

Preface	xxi
Acknowledgments	xxiii
The Constitution of the United States	xxv
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>	11
<i>Patterson v. Former Chicago Police Lt. Jon Burge</i>	14
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>	32
<i>United States v. Jones</i>	37
1. Open Fields	47
<i>Oliver v. United States</i>	48
<i>United States v. Dunn</i>	53
2. Aerial Searches	56
<i>California v. Ciraolo</i>	57
<i>Florida v. Riley</i>	60
3. Thermal Imaging of Homes	66
<i>Kyllo v. United States</i>	66
4. Searches of Trash	72
<i>California v. Greenwood</i>	72
5. Observation and Monitoring of Public Behavior	76
<i>United States v. Knotts</i>	76
<i>Smith v. Maryland</i>	80
<i>Carpenter v. United States</i>	84
6. Use of Dogs to Sniff for Contraband	93
<i>Illinois v. Caballes</i>	95
<i>Rodriguez v. United States</i>	98
<i>Florida v. Jardines</i>	102
<i>Florida v. Harris</i>	107
C. The Requirement for Probable Cause	111

Contents	xiii
1. What Is Sufficient Belief to Meet the Standard for Probable Cause?	111
<i>Illinois v. Gates</i>	112
<i>Maryland v. Pringle</i>	119
2. Is It an Objective or a Subjective Standard?	121
<i>Whren v. United States</i>	121
3. What if the Police Make a Mistake as to the Law?	125
<i>Heien v. North Carolina</i>	125
D. The Warrant Requirement	130
1. What Information Must Be Included in the Application for a Warrant?	131
2. What Form Must the Warrant Take?	132
<i>Andresen v. Maryland</i>	132
<i>Groh v. Ramirez</i>	136
3. What Are the Requirements in Executing Warrants?	140
a. How May Police Treat Those Who Are Present When a Warrant Is Being Executed?	141
<i>Muehler v. Mena</i>	141
b. Do Police Have to Knock and Announce Before Searching a Dwelling?	145
<i>Wilson v. Arkansas</i>	145
<i>Richards v. Wisconsin</i>	148
c. What If There Are Unforeseen Circumstances or Mistakes While Executing a Warrant?	151
<i>Maryland v. Garrison</i>	151
<i>Los Angeles County, California v. Rettele</i>	154
E. Exceptions to the Warrant Requirement	157
1. Exigent Circumstances	158
a. Hot Pursuit	158
<i>Warden, Maryland Penitentiary v. Hayden</i>	158
<i>Payton v. New York</i>	159
<i>Lange v. California</i>	162
b. Safety	165
<i>Brigham City, Utah v. Stuart</i>	166
c. Preventing Destruction of Evidence	167
<i>Kentucky v. King</i>	168
d. Limits on Exigent Circumstances	174
<i>Missouri v. McNeely</i>	175
<i>Birchfield v. North Dakota</i>	182
<i>Mitchell v. Wisconsin</i>	192
<i>Caniglia v. Strom</i>	199

2. Plain View	201
<i>Coolidge v. New Hampshire</i>	201
<i>Minnesota v. Dickerson</i>	204
3. The Automobile Exception	206
a. The Exception and Its Rationale	206
<i>California v. Carney</i>	207
<i>Collins v. Virginia</i>	210
b. Searches of Containers in Automobiles	215
<i>California v. Acevedo</i>	216
c. Searching Automobiles Incident to Arrest	220
4. Searches Incident to Arrest	220
<i>Chimel v. California</i>	221
<i>Knowles v. Iowa</i>	224
<i>Riley v. California</i>	226
<i>Arizona v. Gant</i>	235
5. Inventory Searches	243
<i>South Dakota v. Opperman</i>	244
<i>Illinois v. Lafayette</i>	247
6. Protective Sweeps	249
<i>Maryland v. Buie</i>	250
7. Consent	253
<i>Schneekloth v. Bustamonte</i>	253
<i>Georgia v. Randolph</i>	260
<i>Fernandez v. California</i>	263
8. Searches When There Are “Special Needs”	270
a. Administrative Searches	271
<i>Camara v. Municipal Court of City and County of San Francisco</i>	271
<i>New York v. Burger</i>	275
<i>City of Los Angeles v. Patel</i>	279
b. Border Crossing	286
<i>United States v. Flores-Montano</i>	286
<i>United States v. Ramsey</i>	289
<i>United States v. Montoya-Hernandez</i>	291
c. Checkpoints	296
<i>Michigan Department of State Police v. Sitz</i>	296
<i>City of Indianapolis v. Edmond</i>	298
d. Schools	303
<i>Safford Unified School District #1 v. Redding</i>	304

Contents	xv
e. The Government Employment Context	312
<i>City of Ontario v. Quon</i>	312
f. Drug Testing	318
<i>Vernonia School District 47J v. Acton</i>	319
<i>Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls</i>	326
<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	345
<i>Maryland v. King</i>	345
9. Searches of Those on Probation and Parole	356
<i>United States v. Knights</i>	357
<i>Samson v. California</i>	359
F. Seizures and Arrests	362
1. Is a Warrant Needed for Arrests?	362
<i>United States v. Watson</i>	362
2. When Is a Person Seized?	366
<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?	382
<i>Atwater v. City of Lago Vista</i>	382
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>	401
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>	408
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	431
<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>	441
I. Excessive Police Force	448
<i>Tennessee v. Garner</i>	448
<i>Graham v. Connor</i>	454
Chapter 3 The Exclusionary Rule and Other Remedies	459
A. Is the Exclusionary Rule a Desirable Remedy for Unconstitutional Police Behavior?	459
<i>Hudson v. Michigan</i>	460
B. The Origins of the Exclusionary Rule	464
<i>Weeks v. United States</i>	464
<i>Mapp v. Ohio</i>	467
C. When Does the Exclusionary Rule Apply?	472
<i>Herring v. United States</i>	472
<i>Davis v. United States</i>	480
D. Who Can Object to the Introduction of Evidence and Raise the Exclusionary Rule?	485
<i>Rakas v. Illinois</i>	485
<i>Minnesota v. Carter</i>	492
<i>Brendlin v. California</i>	495
<i>Byrd v. United States</i>	499
E. Exceptions to the Exclusionary Rule	504
1. Independent Source	505
<i>Murray v. United States</i>	505
2. Inevitable Discovery	510
<i>Nix v. Williams</i>	510
3. Inadequate Causal Connection—Attenuation of the Taint	516
<i>Brown v. Illinois</i>	517
<i>Utah v. Strieff</i>	523
4. The Good Faith Exception to the Exclusionary Rule	531
<i>United States v. Leon</i>	531
5. The Exception for Violations of the Requirement for “Knocking and Announcing”	547

Contents	xvii
F. Suppression Hearings	549
G. Civil Remedies Against the Police	550
1. Suits for Injunctive Relief	550
<i>City of Los Angeles v. Lyons</i>	550
2. Suits for Money Damages	559
<i>Monell v. Department of Social Services</i>	559
<i>Harlow v. Fitzgerald</i>	568
Chapter 4 Police Interrogation and the Privilege Against Self-Incrimination	573
A. Due Process and the Requirement for Voluntariness	574
1. The Requirement for Voluntariness	574
<i>Brown v. Mississippi</i>	575
2. Determining Whether a Confession Is Voluntary	577
a. The Length of the Interrogation and Whether the Defendant Was Deprived of Basic Bodily Needs	577
b. The Use of Force and Threats of Force	577
<i>Arizona v. Fulminante</i>	577
c. Psychological Pressure Tactics	580
<i>Spano v. New York</i>	580
d. Deception	583
e. The Age, Level of Education, and Mental Condition of a Suspect	584
<i>Colorado v. Connelly</i>	584
3. Is the Voluntariness Test Desirable?	589
4. Coercive Questioning, Torture, and the War on Terrorism	589
B. Fifth Amendment Limits on In-Custodial Interrogation: <i>Miranda v. Arizona</i>	590
1. <i>Miranda v. Arizona</i> and Its Affirmation by the Supreme Court	590
<i>Miranda v. Arizona</i>	590
<i>Dickerson v. United States</i>	603
2. Is <i>Miranda</i> Desirable?	607
3. What Are the Requirements for <i>Miranda</i> to Apply?	609
a. When Is a Person “in Custody”?	609
<i>Oregon v. Mathiason</i>	610
<i>J.D.B. v. North Carolina</i>	613
<i>Berkemer v. McCarty</i>	618
b. What Is an “Interrogation”?	622
<i>Rhode Island v. Innis</i>	622
<i>Illinois v. Perkins</i>	629

c. What Is Required of the Police?	632
<i>California v. Prysock</i>	632
<i>Duckworth v. Eagan</i>	635
4. What Are the Consequences of a Violation of <i>Miranda</i> ?	639
<i>Oregon v. Elstad</i>	640
<i>Missouri v. Seibert</i>	645
<i>United States v. Patane</i>	651
5. Waiver of <i>Miranda</i> Rights	655
a. What Is Sufficient to Constitute a Waiver?	655
<i>North Carolina v. Butler</i>	655
<i>Berghuis v. Thompkins</i>	658
<i>Salinas v. Texas</i>	665
b. How Is a Waiver After the Assertion of Rights Treated?	670
<i>Michigan v. Mosley</i>	670
<i>Edwards v. Arizona</i>	673
<i>Minnick v. Mississippi</i>	676
<i>Maryland v. Shatzer</i>	680
<i>Davis v. United States</i>	686
6. What Are the Exceptions to <i>Miranda</i> ?	690
a. Impeachment	690
<i>Harris v. New York</i>	691
b. Emergencies	693
<i>New York v. Quarles</i>	693
c. Booking Exception	700
C. The Sixth Amendment Right to Counsel and Police Interrogations	701
1. The Sixth Amendment Right to Counsel During Interrogations	701
<i>Massiah v. United States</i>	701
<i>Brewer v. Williams</i>	706
2. The Sixth Amendment Right to Counsel Is Offense Specific	711
<i>Texas v. Cobb</i>	712
3. Waivers	716
<i>Montejo v. Louisiana</i>	716
4. What Is Impermissible Police Eliciting of Statements?	725
<i>United States v. Henry</i>	725
<i>Kuhlmann v. Wilson</i>	729
D. The Privilege Against Self-Incrimination in Other Contexts	732
1. What Are the Requirements for the Privilege Against Self-Incrimination to Apply?	733
a. Only Individuals May Invoke the Privilege	733

Contents	xix
b. The Privilege Applies Only to That Which Is Testimonial	733
<i>Schmerber v. California</i>	733
c. There Must Be Compulsion	736
d. There Must Be the Possibility of Incrimination	737
2. When May the Government Require the Production of Documents and Other Things?	740
<i>Fisher v. United States</i>	741
3. May the Government Require Testimony If It Provides Immunity?	746
<i>Kastigar v. United States</i>	746
<i>United States v. Hubbell</i>	750
Chapter 5 Identification Procedures	755
A. The Right to Counsel	756
1. The Right to Counsel in Lineups	756
<i>United States v. Wade</i>	756
2. Limits on the Right to Counsel in Identification Procedures	766
<i>Kirby v. Illinois</i>	766
<i>United States v. Ash</i>	770
B. Due Process Protection for Identification Procedures	776
1. Unnecessarily Suggestive Identification Procedures by Police Violate Due Process	776
<i>Foster v. California</i>	778
2. Limits on the Ability of Courts to Find That Identification Procedures Violate Due Process	780
<i>Simmons v. United States</i>	781
<i>Neil v. Biggers</i>	783
<i>Manson v. Brathwaite</i>	787
3. Requirement That Police Be Involved in Creating the Suggestive Identification Procedure	793
<i>Perry v. New Hampshire</i>	793
Chapter 6 Right to Counsel	799
A. Introduction	799
B. Appointment of Counsel	800
<i>Gideon v. Wainwright</i>	800
C. When the Right to Counsel Applies	803
<i>Argersinger v. Hamlin</i>	804
D. Standard for “Effective Assistance” of Counsel	807
<i>Strickland v. Washington</i>	807

xx	Contents
1. Conflicts of Interest	818
2. Complete Denial of Counsel	819
3. Strategic Decisions by Defense Counsel	819
<i>Florida v. Nixon</i>	820
<i>McCoy v. Louisiana</i>	823
4. Right to Retain Counsel	828
5. Right to Retain Experts	829
E. Right of Self-Representation	830
<i>Faretta v. California</i>	830
<i>Indiana v. Edwards</i>	838
F. Right of Counsel for Enemy Combatants	842
Table of Cases	843
Index	853