

CRIMINAL PROCEDURE FOR THE CRIMINAL JUSTICE PROFESSIONAL



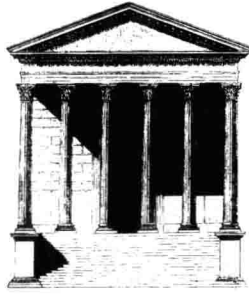
SIXTH EDITION

JOHN N. FERDICO



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Criminal Procedure
for the
Criminal Justice Professional



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*Criminal Procedure
for the
Criminal Justice Professional*

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Criminal Procedure for the Criminal Justice Professional was originally published in 1975 as *Criminal Procedure for the Law Enforcement Officer* and was written with the primary emphasis on providing practical guidelines for law enforcement officers with respect to the legal aspects of their daily duties. Over the years, in response to suggestions and comments from professors and students who have used the book, many changes have been made to enhance the book's suitability for use as a classroom text. Chapters dealing with individual rights under the Constitution and basic underlying concepts have been added and chapters dealing with evidence, testifying in court, and investigation of crime have been eliminated. Review and discussion questions were added to stimulate discussion and to expand understanding beyond the principles and examples used in the text. Finally, in 1993 the Fifth Edition of this book added two pedagogical devices to assist the student's comprehension of basic concepts:

- ◆ *Key Points*—concise, clear statements of the essential principles of criminal procedure. These appear at the end of major subdivisions of chapters and serve as mini-summaries of those subdivisions. Their purpose is to aid the student in “separating the wheat from the chaff” and to expedite review by boiling down the complexities into understandable statements of fundamentals.
- ◆ *Key Holdings from Major Cases*—essential principles from U.S. Supreme Court cases, usually presented in the form of quotations. These appear at the end of chapters. Their purpose is to familiarize the student with judicial language and to give a sense of the historical development of particular aspects of criminal procedure in the words of the Supreme Court. These holdings also serve as summaries of important principles.

The purpose of the various improvements to the book has been to provide the student with a broad and sophisticated understanding of the law of criminal procedure while maintaining a practical, real-life orientation.

The Sixth Edition of *Criminal Procedure for the Criminal Justice Professional* retains all these features and expands and revises them where necessary. In addition, every chapter has been thoroughly reviewed, revised, and updated to reflect modern developments in the law. The revisions include discussions of all relevant U.S. Supreme Court cases decided since the publication of the Fifth Edition and all amendments to relevant legislation and court rules. Also, all forms and exhibits have been reviewed and updated where necessary.

The Sixth Edition adds discussions of over 160 new cases decided by the U.S. Supreme Court and other federal and state courts. Many of these new cases replace old and archaic cases with modern examples illustrating important legal principles. Some of these new cases establish new principles of criminal procedure law or provide instructive examples of the operation of existing law. In addition to these general changes, the following notable changes have been made to individual chapters.

Chapter 1—Individual Rights under the United States Constitution

This chapter is essentially unchanged except for updating and the addition of seven new cases. A notable improvement, made in response to readers' suggestions, is a revamped and expanded discussion of the Sixth Amendment right to counsel.

Chapter 2—An Overview of the Criminal Court System

This chapter adds sections on the role of U.S. magistrate judges and on jury nullification. Eight new cases are also added, including the following U.S. Supreme Court cases:

- ♦ *Brecht v. Abrahamson* (1993), dealing with the standard for determining whether habeas corpus relief must be granted for constitutional trial errors
- ♦ *Wisconsin v. Mitchell* (1993), dealing with racial motivation for committing a crime as a consideration for sentence enhancement
- ♦ *J. E. B. v. Alabama ex rel. T. B.* (1994), dealing with peremptory challenges

Chapter 3—Basic Underlying Concepts

The section on "Reasonableness" is expanded to give deeper insight into the import and significance of this basic concept. Nine new cases, including the following U.S. Supreme Court cases, are added:

- ♦ *Soldal v. Cook County, Ill.* (1992), dealing with the application of the Fourth Amendment to noncriminal seizures of property
- ♦ *United States v. Padilla* (1993), dealing with a codefendant's standing to object to a search
- ♦ *Arizona v. Evans* (1995), dealing with the good-faith exception to the exclusionary rule

Chapter 4—Arrest

This chapter is essentially unchanged except for updating and the addition of nine new cases. The section on entry of dwellings is reorganized to make the presentation more logical. No major U.S. Supreme Court cases dealing with arrest have been handed down since the publication of the Fifth Edition.

Chapter 5—Search Warrants

This chapter contains expanded discussions of “staleness” of probable cause and of the requirements for descriptions of the place to be searched and the items to be seized in an application for a search warrant. Also, the sections on anticipatory search warrants and warrants for electronic surveillance are significantly revised. Twenty-two new cases are added, but no major U.S. Supreme Court cases dealing with search warrants have been handed down since the publication of the Fifth Edition.

Chapter 6—Probable Cause

This chapter is revised to provide more current and more instructive cases illustrating the probable cause concept. Twelve new cases are added, but no major U.S. Supreme Court cases dealing with probable cause have been handed down since the publication of the Fifth Edition.

Chapter 7—Stop and Frisk

Added to this chapter are a brief section on the history of stop and frisk and a section on facts and circumstances determining the reasonableness of a stop. Also included are expanded discussions of the reasonableness of investigative methods used in connection with a stop and of the allowable scope of a frisk. Thirteen new cases are added. The 1993 U.S. Supreme Court case of *Minnesota v. Dickerson* is briefly mentioned in connection with stop and frisk but is discussed in detail in Chapter 10.

Chapter 8—Search Incident to Arrest

This chapter is reorganized so that chapter headings and subheadings are more logically categorized. Also included is an expanded discussion of emergency

searches of containers found in the possession of arrested persons. Nine new cases are added, but no major U.S. Supreme Court cases dealing with search incident to arrest have been handed down since the publication of the Fifth Edition.

Chapter 9—Consent Searches

This chapter is essentially unchanged except for updating and the addition of fourteen new cases. No major U.S. Supreme Court cases dealing with consent searches have been handed down since the publication of the Fifth Edition.

Chapter 10—The Plain View Doctrine

This chapter is extensively revamped and reorganized to reflect changes in the law resulting from the 1993 U.S. Supreme Court case of *Minnesota v. Dickerson*. This case, probably the most significant criminal procedure case since the publication of the Fifth Edition, expands the plain view doctrine to include evidence discovered through “plain touch” or “plain feel.” Also, five new cases are added. Other changes are expanded coverage of the theoretical underpinnings of the plain view doctrine and of the application of the plain view doctrine to the examination of closed containers.

Chapter 11—Search and Seizure of Vehicles and Containers

This chapter includes an expanded discussion of exigent circumstances under the *Carroll* doctrine. Seven new cases are added, but no major U.S. Supreme Court cases dealing with vehicle or container searches have been handed down since the publication of the Fifth Edition.

Chapter 12—Open Fields and Abandoned Property

In this chapter, the discussion of abandonment is reorganized and revised to better reflect the current state of the law. Fourteen new cases are added, but no major U.S. Supreme Court cases dealing with open fields or abandonment have been handed down since the publication of the Fifth Edition.

Chapter 13—Admissions and Confessions

Changes to this chapter include an expanded treatment of custody for purposes of *Miranda* and an expanded discussion of the application of *Miranda* to various types of routine questioning. Twenty-three new cases are added, including the following U.S. Supreme Court cases:

- ♦ *McNeil v. Wisconsin* (1991), holding that the Sixth Amendment right to counsel is offense-specific
- ♦ *Brecht v. Abrahamson* (1993), allowing the use for impeachment purposes of a defendant’s silence before *Miranda* warnings are given

- ♦ *Stansbury v. California* (1994), holding that the focus of a criminal investigation on a defendant is irrelevant for purposes of determining *Miranda* custody
- ♦ *Davis v. United States* (1994), holding that ambiguous or equivocal references to an attorney are insufficient to invoke a suspect's right to counsel

Chapter 14—Pretrial Identification Procedures

Changes to this chapter include additions to and revision of the guidelines for lineup and photographic identifications, based on recent court decisions. Other changes are an expanded discussion of showups, including new material on unarranged spontaneous showups; addition of modern examples of the application of the *Biggers-Brathwaite* reliability factors; and a new section explaining why there is no right to counsel at preparatory steps in the prosecutor's gathering of evidence. Ten new cases are added, but no major U.S. Supreme Court cases dealing with pretrial identification have been handed down since the publication of the Fifth Edition.

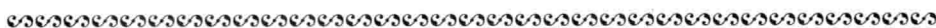
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John N. Ferdico



Introduction

A *crime* is an act committed or omitted in violation of a law specifically prohibiting or commanding it. Crimes differ from other prohibited behavior in that, upon conviction, an adult may be penalized by fine, incarceration, or both; a corporation may be penalized by fine or forfeiture; and a juvenile may be adjudged delinquent or transferred to criminal court for prosecution. Generally, a crime consists of conduct that violates the duties a person owes to the community or society, as distinguished from a private wrong committed against one or more persons or organizations. *Criminal law* is the body of law that defines what acts or omissions constitute crimes and provides for the punishment of that behavior. *Criminal procedure* can be defined as the body of laws and rules governing the process of detecting and investigating crime and gathering evidence against, apprehending, prosecuting, trying, adjudicating, sentencing, and punishing persons accused of crimes.

Criminal Procedure—Complex and Dynamic

The law of criminal procedure is not only complex, but constantly changing. The criminal justice professional, and especially the law enforcement officer, is expected to understand these complexities and keep abreast of the changes. More importantly, criminal procedure law must be applied to a variety of situations that do not always neatly conform to the established principles. To compound the problem, criminal procedure law is derived primarily from judicial opinions that are often written in a rambling, legalistic style that even lawyers and judges have trouble understanding. The result is a gap of communication and understanding between those who make the rules (judges) and those who must enforce and apply them (law enforcement officers and other criminal jus-

tice professionals). Violations of rights of citizens by criminal justice personnel who are not aware or not heedful of court-imposed limitations on their activities is a main cause of the failure of many prosecutions and the reversal of many convictions.

This book is an attempt to bridge the gap of communication and understanding between judges and criminal justice professionals. All who operate within the criminal justice system need understandable guidelines for performing their particular functions within the system. For example, law enforcement officers need understandable rules and procedures for conducting arrests, searches and seizures, interrogations, and lineups. Also, all criminal justice personnel should be familiar with the language and reasoning of the courts defining rights and obligations in the criminal justice area. Nonlawyers, however, should not be expected to read through long, involved opinions of every state and federal case that affects them and to extract principles of law to guide them in the execution of their duties. They already carry a heavy enough burden. Therefore, this book attempts to reduce the complexity of the law of criminal procedure into simple, straightforward advice, illustrated with examples of actual cases. Quotations from cases are used if they are written in clear, understandable language.

Criminal Procedure—The Constitution and the Courts

Most of the principles governing criminal procedure are derived from the United States Constitution, constitutions of individual states, and court decisions interpreting those constitutions. This book begins with a discussion of individual rights under the U.S. Constitution and an overview of the criminal court system. The remainder and greater portion of the book is a discussion of various specific areas of criminal procedure, presented primarily through appellate court decisions. An *appellate court* is a court that hears appeals from lower courts, usually trial courts. An *appeal* in a criminal case is a request to an appellate court by either the defendant or the prosecution to review alleged errors by the trial court or alleged official misconduct or violation of rights by one of the participants in the criminal justice process. Most appeals are by convicted defendants attempting to overturn their convictions. After the appellate court reviews the allegations presented, it issues a written opinion explaining its decision.

Most of the principles in this book are illustrated by decisions of the U.S. Supreme Court. The Supreme Court has a significant role in the development of the law of criminal procedure, because criminal procedure is prominently featured in the Constitution and because the Supreme Court has the ultimate responsibility for interpreting the Constitution. Of the twenty-three separate rights set out in the first eight amendments to the Constitution, more than half concern criminal procedure. While the Court has had little to say about some constitutional rights, the Court has, since the early 1960s especially, developed complex and comprehensive bodies of law around other constitutional rights. Lower federal courts and state appellate courts have responded to this development with increased activity of their own in the criminal procedure area in re-

cent years. Decisions of these lower courts are used in this book primarily to give examples of important principles and to clarify the law in areas where the U.S. Supreme Court has not spoken, or has spoken only superficially or sketchily. In rare situations, a lower court case may be used to set out a principle or doctrine not addressed by the U.S. Supreme Court or to illustrate a state court's disagreement with and departure from guidelines established by the Supreme Court. The reader is apprised of these uses of lower court decisions.

Because most criminal procedure principles and doctrines derive from U.S. Supreme Court decisions interpreting the Constitution, the reader should know how to recognize these cases. An example of a U.S. Supreme Court case citation follows: *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L.Ed.2d 694 (1966). The title of the case appears in italics. The designation "384 U.S. 436" means that the *Miranda* case appears in volume 384 of the *United States Reports*, beginning at page 436. The *United States Reports* is the official published collection of U.S. Supreme Court decisions. "S.Ct." refers to the *Supreme Court Reporter*, a compilation of U.S. Supreme Court decisions published by West Publishing Company, Eagan, Minnesota. "L.Ed.2d" refers to the *U.S. Supreme Court Reports Lawyer's Edition*, Second Series, published by Lawyers Cooperative Publishing, Rochester, New York. These published collections of Supreme Court decisions can be found in law libraries. All U.S. Supreme Court decisions in this book are cited according to this format.

This book uses the West Publishing Company Reporter system for all citations for lower federal and state court decisions. For example, *United States v. Guyon*, 717 F.2d 1536 (6th Cir. 1983), means that the *Guyon* case appears in volume 717 of West's *Federal Reporter*, Second Series, beginning at page 1536. "6th Cir." means that the case was decided by the U.S. Court of Appeals for the Sixth Circuit. All decisions of U.S. Courts of Appeals appear in West's *Federal Reporter*. Decisions of the U.S. District Courts appear in West's *Federal Supplement*. A typical citation to that reporter follows: *United States v. Gallego-Zapata*, 630 F.Supp. 655 (D.Mass. 1986). "D.Mass." indicates that the case was decided by the U.S. District Court for the District of Massachusetts. A typical state court citation follows: *People v. Eddington*, 198 N.W.2d 297 (Mich. 1972). "N.W.2d" means that the case appears in West's *Northwestern Reporter*, Second Series. West Publishing Company publishes state court decisions in reporters covering different regions of the United States. The designation "Mich." means that the case was decided by the Michigan Supreme Court. A more detailed discussion of citations and the reporter systems is beyond the scope of this book.

Pedagogical Features

The Sixth Edition of *Criminal Procedure for the Criminal Justice Professional* contains the following pedagogical features:

- ◆ *Key Points*—This feature presents concise summaries of major principles of criminal procedure law at the ends of major subdivisions of chapters.

Their purpose is to assist the reader in reviewing the preceding material and in recognizing and appreciating essential rules, principles, and guidelines.

- ◆ *Key Holdings from Major Cases*—This feature appears at the end of chapters. These key holdings are usually important quotations from U.S. Supreme Court decisions. Some of the quotations have appeared earlier in the text, and others have not. Their purpose is to familiarize the reader with judicial language, to summarize important legal principles, and to embellish the text with the sometimes elegant and dramatic language used by some Supreme Court Justices.
- ◆ *Review and Discussion Questions*—This feature appears at the end of chapters. The questions are designed to test the student's depth of understanding of legal principles presented in each chapter and to stimulate discussion of the limits and implications of these principles.

The “Key points” and “Key Holdings from Major Cases” features do not appear in the first two chapters, because these chapters are introductory overviews and the greater part of the material in the chapters is in summary form already. To include them would be redundant. For similar reasons, “Key Points” is not included in Chapter 3, although that chapter does include “Key Holdings from Major Cases.”



SUMMARY OF CONTENTS

<i>Preface</i>	xix
<i>Introduction</i>	xxv

PART 1

A Framework for the Study of Criminal Procedure

1. Individual Rights under the United States Constitution	2
2. An Overview of the Criminal Court System	32
3. Basic Underlying Concepts	78

PART 2

Arrest, Search Warrants, and Probable Cause

4. Arrest	106
5. Search Warrants	159
6. Probable Cause	221

PART 3

Exceptions to the Search Warrant Requirement

7. Stop and Frisk	258
8. Search Incident to Arrest	303
9. Consent Searches	326
10. The Plain View Doctrine	357
11. Search and Seizure of Vehicles and Containers	381
12. Open Fields and Abandoned Property	408

PART 4

Admissions and Confessions and Pretrial Identification

13. Admissions and Confessions	438
14. Pretrial Identification Procedures	501

<i>Table of Cases</i>	527
<i>Index</i>	541



Table of Contents

Preface

xix

Introduction

xxv

PART 1

A Framework for the Study of Criminal Procedure

1 Individual Rights under the United States Constitution	2
History	3
The Original Constitution	4
The Bill of Rights	6
Individual Rights in the Original Constitution	9
Individual Rights in the Bill of Rights	11
Amendment I	
Freedom of Religion	12
Freedom of Speech	13
Freedom of the Press	14
The Right to Assembly and Petition	14
Amendment II	
Amendment III	
Amendment IV	
Amendment V	
Indictment by Grand Jury	16
Freedom from Double Jeopardy	16
Privilege against Self-incrimination	18
The Right to Due Process	19
The Right to Just Compensation	19
Amendment VI	
The Right to a Speedy and Public Trial	20
Trial by an Impartial Jury	20
The Right to Notice of Charges	21
The Right to Confrontation with Witnesses	21
Guarantee of Compulsory Process	22
The Right to Representation by Counsel	22
Amendment VII	
Amendment VIII	

The Right to Bail	24
Freedom from Cruel and Unusual Punishment	25
Amendment IX	
Amendment X	
Later Amendments Dealing with Individual Rights	27
Amendment XIII	
Amendment XIV	
The Right to Due Process	28
The Right to Equal Protection of the Laws	29
Amendment XV	
Amendment XIX	
Amendment XXVI	
Amendment XXIV	
Conclusion	30
Review and Discussion Questions	31
 2 An Overview of the Criminal Court System	 32
Structure of the Court System	33
Preliminary Proceedings	37
The Complaint	38
Affidavits	39
Warrant or Summons Issued on the Complaint	39
Initial Appearance before the Magistrate	39
Preliminary Examination	39
Indictment and Information	42
Sufficiency of Indictment	44
Joinder and Severance	45
Duplicity and Multiplicity	46
Prosecutorial Discretion	46
Grand Jury	47
Waiver of Indictment	49
Warrant or Summons Issued on the Indictment	49
Arraignment and Preparation for Trial	49
Pleas	50
Plea Bargaining	52
Motions	54
Depositions	55
Discovery	56
Subpoena	57
Competency to Stand Trial	57
Venue	59
The Trial	60
Trial without a Jury	61
Selection of Jurors	61
Jury Composition	63
Presentation of Evidence	63