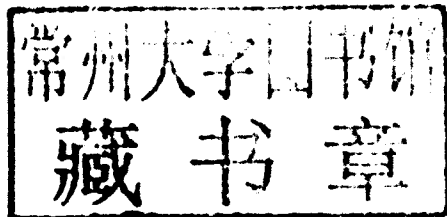


Walter P. Signorelli



Criminal Law, Procedure, and Evidence

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Criminal Law, Procedure, and Evidence

dedication

This book is dedicated to all my students and colleagues with whom I have had so much fun over the years and to those who played a part in the development of this book. Thank you, all.

preface

Since the spark was lit by the Supreme Court from the 1910s through the 1930s, particularly by Justices John Harlan I, Louis Brandeis, and Hugo Black, the application of constitutional principles to almost all aspects of life has expanded in breadth and intensity. Most profound has been the application of constitutional principles to both substantive and procedural criminal law—and, in recent decades, to evidence law. Consequently, the usually distinct subjects of criminal law, procedure, and evidence can no longer be studied effectively without relating them to the constitutional principles of due process, legality, specificity, notice, equality, and fairness.

The goal of this book is to provide a comprehensive understanding of criminal law, procedure, and evidence with a focus on how constitutional law interacts with and affects these disciplines. Distinct issues are addressed, such as probable cause, search and seizure, stop and frisk, confessions, Miranda warnings, the right to counsel, lineups, the exclusionary rule, criminal law principles, proportionate sentencing, competent evidence, standards of proof, and the right to confront accusers, but also addressed are the overlays and connections between these issues, thereby providing a complete view of American legal principles.

In our federal system, laws vary from one state to another and significant differences exist between state and federal law; however, the mandates of the U.S. Constitution impose general principles that each jurisdiction must follow. The challenge for practitioners is to apply these constitutional principles to specific situations in a manner that produces just and fair results. To describe how the process works, this book draws from a wide array of cases and relates those

cases to the kinds of encounters between citizens and police that regularly occur throughout the nation. While covering the landmark cases, this book emphasizes the cases and issues that are less settled and more pertinent to current conditions; for example, extensive coverage is provided for the various and fluid situations that might arise when the police stop an automobile. In such a situation, it is important for individuals to understand their rights and the powers of the police, while it is equally or perhaps more important for the police to understand the limits of their powers. The roles of the police, prosecutors, defense attorneys, and judges are explained, and critical issues such as false confessions and misidentifications are thoroughly explored.

Most readers have a sense that in our constitutional society individuals have a "right to be let alone," yet they also understand that law enforcement officers must sometimes infringe on that right. The balance between individual rights and police power is a major theme of this book, and, in the context of a society gripped by threats of terrorism, keeping the right balance is crucial. While recognizing the importance of police efficiency and effectiveness, restricting police authority is equally important for a free society. Setting ground rules for police to follow in their routine functions establishes boundaries that tend to prevent extreme police conduct. Limiting police authority sets a bulwark against unlimited police oppression. As Justice Louis Brandeis wrote in a case that involved federal agents breaking state laws:¹

Decency, security, and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, omnipresent teacher. For good or ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a law-breaker, it breeds contempt for the law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of criminal law the end justifies the means—to declare that the government may commit crimes in order to secure the conviction of a private criminal—would bring terrible retribution. Against that pernicious doctrine this court should resolutely set its face.

¹ Dissenting, *Olmstead v. United States*, 277 U.S. 438 (1928).

Notwithstanding the need for restrictions, law enforcement officers must be granted a substantial degree of discretion to perform their duties. They often face dangerous and quickly changing circumstances that require them to act expeditiously without the benefit of complete information. Substantive and procedural law authorizes officers to act, but then courts review the actions and, if necessary, correct them. An escalating set of standards provides checks and balances at each stage of the criminal justice process. Consequently, an arrest of a particular individual may be justified by circumstances while a jury acquittal of the same individual for the same conduct may be equally justified.

Each chapter of the text contains a problem in the form of a fact pattern that highlights one or more of the classic criminal justice issues and to which students can relate, such as an automobile stop, a family dispute, or a police interrogation. These problems are presented from both the point of view of citizens caught up in a police investigation and from the point of view of police officers attempting to enforce the law within the framework of constitutional protections. After each problem, questions are posed, and the reader is asked to play the role of a decision-maker—as a citizen, police officer, prosecutor, defense attorney, or judge.

Some of the questions have obvious answers; the reader, even without any legal training and through instinct and common sense, should recognize the generally accepted answer. Other questions raise conflicting issues that do not lend themselves to easy answers; they may have diametrically opposed answers for which valid and rational supporting arguments are conceivable.

Contradictory answers most often arise because of differences in the weight and credibility given to the specific facts of a case and differences in the application of general principles to specific facts. Contradictory answers also arise because of the different weight given to competing interests within society. The debate is healthy. Our justice system is alive and adapts to changing circumstances and persuasive advocacy, and adversarial debate is the process by which our justice system progresses. Because the law is continually changing, readers with an interest in the subject, particularly students and criminal justice practitioners, must do more than memorize the results of a list of cases; they must endeavor to gain an understanding of legal history, principles, and purposes.

References to relevant cases are provided for the reader seeking solutions to the problems or additional information. Highlighted are recent and relevant Supreme Court cases, such as *Hudson v.*

Michigan and Virginia v. Moore (exclusionary rule limitations), *Georgia v. Randolph* (co-tenant consent to search), *Brendlin v. California* (search of automobile passengers), *Herring v. United States* (good faith exception to the exclusionary rule), *Crawford v. Washington* (the right of confrontation), and *Maryland v. Shatzer* and *Montejo v. Louisiana* (right to counsel), all of which were decided between 2004 and 2010.

Law enforcement officers who study this book will gain a broad-based working knowledge of criminal law and procedure and the evidentiary standards that will help them to make better decisions and to explain in court the reasons for their decisions. Fully developed and competent explanations by trained officers of their actions will help the courts assess the what, how, and why of the police action and whether it was lawful or justified. For students and others assessing police performance and the effectiveness of the criminal justice system, the material presented will help them apply a broader perspective to specific situations they may encounter.

The ultimate goal of the book is to educate readers regarding liberty and security issues so they may apply critical thinking when they are confronted with such issues in life or in the media. With a more developed understanding of criminal justice and constitutional principles, the reader will have the background information to intelligently analyze the issues and to confidently provide valid and reasonable arguments for any positions that they choose to adopt or advocate.

about the author

Walter Signorelli was a member of the New York City Police Department for 31 years and served in ranks from police officer to inspector. He held positions as the commanding officer of precincts in Brooklyn and Manhattan and as an executive officer in the Detective Bureau, the Organized Crime Control Bureau, and the Narcotics Division. He is a *cum laude* graduate of St. John's University School of Law and of the Columbia University Police Management Institute. Since his retirement from the police department in 1998, he has practiced law and acted as a police practices consultant and expert witness for both plaintiffs and defendants in police liability lawsuits, testifying in federal and state courts. Currently, he is an adjunct professor of law and police science at John Jay College of Criminal Justice. He has authored two books related to law and police science: *The Constable Has Blundered: The Exclusionary Rule, Crime, and Corruption* (Carolina Academic Press, 2010) and *The Crisis of Police Liability Lawsuits* (Carolina Academic Press, 2006).

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