CONTENTS

Preface	xxix
Acknowledgments	XXXV
PART ONE	
GATHERING INFORMATION	1

CHAPTER I	
The Border of Criminal Procedure: Daily Interactions Between	
Citizens and Police	3
A. Police as Providers of Service	3
Oregon Revised Statutes §133.033	4
Indianapolis Police Department Job Description: Patrol Officer	4
Edward Caniglia v. Robert Strom	6
Notes	9
Problem 1-1. I'm from the Government and I'm Here to Help	11
Problem 1-2. Emergency on the Road	11
B. Policing Philosophies	12
Seth W. Stoughton, Principled Policing: Warrior Cops and	
Guardian Officers	12
Fairfield Police Department, Community Policing Programs	18
Tracey L. Meares, Norms, Legitimacy, and Law Enforcement	19
Notes	22
Problem 1–3. Loitering With No Apparent Purpose	24
Problem 1–4. If You Can't Give 'Em a Rap, Give 'Em a Ride	25
C. Policing Organizations	26
Bureau of Justice Statistics, Local Police Departments, 2016: Personnel	26
Bureau of Justice Statistics, Local Police Departments,	
2013: Personnel, Policies, and Practices	27
Herbert L. Packer, Two Models of the Criminal Process	28
Notes	31
CHAPTER II	
Search and Seizure Defined	33
A. What Is a Search?	34

hat Is a Search?	34
Charles Katz v. United States	34
United States v. Antoine Jones	37
Florida v. Joelis Jardines	41
Notes	44

Problem 2-1. Peep-Hole Observations	49
Problem 2-2. A Jurisprudence of Squeezes	49
Problem 2-3. The Friendly Skies	50
Timothy Ivory Carpenter v. United States	51
Notes	56
Problem 2-4. Prescription Privacy	59
Problem 2-5. Eye in the Sky	59
Problem 2-6. Reversing Time to Solve Crime	61
Problem 2-7. Access to Private DNA Databases	61
B. What Is a Seizure?	62
Delaware Code Tit. 11, §1902	62
Notes	62
United States v. Sylvia Mendenhall	63
Wesley Wilson v. State	66
Notes	69
Problem 2-8. Seized by Bullets	71
C. State Action Requirement	72
Problem 2-9. Private Viewing	72
Notes	73
CHAPTER III	
Limited Searches and Seizures	75
	7(

A.	Reasonable Suspicion	76
	1. Grounds for Stops: Articulable, Individualized Reasonable Suspicion	76
	State v. Theodore Nelson	77
	State v. David Dean	78
	Notes	80
	Jamal Sizer v. State	82
	Notes	86
	2. Pretextual Stops	87
	People v. Frank Robinson	88
	Notes	91
	Problem 3-1. Prosecutors and Pretextual Stops	94
	Problem 3-2. Asset Management	95
	3. Criminal Profiles and Race	95
	Uriel Harris v. State	96
	Attorney General of Maryland, Ending Discriminatory Profiling in	
	Maryland	100
	Notes	102
	Problem 3-3. Goatee and Dark Skin	104
	4. Collecting and Reporting Stop Data	104
	Nebraska Crime Commission, 2017 Traffic Stops in Nebraska: A	
	Report to the Governor and the Legislature on Data Submitted by	
	Law Enforcement	105
	Notes	108
	Problem 3-4. Borderline State	110
B.	Limited Searches of Individuals	111
	1. Frisks for Weapons	111
	John Terry v. Ohio	111

	Notes	118
	2. The Scope of a <i>Terry</i> Search	120
	Commonwealth v. Roosevelt Wilson	120
	Arkansas Rule of Criminal Procedure 3.4	122
	Montana Code §46-5-401(2)	122
	Notes	123
	Problem 3-5. Frisking Car and Driver	125
C		120
U.	Limited Administrative Stops and Searches	
	City of Indianapolis v. James Edmond	127
	Iowa Code §321K.1	131
	Notes	131
CH	IAPTER IV	
Fu	Ill Searches of People and Places: Basic Concepts	137
A.	Warrants	137
	1. General Search Warrants and the History of the Fourth Amendment	138
	John Entick v. Nathan Carrington	138
	The Writs of Assistance	140
	Notes	140
	2. Particularity in Warrants	144
	Christopher Wheeler v. State	144
	Notes	148
	Problem 4-1. Errors in a Facially Valid Warrant	150
	3. Probable Cause	151
	a. Standards for Defining Probable Cause	151
	Virgil Brinegar v. United States	153
	Problem 4-2. Applying Different Probable Cause Standards	156
	Notes	157
	Problem 4-3. A New Look	160
	b. Sources of Information to Support Probable Cause	161
	State v. Timothy Barton	161
	State v. Randall Utterback	167
	Notes	169
	Problem 4-4. Assessing Anonymous Tips	172
	c. Can a Statute or Rule Clarify the Assessment of Probable Cause?	172
	Iowa Code §808.3	173
	Iowa Rule of Criminal Procedure 2.36, Form 2	
		173
	Iowa Rule of Criminal Procedure 2.36, Form 3	174
	Notes	175
	4. Neutral and Detached Magistrate	175
	State ex rel. Eustace Brown v. Jerry Dietrick	176
	Notes	178
B.	Exigency	180
	1. Warrantless Searches Based on Exigent Circumstances	180
	State v. Rashad Walker	180
	Notes	184
	2. No-Knock Warrants	187
	State v. Tanya Marie Anyan	187
	Louisville Metro Code of Ordinances	192

xi

Notes	193
Problem 4-5. Tragedy in Louisville	194
C. Consensual Searches	195
1. Components of a Voluntary Choice	195
Merle Schneckloth v. Robert Bustamonte	196
Chicago Police Department Consent to Search Form, CPD-11.483	199
Philadelphia Police Department Directive 7, Appendix A	199
Notes	200
Problem 4-6. Scope of Consent	203
2. Third-Party Consent	204
Arkansas Rule of Criminal Procedure 11.2	204
Problem 4-7. Co-tenant Consenting for Co-tenant	204
Problem 4-8. Parent Consenting for Child	204
Problem 4-9. Child Consenting for Parent	205
Notes	205
Commonwealth v. Porter P.	206
Notes	210
Problem 4-10. Divide and Conquer	210
Problem 4-11. Consent Through Lease Provisions	211
D. Special Needs Searches	211
Roland Camara v. Municipal Court of San Francisco	212
Notes	215
CHAPTER V	
Arrests	217
A Stop or Arrest?	217
A. Stop or Arrest? Nevada Revised Statutes \$171,123	217
Nevada Revised Statutes \$171.123	217
Nevada Revised Statutes §171.123 Arkansas Rule of Criminal Procedure 3.1	217 217
Nevada Revised Statutes §171.123 Arkansas Rule of Criminal Procedure 3.1 <i>Robert Bailey v. State</i>	217 217 218
Nevada Revised Statutes §171.123 Arkansas Rule of Criminal Procedure 3.1 <i>Robert Bailey v. State</i> Notes	217 217 218 222
Nevada Revised Statutes §171.123 Arkansas Rule of Criminal Procedure 3.1 <i>Robert Bailey v. State</i> Notes B. Arrest Warrants	217 217 218 222 225
Nevada Revised Statutes §171.123 Arkansas Rule of Criminal Procedure 3.1 <i>Robert Bailey v. State</i> Notes B. Arrest Warrants William Blackstone, Commentaries on the Laws of England	217 217 218 222 225 225
Nevada Revised Statutes §171.123 Arkansas Rule of Criminal Procedure 3.1 <i>Robert Bailey v. State</i> Notes B. Arrest Warrants	217 217 218 222 225 225 225 225
Nevada Revised Statutes §171.123 Arkansas Rule of Criminal Procedure 3.1 <i>Robert Bailey v. State</i> Notes B. Arrest Warrants William Blackstone, Commentaries on the Laws of England <i>State v. Steven Thomas</i> Notes	217 217 218 222 225 225 225 225 228
Nevada Revised Statutes §171.123 Arkansas Rule of Criminal Procedure 3.1 <i>Robert Bailey v. State</i> Notes B. Arrest Warrants William Blackstone, Commentaries on the Laws of England <i>State v. Steven Thomas</i> Notes Problem 5-1. Indoor-Outdoor Arrest	217 217 218 222 225 225 225 225 228 230
Nevada Revised Statutes §171.123 Arkansas Rule of Criminal Procedure 3.1 <i>Robert Bailey v. State</i> Notes B. Arrest Warrants William Blackstone, Commentaries on the Laws of England <i>State v. Steven Thomas</i> Notes	217 217 218 222 225 225 225 225 228 230 230
 Nevada Revised Statutes §171.123 Arkansas Rule of Criminal Procedure 3.1 <i>Robert Bailey v. State</i> Notes B. Arrest Warrants William Blackstone, Commentaries on the Laws of England <i>State v. Steven Thomas</i> Notes Problem 5-1. Indoor-Outdoor Arrest Problem 5-2. Warrant Sweeps C. Police Discretion in the Arrest Decision 	217 217 218 222 225 225 225 225 228 230
 Nevada Revised Statutes §171.123 Arkansas Rule of Criminal Procedure 3.1 <i>Robert Bailey v. State</i> Notes B. Arrest Warrants William Blackstone, Commentaries on the Laws of England <i>State v. Steven Thomas</i> Notes Problem 5-1. Indoor-Outdoor Arrest Problem 5-2. Warrant Sweeps C. Police Discretion in the Arrest Decision William Blackstone, Commentaries on the Laws of England 	217 217 218 222 225 225 225 225 228 230 230 230 230 231
 Nevada Revised Statutes §171.123 Arkansas Rule of Criminal Procedure 3.1 <i>Robert Bailey v. State</i> Notes B. Arrest Warrants William Blackstone, Commentaries on the Laws of England <i>State v. Steven Thomas</i> Notes Problem 5-1. Indoor-Outdoor Arrest Problem 5-2. Warrant Sweeps C. Police Discretion in the Arrest Decision 	217 217 218 222 225 225 225 225 225 228 230 230 230
 Nevada Revised Statutes §171.123 Arkansas Rule of Criminal Procedure 3.1 <i>Robert Bailey v. State</i> Notes B. Arrest Warrants William Blackstone, Commentaries on the Laws of England <i>State v. Steven Thomas</i> Notes Problem 5-1. Indoor-Outdoor Arrest Problem 5-2. Warrant Sweeps C. Police Discretion in the Arrest Decision William Blackstone, Commentaries on the Laws of England Connecticut General Statutes §46b-38b Iowa Code §236.12 	217 217 218 222 225 225 225 225 228 230 230 230 231 231
 Nevada Revised Statutes §171.123 Arkansas Rule of Criminal Procedure 3.1 <i>Robert Bailey v. State</i> Notes B. Arrest Warrants William Blackstone, Commentaries on the Laws of England <i>State v. Steven Thomas</i> Notes Problem 5-1. Indoor-Outdoor Arrest Problem 5-2. Warrant Sweeps C. Police Discretion in the Arrest Decision William Blackstone, Commentaries on the Laws of England Connecticut General Statutes \$46b-38b Iowa Code \$236.12 Lawrence Sherman & Richard Berk, The Minneapolis Domestic 	217 217 218 222 225 225 225 225 228 230 230 230 231 231
 Nevada Revised Statutes §171.123 Arkansas Rule of Criminal Procedure 3.1 <i>Robert Bailey v. State</i> Notes B. Arrest Warrants William Blackstone, Commentaries on the Laws of England <i>State v. Steven Thomas</i> Notes Problem 5-1. Indoor-Outdoor Arrest Problem 5-2. Warrant Sweeps C. Police Discretion in the Arrest Decision William Blackstone, Commentaries on the Laws of England Connecticut General Statutes §46b-38b Iowa Code §236.12 	217 217 218 222 225 225 225 225 225 228 230 230 230 230 231 231 231 232
 Nevada Revised Statutes §171.123 Arkansas Rule of Criminal Procedure 3.1 <i>Robert Bailey v. State</i> Notes B. Arrest Warrants William Blackstone, Commentaries on the Laws of England <i>State v. Steven Thomas</i> Notes Problem 5-1. Indoor-Outdoor Arrest Problem 5-2. Warrant Sweeps C. Police Discretion in the Arrest Decision William Blackstone, Commentaries on the Laws of England Connecticut General Statutes §46b-38b Iowa Code §236.12 Lawrence Sherman & Richard Berk, The Minneapolis Domestic Violence Experiment 	217 217 218 222 225 225 225 225 225 228 230 230 230 230 230 231 231 232 232
 Nevada Revised Statutes §171.123 Arkansas Rule of Criminal Procedure 3.1 <i>Robert Bailey v. State</i> Notes B. Arrest Warrants William Blackstone, Commentaries on the Laws of England <i>State v. Steven Thomas</i> Notes Problem 5-1. Indoor-Outdoor Arrest Problem 5-2. Warrant Sweeps C. Police Discretion in the Arrest Decision William Blackstone, Commentaries on the Laws of England Connecticut General Statutes §46b-38b Iowa Code §236.12 Lawrence Sherman & Richard Berk, The Minneapolis Domestic Violence Experiment Notes 	217 217 218 222 225 225 225 225 225 225 225 225 22
 Nevada Revised Statutes §171.123 Arkansas Rule of Criminal Procedure 3.1 <i>Robert Bailey v. State</i> Notes B. Arrest Warrants William Blackstone, Commentaries on the Laws of England <i>State v. Steven Thomas</i> Notes Problem 5-1. Indoor-Outdoor Arrest Problem 5-2. Warrant Sweeps C. Police Discretion in the Arrest Decision William Blackstone, Commentaries on the Laws of England Connecticut General Statutes §46b-38b Iowa Code §236.12 Lawrence Sherman & Richard Berk, The Minneapolis Domestic Violence Experiment Notes Problem 5-3. Racial Patterns in Arrests 	217 217 218 222 225 225 225 225 225 225 225 228 230 230 230 230 231 231 231 232 232 234 237
 Nevada Revised Statutes §171.123 Arkansas Rule of Criminal Procedure 3.1 <i>Robert Bailey v. State</i> Notes B. Arrest Warrants William Blackstone, Commentaries on the Laws of England <i>State v. Steven Thomas</i> Notes Problem 5-1. Indoor-Outdoor Arrest Problem 5-2. Warrant Sweeps C. Police Discretion in the Arrest Decision William Blackstone, Commentaries on the Laws of England Connecticut General Statutes §46b-38b Iowa Code §236.12 Lawrence Sherman & Richard Berk, The Minneapolis Domestic Violence Experiment Notes Problem 5-3. Racial Patterns in Arrests D. Paper Arrests: Citations 	217 217 218 222 225 225 225 225 225 228 230 230 230 230 230 231 231 231 232 232 234 237 237
 Nevada Revised Statutes §171.123 Arkansas Rule of Criminal Procedure 3.1 <i>Robert Bailey v. State</i> Notes B. Arrest Warrants William Blackstone, Commentaries on the Laws of England <i>State v. Steven Thomas</i> Notes Problem 5-1. Indoor-Outdoor Arrest Problem 5-2. Warrant Sweeps C. Police Discretion in the Arrest Decision William Blackstone, Commentaries on the Laws of England Connecticut General Statutes §46b-38b Iowa Code §236.12 Lawrence Sherman & Richard Berk, The Minneapolis Domestic Violence Experiment Notes Problem 5-3. Racial Patterns in Arrests D. Paper Arrests: Citations New York Criminal Procedure Law §\$150.10, 150.20, 150.60 	217 217 218 222 225 225 225 225 225 228 230 230 230 230 230 231 231 231 232 232 234 237 237 237
 Nevada Revised Statutes \$171.123 Arkansas Rule of Criminal Procedure 3.1 <i>Robert Bailey v. State</i> Notes B. Arrest Warrants William Blackstone, Commentaries on the Laws of England <i>State v. Steven Thomas</i> Notes Problem 5-1. Indoor-Outdoor Arrest Problem 5-2. Warrant Sweeps C. Police Discretion in the Arrest Decision William Blackstone, Commentaries on the Laws of England Connecticut General Statutes \$46b-38b Iowa Code \$236.12 Lawrence Sherman & Richard Berk, The Minneapolis Domestic Violence Experiment Notes Problem 5-3. Racial Patterns in Arrests D. Paper Arrests: Citations New York Criminal Procedure Law \$\$150.10, 150.20, 150.60 Revised Statutes of Nebraska \$\$29-435, 29-427 	217 217 218 222 225 225 225 225 225 228 230 230 230 230 230 231 231 231 232 232 234 237 237 237 239

xii

	William Blackstone, Commentaries on the Laws of England	244
	Tennessee v. Edward Garner	245
	Notes	251
	Dallas Police Department General Orders, 901.00 Response Continuum	254
	Problem 5-4. Ruby Ridge	258
	Notes	260
	Problem 5-5. Subduing Motorcycle Rider	262
	Problem 5-6. High-Speed Chase	263
CH	IAPTER VI	
Se	arches in Recurring Contexts	265
А.	"Persons"	265
	1. Searches Incident to Arrest	266
	Arkansas Rule of Criminal Procedure 12.2	266
	Annotated Laws of Massachusetts Ch. 276, §1	266
	Danny Birchfield v. North Dakota	266
	Notes	270
	Problem 6-1. Lunging in Handcuffs	273
	Problem 6-2. Search Incident to (but After) Arrest	274
	Problem 6-3. Sweeping Authority	274
	Problem 6-4. Blood Test Consent	274
	2. Body Searches at the Jail	275
	Maryland v. Alonzo J. King, Jr.	276
	Revised Code of Washington §§10.79.080, 10.79.130, 10.79.140	279
	Notes	280
	Problem 6-5. Personal Inventories	284
	Problem 6-6. Body Cavity Search Away from the Jail	284
B.	"Houses" and Other Places	284
	1. The Outer Boundaries of Houses	285
	Constitution of Michigan Art. I, §11	285
	State v. Gregory Fisher	285
	Notes	290
	Problem 6-7. Private Property	292
	2. Workplaces	292
	People v. Carlos Christopher Galvadon	293
	Notes	296
	3. Schools and Prisons	297
	Oklahoma Statutes Tit. 70, §24-102	297
	State v. Marzel Jones	297
	Hugh and Lee Hageman v. Goshen County School District No. 1	301
	Notes	305
	Problem 6-8. Jail Cell Search	308
	Problem 6-9. Gun Lockers	308
C.		309
	Edward Boyd v. United States	309
	Notes	311
D.	"Effects"	314

D. "Effects"

1. Search of a Car Incident to Arrest	
Clarence Robinson v. State	

	Notes	318
	Problem 6-10. Mobile Homes	320
	Problem 6-11. Car Metadata	321
	2. Inventory Searches	321
	People v. Curtis Gipson	321
	Notes	324
	Problem 6-12. The Other Gun	326
	3. Containers, In and Out of Cars	327
	California v. Charles Acevedo	327
	Notes	332
CH	IAPTER VII	
Re	emedies for Unreasonable Searches and Seizures	335
А.	Origins of the Exclusionary Rule	335
	Fremont Weeks v. United States	336
	Notes	337
	People v. Charles Cahan	338
	Dollree Mapp v. Ohio	343
	Notes	346
B.	Limitations on the Exclusionary Rule	350
	1. Evidence Obtained in "Good Faith"	350
	Commonwealth v. Richard Johnson	350
	Colorado Revised Statutes §16-3-308	356
	Notes	357
	Problem 7-1. Objective Good Faith	359
	Problem 7-2. Unwarranted Good Faith	360
	2. Causation Limits: Inevitable Discovery and Independent Source	360
	Michael Wehrenburg v. State	361
	Notes	365
	Problem 7-3. The Search Party	368
	Problem 7-4. Illegal Stop vs. Outstanding Warrant	369
	Problem 7-5. Breaking the Chain of Causation?	369
	3. Standing to Challenge Illegal Searches and Seizures	370
	Louisiana Constitution Art. I, §5	370
	State v. John Bruns	370
	Notes	374
	Problem 7-6. Privacy Interests of Social Guests	376
C.	Additions and Alternatives to the Exclusionary Rule	376
	1. Administrative Remedies	377
	United States Department of Justice, Investigation of the Chicago	
	Police Department	377
	Notes	381
	Problem 7-7. The Mayor's Next Move	383
	2. Tort Actions and Criminal Prosecutions	384
	Office of the Attorney General, State of Arkansas,	205
	Opinion No. 2004-188	385
	Consent Decree, United States v. City of Los Angeles	387
	Notes	389

		Contents
Problem 7-8. Checkin	g with the Boss	392
Problem 7-9. Legislati	ve Remedies	394
CHAPTER VIII		
Interrogations		395
A. Voluntariness of Confessions		395
1. Physical Abuse and Depriva	tions	395
Ed Brown v. Mississipp		396
Notes		399
2. Promises and Threats		401
State v. Jami Del Swan	igan	401
Notes	0	405
3. Police Lies		407
People v. Adrian Thom	as	408
Oregon Revised Statu	tes § 133.403(1)	412
Notes		412
B. Miranda Warnings		414
1. The Miranda Revolution		416
Ernesto Miranda v. Ari	izona	416
Louisiana Constitutio	n Art. 1, §13	425
Massachusetts Genera	l Laws, Ch. 276, §33A	425
Notes		425
2. The "Custody" Precondition	n for <i>Miranda</i> Warnings	427
State v. Kevin Franklin	e Elmarr	427
Notes		431
Problem 8-1. Convers	ation During Police Assistance	433
Problem 8-2. Blunt Q	uestions	433
3. The "Interrogation" Precond	lition for <i>Miranda</i> Warnings	434
Rhode Island v. Thoma	s Innis	434
Notes		439
Problem 8-3. Blurting		440
Problem 8-4. Public S	afety Motivation	440
4. Form of Warnings		441
Notes		442
C. Invocation and Waiver of Miras	<i>nda</i> Rights	442
Vermont Statutes Tit.	13, §\$5234, 5237	443
Commonwealth v. Clas	rke	443
Notes		448
Problem 8-5. Your La	wyer Is Standing Outside	452
Problem 8-6. Invocati	on or Waiver?	453
Problem 8-7. Capacity	y to Waive	453
D. Post-Invocation Activity by Pol	ice	454
Charles Globe v. State		454
Tevin Benjamin v. Stat	e	456
Notes		461
E. Sixth Amendment Right to Co	unsel During Investigations	463
Robert Rubalcado v. St.	ate	463
Notes		468
Problem 8-8. Christia	n Burial Speech	470

XV

Problem 8-9. Cellmate Confession	471
F. The Impact of Unlawful Interrogations	472
1. The Result of Interrogation Violations at the Case Level	472
Missouri v. Patrice Seibert	472
Notes	476
Problem 8-10. Physical Fruits Discovered	478
2. Systemwide Impacts of Miranda's Warning/Waiver Regime	479
Saul M. Kassin, Richard A. Leo et al., Police Interviewing and	
Interrogation: A Self-Report Survey of Police Practices and Beliefs	479
Notes	483
G. Preventing Unlawful Interrogations: Other Approaches?	485
Texas Code of Criminal Procedure Art. 38.22	486
Policy Concerning Electronic Recording of Statements	486
Notes	488
Problem 8-11. Supplementing <i>Miranda</i>	489
Trobent of The Supplementing Intranam	10)
CHAPTER IX Identifications	491
Identifications	491
A. Risks of Mistaken Identification	491
Ralph Norman Haber & Lyn Haber, Experiencing, Remembering	
and Reporting Events	492
Notes	495
B. Exclusion of Identification Evidence	496
1. Exclusion on Right to Counsel Grounds	497
United States v. Billy Joe Wade	497
People v. Jonathan Hickman	501
Notes	503
2. Exclusion on Due Process Grounds	505
State v. Larry Henderson	506
Problem 9-1. The Pizza Hut Robbery	513
Notes	514
Problem 9-2. Photo Lineups	516
C. Other Remedies for Improper Identification Procedures	517
1. Jury Instructions	517
State v. Bryan Allen	517
Notes	522
2. Expert Testimony and Other Remedies	523
Problem 9-3. Help for the Jury	523
Notes	524
Problem 9-4. Video Recorded Lineups	526
D. Preventing Mistaken Identification	527
Florida Statutes § 92.70	527
U.S. Department of Justice, Office of Justice Programs	528
Notes Broblem 9.5. Drofting a Paligy	529 530
Problem 9-5. Drafting a Policy	530
CHAPTER X	
Complex Investigations	533

xvi

A.	The Investigative Grand Jury	533
	1. Grand Jury Secrecy	534
	Federal Rule of Criminal Procedure 6	534
	Colorado Revised Statutes §16-5-204(4)(D)	535
	Notes	535
	Problem 10-1. College Admissions Fraud	537
	2. Immunity for Witnesses and the Scope of the Privilege Against	
	Self-Incrimination	538
	Commonwealth v. Patricia Swinehart	539
	Notes	542
	3. Document Subpoenas	545
	George Tiller v. Michael Corrigan	545
	Ohio Revised Code §2939.12	550
	Arkansas Statutes §16-43-212	550
	Notes	550
	Problem 10-2. Compelling Passwords and Fingerprints	554
B.	Undercover Investigations	555
	People v. Jessie Johnson	555
	Model Penal Code §2.13	560
	Missouri Revised Statutes §562.066	560
	Cincinnati Police Department, Procedure Manual §12.131	
	Confidential Informant Management and Control	560
	Notes	561
	Problem 10-3. Outrageous Government Conduct	564
С.	Wiretapping	565
	1. Judicial Limits on Wiretaps	565
	Roy Olmstead v. United States	565
	Notes	567
	2. Statutory Wiretapping Procedures	568
	18 U.S.C. \$2511	569
	New Jersey Statutes §2A:156A-4	569
	Problem 10-4. Minimization	570
	Notes	571
	Problem 10-5. Number, Please	575
	3. Bugs on Agents	575
	State v. Michael Thaddeus Goetz	576
	Notes	582

PART TWO EVALUATING CHARGES

CHAPTER XI Defense Counsel

efense Counsel	585
When Will Counsel Be Provided?	585
1. Types of Charges	585
Clarence Earl Gideon v. Louie Wainwright	587
Florida Rule of Criminal Procedure 3.111	590
	When Will Counsel Be Provided?1. Types of Charges<i>Clarence Earl Gideon v. Louie Wainwright</i>

	Vermont Statutes Tit. 13, §§5231, 5201	591
	Notes	591
	Problem 11-1. Advice on Counsel	594
	Problem 11-2. Lawyers and Experts	594
	Problem 11-3. Universal Appointment	595
2. Ty	pe of Proceedings	595
	Alabama Rule of Criminal Procedure 6.1(a)	596
	Missouri Supreme Court Rules 31.01, 31.02	596
	State v. John Arthur Senn, Jr.	597
	Notes	602
	Problem 11-4. Lawyers in Psychiatric Examinations	605
B. Select	ion and Rejection of Counsel	605
	State v. Joseph Spencer	606
	Notes	610
	Problem 11-5. Competence to Stand Trial and	
	to Waive Counsel	614
C. Adequ	acy of Counsel	615
	Charles Strickland v. David Washington	615
	Blaine Lafler v. Anthony Cooper	621
	Notes	626
	Problem 11-6. Cronic Errors	628
	American Bar Association, Criminal Justice Standards for the Defense	
	Function	629
	Rule 33, Court of Common Pleas, Cuyahoga County, Ohio	631
	Notes	632
	Problem 11-7. More Objective Competence Standards	633
D. Syster	ns for Providing Counsel	633
	Donald J. Farole & Lynn Langton, County-Based and Local Public	
	Defender Offices, 2007	634
	State v. Leonard Peart	636
	Kimberly Hurrell-Harring v. State	638
	American Bar Association, Model Rule of Professional Conduct 1.5(d)	642
	Notes	642
	Problem 11-8. Rights of Counsel	647
	Problem 11-9. Flat Fees for Service	647
	Problem 11-10. The Neighborhood Defender	648
E. The E	thics of Defending People Accused of Crime	649
	Speeches of Lord Erskine	649
	John Dos Passos, The American Lawyer: As He Was—As He Is—As	
	He Can Be	650
	American Bar Association and Association of American Law Schools,	
	Professional Responsibility: Report of the Joint Conference (1958)	650
	John Kaplan, Defending Guilty People	652
	Letter from William Townsend	653
	Notes	653
CHAPTE	R XII	
Pretrial	Release and Detention	657
A. Pretria	al Release	658

	1. Standard Release Practices	658
	American Bar Association, Pretrial Release Standards	659
	Alabama Rules of Criminal Procedure 7.2, 7.3	659
	Thomas H. Cohen & Brian A. Reaves, Pretrial Release of Felony	
	Defendants in State Courts	660
	District Attorney, Suffolk County, Massachusetts,	
	The Rachel Rollins Policy Memo	663
	Notes	663
	Problem 12-1. Automatic Delay	666
	2. Bail Reform Efforts	667
	Vera Institute of Justice, Fair Treatment for the Indigent: The	
	Manhattan Bail Project	667
	Megan Stevenson & Sandra G. Mayson, Pretrial Detention and Bail, 3	(=0
	Reforming Criminal Justice: Pretrial and Trial Processes 21-47	670
	In re Kenneth Humphrey	674
D	Notes	680
D.	Pretrial Detention	684 684
	U.S. Constitution Amendment VIII	684 684
	<i>United States v. Anthony Salerno</i> New Mexico Constitution Art. II, §13	690
	Oklahoma Constitution Art. II, § 8	690
	Problem 12-2. The Next Danger	691
	Notes	692
		0/2
CH	HAPTER XIII	
Cl	harging	695
		(05
А.	Individual Prosecutor Discretion Not to Charge	695 696
	Revised Code of Washington §9.94A.411(1) Notes	690 697
	Problem 13-1. Three Variations on a Theme	700
	Problem 13-2. Passing a School Bus	
B	-	701 702
B.	Policies to Encourage or Mandate Charges	702
B.	Policies to Encourage or Mandate Charges Florida Statutes §741.2901	702 702
B.	Policies to Encourage or Mandate Charges Florida Statutes §741.2901 Wisconsin Statutes §968.075	702 702 703
B.	Policies to Encourage or Mandate Charges Florida Statutes §741.2901 Wisconsin Statutes §968.075 Italian Constitution Art. 112	702 702 703 703
B.	Policies to Encourage or Mandate Charges Florida Statutes §741.2901 Wisconsin Statutes §968.075 Italian Constitution Art. 112 German Code of Criminal Procedure 152(2)	702 702 703 703 703
B.	Policies to Encourage or Mandate Charges Florida Statutes §741.2901 Wisconsin Statutes §968.075 Italian Constitution Art. 112 German Code of Criminal Procedure 152(2) West Virginia Code §7-4-1	702 702 703 703 703 703 703
B.	Policies to Encourage or Mandate Charges Florida Statutes §741.2901 Wisconsin Statutes §968.075 Italian Constitution Art. 112 German Code of Criminal Procedure 152(2)	702 702 703 703 703
	Policies to Encourage or Mandate Charges Florida Statutes §741.2901 Wisconsin Statutes §968.075 Italian Constitution Art. 112 German Code of Criminal Procedure 152(2) West Virginia Code §7-4-1 <i>The Question on the Application of Peter Dennis v. DPP</i> Notes	702 702 703 703 703 703 703
	Policies to Encourage or Mandate Charges Florida Statutes §741.2901 Wisconsin Statutes §968.075 Italian Constitution Art. 112 German Code of Criminal Procedure 152(2) West Virginia Code §7-4-1 <i>The Question on the Application of Peter Dennis v. DPP</i> Notes Policies to Discourage Charges	702 702 703 703 703 703 703 703 707
	Policies to Encourage or Mandate Charges Florida Statutes §741.2901 Wisconsin Statutes §968.075 Italian Constitution Art. 112 German Code of Criminal Procedure 152(2) West Virginia Code §7-4-1 <i>The Question on the Application of Peter Dennis v. DPP</i> Notes	702 703 703 703 703 703 703 703 707 709
	Policies to Encourage or Mandate Charges Florida Statutes §741.2901 Wisconsin Statutes §968.075 Italian Constitution Art. 112 German Code of Criminal Procedure 152(2) West Virginia Code §7-4-1 <i>The Question on the Application of Peter Dennis v. DPP</i> Notes Policies to Discourage Charges Office of the District Attorney, City of Philadelphia	702 703 703 703 703 703 703 703 707 709
	Policies to Encourage or Mandate Charges Florida Statutes §741.2901 Wisconsin Statutes §968.075 Italian Constitution Art. 112 German Code of Criminal Procedure 152(2) West Virginia Code §7-4-1 <i>The Question on the Application of Peter Dennis v. DPP</i> Notes Policies to Discourage Charges Office of the District Attorney, City of Philadelphia Homicide Policies and Procedures, Florida State Attorney's Office,	702 703 703 703 703 703 703 703 707 709 709
	 Policies to Encourage or Mandate Charges Florida Statutes §741.2901 Wisconsin Statutes §968.075 Italian Constitution Art. 112 German Code of Criminal Procedure 152(2) West Virginia Code §7-4-1 The Question on the Application of Peter Dennis v. DPP Notes Policies to Discourage Charges Office of the District Attorney, City of Philadelphia Homicide Policies and Procedures, Florida State Attorney's Office, Fourth Judicial Circuit (2017) 	702 703 703 703 703 703 703 703 707 709 709 709
C.	Policies to Encourage or Mandate Charges Florida Statutes §741.2901 Wisconsin Statutes §968.075 Italian Constitution Art. 112 German Code of Criminal Procedure 152(2) West Virginia Code §7-4-1 <i>The Question on the Application of Peter Dennis v. DPP</i> Notes Policies to Discourage Charges Office of the District Attorney, City of Philadelphia Homicide Policies and Procedures, Florida State Attorney's Office, Fourth Judicial Circuit (2017) Principles of Federal Prosecution of Business Organizations	702 703 703 703 703 703 703 703 703 707 709 709 709 710 713
C.	Policies to Encourage or Mandate Charges Florida Statutes §741.2901 Wisconsin Statutes §968.075 Italian Constitution Art. 112 German Code of Criminal Procedure 152(2) West Virginia Code §7-4-1 <i>The Question on the Application of Peter Dennis v. DPP</i> Notes Policies to Discourage Charges Office of the District Attorney, City of Philadelphia Homicide Policies and Procedures, Florida State Attorney's Office, Fourth Judicial Circuit (2017) Principles of Federal Prosecution of Business Organizations Notes	702 703 703 703 703 703 703 703 707 709 709 709 709 710 713 715
C.	Policies to Encourage or Mandate Charges Florida Statutes §741.2901 Wisconsin Statutes §968.075 Italian Constitution Art. 112 German Code of Criminal Procedure 152(2) West Virginia Code §7-4-1 <i>The Question on the Application of Peter Dennis v. DPP</i> Notes Policies to Discourage Charges Office of the District Attorney, City of Philadelphia Homicide Policies and Procedures, Florida State Attorney's Office, Fourth Judicial Circuit (2017) Principles of Federal Prosecution of Business Organizations Notes Diversion of Charges	702 703 703 703 703 703 703 703 707 709 709 709 709 710 713 715 718

xix

	Notes	721
	Problem 13-3. Diversion Policies and Exceptions	723
E.	Selection Among Charges	724
	U.S. Department of Justice, Principles of Federal Prosecution	724
	Minnesota Statutes §388.051	724
	People v. Jaleh Wilkinson	724
	Notes	728
	Problem 13-4. Available Charges	730
F.	Which System, and Why It Matters	731
	1. Juvenile Versus Adult Justice System	731
	Howard N. Snyder, Melissa Sickmund & Eileen Poe-Yamagata,	
	Juvenile Transfers to Criminal Court in the 1990s: Lessons Learned	
	from Four Studies	732
	State v. Jonas Dixon	733
	Notes	737
	2. Federal Versus State Justice System	738
	Sara Sun Beale, The Unintended Consequences of Enhancing Gun	
	Penalties: Shooting Down the Commerce Clause and Arming	_ / -
	Federal Prosecutors	740
	Scott Decker and Jack McDevitt, Project Safe	
	Neighborhoods: Strategic Interventions: Gun Prosecution Case	= (0
	Screening	742
	Problem 13-5. Federal Day	744
	3. Crimes Committed on Tribal Lands	744
	James D. Diamond, Practicing Indian Law in Federal, State, and	
	Tribal Criminal Courts: An Update About Recent Expansion of	744
	Criminal Jurisdiction over Non-Indians	744
C	Notes Victim Input into Chaming Decisions	740 747
G.	Victim Input into Charging Decisions Wisconsin Statutes §968.02	747
	Joseph Kennedy, Private Financing of Criminal Prosecutions and	/4/
	the Differing Protections of Liberty and Equality in the Criminal	
	Justice System	747
	Notes	749
	Problem 13-6. Involved Citizens	751
Н	Selective Prosecution	751
11.	United States v. Christopher Armstrong	752
	Notes	756
I.	Pretrial Screening	759
	New York Constitution Art. I, §6	759
	Illinois Annotated Statutes Ch. 725, Para. 5/111-2	760
	Commonwealth v. Khari Wilcox	760
	Notes	762
CF	IAPTER XIV	
Ie	opardy and Joinder	767
2		
А.	Double Jeopardy	767
	1. Multiple or Dual Sovereigns	768
	Puerto Rico v. Luis Sánchez Valle	768

U.S. Attorneys' Manual §9-2.031, Dual Prosecution and Successive	
Prosecution Policy (Petite Policy)	772
New Jersey Statutes §2C:1-11	774
Ohio Revised Code §2925.50	775
Problem 14-1. Rodney King's Attackers	775
Notes	776
2. "Same Offence"	778
Robert Taylor v. Commonwealth	779
People v. Melissa Nutt	782
New York Criminal Procedure Law §40.20	787
Notes	787
Problem 14-2. Multiplicity	790
Notes	791
3. Collateral Estoppel	791
Ex Parte Philip Taylor	792
Notes	796
Problem 14-3. Rose Bowl	797
B. Joinder	798
1. Discretionary Joinder and Severance of Offenses	798
Federal Rule of Criminal Procedure 8(a)	798
Federal Rule of Criminal Procedure 13	799
Federal Rule of Criminal Procedure 14	799
Vermont Rule of Criminal Procedure 8(a)	799
Vermont Rule of Criminal Procedure 14	799
Damian Long v. United States	800
Matthew J. Galluzzo, The New Predatory Sexual Assault Charges	
Against Weinstein Are Shrewdly Tactical	804
Problem 14-4. Compulsory Joinder	805
Problem 14-5. Protective Order	806
Notes	807
2. Joint Trials of Defendants	809
Problem 14-6. Antagonistic Brothers	810
Federal Rule of Criminal Procedure 8(b)	811
Vermont Rule of Criminal Procedure 8(b)	811
Vermont Rule of Criminal Procedure 14(b)(2)	811
Notes	813
PART THREE	
RESOLVING GUILT AND INNOCENCE	815

CHAPTER XV

Discovery and Speedy Trial		817
A.	Discovery	817
	1. Prosecution Disclosure of Exculpatory Information	818
	People v. Alan Beaman	819
	Notes	823
	Problem 15-1. Preserving Evidence	827
	American Bar Association, Model Rules of Professional Conduct 3.8	828

U.S. Department of Justice, Memorandum for Department Prosecutors	829
Notes	832
2. Prosecution Disclosure of Inculpatory Information	833
Problem 15-2. Exchanging Words	834
South Carolina Rule of Criminal Procedure 5(A)	834
North Carolina General Statutes §15A-903	835
Notes	836
3. Defense Disclosures	839
Pennsylvania Rule of Criminal Procedure 573(C)	839
Pennsylvania Rule of Criminal Procedure 567(A)	840
Commonwealth v. Patrick Durham	840
Notes	842
4. Discovery Ethics	844
Standing Committee on Professional Responsibility and Conduct,	
State Bar of California, California Formal Ethics Opinion 1984-76	844
North Carolina State Bar, Receipt of Evidence of Crime by Lawyer for	
Defendant, Ethics Opinion 221	845
Notes	847
Problem 15-3. Defense Attorney as Repository	848
B. Speedy Trial Preparation	848
1. Pre-Accusation Delay	849
New York Criminal Procedure Law §30.10	849
Commonwealth v. Stephen Scher	850
Notes	854
Problem 15-4. Child Victims	856
2. Constitutional Protections for Speedy Trial After Accusation	857
Vermont v. Michael Brillon	857
Notes	862
3. Statutory Protections for Speedy Trial After Accusation	864
California Penal Code §1382	865
California Penal Code §1387	865
People v. Michael Sutton	866
18 U.S.C. §3161	870
18 U.S.C. §3162	871
Notes	871
Problem 15-5. Voluminous Discovery	873
CHAPTER XVI	
Pleas and Bargains	875
A. Bargain About What?	876
Federal Rule of Criminal Procedure 11(A), (C)	876
North Carolina Defender Manual	877
State v. Ahmad Bey	877
Notes	881
Problem 16-1. Waiving the Right to Appeal a Sentence	884
B. Validity of Guilty Pleas	884
1. Lack of Knowledge	885
Federal Rule of Criminal Procedure 11(B)	885
Missouri v. Galin Frye	886

956

956

	Notes	892
	Problem 16-2. Direct and Collateral Effects	895
	Problem 16-3. Pre-Plea Discovery	895
	2. Involuntary Pleas	896
	a. Large Plea Discounts	896
	Robert Brady v. United States	896
	Notes	898
	b. Judicial Overinvolvement	900
	State v. Landour Bouie	900
	Notes	905
	c. Alford Pleas: Voluntariness and Factual Basis	907
	Federal Rule of Criminal Procedure 11(B)	907
	State v. Edwin Urbina	907
	Notes	913
C.	Categorical Restrictions on Bargaining	914
	1. Legislative Limits	914
	California Penal Code §1192.7	914
	New York Criminal Procedure Law §220.10	915
	Revised Code of Washington §§9.94A.450, 9.94A.460	916
	Notes	917
	2. Judicial Rules	918
	Problem 16-4: Rejecting Plea Bargains	918
	Notes	920
	3. Prosecutorial Plea Negotiation Guidelines	922
	U.S. Department of Justice, Principles of Federal Prosecution	923
	Notes	924
	U.S. Sentencing Guidelines §§6B1.2, 6B1.4 (Policy Statements)	927
	Janet Reno, Attorney General, Charging and Plea Decisions ("Reno	
	Bluesheet")	927
	Notes	928
	State v. Christopher Brimage	929
	Problem 16-5. Statewide Bargaining Guidelines	934
	Problem 16-6. Sharkfest	934
	Notes	935
	4. Victim Consultation	936
	Maine Revised Statutes Tit. 15, §812; Tit. 17-A, §§2102, 2103	936
	State v. Patrick William Casey	937
	Notes	941
D.	Alternatives to Plea Bargaining	941

D. Alternatives to Plea Bargaining	941
Albert W. Alschuler, Implementing the Criminal Defendant's Right to	
Trial: Alternatives to the Plea Bargaining System	942
J. Harvie Wilkinson, III, In Defense of American Criminal Justice	943
Ronald Wright & Marc Miller, The Screening/Bargaining Tradeoff	945
Notes	950
Ronald Wright & Marc Miller, The Screening/Bargaining Tradeoff	94

CHAPTER XVII Decisionmakers at Trial A. Judge or Jury? Jean-Baptiste Bado v. United States

Maryland Courts and Judicial Proceedings Code §12-401	962
Notes	962
Problem 17-1. Judge Shopping and Jury Trial Waivers	966
B. Selection of Jurors	966
1. Voir Dire	967
Keith Filmore v. State	969
Notes	971
Problem 17-2. Defendant Bias and Voir Dire	973
2. Dismissal for Cause	973
Texas Code of Criminal Procedure Art. 35.16	974
State v. Reche Smith	975
Notes	977
3. Peremptory Challenges	978
James Batson v. Kentucky	979
Curtis Giovanni Flowers v. Mississippi	984
Washington General Rule 37, Jury Selection	991
Notes	992
Problem 17-3. The Reach of Batson	996
C. Jury Deliberations and Verdicts	996
Evangelisto Ramos v. Louisiana	997
State v. Ronald Bean	1003
Notes	1006
Problem 17-4. Someone Is Not Talking or Someone Is Not Listening	1012
Problem 17-5. Jury Nullification and Social Justice	1012
D. Public Access and Influence	1013
State v. Manuel Turrietta	1014
Notes	1019
Problem 17-6. Measures for Justice	1023
CHAPTER XVIII	
Witnesses and Proof	1025
A. Confrontation of Witnesses	1025
1. The Value of Confrontation	1025
Israel Romero v. State	1026
Notes	1030
Problem 18-1. Child Testimony	1032
Problem 18-2. Anonymous Witnesses in an Inquisitorial System	1033
2. Out-of-Court Statements by Unavailable Witnesses	1034
Michael Crawford v. Washington	1034
Notes	1040
3. Statements by Co-Defendants	1042
Commonwealth v. John Bacigalupo	1042
Notes	1046
B. Self-Incrimination Privilege at Trial	1049
Eddie Dean Griffin v. California	1050
Kevin Sean Murray v. United Kingdom	1052
Notes	1058
Problem 18-3. Telling the Jury	1062
Problem 18-4. Pre-Arrest Silence	1062

xxiv

C. Ethics and Lies at Trial	1063
People v. Derek Andrades	1064
Notes	1066
Problem 18-5. The Do-Not-Call List	1068
D. Burden of Proof	1068
State v. Denise Frei	1069
Notes	1073
Problem 18-6. Words and Numbers	1078
Problem 18-7. A Doubt with a Reason	1078
Problem 18-8. Presumption in the Fire	1079
PART FOUR	

PART FOUR MEASURING PUNISHMENT AND REASSESSING GUILT

CH	HAPTER XIX	
Se	entencing	1083
	Code of Hammurabi	1083
А.	Who Sentences?	1084
	1. Indeterminate Sentencing	1084
	Samuel Williams v. New York	1084
	Notes	1087
	2. Legislative Sentencing	1089
	U.S. Sentencing Commission, Mandatory Minimum Penalties in the	
	Federal Criminal Justice System	1089
	Problem 19-1. The Golf Club Odyssey	1091
	Notes	1092
	3. Sentencing Commissions	1094
	Dale Parent, Structuring Criminal Sentencing	1095
	Richard S. Frase, State Sentencing Guidelines: Diversity, Consensus,	
	and Unresolved Policy Issues	1099
	Notes	1102
В.	New Information About the Offender and the Victim	1104
	1. Offender Information	1104
	a. Criminal History	1104
	Washington State Sentencing Guidelines	1104
	Federal Rules of Criminal Procedure, Rule 32	1105
	Notes	1107
	Problem 19-2. Personal History and Prospects	1108
	b. Cooperation in Other Investigations	1110
	Taggart Parrish v. State	1110
	U.S. Sentencing Guidelines §5k1.1	1113
	Notes	1113
	2. New Information About the Victim and the Community	1114
	Michigan Constitution Article I, §24	1114
	Notes	1115
	Problem 19-3. The Community as Victim	1117

Problem 19-4. Sentencing Hearings, Guilty Plea Hearings	1118
C. Revisiting Points in the Criminal Process	1118
1. Revisiting Investigations	1118
People v. Deon Lamont Claypool	1119
Notes	1122
Problem 19-5. Learning a Lesson	1123
Problem 19-6. Reversing the Exclusion	1123
2. Revisiting Charging Decisions: Relevant Conduct	1123
U.S. Sentencing Guidelines §1B1.3(a)	1124
Florida Rule of Criminal Procedure 3.701(d)(11)	1125
State v. Douglas McAlpin	1125
Notes	1127
3. Revisiting Proof at Trial	1129
Ralph Blakely v. Washington	1130
Notes	1138
4. Revisiting Jury Verdicts and Guilty Pleas	1139
U.S. Sentencing Guidelines §3E1.1	1140
Notes	1140
Problem 19-7. Trial Penalty or Reward for Plea?	1142
D. Race and Sentencing	1142
1. Race and the Victims of Crime	1143
Warren McCleskey v. Ralph Kemp	1144
Notes	1150
2. Race and Discretionary Decisions Affecting Punishment	1151
Freddie Stephens v. State	1151
Notes	1156
Problem 19-8. The Crack-Powder Differential	1158
CHAPTER XX	
Appeals	1159
A. Who Appeals?	1159
1. Right to Appeal	1159
Arkansas Statutes §16-91-101	1159
Arkansas Rule of Criminal Procedure 24.3(B)	1159
California Penal Code §1237.5	1160
California Rule of Court 8.304(B)(4)	1160
Notes	1160
2. Appeals by Indigent Defendants	1160
Bryan Mosley v. State	1161
Notes	1164
3. Interlocutory Appeals	1165
Delaware Code Tit. 10, §§9902, 9903	1166
State v. Matthew Medrano	1166
State v. Matthew Mearano Notes	1160
B. Appellate Review of Factual Findings	1109
Kelvin Brooks v. State	
Notes	1172
Problem 20-1. Edited Trials	1175 1176
C. Harmless Error	1176
U. Hammuss LIIUI	11/0

	Contents	xxvii
Federal Rule of Criminal Procedure 52	1177	
Tennessee Rule of Appellate Procedure 36(B)	1178	
Kentel Weaver v. Massachusetts	1178	
Notes	1184	
Problem 20-2. Preserving Error	1186	
D. Retroactivity	1187	
George Membres v. State	1187	
Notes	1193	
Table of Cases	1197	
Index	1215	