TABLE OF CONTENTS

PREFACE iii
TABLE OF CASES xxi

Introduction: The Criminal Justice Process 1

PART ONE Investigation of Crime 9

Editors' Introduction: Federal and State Constitutional Provisions Affecting Law Enforcement Conduct 10

CHAPTER 1 The Exclusionary Sanction 13

Editors' Introduction: Exclusionary Rules 13
A. Adoption of the Federal Constitutional Exclusionary Sanction 15
Mapp v. Ohio 16
Notes 21
B. Scope of Exclusionary Sanctions: Standing, Fruit of the Poisonous Tree, Independent Source and Attenuation of the Taint 26
Editors' Introductory Note: Exclusionary Sanction Issues, Requirements and Exceptions 26
Wong Sun v. United States 27
Notes 32
C. Exceptions to Exclusionary Requirements 39
Editors' Introduction: Exclusionary Sanction Exceptions 39
United States v. Leon 40
Notes 51

CHAPTER 2 Constitutional Doctrines Relating to Law Enforcement Conduct 57

A. Scope of the Basic Doctrines 58
Schmerber v. California 58
Notes 64
B. The Fourth Amendment's Prohibition Against Unreasonable Searches and Seizures 68
Editors' Introduction: Private Party Searches and Seizures 68
1. Police Activity Constituting a "Search" 69
Editors' Introduction: The Katz Criterion for Identifying Searches and the Reasonableness of Searches 69
a. Entry Onto "Open Fields" 75
Oliver v. United States 75
Note: The Protected Curtilage 85
b. Aerial and Other Observations 86
Florida v. Riley 86
Notes 92
2. Definition and Reasonableness of Activity Constituting a "Seizure" of Property 94

Editors' Introduction: Seizures of Items Under Fourth Amendment Law ---- 94
Horton v. California ---- 98
Note ---- 104
3. Applying the "Standing" Requirement ---- 104
Rakas v. Illinois ---- 105
Notes ---- 111

CHAPTER 3 Issuance and Execution of Arrest and Search Warrants ---- 115

Editors' Introduction: Warrants, Their Use, and Basic Fourth Amendment Requirements ---- 115
A. The Showing of Probable Cause ---- 120
1. The Initial Showing Before the Magistrate ---- 120
Editors' Introduction: The "Probable Cause" Showing ---- 120
Illinois v. Gates ---- 122
Note: Assertions of Law Enforcement "Knowledge" ---- 131
2. Challenging Factual Statements in the Affidavit ---- 132
Franks v. Delaware ---- 132
Notes ---- 142
B. Entering the Premises and Other Limits on Execution of Warrants 144
Editors' Introduction: Announcement Demands and Other Requirements for Execution of Warrants ---- 144
Richards v. Wisconsin ---- 148
Notes and Questions ---- 152
C. Particularity Demanded of Warrants and Related Limits on Execution of Warrants ---- 158
Editors' Introduction: Particularity and Its Effect on Execution of the Warrant ---- 158
Maryland v. Garrison ---- 161
Notes ---- 168

CHAPTER 4 Detentions of Persons and Related Searches ---- 171

Editors' Introduction: Detentions, Seizures and Their Characterization ---- 172
A. Determining Whether a Person is Detained or Seized ---- 172
Editors' Introduction: Defining "Seizures" of the Person ---- 172
California v. Hodari D. ---- 173
Note: Seizure of a Stationary Suspect ---- 178
B. Arrests and Associated Searches ---- 179
Editors' Introduction: Arrests and Their Validity ---- 179
1. Searches Incident to Arrests ---- 187
Editors' Introduction: Searches Incident to Arrests and Those Part of Stationhouse Processing ---- 187
Chimel v. California ---- 189
Notes ---- 193
2. "Incidental" Searches of Vehicles ---- 195
New York v. Belton ---- 195
C. Field Detentions for Investigation and Related Searches ---- 199
Editors' Introduction: Terry "Stops" and "Frisks" ---- 199

1. Field Detentions 205
Editors' Introduction: Reasonable Suspicion 205
Florida v. Royer 214
Notes 218
2. Weapon Searches 221
Editors' Introduction: Searching for Weapons on Less Than Probable Cause 221
Minnesota v. Dickerson 224
Notes 228
D. Traffic Stops 230
Editors' Introduction: Traffic Stops as a Distinguishable Type of Detention 230
Knowles v. Iowa 233
Notes 236
State v. Soto 240
E. Sobriety Checkpoints and Related Detentions 245
Editors' Introduction: Suspicionless Stops 245
Michigan v. Sitz 247
Note 252
F. Pretext Motivation 252
Whren v. United States 253
Note: Pretext Motivation Under State Law 257

CHAPTER 5 "Warrantless" Searches 259

Editors' Introduction: Exceptions to Benchmark Fourth Amendment Requirements 260
A. The Emergency Doctrine 261
Vale v. Louisiana 262
Notes 265
B. Administrative Inspections and Searches of Licensed Premises 266
Editor's' Introduction: "Administrative" Housing Code Inspections 266
New York v. Burger 268
Notes 278
C. Consent Searches 279
1. The Effectiveness of Consent 280
Schneckloth v. Bustamonte 280
Notes 289
2. Authority to Consent: "Third Party" Consents 291
Editors' Introduction: Consents Given By Third Parties 291
Illinois v. Rodriguez 293
Note 299
3. Scope of Consent 299
Florida v. Jimeno 299
D. Searches and Seizures of Vehicles 302
1. The "Vehicle" Exception to the Search Warrant Requirements 302
Editors' Introduction: "Automobile" or "Vehicle" Exception 302
Chambers v. Maroney 304
Notes 308
2. Searches of Containers Found in Vehicles 309
California v. Acevedo 310
Note: Containers Belonging to Passengers 316
3. Seizure and Inventory of Vehicles 318

Editors' Introduction: Impoundment of Vehicles and Inventorying of Impounded Vehicles ... 318
Colorado v. Bertine ... 321
Note: Required Standardized Procedures ... 326
E. Searches and Seizures at or Near International Borders ... 327
1. Enforcement Activity at the International Border ... 328
United States v. Montoya de Hernandez ... 329
2. Border–Related Enforcement Activity ... 337
United States v. Martinez–Fuerte ... 338
Notes: ''Roving'' Patrols ... 347
F. Extraordinarily Intrusive Searches ... 348
Winston v. Lee ... 349

CHAPTER 6 Electronic Surveillance ... 355

A. The Constitutional Background ... 356
Editors' Note: Background of Federal and State Electronic Surveillance Law ... 356
B. The Federal Statute and Its Application ... 358
Editors' Introduction: a Summary of the Federal Electronic Communications Privacy Act (''Title III'') ... 358
Notes ... 368
United States v. Kahn ... 370
Notes ... 375

CHAPTER 7 Interrogation and Confessions ... 379

Editors' Introduction: Confessions and Confessions Law in the Context of Modern Law Enforcement ... 380
A. The Requirement of ''Voluntariness'' ... 386
Editors' Introduction: Development, Content, and Current Signature of the Voluntariness Requirement ... 386
Colorado v. Connelly ... 393
Notes ... 397
B. Self–Incrimination and Miranda's Right to Counsel ... 400
1. The Miranda Decision ... 401
Editors' Introduction: The Miranda Rights ... 401
Miranda v. Arizona ... 402
Notes ... 413
2. Applicability of Miranda ... 416
Editors' Introduction: ''Threshold'' Issues and Exceptions ... 416
a. The Requirement of ''Interrogation'' ... 418
Rhode Island v. Innis ... 418
Notes ... 424
b. The Requirement of ''Custody'' ... 425
Editors' Introduction: Miranda's Custody Prerequisite ... 425
Berkemer v. McCarty ... 428
Notes ... 433
3. The Right to Prevent Questioning ... 434
Editors' Introduction: Suspects' Right Under Miranda To Avoid Interrogation ... 434
Davis v. United States ... 439
Notes ... 446
4. Waiver of the Miranda Rights ... 448

Editors' Introduction: Waiver Issues 448
Moran v. Burbine 454
Notes 463
5. "Fruits" of an Inadmissible Confession 466
Oregon v. Elstad 466
6. Legislative "Modification" of Miranda 476
Editors' Introduction: The Effect of Miranda 476
United States v. Dickerson 483
Notes 488
C. Sixth Amendment Right to Counsel 490
Editors' Introduction: Sixth Amendment Right to Counsel During Police Questioning 490
Patterson v. Illinois 495
Note 503

CHAPTER 8 Undercover Investigations 504

Editors' Introduction: Undercover Law Enforcement Activities and Special Concern 504
A. Entrapment 505
United States v. Russell 506
Notes 514
B. Elicitation of Self–Incriminating Statements 519
Editors' Introduction: Application of the Fifth and Sixth Amendments to Undercover Investigations 519
United States v. Henry 521
Notes 528
C. Undercover Surveillance as a "Search" (and Related Matters) 529
Hoffa v. United States 530
Notes 533

CHAPTER 9 Grand Jury Investigative Functions 536

Editors' Introduction: Grand Jury Investigative Powers 536
A. The Subpoena Power 541
United States v. Dionisio 541
United States v. Mara 545
Notes 549
B. Questioning and the Privilege Against Compelled Self–Incrimination 555
United States v. Washington 555
Notes 561

CHAPTER 10 Eyewitness Identification 566

Editors' Introduction: The Persuasive Powers and Risks of Eyewitness Identification 566
A. Constitutional Issues 570
Editors' Introduction: The Supreme Court's Eyewitness Trilogy 570
1. Assistance of Counsel 571
United States v. Wade 571
Notes 578
2. Prohibition Against Impermissibly Suggestive Procedures 580

Editors' Introduction: The Due Process Prohibition Against Excessive Suggestiveness ---- 580
Manson v. Brathwaite ---- 581
Note: Independent Source ---- 588
B. Evidentiary and Procedural Safeguards Against Unreliable Eyewitness Testimony ---- 589
Editors' Introduction: Expert Testimony and Jury Instructions as Safeguards Against Mistaken Eyewitnesses ---- 589
State v. Cromedy ---- 594
Note ---- 601

PART TWO Prosecution and Adjudication ---- 603

CHAPTER 11 The Initial Appearance and Detention ---- 605

Gerstein v. Pugh ---- 607
Notes ---- 614

CHAPTER 12 Bail and Preventive Detention ---- 616

Editors' Introduction: The Money Bail System ---- 616
A. The Movement Away From Money Bail ---- 620
Schilb v. Kuebel ---- 623
Notes ---- 629
B. The Movement for Preventive Pretrial Detention and the Bail Reform Act of 1984 ---- 630
United States v. Salerno ---- 636
Notes ---- 644
United States v. Jessup ---- 646
Notes ---- 658

CHAPTER 13 Discretion to Prosecute ---- 661

A. The Prosecutor's Charging Decisions ---- 661
B. Limits on Prosecutorial Discretion ---- 666
Wayte v. United States ---- 667
Notes ---- 674

CHAPTER 14 The Preliminary Examination and the Grand Jury ---- 679

A. The Preliminary Examination ---- 681
Coleman v. Alabama ---- 683
Myers v. Commonwealth ---- 686
Notes ---- 691
B. The Grand Jury ---- 695
Costello v. United States ---- 697
Notes ---- 699

CHAPTER 15 Right to a Speedy Trial ---- 706

A. Sixth Amendment Speedy Trial Guarantee ---- 706

Barker v. Wingo 706
Notes 716
B. Federal Speedy Trial Act 721
Editors' Introduction: Outline of the Statute 721
United States v. Taylor 722
Notes 730

CHAPTER 16 Competency to Stand Trial 732

A. The Duty to Inquire Into Competency 735
Pate v. Robinson 735
Notes 740
B. Processing of Incompetent Defendants 743
Jackson v. Indiana 743
Notes 750

CHAPTER 17 Discovery and Disclosure 753

Editors' Introduction: Issues Under Modern Discovery Provisions 753
A. Prosecutorial Disclosure 758
Federal Rules of Criminal Procedure 758
Note 759
1. Constitutional Obligations 759
United States v. Bagley 759
Notes 770
2. Statutory Considerations 775
People v. Bassett 775
Notes 778
B. Disclosure by the Defense 780
Editors' Introduction: Defense Disclosure Provisions 780
United States v. Nobles 783
Notes 785

CHAPTER 18 Right to an Impartial Trial 788

Editors' Introduction: Change of Venue and of Judge 788
Murphy v. Florida 790
Notes 796

CHAPTER 19 Joinder and Severance of Charges and Defendants 808

A. Joinder and Severance of Charges 809
United States v. Foutz 809
Notes 815
B. Joinder and Severance of Defendants 816
Schaffer v. United States 816
Notes 819

CHAPTER 20 Double Jeopardy 824

Editors' Introduction: The Interests Protected 824
Raising and Resolving Double Jeopardy Issues 825

Attachment of Jeopardy 828
"Separate Sovereignties" Exception 828
Government Appeal 831
A. Former Acquittal 834
Burks v. United States 834
Notes 838
Ashe v. Swenson 849
Notes 852
B. Multiple Convictions 855
Brown v. Ohio 855
Notes 859
Missouri v. Hunter 860
Notes 865
United States v. Dixon 869
C. Termination Without Acquittal or Conviction 882
Editors' Introduction: Development of Jeopardy Protection Against Aborted Prosecutions 882
1. Mistrials 884
Illinois v. Somerville 884
Notes 889
2. Dismissals and Similar Matters 892
United States v. Scott 892
Note 896
D. Forfeiture of Property Associated with the Commission of Criminal Offenses 897
United States v. Ursery 897
Note 913

CHAPTER 21 Pretrial Hearings and Related Matters 915

Editors' Introduction: The Procedural Context of Pretrial Hearings 915
Obligation to Raise Matters Pretrial 915
Determination of Matters Raised by Pretrial Motion 916
Appeal 916
Federal Constitutional Right to Pretrial Resolution of Certain Matters 917
Omnibus Hearing Proposals 917
Watkins v. Sowders 918
Notes 924

CHAPTER 22 Adjudication of Guilt by Plea 929

A. Entry of the Plea of Guilty 930
Editors' Introduction: Structures for Plea Acceptance 930
Federal Rules of Criminal Procedure 934
Notes 937
Boykin v. Alabama 939
Notes 941
B. Effect of a Guilty Plea on Later Assertion of Rights 943
Blackledge v. Perry 944
Menna v. New York 947
Notes 948
C. Plea Bargaining 949
1. Practices and Controversies 951
Newman, Reshape the Deal 951

National Advisory Commission on Criminal Justice Standards and Goals ... 956
Notes ... 956
2. "Voluntariness" of Pleas and Related Matters ... 957
a. Basic Voluntariness Considerations ... 957
Brady v. United States ... 957
Notes ... 967
Bordenkircher v. Hayes ... 969
Notes ... 975
b. Trial Judge Participation ... 977
Frank v. Blackburn ... 977
Notes ... 981
c. Pleading Guilty Without Admitting Guilt ... 982
North Carolina v. Alford ... 982
Notes ... 985
3. Role of the Trial Judge in Accepting or Rejecting the Plea ... 985
United States v. Ammidown ... 986
Notes ... 990
4. The Necessity of Respecting a Bargain Once Made ... 991
Santobello v. New York ... 991
United States v. Benchimol ... 994
Notes ... 996
5. Efforts to Abolish Plea Bargaining ... 999
California Penal Code (1982) ... 999
Notes ... 1000

CHAPTER 23 Adjudication of Guilt or Innocence by Trial ... 1002

A. Proof Beyond a Reasonable Doubt ... 1003
Mullaney v. Wilbur ... 1005
Notes ... 1009
B. Right to a Trial by Jury ... 1018
1. Prosecutions to Which the Right Applies ... 1019
Duncan v. Louisiana ... 1019
Notes ... 1024
2. Composition of the Jury ... 1026
Powers v. Ohio ... 1026
Notes ... 1036
3. The Jury Size and Agreement Required ... 1043
Apodaca v. Oregon ... 1043
Notes ... 1050
C. Confrontation, Cross–Examination and Compulsory Process to Obtain Witnesses ... 1053
1. Confrontation ... 1053
Maryland v. Craig ... 1054
Notes ... 1068
2. Cross–Examination and Compulsory Process to Obtain Witnesses ... 1078
Chambers v. Mississippi ... 1078
Notes ... 1082
D. Exercise at Trial of the Privilege Against Compelled Self–Incrimination ... 1086
1. Comment Upon and Inferences From the Failure to Testify ... 1086
Carter v. Kentucky ... 1087

Notes ... 1092
2. Waiver ... 1093
United States v. Hearst ... 1094
Notes ... 1099

CHAPTER 24 Effective Assistance of Counsel ... 1101

A. The Right to have Counsel be "Effective" ... 1102
United States v. Cronic ... 1102
Notes ... 1109
Strickland v. Washington ... 1111
Notes ... 1124
B. Self–Representation and Waiver of Sixth Amendment Rights ... 1130
Faretta v. California ... 1132
Note ... 1141

CHAPTER 25 Sentencing ... 1143

A. Sentencing Goals ... 1144
B. Structuring the Sentencing System ... 1146
1. The Problem of Discretion in Sentencing ... 1148
Frankel, Lawlessness in Sentencing ... 1148
2. Controlling Sentencing Discretion by Appellate Review ... 1150
a. Appellate Review of Sentencing Considerations ... 1151
United States v. Grayson ... 1151
Notes ... 1153
b. Appellate Review of the Sentences Imposed ... 1158
Solem v. Helm ... 1159
Notes ... 1169
3. Reducing Discretion by "Determinate" Sentencing ... 1171
a. State Reforms ... 1172
Hussey and Lagoy, The Impact of Determinate Sentencing Structures ... 1172
Notes ... 1174
b. Federal Reform: The Sentencing Reform Act of 1984 ... 1177
Mistretta v. United States ... 1178
Notes ... 1185
C. Procedural Issues in Sentencing ... 1189
1. Development of Sentencing Information ... 1190
Fennell and Hall, Due Process at Sentencing: An Empirical and Legal Analysis of the Disclosure of Presentence Reports in Federal Courts ... 1190
Gardner v. Florida ... 1193
Notes ... 1198
2. Defense Counsel's Role ... 1200
Mempa v. Rhay ... 1200
Notes ... 1202
3. Prosecutor's Role ... 1205
Teitelbaum, The Prosecutor's Role in the Sentencing Process: A National Survey ... 1205
D. Alternatives or Supplements to Incarceration ... 1207
1. Probation ... 1207
Notes ... 1212

Black v. Romano 1214
Petersilia, Turner, Kahan and Peterson, Granting Felon's Probation V–XIII (1985) 1217
2. Fines 1220
Notes 1221
3. Restitution 1222
Hughey v. United States 1229
Notes 1232
4. Involuntary Commitment of "Sexual Predators" 1233
Kansas v. Hendricks 1233
5. Enhanced Punishment Under Recidivist Provisions 1247
Almendarez-Torres v. United States 1247

CHAPTER 26 Appeal and Collateral Attack 1257

A. The Context: Tension Between Appellate Caseload and Post Conviction Remedies 1258
B. Appeal 1259
Editors' Introduction: Structures for Direct Appeal 1259
Ross v. Moffitt 1261
Notes 1263
C. Collateral Attack 1271
Editors' Introduction: Structures for Collateral Attack 1271
Notes 1276
Wainwright v. Sykes 1280
Notes 1284
Felker v. Turpin 1290

INDEX 1299

*