
CONTENTS

Preface	xxix
Acknowledgments	xxxix
The Constitution of the United States	xxxiii
Chapter 1 Introduction to Criminal Procedure	1
A. The Participants in the Criminal Justice System	1
1. Defendants	1
2. Defense Counsel	2
3. Prosecutors	2
4. Victims	3
5. Police and Other Law Enforcement Officers	3
6. Magistrates and Judges	3
7. Jurors	4
8. Corrections Officials	4
9. Public	4
10. Media	5
B. Stages of the Criminal Justice Process	5
1. Step 1: Pre-Arrest Investigation	5
2. Step 2: Arrest	6
3. Step 3: Filing the Complaint	6
4. Step 4: <i>Gerstein</i> Review	6
5. Step 5: First Appearance/Arraignment on Complaint	7
6. Step 6: Grand Jury or Preliminary Hearing	7
7. Step 7: Arraignment on Indictment or Information	8
8. Step 8: Discovery	8
9. Step 9: Pretrial Motions	8
10. Step 10: Plea Bargaining and Guilty Pleas	9
11. Step 11: Trial	9
12. Step 12: Sentencing	10
13. Step 13: Appeals and Habeas Corpus	10

C. The Purpose of Procedural Rules	11
<i>Powell v. Alabama</i>	12
<i>Patterson v. Former Chicago Police Lt. Jon Burge</i>	15
D. Key Provisions of the Bill of Rights	17
E. The Application of the Bill of Rights to the States	18
1. The Provisions of the Bill of Rights and the Idea of “Incorporation”	18
2. The Debate over Incorporation	20
3. The Current Law as to What’s Incorporated	22
<i>Duncan v. Louisiana</i>	22
<i>Timbs v. Indiana</i>	24
4. The Content of Incorporated Rights	28
F. Retroactivity	29
 Chapter 2 Searches and Seizures	 31
A. Introduction	31
B. What Is a Search?	32
<i>Katz v. United States</i>	33
<i>United States v. Jones</i>	38
1. Open Fields	48
<i>Oliver v. United States</i>	49
<i>United States v. Dunn</i>	54
2. Aerial Searches	57
<i>California v. Ciraolo</i>	58
<i>Florida v. Riley</i>	61
3. Thermal Imaging of Homes	67
<i>Kyllo v. United States</i>	67
4. Searches of Trash	73
<i>California v. Greenwood</i>	73
5. Observation and Monitoring of Public Behavior	77
<i>United States v. Knotts</i>	77
<i>Smith v. Maryland</i>	81
<i>Carpenter v. United States</i>	85
6. Use of Dogs to Sniff for Contraband	94
<i>Illinois v. Caballes</i>	96
<i>Rodriguez v. United States</i>	99
<i>Florida v. Jardines</i>	103
<i>Florida v. Harris</i>	108
C. The Requirement for Probable Cause	112

Contents**xiii**

1. What Is Sufficient Belief to Meet the Standard for Probable Cause?	112
<i>Illinois v. Gates</i>	113
<i>Maryland v. Pringle</i>	120
2. Is It an Objective or a Subjective Standard?	122
<i>Whren v. United States</i>	122
3. What If the Police Make a Mistake as to the Law?	126
<i>Heien v. North Carolina</i>	126
D. The Warrant Requirement	131
1. What Information Must Be Included in the Application for a Warrant?	132
2. What Form Must the Warrant Take?	133
<i>Andresen v. Maryland</i>	133
<i>Groh v. Ramirez</i>	137
3. What Are the Requirements in Executing Warrants?	141
a. How May Police Treat Those Who Are Present When a Warrant Is Being Executed?	142
<i>Muehler v. Mena</i>	142
b. Do Police Have to Knock and Announce Before Searching a Dwelling?	146
<i>Wilson v. Arkansas</i>	146
<i>Richards v. Wisconsin</i>	149
c. What If There Are Unforeseen Circumstances or Mistakes While Executing a Warrant?	152
<i>Maryland v. Garrison</i>	152
<i>Los Angeles County, California v. Rettele</i>	155
E. Exceptions to the Warrant Requirement	158
1. Exigent Circumstances	159
a. Hot Pursuit	159
<i>Warden, Maryland Penitentiary v. Hayden</i>	159
<i>Payton v. New York</i>	160
<i>Lange v. California</i>	163
b. Safety	166
<i>Brigham City, Utah v. Stuart</i>	167
c. Preventing Destruction of Evidence	168
<i>Kentucky v. King</i>	169
d. Limits on Exigent Circumstances	175
<i>Missouri v. McNeely</i>	176
<i>Birchfield v. North Dakota</i>	183
<i>Mitchell v. Wisconsin</i>	193
<i>Caniglia v. Strom</i>	200

2. Plain View	202
<i>Coolidge v. New Hampshire</i>	202
<i>Minnesota v. Dickerson</i>	205
3. The Automobile Exception	207
a. The Exception and Its Rationale	207
<i>California v. Carney</i>	208
<i>Collins v. Virginia</i>	211
b. Searches of Containers in Automobiles	217
<i>California v. Acevedo</i>	217
c. Searching Automobiles Incident to Arrest	221
4. Searches Incident to Arrest	222
<i>Chimel v. California</i>	222
<i>Knowles v. Iowa</i>	225
<i>Riley v. California</i>	227
<i>Arizona v. Gant</i>	236
5. Inventory Searches	244
<i>South Dakota v. Opperman</i>	245
<i>Illinois v. Lafayette</i>	248
6. Protective Sweeps	250
<i>Maryland v. Buie</i>	251
7. Consent	254
<i>Schneckloth v. Bustamonte</i>	254
<i>Georgia v. Randolph</i>	261
<i>Fernandez v. California</i>	264
8. Searches When There Are “Special Needs”	271
a. Administrative Searches	271
<i>Camara v. Municipal Court of City and County of San Francisco</i>	271
<i>New York v. Burger</i>	276
<i>City of Los Angeles v. Patel</i>	280
b. Border Crossing	287
<i>United States v. Flores-Montano</i>	287
<i>United States v. Ramsey</i>	289
<i>United States v. Montoya-Hernandez</i>	292
c. Checkpoints	296
<i>Michigan Department of State Police v. Sitz</i>	297
<i>City of Indianapolis v. Edmond</i>	299
d. Schools	304
<i>Safford Unified School District #1 v. Redding</i>	305

e. The Government Employment Context	313
<i>City of Ontario v. Quon</i>	313
f. Drug Testing	318
<i>Vernonia School District 47J v. Acton</i>	319
<i>Board of Education of Independent School District No. 92</i>	
<i>of Pottawatomie County v. Earls</i>	327
<i>Ferguson v. City of Charleston</i>	333
g. Searches in Jails and Prisons	338
<i>Florence v. Board of Chosen Freeholders of the County of Burlington</i>	338
h. DNA Testing of Those Arrested	346
<i>Maryland v. King</i>	346
9. Searches of Those on Probation and Parole	357
<i>United States v. Knights</i>	357
<i>Samson v. California</i>	360
F. Seizures and Arrests	362
1. Is a Warrant Needed for Arrests?	362
<i>United States v. Watson</i>	363
2. When Is a Person Seized?	367
<i>United States v. Mendenhall</i>	367
<i>California v. Hodari D.</i>	373
<i>Torres v. Madrid</i>	377
3. For What Crimes May a Person Be Arrested?	383
<i>Atwater v. City of Lago Vista</i>	383
G. Stop and Frisk	391
1. The Authority for Police to Stop and Frisk	391
<i>Terry v. Ohio</i>	391
2. The Distinction Between Stops and Arrests	400
3. What May Police Do When They Stop an Individual?	401
<i>Hübel v. Sixth Judicial District Court of Nevada</i>	402
4. What Is Sufficient for Reasonable Suspicion?	405
a. Reasonable Suspicion: General Principles	405
<i>United States v. Arvizu</i>	405
<i>Kansas v. Glover</i>	409
b. Reasonable Suspicion Based on Informants' Tips	414
<i>Alabama v. White</i>	414
<i>Florida v. J.L.</i>	417
<i>Navarette v. California</i>	419

c. Reasonable Suspicion Based on a Person's Trying to Avoid a Police Officer	426
<i>Illinois v. Wardlow</i>	426
d. Reasonable Suspicion Based on Profiles	430
<i>United States v. Sokolow</i>	431
H. Electronic Surveillance	435
1. Is Electronic Eavesdropping a Search?	435
2. Statutory Requirements	438
3. Warrantless Eavesdropping	440
<i>United States v. United States District Court for the Eastern District of Michigan</i>	440
I. Excessive Police Force	448
<i>Tennessee v. Garner</i>	448
<i>Graham v. Connor</i>	454
<i>Barnes v. Felix</i>	457
 Chapter 3 The Exclusionary Rule and Other Remedies	 463
A. Is the Exclusionary Rule a Desirable Remedy for Unconstitutional Police Behavior?	463
<i>Hudson v. Michigan</i>	464
B. The Origins of the Exclusionary Rule	468
<i>Weeks v. United States</i>	468
<i>Mapp v. Ohio</i>	471
C. When Does the Exclusionary Rule Apply?	476
<i>Herring v. United States</i>	476
<i>Davis v. United States</i>	484
D. Who Can Object to the Introduction of Evidence and Raise the Exclusionary Rule?	489
<i>Rakas v. Illinois</i>	489
<i>Minnesota v. Carter</i>	496
<i>Brendlin v. California</i>	499
<i>Byrd v. United States</i>	503
E. Exceptions to the Exclusionary Rule	508
1. Independent Source	508
<i>Murray v. United States</i>	509
2. Inevitable Discovery	514
<i>Nix v. Williams</i>	514

Contents	xvii
3. Inadequate Causal Connection—Attenuation of the Taint	520
<i>Brown v. Illinois</i>	521
<i>Utah v. Strieff</i>	527
4. The Good Faith Exception to the Exclusionary Rule	535
<i>United States v. Leon</i>	535
5. The Exception for Violations of the Requirement for “Knocking and Announcing”	551
F. Suppression Hearings	552
G. Civil Remedies Against the Police	554
1. Suits for Injunctive Relief	554
<i>City of Los Angeles v. Lyons</i>	554
2. Suits for Money Damages	562
<i>Monell v. Department of Social Services</i>	562
<i>Harlow v. Fitzgerald</i>	571
 Chapter 4 Police Interrogation and the Privilege Against Self-Incrimination	 577
A. Due Process and the Requirement for Voluntariness	578
1. The Requirement for Voluntariness	578
<i>Brown v. Mississippi</i>	579
2. Determining Whether a Confession Is Voluntary	580
a. The Length of the Interrogation and Whether the Defendant Was Deprived of Basic Bodily Needs	581
b. The Use of Force and Threats of Force	581
<i>Arizona v. Fulminante</i>	581
c. Psychological Pressure Tactics	584
<i>Spano v. New York</i>	584
d. Deception	587
e. The Age, Level of Education, and Mental Condition of a Suspect	588
<i>Colorado v. Connelly</i>	588
3. Is the Voluntariness Test Desirable?	593
4. Coercive Questioning, Torture, and the War on Terrorism	593
B. Fifth Amendment Limits on Custodial Interrogation: <i>Miranda v. Arizona</i>	594
1. <i>Miranda v. Arizona</i> and Its Affirmation by the Supreme Court	594
<i>Miranda v. Arizona</i>	594
<i>Dickerson v. United States</i>	607
<i>Vega v. Tekoh</i>	611
2. Is <i>Miranda</i> Desirable?	620

3. What Are the Requirements for <i>Miranda</i> to Apply?	621
a. When Is a Person “in Custody”?	621
<i>Oregon v. Mathiason</i>	622
<i>J.D.B. v. North Carolina</i>	625
<i>Berkemer v. McCarty</i>	630
b. What Is an “Interrogation”?	634
<i>Rhode Island v. Innis</i>	634
<i>Illinois v. Perkins</i>	641
c. What Is Required of the Police?	644
<i>California v. Prysock</i>	644
<i>Duckworth v. Eagan</i>	647
4. What Are the Consequences of a Violation of <i>Miranda</i> ?	651
<i>Oregon v. Elstad</i>	652
<i>Missouri v. Seibert</i>	657
<i>United States v. Patane</i>	663
5. Waiver of <i>Miranda</i> Rights	666
a. What Is Sufficient to Constitute a Waiver?	667
<i>North Carolina v. Butler</i>	667
<i>Berghuis v. Thompson</i>	669
<i>Salinas v. Texas</i>	677
b. How Is a Waiver After the Assertion of Rights Treated?	682
<i>Michigan v. Mosley</i>	682
<i>Edwards v. Arizona</i>	685
<i>Minnick v. Mississippi</i>	687
<i>Maryland v. Shatzer</i>	692
<i>Davis v. United States</i>	698
6. What Are the Exceptions to <i>Miranda</i> ?	702
a. Impeachment	702
<i>Harris v. New York</i>	703
b. Emergencies	705
<i>New York v. Quarles</i>	705
c. Booking Exception	712
C. The Sixth Amendment Right to Counsel and Police Interrogations	712
1. The Sixth Amendment Right to Counsel During Interrogations	713
<i>Massiah v. United States</i>	713
<i>Brewer v. Williams</i>	718
2. The Sixth Amendment Right to Counsel Is Offense Specific	723
<i>Texas v. Cobb</i>	724

Contents	xix
3. Waivers	728
<i>Montejo v. Louisiana</i>	728
4. What Is Impermissible Police Eliciting of Statements?	736
<i>United States v. Henry</i>	737
<i>Kuhlmann v. Wilson</i>	740
D. The Privilege Against Self-Incrimination in Other Contexts	744
1. What Are the Requirements for the Privilege Against Self-Incrimination to Apply?	744
a. Only Individuals May Invoke the Privilege	745
b. The Privilege Applies Only to That Which Is Testimonial	745
<i>Schmerber v. California</i>	745
c. There Must Be Compulsion	748
d. There Must Be the Possibility of Incrimination	749
2. When May the Government Require the Production of Documents and Other Things?	752
<i>Fisher v. United States</i>	752
3. May the Government Require Testimony If It Provides Immunity?	757
<i>Kastigar v. United States</i>	758
<i>United States v. Hubbell</i>	762
 Chapter 5 Identification Procedures	 767
A. The Right to Counsel	768
1. The Right to Counsel in Lineups	768
<i>United States v. Wade</i>	768
2. Limits on the Right to Counsel in Identification Procedures	778
<i>Kirby v. Illinois</i>	778
<i>United States v. Ash</i>	782
B. Due Process Protection for Identification Procedures	788
1. Unnecessarily Suggestive Identification Procedures by Police Violate Due Process	788
<i>Foster v. California</i>	790
2. Limits on the Ability of Courts to Find That Identification Procedures Violate Due Process	792
<i>Simmons v. United States</i>	793
<i>Neil v. Biggers</i>	795
<i>Manson v. Brathwaite</i>	799
3. Requirement That Police Be Involved in Creating the Suggestive Identification Procedure	805
<i>Perry v. New Hampshire</i>	805

Chapter 6	Initiating Prosecution	811
A.	The Charging Decision	812
	<i>People v. Robert Denny</i>	814
	<i>Inmate Convicted of Indecent Exposure</i>	815
	<i>Mandatory 55-Year Sentence “Extreme”?</i>	815
	<i>Inmates of Attica Correctional Facility v. Rockefeller</i>	816
B.	Limits on Prosecutorial Discretion	817
1.	Statutory and Administrative Limits	817
2.	Ethical Limits	818
3.	Constitutional Limits	820
a.	Selective or Discriminatory Enforcement	821
	<i>Wayte v. United States</i>	821
	<i>United States v. Armstrong</i>	824
b.	Vindictive Prosecution	828
	<i>Blackledge v. Perry</i>	828
C.	Formal Charging Mechanisms	830
1.	The Grand Jury	830
a.	Operation of the Grand Jury	832
b.	Screening Function of the Grand Jury	833
	<i>Costello v. United States</i>	833
	<i>United States v. Williams</i>	835
c.	Grand Jury Reform	838
2.	Preliminary Hearing	839
D.	Severance and Joinder	840
1.	Federal Rules of Criminal Procedure 8 and 14	841
2.	Irreconcilable Conflicts and <i>Bruton</i> Problems	841
a.	Conflicting Defenses	841
	<i>Zafiro v. United States</i>	841
b.	<i>Bruton</i> Problems	844
	<i>Bruton v. United States</i>	844
	<i>Richardson v. Marsh</i>	846
	<i>Gray v. Maryland</i>	848
	<i>Samia v. United States</i>	851
E.	Amendments and Variances	857
F.	Dismissing Cases	858
Chapter 7	Bail and Pretrial Release	859
A.	Introduction	859
B.	Preventive Detention	861

Contents	xxi
1. Pretrial Detention	861
<i>United States v. Salerno</i>	861
2. Other Types of Preventive Detention	867
a. Detention of Material Witnesses	867
<i>United States v. Awadallah</i>	868
b. Preventive Detention of Sexual Predators	872
<i>Kansas v. Hendricks</i>	873
c. Preventive Detention for Immigration Detainees	878
d. Enemy Combatants	878
 Chapter 8 Discovery	 881
A. Introduction	881
B. Statutory and Rule Discovery: A Two-Way Street	884
<i>Williams v. Florida</i>	885
C. Constitutional Discovery: A One-Way Street	887
<i>Brady v. Maryland</i>	888
<i>Giglio v. United States</i>	889
<i>United States v. Bagley</i>	891
<i>Kyles v. Whitley</i>	899
<i>Banks v. Dretke</i>	907
D. Discovery for Guilty Pleas	909
E. Duty to Preserve Evidence	910
<i>Arizona v. Youngblood</i>	910
F. Final Note	914
 Chapter 9 Plea Bargaining and Guilty Pleas	 915
A. Introduction	915
B. Plea Bargaining	916
1. History of Plea Bargaining	916
2. The Pros and Cons of Plea Bargaining	917
a. Support for Plea Bargaining	917
b. Criticisms of Plea Bargaining	917
c. Evaluating a Plea Bargain	919
3. Bans on Plea Bargaining	919
4. The Legality of Plea Bargaining	920
<i>Brady v. United States</i>	920

5. Effective Assistance of Counsel for Plea Bargaining	928
<i>Missouri v. Frye</i>	928
<i>Lafler v. Cooper</i>	932
C. Guilty Pleas	935
<i>Boykin v. Alabama</i>	935
<i>Henderson v. Morgan</i>	937
<i>Hill v. Lockhart</i>	940
<i>Padilla v. Kentucky</i>	942
D. Rule 11 and the Procedural Requirements for Entering Guilty Pleas	944
E. Remedies for Violations of Plea Agreements	946
<i>Santobello v. New York</i>	946
<i>Ricketts v. Adamson</i>	948
F. Withdrawal of Guilty Pleas	951
Chapter 10 Speedy Trial Rights	953
A. Introduction	953
B. Why Speedy Trial Rights Matter	953
<i>People v. Kramer: Speedy Trial Rights and Justice Delayed</i>	954
<i>State Loses Appeal in Child-Rape Case</i>	954
<i>Judge Dismisses Molestation Case—Again</i>	955
1. Impact on the Defendant	955
2. Impact on the Prosecution and Witnesses	956
3. Impact on the Public	956
4. Covid-19 Pandemic and Unavoidable Delays	956
C. Due Process and Speedy Trial Rights	957
1. Pre-Charging Delay, Due Process Rights, and Statutes of Limitations	957
<i>United States v. Marion</i>	957
Federal Statutes of Limitation	961
<i>United States v. Lovasco</i>	962
2. Post-Charging Delay and Speedy Trial Rights	965
a. Statutory Protections	965
b. Constitutional Protection	966
<i>Barker v. Wingo</i>	966
<i>Doggett v. United States</i>	971
<i>Vermont v. Brillon</i>	974
c. Other Speedy Trial Rules and Laws	977
D. Remedies for Speedy Trial Violations	978

Contents	xxiii
E. Speedy Trial Rights and Sentencing	978
<i>Betterman v. Montana</i>	978
Chapter 11 Right to Counsel	981
A. Introduction	981
B. Appointment of Counsel	982
<i>Gideon v. Wainwright</i>	982
C. When the Right to Counsel Applies	985
<i>Argersinger v. Hamlin</i>	986
D. Standard for “Effective Assistance” of Counsel	989
<i>Strickland v. Washington</i>	989
1. Conflicts of Interest	999
2. Complete Denial of Counsel	1001
3. Strategic Decisions by Defense Counsel	1001
<i>Florida v. Nixon</i>	1001
<i>McCoy v. Louisiana</i>	1005
4. Right to Retain Counsel	1010
5. Right to Retain Experts	1011
E. Right of Self-Representation	1012
<i>Faretta v. California</i>	1012
<i>Indiana v. Edwards</i>	1020
F. Right of Counsel for Enemy Combatants	1024
Chapter 12 Trial	1025
A. Trial by Jury	1025
1. Role of the Jury	1025
<i>Duncan v. Louisiana</i>	1026
2. When Is There a Right to a Jury Trial?	1029
3. Composition of the Jury	1030
a. Number of Jurors	1030
<i>Williams v. Florida</i>	1030
<i>Ballew v. Georgia</i>	1034
b. Unanimity	1037
<i>Ramos v. Louisiana</i>	1037
B. Jury Composition and Selection	1042
1. Selecting the Jury Venire	1042
<i>Taylor v. Louisiana</i>	1042
2. Selecting the Petit Jury	1046
<i>Batson v. Kentucky</i>	1047

3. Applying <i>Batson</i>	1057
a. Standing to Raise <i>Batson</i> Challenges	1057
b. <i>Batson</i> Challenges in Civil Cases	1058
c. Discriminatory Use of Peremptory Challenges by the Defense	1059
d. <i>Batson</i> Challenges to Other Types of Discrimination	1060
e. The Mechanics of Bringing <i>Batson</i> Challenges	1062
<i>Snyder v. Louisiana</i>	1063
<i>Rivera v. Illinois</i>	1067
C. Pretrial Publicity and the Right to a Fair Trial	1070
1. When Does Pretrial Publicity Interfere with a Defendant's Right to a Fair Trial?	1070
<i>Irvin v. Dowd</i>	1070
<i>Skilling v. United States</i>	1074
2. Remedies for Prejudicial Pretrial Publicity	1079
a. Closure of Courtrooms	1079
b. Other Remedies	1081
<i>Sheppard v. Maxwell</i>	1082
c. Ethical Limitations on Lawyers' Extrajudicial Comments	1085
<i>Gentile v. State Bar of Nevada</i>	1086
<i>United States v. Cutler</i>	1088
d. Prior Restraints	1091
<i>Nebraska Press Association v. Stuart</i>	1091
3. Cameras in the Courtroom	1096
<i>Chandler v. Florida</i>	1097
D. Trial Rights: Due Process, Right of Confrontation, and Privilege Against Self-Incrimination	1101
1. Right of Confrontation	1101
a. Right to Be Present at Trial	1102
<i>Illinois v. Allen</i>	1102
<i>Deck v. Missouri</i>	1104
b. Right to Confront Witnesses	1105
<i>Maryland v. Craig</i>	1106
<i>Crawford v. Washington</i>	1109
<i>Michigan v. Bryant</i>	1112
<i>Ohio v. Clark</i>	1117
c. Due Process Rights	1123
2. Privilege Against Self-Incrimination and Improper Closing Arguments	1124
<i>Griffin v. California</i>	1124
<i>Darden v. Wainwright</i>	1126

Contents	xxv
E. Defendant's Right to Present a Defense	1128
<i>Chambers v. Mississippi</i>	1129
<i>Holmes v. South Carolina</i>	1131
F. Role of the Jury and Proof Beyond a Reasonable Doubt	1134
<i>In re Winship</i>	1134
<i>Tanner v. United States</i>	1138
 Chapter 13 Sentencing	 1141
A. Introduction	1141
B. Indeterminate Versus Determinate Sentencing	1143
1. Indeterminate Sentencing	1143
2. Determinate Sentencing	1144
3. Mandatory Minimum Sentences	1146
4. <i>Apprendi</i> and Its Progeny	1146
<i>Apprendi v. New Jersey</i>	1147
<i>Blakely v. Washington</i>	1153
<i>United States v. Booker</i>	1160
C. Eighth Amendment: When Does a Sentence Constitute Cruel and Unusual Punishment?	1166
1. Determining When a Sentence Is Proportional	1166
<i>Solem v. Helm</i>	1166
2. Proportionality and Three Strikes Laws	1172
<i>Ewing v. California</i>	1172
3. Juveniles and Sentencing	1179
<i>Graham v. Florida</i>	1179
<i>Miller v. Alabama</i>	1184
4. Excessive Fines and Forfeitures	1188
<i>United States v. Bajakajian</i>	1188
D. The Death Penalty	1192
1. Is the Death Penalty Unconstitutional?	1193
<i>Furman v. Georgia</i>	1193
2. Standards for Constitutional Implementation of the Death Penalty	1202
3. Recent Limits on the Scope of the Death Penalty	1205
a. Prohibition of the Death Penalty for Mentally Disabled Defendants	1205
<i>Atkins v. Virginia</i>	1205
b. Prohibition of the Death Penalty for Crimes Committed by Minors	1214
<i>Roper v. Simmons</i>	1214

c. Prohibition of the Death Penalty for Non-Homicide Offenses	1223
<i>Kennedy v. Louisiana</i>	1223
d. Method of Execution	1225
<i>Baze v. Rees</i>	1225
<i>Glossip v. Gross</i>	1233
E. Pardons and Clemency	1246
1. Offenses for Which a Pardon May Be Issued	1246
2. Form of Pardon or Clemency	1246
3. Conditions on Pardons	1247
4. Self-Pardon	1247
 Chapter 14 Double Jeopardy	 1249
A. Introduction	1250
<i>United States v. Scott</i>	1250
B. The Basics	1252
1. What Is a Criminal Offense?	1252
<i>Hudson v. United States</i>	1252
2. What Is the “Same Offense”?	1256
<i>Blockburger v. United States</i>	1256
3. When Does Jeopardy Attach?	1258
C. No Retrial Following Conviction or Acquittal	1258
1. No Retrial After Acquittal	1258
<i>Burks v. United States</i>	1259
2. No Retrial After Conviction	1262
D. Exceptions to the Double Jeopardy Rule	1262
1. Retrial After Mistrials	1262
a. Retrial After Mistrial for Hung Jury	1262
<i>United States v. Sanford</i>	1263
b. Retrials After Other Mistrials	1265
<i>United States v. Dinitz</i>	1265
<i>Oregon v. Kennedy</i>	1268
2. Dual Sovereignty	1272
<i>Barthkus v. Illinois</i>	1272
3. Retrial After Trial in Improper Venue	1275
<i>Smith v. United States</i>	1275
E. Multiple Charges and Cumulative Punishments	1278
<i>Rutledge v. United States</i>	1279
F. Collateral Estoppel	1281
<i>Ashe v. Swenson</i>	1282
<i>Yeager v. United States</i>	1285

Contents	xxvii
Chapter 15 Habeas Corpus (online)	1289
A. Introduction	1289
B. The Issues That Must Be Addressed in Order for a Federal Court to Grant Habeas Corpus Relief	1291
1. Is the Petition Time Barred?	1292
<i>Holland v. Florida</i>	1295
<i>McQuiggin v. Perkins</i>	1303
2. Is It a First or a Successive Habeas Corpus Petition?	1309
<i>Tyler v. Cain</i>	1310
<i>Magwood v. Patterson</i>	1316
3. Has There Been Exhaustion of All of the Claims Raised in the Habeas Petition?	1322
<i>Rose v. Lundy</i>	1325
4. Does the Petition Rely on Existing Rules or Seek Recognition of a New Rule of Constitutional Law?	1332
<i>Teague v. Lane</i>	1332
<i>Edwards v. Vannoy</i>	1339
5. Is It an Issue That Can Be Raised on Habeas Corpus?	1343
<i>Stone v. Powell</i>	1344
6. Has There Been a Procedural Default, and If So, Is There Either Cause and Prejudice or an Adequate Showing of Actual Innocence?	1357
<i>Wainwright v. Sykes</i>	1358
<i>Maples v. Thomas</i>	1368
<i>Herrera v. Collins</i>	1377
<i>House v. Bell</i>	1388
7. May the Federal Court Hold an Evidentiary Hearing?	1401
<i>Cullen v. Pinholster</i>	1402
8. May the Federal Court Grant the Habeas Corpus Petition?	1409
C. Statutes and Rules Governing Habeas Corpus	1413
D. Habeas Corpus and the War on Terrorism	1416
<i>Rasul v. Bush</i>	1416
<i>Boumediene v. Bush</i>	1421
Table of Cases	TC-1
Index	I-1