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Criminal Procedure

CASES & MATERIALS

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The University of Dayton



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Criminal Procedure: Cases and Materials

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This Book is Dedicated to My Parents:

*Dr. Ernagene F. Ingram
and
Dr. Lewis K. Ingram*

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Preface

Criminal Procedure: Cases and Materials has been developed to assist the reader to comprehend the police and court functions of the American system of criminal justice and to grasp the methods and rationales under which it operates. Essential to a thorough understanding of the criminal process is a basic comprehension of the constitutional requirements, interpretations, and parameters within which law enforcement officials, attorneys, and courts must operate. This book provides a substantive avenue to learn the basics of criminal procedure, as well as some of the important prior case law, which gives insight to how a particular legal principle may be interpreted in the future.

Since the Warren Court revolution in individual rights of the 1960s, criminal procedure has been largely driven by litigation and decisional law of the Supreme Court of the United States. Even though local, state, and federal law varies from jurisdiction to jurisdiction, the criminal process must adhere to the same threshold standards of the United States Constitution. Each participant, from the initial police official to the final appellate judge, possesses responsibility both to ensure that the constitutional rights of the accused are protected and to enforce the sometimes conflicting expectations and needs of society. Although few individuals contend that the constitutional rights of an accused should be ignored, many argue that such rights should be judicially applied in a manner that best protects the victim primarily, society secondarily, and lastly, the accused. The constitutional rights to which an accused is entitled must be respected by law enforcement officials or the accused may have a chance of walking free or of engaging in plea bargaining to a lesser charge. The cases and materials within this book provide a guideline of appropriate practice that should permit the criminal justice practitioner and the student to recognize the rights of society and the accused, while delivering services within constitutional dictates.

The study of criminal procedure may be undertaken by a case method whereby the student reads an edited appellate case and attempts to discern the guiding principle or principles from the opinions presented. Alternatively, a purely textual approach allows the presentation of the main principles, but clarity often suffers when the principle is not presented in the context of a real-life

situation. While both methods have advantages, this book bridges the two techniques and presents both text and cases in a manner designed to follow the usual order of the criminal process.

This book conforms to the case/text approach of learning criminal procedure by introducing each chapter with a textual overview of the principles contained in the chapter followed by presentations of the major cases that develop and illustrate the particular legal principles. The facts for each primary case have been rewritten for the purpose of limiting the legal issues to those pertinent to the respective chapter in which the case appears. The procedural question for each case, reflecting the edited version of the facts, presents the reader with a single legal issue on which the court rests its decision. The rationale follows the procedural question and has been limited to a discussion of the factors that influenced the court majority to decide the case in the particular way. In situations where a minority opinion anticipates a possible future direction of the court or otherwise helps illustrate the principal issue, the book presents a succinct version of the dissenter's opinion.

The substantive topics handled in each chapter generally follow the chronological sequence that parallels many, if not most, criminal-police/law enforcement encounters. For example, a stop and frisk may begin a criminal investigation that leads to a search of a person, car, or home and, ultimately, to a jury trial on charges brought by a grand jury. The chronological order permits the student to experience the general unfolding of the criminal process as it normally occurs, from initiation to final disposition.

Within each chapter, this book presents the major case of a branch of criminal procedure and follows that presentation with more recent judicial decisions, giving form and substance to the court's pronouncements. For example, the major case on the warning of an arrestee's rights, *Miranda v. Arizona*, is followed by additional cases that have refined the rights of the arrestee and have delineated the parameters that the police may follow when attempting to question a person in custody. At the end of each complete case presentation, notes and/or questions are introduced that raise issues mentioned within each opinion that involve or are related to the primary principles introduced by the major case.

In selecting the cases for each chapter, attention has been directed to the generally recognized leading cases and to those that have been presented as demonstrative of primary criminal procedure principles. Considerable effort has been expended in an attempt to digest and include the latest significant cases encompassing each section of criminal procedure. Consequently, for recent cases in which the Court has made small or incremental changes, treatment in case note form follows the principal cases. In other instances, where appropriate cases appear illustrative of recent judicial innovation or creation, and happen to be the most recent court pronouncements on the particular legal issue, the latest cases have been incorporated in their respective places. Where a slight alteration in a case fact pattern might suggest a contrary judicial resolution, questions addressing a hypothetical situation follow the presentation of the principal case. In situations where the Supreme Court of the United States has recently released opin-

ions which, though significant, do not merit full-case treatment, the new decisions received case note treatment.

While no single book could adequately cover all aspects of criminal procedure, this book is designed to present representative cases covering most of the problem areas that concern the police and court functions. The student of criminal procedure soon discovers that the dictates of time and the extent of the subject prohibit learning everything about this particular body of law. Even if complete mastery were possible, this body of knowledge consists of a moving target and recent knowledge becomes obsolete with each term of the supreme court of each jurisdiction. As a dynamic body of law, the field of criminal procedure constantly changes as novel situations cause the court to decide a particular case in an unpredictable fashion. Old legal postures and doctrines may no longer be tenable in light of new technology, while new members of the courts may embrace legal interpretations that change the collective perception of the court and, with it, the law as well. Accordingly, continued renewal of criminal procedure knowledge for both the professional and the student remains not only desirable, but constitutes an ongoing necessity. Therefore, the intent of this book is to foster a basic understanding of criminal procedure and to assist the reader to an enhanced knowledge of this area of law.

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May, 1994

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<i>Wolf v. Colorado</i>	338	U.S.	25	(1949)	185, 186
<i>Wong Sun v. United States</i>	371	U.S.	471	(1963)	61, 65, 71, 178, 180, 187, 211

Constitutional and Statutory Authority

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Federal Speedy Trial Act	18 USC § 3161	348
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Introduction

Introduction to the Criminal Process

The following narrative overview of the criminal process has been designed to acquaint the student with the broad scope of criminal procedure and to place the various steps in context. Most American jurisdictions follow similar procedures when dealing with allegations of criminality, from investigation to final case disposition. The reader should be aware that not all jurisdictions follow identical procedures in all cases and that there are individual differences even within a single state. The overview presented below is intended to be generally representative of procedure as practiced in the United States.

Initial Encounter with Law Enforcement

The initial encounter with the criminal justice system that an individual normally faces involves contact with a police officer who has been activated by personal observation of crime, a citizen complaint, a grand jury indictment, or a prosecutor's information. Where the officer has been sent to arrest pursuant to an indictment, information, or an arrest warrant the officer has a nondiscretionary duty to effectuate a full-custody arrest. However, in many situations, the officer possesses discretionary authority to adjust the problem where a citizen complaint or dispute has prompted the criminal justice system to action. If the existence of a crime appears well founded the officer may effectuate an arrest or issue a summons to a court hearing.

The stage prior to an arrest may involve additional investigation whether by a police officer or by a prosecutor engaged in using a grand jury to probe for additional information. Search warrants followed by searches and seizures may produce additional incriminating information. Police may request that a suspect appear voluntarily in a lineup or volunteer to give blood or hair samples. All these procedures may produce evidence that matures probable cause for an arrest.

Arrest

The Fourth Amendment legal standard utilized to decide whether an arrest constitutes an appropriate response is called probable cause for arrest. Under this

standard, the law enforcement official must believe that the facts and circumstances known to the officer are based on trustworthy information and are sufficient to warrant a person of reasonable caution in believing that the suspect had committed or was committing an offense that dictated a full custody arrest. The probable cause standard is automatically met if the arrest is pursuant to a grand jury indictment.

Where an arrest constitutes the appropriate response to the facts, the law enforcement official normally must make other decisions in order to protect the evidence for use in court and to protect the constitutional rights of the arrestee. If the arresting officer determines not to question the arrestee, generally no specific warnings of constitutional rights need be given. However, where the officer desires to question the arrestee, the *Miranda* warnings must be read to and understood by the subject.

These judicially required warnings are designed to convey to the arrestee that he/she possesses both the right to remain silent under the Fifth Amendment and the right to consult with counsel, protected under the Sixth Amendment. Additionally, the arrestee must be informed that if he chooses to speak, the evidence divulged may be used against him by the government in a court of law. Upon arrest, the arrestee must be informed that he has a right to free counsel, which will be granted prior to any questioning. To summarize the *Miranda* requirements, the subject must be informed of the right to remain silent, that if he speaks, anything stated may be used against him, that he has the right to speak with counsel who will be paid by the government at no expense to the arrestee.

The necessity of reading the *Miranda* warnings is triggered by two coexisting factors. First the subject must be in custody and second, questioning of the arrestee must occur. Not infrequently, the issue arises concerning precisely what are the attributes of custody. For most cases, the concept of custody is clear, but in others, the arrestee may have not been sure if he was in custody or whether complete freedom existed. If a person is free to leave a police station at any time, the individual has not been in custody. A secondary question, often litigated, concerns the concept of interrogation and its limits. Some statements made by a police officer could be interpreted as questions to an arrestee, although ostensibly directed to another officer. Interrogation has been interpreted in a broader context than mere questioning to include actions by police that are designed to elicit a verbal response indicative of crime.

Once an officer effectuates an arrest, the investigatory stage of the process continues, both as to evidence at the situs of the arrest and on the person of the arrestee. The scope of a search incident to a lawful arrest extends to any objects on the person or within the clothing, and includes a full search and inventory of any personal possessions of the arrestee. Where the investigating officers discover objects or information of an incriminating nature, courts permit the admission of the articles into evidence. Where a person has been arrested in the home, the extent of a search includes the person of the arrestee and the surrounding area from which the subject could easily and quickly obtain a weapon to frustrate the arrest or to destroy evidence. The process of searching normally concludes

when the arrestee completes the booking procedure at the appropriate institution or local jail.

Initial Appearance

An arrestee's first encounter with the prosecution and the courts normally occurs at an arraignment or preliminary hearing. Although the person who has been arrested following an indictment generally has no right to have a judicial officer determine whether probable cause exists to hold the person, the same cannot be said for the individual arrested without a warrant or indictment. The judge must hold a hearing within 48 hours following arrest to determine whether probable cause exists to justify continued detention of the person in custody. If probable cause is found to exist, the arrestee is held for grand jury action or other disposition. Where the hearing is solely to determine probable cause, the defendant has no right to be present or to be represented by counsel; however, if the hearing is a traditional preliminary hearing where defendant will plead or the judge will set bail, the arrestee has the right to be present and to be represented by counsel.

At the first appearance, whatever the name, bail may be determined and counsel may be appointed. Where the hearing is designated a preliminary hearing, in addition to the setting of bail and the appointment of counsel, the prosecution will make a presentation of a *prima facie* case sufficient to hold defendant further. A failure to present a *prima facie* case usually results in a dismissal of the prosecution's case.

The Grand Jury

Felony charges normally are made by a grand jury composed of citizens who hear evidence against an accused and come to a determination concerning whether probable cause exists to believe that a person has committed a crime. The public is excluded from the grand jury room where the prosecutor asks individual witnesses questions in front of the jurors. There is no attorney, generally, for the potential defendant or target, although some jurisdictions allow an attorney to privately advise the witness concerning legal matters. The grand jury members may ask questions of the witness and have the power to subpoena papers and documents from virtually any person or company. As is the case frequently, the target of the grand jury's investigation is unaware that the grand jury is considering an indictment against the individual.

The grand jury system is not mandated for use by the states under the Sixth Amendment unless states choose to utilize the procedure. Many state constitutions require the use of the grand jury, while other states make it optional except for the most serious cases. The Sixth Amendment has been held to require federal prosecutions to begin all serious criminal cases with a grand jury indictment. Unless the accused consents to having an information filed against the defendant, the federal government must first procure an indictment. Even where the govern-

ment obtains an indictment, it does not mean that the individual will be convicted at a subsequent trial; it simply means that a trial probably will be held unless a different disposition of the case happens.

Plea Negotiations

Following the initial charging procedure and prior to a trial on the merits, the prosecutor and the defense attorney may engage in efforts to settle the case without trial. The prosecutor may offer to allow defendant to plead to a lesser included offense or otherwise compromise the case. Where the prosecution feels it has a weak case, it will be more likely to offer some type of plea bargain. The defendant may be anxious to settle the case in return for a conviction of a lower-level offense or to prevent the possible imposition of a much longer potential sentence. Usually both sides concede points of substance in order to successfully reach an agreement. Some cases must be compromised because if all criminal cases went to trial, disorder would reign supreme. Sufficient numbers of prosecutors, judges, and courts are unavailable to try all criminal cases if plea bargaining were not permissible.

Pretrial Activity

Prior to trial, the defendant will have raised issues concerning various constitutional rights. Often pretrial contentions involve the suppression of evidence allegedly seized in violation of a defendant's rights under the Fourth Amendment (search, seizure, and arrest), the Fifth Amendment (self-incrimination), alleged *Miranda* violations, allegations that the trial would violate the protection against double jeopardy, violation of the right to a speedy trial, and a host of other complaints that need to be raised prior to a trial.

Under the Fourth Amendment, the defendant may contest the lack of probable cause for a search, allege the lack of a valid warrant for the search, or argue that the search was unreasonable as executed. Various rules have developed that require that searches be conducted in a reasonable manner. Vehicles may not require a warrant prior to a valid search while dwelling houses and other structures normally may be searched only pursuant to the judicial order of a warrant. Stop and frisk issues, touching on the Fourth Amendment protections, are usually litigated prior to trial. In numerous instances, where a defendant loses a contested motion to suppress evidence, plea negotiations become serious because both the prosecution and defense actually realize the type of evidence that will be available for use at trial.

Contested issues under the Fifth Amendment include disputes concerning proper application of *Miranda* principles. The defendant may argue that the warnings were ineffectively conveyed to him or that he was in custody and should have been warned of his right not to incriminate himself. In other contexts, the prosecution will take the position that no questioning occurred and that the defendant just volunteered the information. Pretrial hearings are of vital importance to