



# CRIM. PROCEDURE

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## LAW AND PRACTICE

SECOND EDITION

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ROLANDO V. del CARMEN

# CRIMINAL PROCEDURE

## Law and Practice

Second Edition

Rolando V. del Carmen

*Sam Houston State University*



Brooks/Cole Publishing Company  
Pacific Grove, California

*To my wife, Josie, and my daughter, Jocelyn,  
and to my colleagues and students  
at the Criminal Justice Center*

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## PREFACE

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Law enforcement is essentially what the term literally means—the enforcement of law by duly authorized agents of the state. The term implies that knowledge of the law is central and essential to law enforcement work. Without it, an officer loses sight of the framework for proper job performance; with it, the officer becomes a worthy agent of the immense power of the state. It is important that law enforcement officers know the law; otherwise, public confidence is diminished, if not betrayed.

This text acquaints the reader with the various aspects of criminal procedure. Laws that govern police work have their basis primarily in the U.S. Constitution, the decisions of the U.S. Supreme Court, and statutes passed by state legislatures. This text focuses on these sources but cautions that other court decisions and agency policies must be given equal attention, particularly if they further limit what an officer can do.

The book covers a variety of topics relevant to law enforcement work, from court systems (Chapter One) to sentencing (Chapter Fourteen). Chapter Fifteen discusses a relatively new but growing concern in law enforcement: legal liabilities. Court decisions, in some cases leading to huge damage awards, have had a direct impact on the daily operation of law enforcement agencies and are perhaps currently the single most influential determinant of police agency procedures. That will continue to be a reality in the foreseeable future, hence legal liabilities must be studied and understood.

The study of law can be complex and tedious, as law students have long discovered. It can also be confusing and frustrating, particularly when no specific guidelines are given by statute or court decisions. These imperfections must be recognized and accepted as inherent in any social organization. Judges, prosecutors, defense lawyers, and court personnel have developed terms and concepts that are part of criminal justice usage and that law enforcement officers must learn and understand. Any law-oriented text written primarily for students and in-service personnel faces the challenge of presenting legal terms and concepts in a less obscure and understandable manner without unduly losing substance or content. That is a task this text undertakes. The text presents criminal procedure in a format and language that, we hope, meet the needs and interests of nonlawyers and yet preserve the substance and content of the law.

The text has several features that aid in the understanding and retention of legal material. These are:

- frequent use of examples and illustrations
- analysis and comparison of leading court cases
- a chapter outline at the beginning of each chapter
- a listing of key terms at the beginning of each chapter, in the order they appear in the text

- the presentation of topics in outline form, and use of the narrative style to discuss the topics
- highlighted sections
- samples of police forms
- a summary of the principles of cases at the end of each chapter
- definitions of legal terms used in each chapter
- case briefs of some leading cases at the end of each chapter
- a summary and review questions at the end of each chapter

There are various paths to learning, none of which works equally well with everybody. Legal material, however, is perhaps best learned and retained through mastery of concepts reinforced by examples. As frequently as possible, the text defines a concept and then further clarifies it with an example when appropriate. Situations in law enforcement can never be exactly alike, hence students must learn to apply legal principles, enunciated in court-decided cases, to actual field situations that sometimes involve high risk. If legal concepts are understood well, their applications to similar situations become easier. Memorizing a definition is much less important than understanding and applying it.

The text is so arranged that the sequence of topics is easy to follow. The definition of terms and the summary of case principles at the end of each chapter should reduce the need for notetaking from the text and make it easier to review the chapter. The summaries are useful in retaining the material in compact form; the discussion questions help identify the important topics in the book; and the highlights focus on statements or information worthy of special note.

Although the United States comprises fifty-one different jurisdictions (the fifty states and the federal government), criminal procedure largely transcends jurisdictional boundaries and is applied nationwide. The rules governing law enforcement have, by and large, been “nationalized” through U.S. Supreme Court decisions interpreting specific constitutional provisions, particularly the Bill of Rights. Nonetheless, variations in state procedures abound, particularly where such variations involve no violations of constitutional rights. The legal doctrines and principles discussed in the text apply nationwide except where state law, local ordinance, or agency policy declare otherwise and such are not inconsistent with court decisions or the Constitution. This text is not written for one state or jurisdiction; therefore knowledge of the content of the text should not be a substitute for familiarity with state law or agency policy.

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The strength of the book flows from many sources, not the least of which are the book's editors; its weaknesses, however, should be attributed mainly to the author.

*Rolando V. del Carmen*

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