

# CRIMINAL PROCEDURE

Fourth Edition

Wayne R. LaFave  
Jerold H. Israel  
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## Preface

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This text is intended primarily for use by law students during their study of criminal procedure. There is, to be sure, no substitute for careful examination of the basic sources—the appellate opinions, statutes, and critical commentary which are to be found in the modern casebooks dealing with this subject. It is neither intended nor expected that this Hornbook on criminal procedure will be of particular use to the student who has not grappled with those materials. Rather, this book has been prepared on the assumption that the diligent student may find a textual treatment of the subject useful as he or she <sup>1</sup> undertakes the necessary process of reviewing and synthesizing the regularly assigned materials.

We have sought to analyze the law governing all of the major steps in the criminal justice process, starting with investigation and ending with post-appeal collateral attacks. Of course, a complete review of all the fine points relating to each and every step in the process would require more than one volume. Accordingly, we have varied the depth of our coverage, taking into consideration both the significance of the particular procedure and the attention typically given to it in a law school criminal procedure course. For every step in the process, however, we have covered, at a minimum, the major themes underlying the governing legal standards and those basic issues that the case law and literature suggest to be the most pressing. We have also sought to go beyond describing “the law” as it currently stands, exploring as well its historical roots and underlying policies. We believe this approach will prove useful to law students.

This book is an updated abridgement of our second edition six-volume Criminal Procedure treatise. We have retained most of the analysis from that larger work, but not much of the supporting documentation. Our supposition in this regard is that a law student who uses a collateral text in connection with course preparation or review is primarily interested in explanation rather than citations to authority. In general, descriptions of lower court rulings and statutory provisions are not followed by illustrative citations, although a specific case or statute noted in the text often will be cited. Supporting citations for descriptions of positions taken by commentators are treated in largely the same manner. So too, brief quotations that are largely illustrative of a line of cases usually are not footnoted. In all instances, readers desiring the full documentation can turn to the treatise, which is readily available on Westlaw as database CRIMPROC. <sup>2</sup>

We have treated the opinions of the Supreme Court of the United States somewhat differently, both because of their special significance

1. To make our sentence structure as short and direct as possible, we generally have not used the phrases “he or she” or “his and her.” Consistent with traditional rules of construction in statutes and legal texts, masculine pronouns (which is what

we usually use) should be read to refer to both male and female actors unless the context clearly indicates otherwise.

2. By using key phrases in the Hornbook text to locate comparable material in CRIMPROC (which in most but not all in-

and because these are the opinions most frequently included in assigned course materials. We have always made reference to the leading Supreme Court opinions which deal with the topic at hand, although we have not included string-citations of Supreme Court rulings on settled points. While our cut-off date for Supreme Court opinions was before the end of the October 2003 term (i.e., June 2004), a pocket part is being published simultaneously with this book updating the Hornbook through the end of that term. (After each successive term, an updated pocket part will be published.).

The authors come away from this project impressed, as always, with the richness of literature in the field. We remain indebted not only to the authors of the articles cited both in the Hornbook and the treatise, but also to many others whose work we could not include without overloading the footnotes. A project of this type also necessarily builds on past endeavors and necessarily reflects the assistance of those who have worked with us on those endeavors. We are especially indebted in this regard to Yale Kamisar, our co-author on *Modern Criminal Procedure*, *Basic Criminal Procedure* and *Advanced Criminal Procedure*

Over the years, on this project and others, we have received the benefit of the excellent work of many student research assistants. Their number has grown far too long to mention them all, but the size of the group makes us no less appreciative of the individual contribution of each of these students. We also are deeply indebted to our secretaries, Natasha Barton, Carol Haley, Joyce Kenney, and Carolyn Lloyd who have seen this project through from start to finish.

While we stand responsible for the work as a whole, Wayne LaFave had the initial responsibility for chapters 3–7, 9–10, 12–13, 17–18 and 21–22; Jerold Israel for chapters 1, 2, 8, 11, 14–16, 19–20, and 23; and Nancy King for chapters 24–28. Each of us would appreciate hearing from readers who have criticisms or suggestions relating to the chapters for which we have initial responsibility

We would also like to recognize the support of our families. Labor of love though it may be, preparation of a text such as this can be terribly demanding, and we appreciate greatly the patience of our families in this regard.

WAYNE R. LAFAVE  
JEROLD H. ISRAEL  
NANCY J. KING

May, 2004

stances will have the same section number, subsection letter, and title) the reader should have no difficulty in finding in the treatise footnote references to supporting

cases, commentary, and statutes. The documentation in the second edition of the treatise is extensive. For example, over twelve thousand appellate cases are cited.

## WESTLAW® Overview

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*Criminal Procedure* offers a detailed and comprehensive treatment of the basic rules, principles and issues relating to the law of criminal procedure. To supplement the information contained in this book, you can access Westlaw, West's computer-assisted legal research service. Westlaw contains a broad array of legal resources, including case law, statutes, expert commentary, current developments and various other types of information.

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# **CRIMINAL PROCEDURE**

**Fourth Edition**

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# Summary of Contents

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	Page
PREFACE .....	v
WESTLAW OVERVIEW .....	vii
<b>PART ONE. INTRODUCTION AND OVERVIEW</b>	
<b>Chapter 1. An Overview of the Criminal Justice Process .....</b>	<b>2</b>
1.1 The Subject Under Inquiry .....	3
1.2 Describing the Fifty-Two Separate Criminal Justice Processes .....	3
1.3 The Steps in the Process .....	6
1.4 The Cornerstone Objectives of the Process .....	23
1.5 The Laws Regulating the Process .....	35
<b>Chapter 2. The Constitutionalization of Criminal Procedure .....</b>	<b>43</b>
2.1 The Elements of Constitutionalization .....	44
2.2 The Fourteenth Amendment and the Extension of the Bill of Rights Guarantees to the States .....	46
2.3 Total Incorporation .....	48
2.4 Fundamental Fairness .....	51
2.5 Selective Incorporation .....	58
2.6 Application of the Selective Incorporation Doctrine .....	63
2.7 The Independent Content of Due Process .....	70
2.8 The Preference for Expansive Interpretations .....	82
2.9 Guideposts for Interpretation .....	87
<b>PART TWO. DETECTION AND INVESTIGATION OF CRIME</b>	
<b>Chapter 3. Arrest, Search And Seizure .....</b>	<b>104</b>
3.1 The Exclusionary Rule and Other Remedies .....	106
3.2 Protected Areas and Interests .....	127
3.3 Probable Cause .....	141
3.4 Search Warrants .....	157
3.5 Seizure and Search of Persons and Personal Effects .....	174
3.6 Entry and Search of Premises .....	189
3.7 Search and Seizure of Vehicles .....	199
3.8 Stop and Frisk and Similar Lesser Intrusions .....	212
3.9 Inspections and Regulatory Searches .....	229
3.10 Consent Searches .....	249
<b>Chapter 4. Wiretapping and Electronic Surveillance .....</b>	<b>261</b>
4.1 Historical Background .....	262
4.2 Title III and the Fourth Amendment .....	264
4.3 Title III: What Surveillance Covered .....	272



	Page
4.4 Title III: Application for and Issuance of Court Order .....	280
4.5 Title III: Executing the Order .....	286
4.6 Title III: Remedies .....	290
<b>Chapter 5. Police “Encouragement” and the Entrapment Defense .....</b>	<b>298</b>
5.1 Encouragement of Crime and the Defense of Entrapment .....	298
5.2 Subjective Versus Objective Test for Entrapment .....	300
5.3 Procedural Considerations .....	304
5.4 Other Challenges to Encouragement Practices .....	307
<b>Chapter 6. Interrogation and Confessions .....</b>	<b>311</b>
6.1 Introduction and Overview .....	312
6.2 The “Voluntariness” Test .....	315
6.3 The Prompt Appearance Requirement .....	322
6.4 The Right to Counsel .....	325
6.5 The Privilege Against Self-Incrimination; <i>Miranda</i> .....	337
6.6 <i>Miranda</i> : When Interrogation Is “Custodial” .....	342
6.7 <i>Miranda</i> : “Interrogation” .....	348
6.8 <i>Miranda</i> : Required Warnings .....	358
6.9 <i>Miranda</i> : Waiver of Rights .....	362
6.10 <i>Miranda</i> : Nature of Offense, Interrogator, and Proceedings .....	374
<b>Chapter 7. Identification Procedures .....</b>	<b>380</b>
7.1 Introduction .....	380
7.2 The Privilege Against Self-Incrimination .....	383
7.3 The Right to Counsel and to Confrontation .....	386
7.4 Due Process: “The Totality of the Circumstances” .....	395
7.5 Additional Possible Safeguards .....	401
<b>Chapter 8. Grand Jury Investigation .....</b>	<b>404</b>
8.1 Dual Functions of the Grand Jury .....	406
8.2 Historical Development .....	407
8.3 Investigative Advantages .....	411
8.4 The Legal Structure of the Investigative Grand Jury .....	415
8.5 Grand Jury Secrecy .....	420
8.6 The Right to Every Man’s Evidence .....	430
8.7 Fourth Amendment Challenges to Subpoenas .....	433
8.8 Challenges to Misuse of the Subpoena Authority .....	439
8.9 Grand Jury Inquiries Based on Illegally Obtained Evidence .....	450
8.10 Grand Jury Testimony and the Privilege Against Self-Incrimination .....	452
8.11 Immunity and Compelled Testimony .....	460
8.12 Self-Incrimination and the Compulsory Production of Documents .....	465
8.13 Application of the Act-of-Production Doctrine .....	474
8.14 Judicial Decisions and the History and Policies of the Self-Incrimination Privilege .....	483
8.15 The Witness’ Right to Counsel .....	492
<b>Chapter 9. Scope of the Exclusionary Rules .....</b>	<b>496</b>
9.1 Standing: The “Personal Rights” Approach .....	496
9.2 Standing: Other Possible Bases .....	505
9.3 “Fruit of the Poisonous Tree” Theories .....	509
9.4 Fruits of Illegal Arrests and Searches .....	515
9.5 Fruits of Illegally Obtained Confessions .....	526
9.6 Permissible Use of Illegally Obtained Evidence at Trial .....	531

	Page
<b>Chapter 10. Administration of the Exclusionary Rules</b> .....	<b>538</b>
10.1 The Pretrial Motion to Suppress .....	538
10.2 Waiver or Forfeiture of Objection .....	540
10.3 Burden of Proof .....	542
10.4 Standard of Proof .....	547
10.5 The Suppression Hearing .....	550
10.6 The Ruling and Its Effect .....	554
 <b>PART THREE. THE COMMENCEMENT OF FORMAL PROCEEDINGS</b>	
<b>Chapter 11. The Right to Counsel</b> .....	<b>558</b>
11.1 The Constitutional Rights to Retained and Appointed Counsel .....	559
11.2 Scope of the Indigent's Right to Counsel and Other Assistance .....	572
11.3 Waiver of the Right to Counsel .....	586
11.4 Choice of Counsel .....	589
11.5 The Constitutional Right to Self-Representation .....	594
11.6 Counsel's Control Over Defense Strategy .....	600
11.7 The Right to Effective Assistance of Counsel: Guiding Principles .....	608
11.8 Ineffective Assistance Claims Based Upon State Interference and Other Extrinsic Factors .....	615
11.9 Ineffective Assistance Claims Based Upon Attorney Conflicts of Interest .....	620
11.10 Ineffective Assistance Claims Based Upon Lawyer Incompetence .....	635
<b>Chapter 12. Pretrial Release</b> .....	<b>647</b>
12.1 Pretrial Release Procedures .....	647
12.2 Constitutionality of Limits on Pretrial Freedom .....	651
12.3 Constitutionality of Mandating Pretrial Detention .....	657
12.4 Special Situations .....	668
12.5 Alternatives to Arrest .....	673
<b>Chapter 13. The Decision Whether to Prosecute</b> .....	<b>677</b>
13.1 Nature of the Decision .....	678
13.2 Discretionary Enforcement .....	680
13.3 Challenges to and Checks Upon the Decision Not to Prosecute .....	686
13.4 Challenging the Decision to Prosecute: Equal Protection .....	689
13.5 Other Challenges to the Decision to Prosecute .....	696
13.6 Challenges to the Decision to Forego or Terminate Diversion .....	703
13.7 Challenges to the Charge Selection .....	707
<b>Chapter 14. The Preliminary Hearing</b> .....	<b>714</b>
14.1 Functions of the Preliminary Hearing .....	714
14.2 Defendant's Right to a Preliminary Hearing .....	719
14.3 The Bindover Determination .....	724
14.4 Preliminary Hearing Procedures .....	730
<b>Chapter 15. Grand Jury Review</b> .....	<b>740</b>
15.1 Defendant's Right to Prosecution by Indictment .....	741
15.2 The Structure of Grand Jury Screening .....	748
15.3 The Effectiveness of Grand Jury Screening .....	755
15.4 Indictment Challenges Based Upon Grand Jury Composition .....	759

	<b>Page</b>
15.5 Indictment Challenges Based Upon Evidentiary Grounds .....	770
15.6 Misconduct Challenges: General Principles .....	775
15.7 Common Prosecutorial Misconduct Claims .....	787
<b>Chapter 16. The Location of the Prosecution .....</b>	<b>797</b>
16.1 Venue: General Principles .....	797
16.2 Applying the Crime-Committed Formula .....	811
16.3 Change of Venue .....	823
<b>Chapter 17. The Scope of the Prosecution: Joinder and Severance .....</b>	<b>830</b>
17.1 Joinder and Severance of Offenses .....	830
17.2 Joinder and Severance of Defendants .....	833
17.3 Joinder and Severance: Procedural Considerations .....	841
17.4 Failure to Join Related Offenses .....	844
<b>Chapter 18. Speedy Trial and Other Prompt Disposition .....</b>	<b>858</b>
18.1 The Constitutional Right to Speedy Trial .....	858
18.2 The Constitutional Balancing Test .....	862
18.3 Statutes and Court Rules on Speedy Trial .....	867
18.4 The Imprisoned Defendant .....	871
18.5 The Right to Other Speedy Disposition .....	875
<b>PART FOUR. THE ADVERSARY SYSTEM AND THE DETERMINATION OF GUILT AND INNOCENCE</b>	
<b>Chapter 19. The Accusatory Pleading .....</b>	<b>882</b>
19.1 The Liberalization of Pleading Requirements .....	882
19.2 Pleading Functions .....	887
19.3 Basic Pleading Defects .....	896
19.4 Bill of Particulars .....	906
19.5 Amendments of the Pleading .....	908
19.6 Variances .....	915
<b>Chapter 20. Discovery and Disclosure .....</b>	<b>920</b>
20.1 The Expansion of Discovery .....	921
20.2 The Structure of Discovery Law .....	926
20.3 Defense Discovery .....	929
20.4 Constitutional Limitations Upon Pretrial Discovery for the Prosecution .....	942
20.5 Prosecution Discovery Provisions .....	952
20.6 Sanctions .....	957
<b>Chapter 21. Pleas of Guilty .....</b>	<b>966</b>
21.1 The Plea Negotiation System .....	967
21.2 Kept, Broken, Rejected and Nonexistent Bargains .....	975
21.3 Plea Negotiation Responsibilities of the Attorneys and Judge .....	994
21.4 Receiving the Defendant's Plea .....	1006
21.5 Challenge of Guilty Plea by Defendant .....	1017
21.6 Effect of Guilty Plea .....	1026
<b>Chapter 22. Trial By Jury and Impartial Judge .....</b>	<b>1032</b>
22.1 The Right to Jury Trial .....	1032
22.2 Selection of Prospective Jurors .....	1043
22.3 Voir Dire; Challenges .....	1050
22.4 Challenging the Judge .....	1065

	Page
<b>Chapter 23. Fair Trial and Free Press</b> .....	<b>1069</b>
23.1 Preventing Prejudicial Publicity .....	1069
23.2 Overcoming Prejudicial Publicity .....	1089
23.3 Conduct of the Trial .....	1099
<b>Chapter 24. The Criminal Trial</b> .....	<b>1102</b>
24.1 The Right to a Public Trial .....	1103
24.2 Presence of the Defendant .....	1105
24.3 The Defendant's Right of Access to Evidence .....	1111
24.4 The Presentation of Evidence .....	1132
24.5 Defendant's Rights to Remain Silent and to Testify .....	1136
24.6 Trial Court Evaluation of the Evidence .....	1141
24.7 The Arguments of Counsel .....	1143
24.8 Jury Instructions .....	1151
24.9 Jury Procedures .....	1160
24.10 Jury Verdicts .....	1167
24.11 Post-Verdict Motions .....	1172
<b>Chapter 25. Double Jeopardy</b> .....	<b>1175</b>
25.1 Dimensions of the Guarantee .....	1175
25.2 Reprosecution Following Mistrial .....	1187
25.3 Reprosecution Following Acquittal or Dismissal .....	1195
25.4 Reprosecution Following Conviction .....	1200
25.5 Reprosecution by a Different Sovereign .....	1205
<b>Chapter 26. Sentencing Procedures</b> .....	<b>1209</b>
26.1 Legislative Structuring of Sentencing: Sanctions .....	1210
26.2 Legislative Structuring of Sentencing: The Allocation of Sentencing Authority .....	1218
26.3 The Guidance of Judicial Discretion .....	1225
26.4 Due Process: The Framework for Sentencing Procedure .....	1231
26.5 Sentencing Information .....	1252
26.6 Special Sentences .....	1256
26.7 Resentencing: Double Jeopardy .....	1259
26.8 Resentencing: The Prohibition Against Vindictiveness .....	1266
<b>Chapter 27. Appeals</b> .....	<b>1272</b>
27.1 Constitutional Protection of the Defendant's Right to Appeal .....	1272
27.2 Defense Appeals and the Final Judgment Rule .....	1274
27.3 Prosecution Appeals .....	1283
27.4 Review by Writ .....	1286
27.5 The Scope of Appellate Review .....	1289
27.6 Harmless Error .....	1298
<b>Chapter 28. Post Conviction Review: Collateral Remedies</b> .....	<b>1311</b>
28.1 Current Collateral Remedies and Historical Antecedents .....	1312
28.2 The Statutory Structure and Habeas Policy .....	1313
28.3 Cognizable Claims .....	1321
28.4 Claims Foreclosed by State Procedural Defaults .....	1334
28.5 Claims Foreclosed Due to Premature, Successive, or Delayed Applications .....	1345
28.6 Constitutional Interpretation on Habeas Review .....	1355



	<b>Page</b>
28.7 Factfinding and Evidentiary Hearings .....	1363
APPENDIX .....	1369
TABLE OF CASES .....	1385
INDEX .....	1413

# Table of Contents

	Page
PREFACE .....	v
WESTLAW OVERVIEW .....	vii
<b>PART ONE. INTRODUCTION AND OVERVIEW</b>	
<b>Chapter 1. An Overview of the Criminal Justice Process .....</b>	<b>2</b>
1.1 The Subject Under Inquiry .....	3
(a) Coverage .....	3
(b) Organization .....	3
1.2 Describing the Fifty-Two Separate Criminal Justice Processes .....	3
(a) State and Federal Authority .....	3
(b) A Federal System That is “One Among Many” .....	4
(c) The Limits of Mandated Uniformity .....	4
(d) The Tendency to Individualize .....	4
(e) The Tendency to Emulate .....	5
(f) The Federal Model .....	6
(g) The ABA Standards .....	6
1.3 The Steps in the Process .....	6
(a) Overview Objectives .....	6
(b) The Character of the Overview .....	6
(c) Step 1: Prearrest Investigation .....	7
(d) Step 2: Arrest .....	11
(e) Step 3: Booking .....	12
(f) Step 4: Post-Arrest Investigation .....	12
(g) Step 5: The Decision to Charge .....	13
(h) Step 6: Filing the Complaint .....	15
(i) Step 7: Magistrate Review of the Arrest .....	15
(j) Step 8: The First Appearance .....	16
(k) Step 9: Preliminary Hearing .....	18
(l) Step 10: Grand Jury Review .....	19
(m) Step 11: The Filing of the Indictment or Information .....	19
(n) Step 12: Arraignment on the Information or Indictment .....	19
(o) Step 13: Pretrial Motions .....	20
(p) Step 14: The Trial .....	20
(q) Step 15: Sentencing .....	22
(r) Step 16: Appeals .....	23
(s) Step 17: Postconviction Remedies .....	23
1.4 The Cornerstone Objectives of the Process .....	23
(a) Implementing the Enforcement of the Substantive Law .....	24
(b) Discovery of the Truth .....	26
(c) Adversary Adjudication .....	27

	Page
(d) Accusatorial Burdens .....	29
(e) Minimizing Erroneous Convictions .....	30
(f) Minimizing the Burdens of Accusation and Litigation .....	31
(g) Providing Lay Participation .....	32
(h) Respecting the Dignity of the Individual .....	33
(i) Maintaining the Appearance of Fairness .....	34
(j) Achieving Equality in the Application of the Process .....	34
(k) Addressing the Concerns of the Victim .....	35
1.5 The Laws Regulating the Process .....	35
(a) Varied Sources .....	35
(b) The Federal Constitution .....	36
(c) Federal Statutes .....	36
(d) State Constitutions .....	36
(e) State Statutes .....	36
(f) General Court Rules .....	37
(g) Local Court Rules .....	37
(h) Common Law Rulings .....	37
(i) Supervisory Authority Rulings .....	38
(j) Internal Administrative Standards .....	41
(k) Local Ordinances .....	42
<b>Chapter 2. The Constitutionalization of Criminal Procedure .....</b>	<b>43</b>
2.1 The Elements of Constitutionalization .....	44
2.2 The Fourteenth Amendment and the Extension of the Bill of Rights Guarantees to the States .....	46
2.3 Total Incorporation .....	48
(a) The Rationale of Total Incorporation .....	48
(b) Rejection by the Court .....	49
2.4 Fundamental Fairness .....	51
(a) The Rationale of Fundamental Fairness .....	51
(b) The Establishment and Initial Application of the Fundamental Fairness Doctrine: From Reconstruction to the 1930s .....	53
(c) Application of Fundamental Fairness: From the Mid-1930s to the Early 1960s .....	55
(d) Subjectivity and Fundamental Fairness .....	57
2.5 Selective Incorporation .....	58
(a) Fundamental Fairness and Selective Incorporation: Similarities and Differences .....	58
(b) The Rationale of Selective Incorporation .....	59
(c) Prior Precedent and the “Absorption” of Individual Guarantees .....	60
(d) Selective Incorporation as a Means of Avoiding Subjectivity .....	60
(e) Facilitating State Enforcement of Due Process Standards .....	60
(f) The Legitimate Interests of Federalism .....	61
2.6 Application of the Selective Incorporation Doctrine .....	63
(a) The Decisions of the Sixties .....	63
(b) Guarantees Not Yet Incorporated .....	64
(c) Acceptance of Selection Incorporation in the Post-1960s .....	66
(d) Selective Incorporation and the Concerns of Federalism .....	68
(e) The Retention of Due Process Methodology .....	69

	Page
2.7 The Independent Content of Due Process.....	70
(a) Procedural Due Process After Selective Incorporation .....	70
(b) Range of Independent-Content Rulings.....	71
(c) Due Process Analysis .....	73
(d) Substantive Due Process .....	81
2.8 The Preference for Expansive Interpretations.....	82
(a) The Nature of the Preference .....	82
(b) The Reasons for the Preference.....	83
(c) Retroactivity .....	86
2.9 Guideposts for Interpretation .....	87
(a) Stare Decisis.....	87
(b) The Significance of Historical Acceptance .....	88
(c) Priority for Truth-Finding .....	91
(d) The Appropriateness of Administratively Based Per Se Rules .....	93
(e) The Appropriateness of Prophylactic Rules .....	95
(f) Weighing the Impact Upon Efficiency .....	100

## PART TWO. DETECTION AND INVESTIGATION OF CRIME

<b>Chapter 3. Arrest, Search And Seizure.....</b>	<b>104</b>
3.1 The Exclusionary Rule and Other Remedies .....	106
(a) Origins of the Exclusionary Rule .....	106
(b) Purposes of the Exclusionary Rule.....	107
(c) The Exclusionary Rule Under Attack .....	108
(d) The Significance of Underlying Motivation; More on the Deterrence Objective and Inquiry Into Subjective Matters .....	113
(e) Constitutional vs. Other Violations .....	115
(f) Application of Exclusionary Rule in Criminal Proceedings .....	116
(g) Application of Exclusionary Rule in Non-criminal Proceedings .....	118
(h) The Exclusionary Rule and “Private” or Nonpolice Searches .....	120
(i) The Exclusionary Rule and Searches by Foreign Police.....	121
(j) Challenge of Jurisdiction .....	122
(k) The “Constitutional Tort” .....	124
(l) Criminal Prosecution; Disciplinary Proceedings.....	126
(m) Expungement of Arrest Records .....	126
(n) Injunction .....	127
(o) Self-Help .....	127
3.2 Protected Areas and Interests .....	127
(a) The <i>Katz</i> Expectation of Privacy Test .....	127
(b) Plain View, Smell and Hearing and Touch; Aiding the Senses .....	130
(c) Residential Premises .....	133
(d) “Open Fields” .....	134
(e) Business and Commercial Premises .....	135
(f) Vehicles .....	136
(g) Personal Characteristics.....	137
(h) Abandoned Effects .....	137
(i) “Mere Evidence” in General and Private Papers in Particular.....	138
(j) Surveillance of Relationships and Movements .....	139
3.3 Probable Cause .....	141
(a) General Considerations.....	141
(b) Nature of Probable Cause.....	142
(c) Information From an Informant.....	145



	Page
(d) Information From a Victim or Witness .....	152
(e) Information From or Held by Other Police .....	153
(f) First-Hand Information .....	155
(g) Special Problems in Search Cases .....	156
3.4 Search Warrants .....	157
(a) When Warrant May Be Utilized .....	157
(b) The “Neutral and Detached Magistrate” Requirement .....	160
(c) Oath or Affirmation; Record .....	161
(d) Probable Cause: The Facially-Sufficient Affidavit .....	161
(e) Particular Description of Place to Be Searched .....	163
(f) Particular Description of Things to Be Seized .....	165
(g) Time of Execution .....	166
(h) Entry Without Notice .....	167
(i) Detention and Search of Persons .....	169
(j) Scope and Intensity of the Search .....	170
(k) What May Be Seized .....	172
(l) Miscellaneous Requirements .....	173
3.5 Seizure and Search of Persons and Personal Effects .....	174
(a) Arrest .....	174
(b) Search of the Person at Scene of Prior Arrest .....	180
(c) Search of the Person During Post-Arrest Detention .....	183
(d) Other Search of the Person .....	185
(e) Seizure and Search of Containers and Other Personal Effects .....	186
3.6 Entry and Search of Premises .....	189
(a) Basis for Entry to Arrest .....	189
(b) Entry Without Notice to Arrest .....	191
(c) Search Before and Incident to Arrest .....	192
(d) Search and Exploration After Arrest .....	193
(e) Warrantless Entry and Search for Evidence .....	194
(f) Warrantless Entry and Search for Other Purposes .....	198
(g) What May Be Seized .....	198
3.7 Search and Seizure of Vehicles .....	199
(a) Search Incident to Arrest .....	199
(b) Search and Seizure to Search for Evidence .....	201
(c) Search of Containers and Persons Within .....	204
(d) Seizure for Other Purposes .....	206
(e) Search for Other Purposes .....	208
(f) Plain View, Subterfuge and Related Matters .....	211
3.8 Stop and Frisk and Similar Lesser Intrusions .....	212
(a) Stop and Frisk: Fourth Amendment Theory .....	212
(b) Dimensions of a Permissible “Stop” .....	214
(c) Action Short of a Stop .....	217
(d) Grounds for a Permissible “Stop” .....	219
(e) “Frisk” for Weapons .....	223
(f) Roadblocks .....	226
(g) Detention at the Police Station for Investigation .....	227
(h) Brief Seizure of Objects .....	228
3.9 Inspections and Regulatory Searches .....	229
(a) General Considerations .....	229
(b) Inspection of Housing .....	230