, organized by chapter, outlines and summarizes the major points covered, and corresponds to the organization of the text.

To access the Instructor's Manual, Test Generator, and PowerPoint Lecture Presentation package online, instructors need to request an instructor access code. Go to www.pearsonhighered.com/irc, where you can register for an instructor access code. Within forty-eight hours of registering you will receive a confirming e-mail including an instructor access code. Once you have received your code, locate your text in the online catalog and click on the Instructor Resources button on the left side of the catalog product page. Select a supplement and a log-in page will appear. Once you have logged in, you can access instructor material for all Pearson Prentice Hall textbooks.

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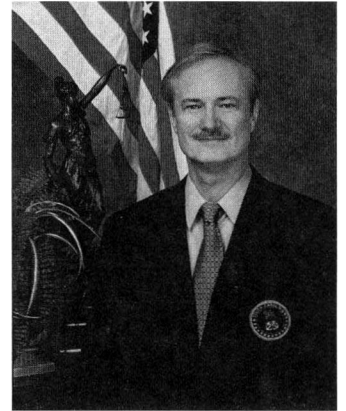
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As an adjunct professor with Webster University in St. Louis, Missouri, Schmallegger helped develop the university's graduate program in security administration and loss prevention. He taught courses in that curriculum for more than a decade. Schmallegger has also taught in the New School for Social Research's online graduate program, helping to build the world's first electronic classrooms in support of distance learning through computer telecommunications. Frank Schmallegger is the author of numerous articles and many books, including the widely used *Criminal Justice Today* (Prentice Hall, 2011); *Criminology Today* (Prentice Hall, 2012); *Criminal Justice: A Brief Introduction* (Prentice Hall, 2012). See his website at www.schmallegger.com.



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