CONTENTS

Preface Acknowledgments	
CHAPTER I	
Introductory Principles	1
A. Stages of the Criminal Process	1
B. Players in the Criminal Justice System	3
C. Criminal Procedure versus Civil Procedure	5
D. Incorporation	6
E. State Constitutional Criminal Procedure	7
CHAPTER II	
The Roots of Modern Constitutional Criminal Procedure: The	
Supreme Court, Race, and the Post-Bellum South	11
A. Invalidation of Convictions Where Black People Were Excluded from Juries	12
Strauder v. West Virginia	12
B. Peonage Convictions	17
Bailey v. Alabama	19
Pollock v. Williams	30
Papachristou v. Jacksonville	35
C. Mob Convictions	40
Moore v. Dempsey	40
Powell v. Alabama	45
Norris v. Alabama	54
D. Coerced Confessions	60
Brown v. Mississippi	60
Lyons v. Oklahoma	66
Akins v. Texas	72
CHAPTER VIII	
Right to Counsel and the Defense Function	721
A. Scope of the Right to Counsel	721
Betts v. Brady	722
Griffin v. Illinois	727
Gideon v. Wainwright	730
Gideon's Two Trials	736
Douglas v. California	738
Argersinger v. Hamlin	740
Alahama v. Shelton	745

В.	Consequences of Representation by Counsel	749
\sim	Brewer v. Williams	750
C.	Effective Assistance of Counsel: Standard of Performance	756 <i>757</i>
	Strickland v. Washington	
	People v. Garrison Rompilla v. Beard	767 770
D	Effective Assistance of Counsel: Indigent Defense Problems	776
υ.	State v. A.N.J.	776
	State v. Wigley	783
	Missouri v. Pratte	787
F	Zealous Advocacy	791
٠.	Nix v. Whiteside	792
	Taylor v. Illinois	799
	McCoy v. Louisiana	804
CH	IAPTER IX	
Τŀ	ne Prosecution Function	811
A.	Discretion	812
	1. The Concern About Discretion	812
	Morrison v. Olson	814
	2. Prosecutorial Discretion in Charging Decisions and the Influence of Race	820
	a. Race and Charging Discretion	820
	b. The Prosecutor's Plenary Charging Power and Discretion	821
	United States v. Fokker Services B.V.	822
	3. The Prosecutor's Discretion to Use Unsavory and	
	Unreliable Witnesses and Tactics	832
	Sherman v. United States	832
	Jacobson v. United States	836
	Hoffa v. United States	842
В.	Prosecutor's Disclosure Obligations	848
	1. Exculpatory Information	848
	Brady v. Maryland	848
	Giglio v. United States	851
	United States v. Ruiz	854
	Milke v. Ryan	860
	2. Discovery Obligations	868
	Williams v. Florida	869
	Williams v. United States	875
	3. Witness Statements	879
	United States v. Jencks	879
C.	Ethics and Accountability	886
	1. General Ethical Obligations of Prosecutors	886
	Berger v. United States	887
	Rogue Cop?	890
	2. Prosecutors' Lack of Accountability	891
	3. Prosecutorial Misconduct Examples	892
	United States v. Hardy	893
	United States v. Coast of Maine Lobster Co.	898

Contents **xi**

The Department of Justice and the Prosecution of		
Civil Rights Crimes		
A. Reconstruction Era Congressional Criminal Legislation	906	
B. Federal Criminal Enforcement During Reconstruction	907	
C. The Supreme Court and Reconstruction Legislation	909	
D. The Department of Justice Civil Rights Section and the		
Disappointment of Screws v. United States	911	
United States v. Classic	912	
Screws v. United States	918	
United States v. Crews	931	
Williams v. United States	935	
United States v. Price	938	
E. Double Jeopardy, Successive Prosecutions, and Federal Civil Rights Enforcement		
Abbate v. United States	948	
Petite v. United States	954	
Gamble v. United States	961	
CHAPTER XI	075	
Pleas and Plea Bargaining	975	
A. Introduction: The Plea-Bargaining Controversy	976	
1. Race and Plea Bargaining	976	
2. Plea Bargaining History	977	
B. The Plea Hearing: Waiver and Consequences	979	
Boykin v. Alabama	979	
C. Guilty Pleas and Voluntariness	984	
Brady v. United States	985	
North Carolina v. Alford	992	
D. Plea Bargaining, the Constitution, and Coercion	997	
Bordenkircher v. Hayes	997	
United States v. Goodwin	1006	
E. The Supreme Court Discovers Plea Agreements Again	1011	
Padilla v. Kentucky	1012	
Missouri v. Frye	1019	
F. The Enforceability of Plea Agreements: Breach and Collateral Waivers	1028	
Santobello v. New York	1028	
United States v. Raynor	1032	
United States v. Guillen	1038	
Watson v. United States	1042	
Hurlow v. United States	1046	
Class v. United States	1052	
CHAPTER XII		
Discriminatory Enforcement	1059	
A. Discriminatory Prosecution: The Perfection of Yick Wo v. Hopkins	1060	
Yick Wo v. Hopkins	1060	
Oyler v. Boles	1066	

B. Lower Courts and Selective Prosecution Claims	1068
United States v. Robinson	1068
United States v. Falk	1072
United States v. Berrios	1080
C. The Supreme Court Steps Back In	1084
Wayte v. United States	1084
United States v. Armstrong	1089
D. Selective Investigation	1102
People v. Harris	1102
Butler v. Cooper	1105
United States v. Conley	1110
CHAPTER XIII	
The Jury I: Scope of the Right and Other Issues	1119
A. Scope of the Right to Trial by Jury	1119
Duncan v. Louisiana	1119
United States v. Gaudin	1127
Ramos v. Louisiana	1133
B. Jury Nullification	1140
United States v. Dougherty	1140
United States v. Sepulveda	1151
C. Jury Knowledge of Potential Punishment	1153
Rogers v. United States	1154
Shannon v. United States	1157
United States v. Trent	1163
D. Jury Instruction Issues: Reasonable Doubt, the <i>Allen</i> Charge, and Implicit Bias	1170
1. Reasonable Doubt	1170
Sandoval v. California	1170
2. The Allen Charge	1177
United States v. Paniagua-Ramos	1178
3. Implicit Bias Instruction	1184
CHAPTER XIV	
Eyewitness Identification	1185
A. Eyewitness Identification and the Right to Counsel	1185
United States v. Wade	1185
Gilbert v. California	1196
Kirby v. Illinois	1198
United States v. Ash	1201
B. Eyewitness Identification and Due Process	1206
Stovall v. Denno	1206
Manson v. Brathwaite	1208
Perry v. New Hampshire	1215
Commonwealth v. Gomes	1221
United States v. Thoreen	1226

xiii

СН	APTER XV	
	e Jury II: Race and Juries	1231
		1231
A.	Race and the Sixth Amendment's Fair Cross-Section Requirement Taylor v. Louisiana	1231
	Duren v. Missouri	1237
R	Bias Challenges to Potential Jurors	1242
ъ.	Ham v. South Carolina	1242
	Ristaino v. Ross	1246
	Turner v. Murray	1250
C.	Race and Peremptory Challenges	1257
	Batson v. Kentucky	1259
	Georgia v. McCollum	1270
	Hernandez v. New York	1277
	Flowers v. Mississippi	1287
D.	Cross-Racial Identifications at Trial	1303
	United States v. Hines	1303
	Commonwealth v. Bastaldo	1308
	People v. Boone	1314
CH	APTER XVI	
Inc	carceration: Bail, Pretrial Detention, and Sentencing	1321
A.	Mass Incarceration	1321
B.	Bail and Pretrial Detention	1322
	Stack v. Boyle	1322
	United States v. Salerno	1326
	United States v. Boustani	1334
	Odonnell v. Harris County, Texas	1337
C.	The Sentencing Guidelines	1341
	Mistretta v. United States	1343
	United States v. Leviner	1351
	Booker v. United States	1357
D.	Race and Sentencing	1368
	Maxwell v. Bishop	1368
	McCleskey v. Kemp	1378
	United States v. Clary	1401
	Belcher v. Connecticut	1421
Tab	le of Cases	1429
Inde	ex	1433