

CRIMINAL JUSTICE SERIES

Roger Wright

CRIMINAL PROCEDURE

From the Courtroom to the Street

SECOND EDITION

Roger Wright

Preparing the student for a career in criminal justice, **CRIMINAL PROCEDURE: From the Courtroom to the Street, Second Edition**, was written with the undergraduate in mind. Drawing on extensive experience as a police officer and practicing criminal defense attorney, author Roger Wright knows that criminal justice professionals need an integrated understanding of legal theory, procedure, and practice. Whether making an arrest, collecting evidence, or conducting an interrogation, they must be able to make sound legal decisions in action. The thoroughly updated Second Edition not only teaches the law, but also offers students an understanding of how the law is actually applied in the field and in the courtroom.

**Criminal Procedure: From the Courtroom to the Street, Second Edition, features:**

- **On the Street** hypotheticals exemplify the decisions and actions of criminal justice professionals in a variety of scenarios.
- **Key appellate cases are presented in a straightforward style** to convey a practical understanding of criminal procedure.
- Readable text is focused on the **legal decision-making skills** needed when making an arrest, collecting evidence, or conducting an interrogation.

- **Logically organized into topic areas that are pertinent to the actual work of criminal justice professionals:**
  - Section I provides an **overview of the criminal justice process**
  - Section II covers **search and seizure**
  - Section III surveys the issues surrounding **the spoken word as evidence**.
  - Section IV delves into **several constitutional issues that impact how criminal procedure unfolds in the courtroom**

**New to the Second Edition:**

- **Updated with new cases**
- **New *Something to Ponder* questions** added to every chapter to encourage critical thinking about the concepts and issues.
- **Coverage of current issues**, including presidential pardons, cell service location, sentencing guidelines, sex offense registry and the Cosby case, and lethal injections.

10053023-0002



[www.WKLegaledu.com](http://www.WKLegaledu.com)



Wright

CRIMINAL PROCEDURE

From the Courtroom to the Street

SECOND EDITION

CRIMINAL PROCEDURE

From the Courtroom to the Street

SECOND EDITION



 Wolters Kluwer

# Criminal Procedure

## **EDITORIAL ADVISORS**

**Alida V. Merlo**

Indiana University of Pennsylvania

**George E. Higgins**

University of Louisville

**G. Larry Mays**

New Mexico State University

Criminal Justice Series

# Criminal Procedure

## From the Courtroom to the Street

### Second Edition

**Roger Wright**

Professor Emeritus  
School of Criminal Justice  
University of Cincinnati

 Wolters Kluwer

Copyright © 2019 CCH Incorporated.

Published by Wolters Kluwer in New York.

Wolters Kluwer Legal & Regulatory U.S. serves customers worldwide with CCH, Aspen Publishers, and Kluwer Law International products. ([www.WKLegaledu.com](http://www.WKLegaledu.com))

No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopy, recording, or utilized by any information storage or retrieval system, without written permission from the publisher. For information about permissions or to request permissions online, visit us at [www.wolterskluwerlb.com](http://www.wolterskluwerlb.com), or a written request may be faxed to our permissions department at 212-771-0803.

Cover Image: Image Depot Pro/Istock

To contact Customer Service, e-mail [customer.service@wolterskluwer.com](mailto:customer.service@wolterskluwer.com), call 1-800-234-1660, fax 1-800-901-9075, or mail correspondence to:

Wolters Kluwer  
Attn: Order Department  
PO Box 990  
Frederick, MD 21705

Printed in the United States of America.

1 2 3 4 5 6 7 8 9 0

ISBN 978-1-5438-0021-0

**Library of Congress Cataloging-in-Publication Data**

Names: Wright, Roger, 1953- author.

Title: Criminal procedure : from the courtroom to the street / Roger Wright,

Professor Emeritus, School of Criminal Justice, University of Cincinnati.

Description: New York : Wolters Kluwer, [2019] | Series: Criminal justice series |

Includes bibliographical references and index.

Identifiers: LCCN 2018056750 | ISBN 9781543800210

Subjects: LCSH: Criminal procedure—United States.

Classification: LCC KF9619.85 .W75 2019 | DDC 345.73/05—dc23

LC record available at <https://lcn.loc.gov/2018056750>

## About Wolters Kluwer Law & Business

Wolters Kluwer Legal & Regulatory US delivers expert content and solutions in the areas of law, corporate compliance, health compliance, reimbursement, and legal education. Its practical solutions help customers successfully navigate the demands of a changing environment to drive their daily activities, enhance decision quality and inspire confident outcomes.

Serving customers worldwide, its legal and regulatory portfolio includes products under the Aspen Publishers, CCH Incorporated, Kluwer Law International, ftwilliam.com and MediRegs names. They are regarded as exceptional and trusted resources for general legal and practice-specific knowledge, compliance and risk management, dynamic workflow solutions, and expert commentary.



# Summary of Contents

*Table of Contents* ix

*Preface* xxi

*Acknowledgments* xxiii

*About the Author* xxv

## Section I: Foundations of Criminal Procedure

- Chapter 1** Introduction to Criminal Procedure 5
- Chapter 2** The Appellate Process 17
- Chapter 3** The History and Development of Due Process 29
- Chapter 4** The Exclusionary Rule 37

## Section II: Search and Seizure

- Chapter 5** Search and Seizure of Persons 53
- Chapter 6** Stop and Frisk 73
- Chapter 7** Investigative Detentions and Searches 87
- Chapter 8** Search and Seizure of Evidence 101
- Chapter 9** Consent Searches 123
- Chapter 10** Vehicle Searches 135

## Section III: Self-Incrimination

- Chapter 11** The Spoken Word as Evidence 151
- Chapter 12** The Application of the *Miranda* Warnings 167
- Chapter 13** Identification Procedures 185

## Section IV: Constitutional Issues

- Chapter 14** The Right to Trial 197
- Chapter 15** Double Jeopardy 213
- Chapter 16** The Right to Counsel 221
- Chapter 17** Bail and Pretrial Detention 231
- Chapter 18** Sentencing and Punishment 237
- Chapter 19** The Death Penalty 255

*Legal Terminology List* 265

*Table of Cases* 271

*Index* 273





# Contents

*Preface* xxi

*Acknowledgments* xxiii

*About the Author* xxv



## **Section I** **Foundations of Criminal Procedure**

### **Chapter 1: Introduction to Criminal Procedure 5**

Sources of Law 5

The U.S. Constitution and Bill of Rights 5

State Constitutions 5

Appellate Courts 6

The U.S. Supreme Court 6

Statutory Law 7

State Versus Federal Procedure 7

Criminal Versus Civil Law 8

The Criminal Justice Process: Investigation to Sentencing 9

Investigation 9

Arrest 9

Initial Appearance/Bail Hearing/Arraignment 10

Preliminary Hearing 10

Grand Jury 11

Felony Arraignment 11

Pretrial Motions 12

Plea Bargaining 12

Trial 13

Sentencing 13

Misdemeanor Trial Process 15

**Summary 15**

**Review Questions 16**

**Legal Terminology 16**

**References 16**

## **Chapter 2: The Appellate Process    17**

The Federal Appellate Court Structure	19
The Federal Trial Courts	19
U.S. Court of Appeals	19
U.S. Supreme Court	20
State Appellate Structure	20
State Appeals to the U.S. Supreme Court	21
The Role of the Executive Branch	22
Habeas Corpus	23
The U.S. Supreme Court and Criminal Procedure	24
How Does the U.S. Supreme Court Develop a Rule of Criminal Procedure?	24
The Decision Process	25
How to Read a Case Opinion	25
<i>Miranda v. Arizona</i>	25
<b>Summary</b>	<b>27</b>
<b>Review Questions</b>	<b>27</b>
<b>Legal Terminology</b>	<b>27</b>
<b>References</b>	<b>28</b>

## **Chapter 3: The History and Development of Due Process    29**

<i>Brown v. Mississippi, 297 U.S. 278 (1936)</i>	30
What Is Due Process?	32
Due Process and Illegal Search	33
<i>Rochin v. California, 342 U.S. 165 (1952)</i>	33
The Application of the Individual Rights to the States	34
<b>Summary</b>	<b>35</b>
<b>Review Questions</b>	<b>35</b>
<b>Legal Terminology</b>	<b>36</b>
<b>References</b>	<b>36</b>

## **Chapter 4: The Exclusionary Rule    37**

The Origin of the Exclusionary Rule	37
The History of the Exclusionary Rule	38
<i>Mapp v. Ohio, 367 U.S. 643 (1961)</i>	39
The Fruit of the Poisonous Tree Doctrine	40
The Exceptions to the Exclusionary Rule	41

Attenuation Doctrine	41
<i>Utah v. Strieff</i> , 579 U.S. ____ (2016)	42
Good Faith Exception	42
Independent Source Exception	44
<i>Segura v. United States</i> , 468 U.S. 796 (1984)	44
Ultimate and Inevitable Discovery	45
<i>Nix v. Williams</i> , 467 U.S. 431 (1984)	45
Collateral Use Exceptions	47
Civil Cases	47
Evidence Obtained by Private Citizens	48
<b>Summary</b>	<b>49</b>
<b>Review Questions</b>	<b>49</b>
<b>Legal Terminology</b>	<b>50</b>
<b>References</b>	<b>50</b>



## Section II Search and Seizure

### Chapter 5: Search and Seizure of Persons 53

Probable Cause	53
Probable Cause as It Applies to an Arrest	53
Sources of Probable Cause	55
The Role of Statutory Law in the Probable Cause Arrest Decision	56
Arrest by Private Citizens	56
Arrest Warrants	57
The Search Authority of an Arrest Warrant	57
<i>Maryland v. Buie</i> , 494 U.S. 325 (1990)	57
Exigent Circumstances Relating to Arrests	58
Hot Pursuit	58
<i>United States v. Santana</i> , 427 U.S. 38 (1976)	59
Danger to Persons	59
<i>Michigan v. Fisher</i> 130 S. Ct. 546 (2009)	60
Escape of Suspect	61
Immediate Destruction of Evidence	61
Search Incidental to Arrest	61
<i>United States v. Robinson</i> , 414 U.S. 218 (1973)	62
Search Within the Immediate Reach and Control	64

<i>Vale v. Louisiana</i> , 399 U.S. 30 (1970)	64
Search of Contents of Cell Phones	66
<i>David Leon Riley v. California</i> , 573 U.S. 373 (2014)	66
United States v. Brima Wurie, 573 U.S. 373 (2014)	66
Detention Facility Search	68
Search of Closed Containers	68
Blood Extraction	68
<i>Schmerber v. California</i> , 384 U.S. 757 (1966)	69
Exigent Circumstances: Immediate Destruction of Evidence	69
<i>Cupp v. Murphy</i> , 412 U.S. 291 (1973)	70
<b>Summary</b>	<b>71</b>
<b>Review Questions</b>	<b>71</b>
<b>Legal Terminology</b>	<b>72</b>
<b>References</b>	<b>72</b>

## **Chapter 6: Stop and Frisk 73**

<i>Terry v. Ohio</i> , 392 U.S. 1 (1968)	73
Step One: Reasonable Suspicion	75
Step Two: Identification as a Police Officer	76
Step Three: Stop	76
Step Four: General Inquiry	77
Legal Issue: Are There Any <i>Miranda</i> Problems Associated with Asking the Suspect Questions?	78
Is the Suspect Required to Answer the Officer's Questions?	78
Step Five: The Officer's Fears Are Not Dispelled	78
Step Six: Frisk	79
Step Seven: If Weapon Found, Search	80
The Expansion of Stop and Frisk	81
<i>United States v. Sokolow</i> , 490 U.S. 1 (1989)	81
Stop and Frisk and Motor Vehicles	82
The Frisk and Probable Cause	83
<i>Minnesota v. Dickerson</i> , 508 U.S. 366 (1993)	84
<b>Summary</b>	<b>85</b>
<b>Review Questions</b>	<b>85</b>
<b>Legal Terminology</b>	<b>86</b>
<b>References</b>	<b>86</b>

## Chapter 7: Investigative Detentions and Searches 87

Traffic Stops 87

Traffic Offenses 87

*Maryland v. Wilson*, 519 U.S. 408 (1997) 88

Reasonable Suspicion Stops 89

*Alabama v. White*, 496 U.S. 325 (1990) 89

Pretextual Stops 90

*Rodriguez v. United States* 575 U.S. 135 S. Ct. 1609 (2015) 91

Sobriety Checkpoints 91

*Michigan Department of State Police v. Sitz*, 496 U.S. 444 (1990) 92

Drug Checkpoints 93

Criminal Apprehension Roadblocks 94

Immigration Checkpoints 94

Border Searches 95

*United States v. Montoya de Hernandez*, 473 U.S. 531 (1985) 95

**Summary 98**

**Review Questions 98**

**Legal Terminology 98**

**References 99**

## Chapter 8: Search and Seizure Evidence 101

Categories of Items Subject to Search 101

Contraband 101

Instrumentalities of a Crime 102

Fruits of a Crime 102

Evidence 102

Reasonable Expectation of Privacy 102

*Katz. v. United States*, 389 U.S. 347 (1967) 102

*Bond v. United States*, 529 U.S. 334 (2000) 104

Abandoned Property 105

*Greenwood v. California*, 486 U.S. 35 (1988) 105

Plain View, Plain Hearing, and Plain Touch 107

Plain View 107

*United States v. Montgomery Gray*, 78 F.Supp.2d 524 (1999) 108

Plain Hearing 109

Plain Smell 109

Plain Feel 110

Open Fields Doctrine	110
<i>Oliver v. United States</i> , 466 U.S. 170 (1984)	111
Technology and Privacy	112
<i>United States v. Knotts</i> , 460 U.S. 276 (1983)	113
<i>Kyllo v. United States</i> , 533 U.S. 27 (2001)	114
<i>United States v. Jones</i> , 565 U.S. 400, 132 S. Ct. 945 (2012)	115
Public Exposure to Technology	116
Cell-Site Location Information	117
<i>Carpenter v. United States</i> , 585 U.S. ____ (2018)	118
<b>Summary</b>	<b>119</b>
<b>Review Questions</b>	<b>120</b>
<b>Legal Terminology</b>	<b>121</b>
<b>References</b>	<b>121</b>

## **Chapter 9: Consent Searches    123**

Standing	123
Landlord and Tenant	124
Hotels	124
<i>Stoner v. California</i> , 376 U.S. 483 (1964)	125
Shared Standing	125
Cotenants	126
Consent to Search Motor Vehicles	128
Voluntary	129
<i>Schneckloth v. Bustamonte</i> , 412 U.S. 218 (1973)	129
Knowingly	130
Scope of the Consent	130
<i>United States v. Russell</i> , 664 F.3d 1279 (2012)	131
Written Consent	132
Consent by Notice	132
Administrative Searches	132
<b>Summary</b>	<b>133</b>
<b>Review Questions</b>	<b>133</b>
<b>Legal Terminology</b>	<b>134</b>
<b>References</b>	<b>134</b>

## **Chapter 10: Vehicle Searches    135**

Probable Cause Search—Motor Vehicle	136
<i>United States v. Ross</i> , 456 U.S. 798 (1982)	136
<i>Chambers v. Maroney</i> , 399 U.S. 42 (1970)	138

Curtilage Searches of Motor Vehicles	139
<i>Collins v. Virginia</i> , 584 U.S. ____ (2018)	139
Inventory Searches	140
<i>South Dakota v. Opperman</i> , 428 U.S. 364 (1976)	140
Area Within Immediate Reach and Control—Motor Vehicles	141
<i>Arizona v. Gant</i> , 556 U.S. 332 (2009)	141
Recreational Vehicles	142
<i>California v. Carney</i> , 471 U.S. 386 (1985)	143
<i>Rental Vehicles</i>	143
<i>Byrd v. United States</i> , 584 U.S. ____ (2018)	144
<b>Summary</b>	145
<b>Review Questions</b>	145
<b>Legal Terminology</b>	145
<b>References</b>	146



## Section III Self-Incrimination

### Chapter 11: The Spoken Word as Evidence 151

The <i>Miranda</i> Rights	151
<i>Miranda v. Arizona</i> , 384 U.S. 436 (1966)	152
Waiver of Rights	154
Invoking the Rights	159
Termination of Interrogation	160
Reinitiating the Interrogation	160
<i>Maryland v. Shatzer</i> , 559 U.S. 98, 130 S. Ct. 1213. (2010)	160
Admissibility Versus Truthful Evidence	162
The Consequences of an Illegal Interrogation	162
<b>Summary</b>	164
<b>Review Questions</b>	164
<b>Legal Terminology</b>	164
<b>References</b>	165

### Chapter 12: The Application of the *Miranda* Warnings 167

Custodial Interrogation by Law Enforcement	167
Custodial	167
Stop and Frisk	168



Traffic Stops and <i>Miranda</i>	169
<i>Berkemer v. McCarty</i> , 468 U.S. 420 (1984)	169
The Field Interview	170
The Police Station Interview	171
<i>Oregon v. Mathiason</i> , 429 U.S. 492 (1977)	172
Juveniles and School Environments	173
<i>J. D. B. v. North Carolina</i> , 564 U.S. 261 (2011)	173
Interrogation	174
Unsolicited and Spontaneous Statements	175
Law Enforcement	176
Private Security	177
Interrogations by Private Citizens	178
Non-Law Enforcement Government Officials	178
The Public Safety Exception	179
<i>New York v. Quarles</i> , 467 U.S. 649 (1984)	179
Terrorism and the Public Safety Exception	180
<b>Summary</b>	<b>182</b>
<b>Review Questions</b>	<b>182</b>
<b>Legal Terminology</b>	<b>183</b>
<b>References</b>	<b>183</b>

## **Chapter 13: Identification Procedures    185**

Pretrial Identification Procedures	186
Lineup Procedures	187
Photographic Arrays	188
The View from the Supreme Court	188
<i>Neil v. Biggers</i> , 409 U.S. 188 (1972)	188
Pretrial Identification Factors	191
Opportunity of the Witness to View the Suspect	191
Certainty of the Witness	191
Degree of Attention	191
Accuracy of the Description	192
Length of Time Between Crime and ID	192
Totality of Circumstances and Showups	192
<b>Summary</b>	<b>194</b>
<b>Review Questions</b>	<b>194</b>
<b>Legal Terminology</b>	<b>194</b>
<b>References</b>	<b>194</b>



## Section IV

### Constitutional Issues

#### Chapter 14: The Right to Trial 197

Right to a Speedy Trial	197
<i>Barker v. Wingo</i> , 407 U.S. 514 (1972)	198
Length of the Delay	199
Reason for the Delay	199
Defendant's Assertion of the Right to Speedy Trial	199
Prejudice to the Defendant by the Delay	199
Statutory Law	200
Speedy Trial and Sentencing	201
<i>Bettermann v. Montana</i> , 578 U.S. ____ (2016)	201
Right to a Public Trial	201
Right to an Impartial Trial by Jury	202
Jury Service	202
Jury Selection	203
The Jury Verdict	204
Jury Nullification	204
Right to Public Trial	205
The Impact of Publicity	206
Judicial Management of Publicity	208
<b>Summary</b>	209
<b>Review Questions</b>	210
<b>Legal Terminology</b>	210
<b>References</b>	210

#### Chapter 15: Double Jeopardy 213

<i>Heath v. Alabama</i> , 474 U.S. 82 (1985)	214
Mistrials and Double Jeopardy	216
The Impact of an Appeal	216
Probable Cause and Double Jeopardy	216
Collateral Estoppel	217
<i>Ashe v. Swenson</i> , 397 U.S. 436 (1970)	217
<b>Summary</b>	218
<b>Review Questions</b>	219
<b>Legal Terminology</b>	219
<b>References</b>	219

## **Chapter 16: The Right to Counsel    221**

- The Landmark Case: *Gideon v. Wainwright*    221
  - Gideon v. Wainwright*, 372 U.S. 335 (1963)    221
- The *Gideon* Impact    223
- Self-Representation    224
- Determination of Indigency    225
- The Attachment of the Right to Counsel    226
- Selection of Appointed Counsel    226
- Public Defender Systems    227
- Effectiveness of Counsel    227
- McCoy v. Louisiana*, 584 U.S. \_\_\_\_ (2018)    228
- Summary**    229
- Review Questions**    229
- Legal Terminology**    230
- References**    230

## **Chapter 17: Bail and Pretrial Detention    231**

- Determination of Bail    232
  - Criminal Record of the Defendant    232
  - Nature of the Crime    232
  - Community Connection    232
  - Defendant's Resources    233
  - The Evidence    233
- Excessive Bail    233
- Pretrial Detention    234
  - United States v. Salerno*, 481 U.S. 739 (1987)    234
- Summary**    236
- Review Questions**    236
- Legal Terminology**    236
- References**    236

## **Chapter 18: Sentencing and Punishment    237**

- Models of Punishment    237
- Sentencing    238
  - Incarceration    238
  - Sentencing Guidelines    239
  - Probation    239

Parole	240
Community Control	240
Monetary Fines	241
Restitution	241
Revocation of Rights or License	241
Sex Offender Registry	242
Death Penalty	242
Considerations in Sentencing	242
Criminal Record	243
Nature of the Crime	243
Status of the Victim	243
Victim's Impact	244
Offender Status	244
Age	244
Offender Remorse	244
Provocation by the Victim	245
Intoxication	245
The Impact of the Eighth Amendment	246
<i>Weems v. United States</i> , 217 U.S. 349 (1910)	247
Habitual Offender Laws	247
<i>Ewing v. California</i> , 538 U.S. 11 (2003)	248
Cruel and Unusual Punishment of Juveniles	249
<i>Graham v. Florida</i> , 560 U.S. 48 (2010)	249
Criminalization of Disease or Addiction	250
Detention Facilities	251
<b>Summary</b>	<b>252</b>
<b>Review Questions</b>	<b>252</b>
<b>Legal Terminology</b>	<b>252</b>
<b>References</b>	<b>253</b>

## **Chapter 19: The Death Penalty 255**

The Supreme Court Review of the Modern Death Penalty	256
<i>Furman v. Georgia</i> , 408 U.S. 238 (1972)	256
<i>Gregg v. Georgia</i> , 428 U.S. 153 (1976)	257
The Death Penalty and Nonhomicide Cases	259
<i>Coker v. Georgia</i> , 433 U.S. 584 (1977)	259

Juveniles and the Death Penalty	260
Mental Illness and the Death Penalty	261
<b>Summary</b>	<b>262</b>
<b>Review Questions</b>	<b>262</b>
<b>Legal Terminology</b>	<b>263</b>
<b>References</b>	<b>263</b>
<i><b>Legal Terminology List</b></i>	<i><b>265</b></i>
<i><b>Table of Cases</b></i>	<i><b>271</b></i>
<i><b>Index</b></i>	<i><b>273</b></i>

# Preface

The objective of this text is to assist the student in understanding how the law is actually applied in the field and in the courtroom. It is designed to take the law to the street. The criminal justice professional wants to be able to make the correct legal decision when making an arrest, collecting evidence, or conducting an interrogation. The paralegal student must be able to examine a case and determine the admissibility of evidence. With the assistance of this book, the instructor should be able to provide students with the legal skills to make those decisions.

After teaching criminal law and procedure courses for undergraduates for over 30 years, I concluded that most of the available textbooks were written for law students or lawyers. Yet, virtually all undergraduate criminal justice and paralegal programs offer a criminal procedure course. The important question should be the following: Why are the students taking a criminal procedure course? The answer is diverse, yet simple. They are simply working toward their dreams. They want to be law enforcement officers, paralegals, or probation or parole officers, or they may be interested in pursuing advanced degrees in criminal justice or law.

The title, *From the Courtroom to the Street*, is indicative of my objective. I want the student reader to understand how the complicated decisions of courts and legislators are actually applied to the real streets. A key component of the text is the “On the Street” stories that are designed to help the student understand how the law works in the real world. The stories, mostly hypothetical, are designed for that objective. They are also presented in “street” language. It is safe to say that not all educators or researchers in higher education will approve of my use of less-than formal language. If so, I have succeeded. This book is designed to help the student reader learn the law, not to cater to those in academic ivory towers. The text, of course, also presents the key appellate cases that provide the foundation for the rules of criminal procedure. But as with the entire text, these cases are presented in a style that should provide a practical understanding of the law.

Prior to my career in higher education, I served as a police officer, a paralegal, and a practicing criminal-defense attorney. These experiences provided my impetus for developing a textbook that would assist the undergraduate.

The textbook is divided into four main sections. The Introductory section lays out the foundational material for criminal procedure, the criminal justice process, the role of the appellate courts, the impact of due process, and the history and development of the exclusionary rule.

Section II addresses the more-defined rules of search and seizure. The student will examine the concepts of the reasonable expectation of privacy, the rules of arrests, and the many justifications for search. Those considerations will include warrants, plain

view, incidental to arrest, probable cause, area within immediate control, consent, border searches, and vehicle searches.

The issues surrounding the spoken word as evidence will be discussed in Section III. The landmark case of *Miranda v. Arizona* sets the stage for a detailed look at the implications and applications surrounding interrogations, confessions, and other settings that result in incriminating statements. The section also examines the rules directed at pretrial identifications such as lineups, showups, and photographic arrays.

Section IV delves into several constitutional issues that impact how criminal procedure unfolds in the courtroom. The chapters cover double jeopardy, the right to fair trial, the right to counsel, protection from excessive bail, and the laws surrounding sentencing. The impact of the Eighth Amendment on the death penalty is studied in the last chapter.

This textbook is designed with the undergraduate classroom in mind. It should assist in preparing a student for the “real-life” workplace that is impacted by the rules of criminal procedure. It should also provide undergraduate criminal procedure instructors with a solid textbook with which to supplement their classroom teaching.

# Acknowledgments

I would like to express my gratitude to my project editor Elizabeth Kenny. Without her guidance and encouragement, this project would not have been possible. Thanks are also due to the many reviewers who offered wise and valuable insight. Special thanks to Aspen's David Herzig who was kind enough to reach out to me concerning this book. It is impossible to adequately express my appreciation and love for my family; Janis Walter, Peter Wright, and Emma Fletcher. Professor Walter, also an author, lawyer, and professor, served as my coach and confidante through the entire process.





## About the Author

Roger Wright is a professor emeritus of Criminal Justice at the University of Cincinnati. He earned his Juris Doctor from Chase College of Law and his Bachelor of Science in Criminal Justice from Memphis State University. He attended law school at Oxford University in England. He has served as a police officer in Memphis, Tennessee, and has additional experience in juvenile corrections. Wright is currently a partner in the Wright Law Group. At the University of Cincinnati, he is primarily responsible for legal courses such as Criminal Law and Criminal Procedure. Wright serves as the mentor for the doctoral teaching assistants and adjuncts who teach undergraduate courses. He has provided training and promotional exams for many local law enforcement agencies. He has received the University College Excellence in Teaching Award and most recently was honored as the University of Cincinnati Order of Omega Professor of the Year. In 2012 he was named as one of the most interesting people in Cincinnati by Cincy Magazine. Wright's interests beyond the law and academia include guitar and tennis.



# Criminal Procedure



## Section I

# Foundations of Criminal Procedure



*“Hey, the cops arrested me and took my smartphone. There’s some private stuff in there. Can they look through the phone?”*

*“The police pulled me over and asked if they could search my car. Do I have to say yes?”*

*“The cops asked me a bunch of questions. They didn’t advise me of rights. Is that cool?”*

*“There’s a helicopter flying over my house. What if they see my marijuana garden?”*

*“I don’t have any money. Do I still have a right to an attorney?”*

*“A witness picked me out of a lineup. Was that fair?”*

## What Is Criminal Procedure?

Criminal procedure involves the rules that determine how criminal law is applied. It provides the rules that police, lawyers, and judges must follow in enforcing criminal law. Police have the duty to investigate criminal activity, to apprehend suspects, and to discover and obtain evidence to successfully prosecute those who are responsible for a crime. Prosecuting attorneys must present evidence in court in an effort to bring criminals to justice. Defense attorneys have the responsibility of protecting the rights of the accused and to ensure that the government proceeds in a constitutional manner. Judges preside over the trial and appellate processes to assure that the law is followed. Criminal procedure impacts all of these duties. Prosecutors, defense attorneys, witnesses, law enforcement officers, judges, and juries must follow the rules of criminal procedure.

If the police were able to investigate crime without any constitutional restrictions, their jobs would be much easier. But they cannot. They cannot break into your home in order to search for evidence without legal justification. They cannot arrest you without a legal reason. They cannot beat a suspect until he confesses to a crime. Guilt does not matter. The fact that a suspect is guilty of a crime does not relieve the participants in the criminal justice system from following the rules. As a nation, we have decided that the process by which we reach justice is just as important as the outcome.

The study of criminal procedure addresses those rules and answers many questions. It addresses the issues affecting search and seizure, interrogation, and investigation. When must the *Miranda* rights be given? When may the police search a person’s car? When can the police pull over a car? Does a person have to give consent to a search if asked? Why does the Transportation Security Administration search your bags at the airport? Criminal procedure also examines the constitutional rights provided by the **Bill of Rights** in the U.S. Constitution. Those rights, such as right to jury trial, the right to confront one’s accusers, the right to counsel, protection against self-incrimination, and protection from cruel and unusual punishment, all impact the administration of justice. However, questions will undoubtedly remain as technology and society evolve.

Universities, police academies, and law schools typically distinguish criminal law from criminal procedure. Most criminal law courses address substantive criminal law. The study of substantive criminal law examines the elements of crime. The student of criminal law must determine what behaviors constitute criminal behavior. What is robbery? What is

murder? What is theft? The study of criminal procedure addresses the methods by which those laws are enforced.

For students' consideration, this textbook provides various hypothetical situations in "On the Street" scenarios that present realistic

issues impacted by the study material. While hypothetical, most scenarios are based in part on real-life events. Some of the street stories will also provide an answer while others require readers to reach their own conclusions.

## On the Street

### Criminal procedure or substantive criminal law?

*The police, suspecting that Jeremy is manufacturing methamphetamine, break into his mobile home by prying open the front door. They do not have a search warrant or any other legal justification. They do not find any evidence of a meth lab, but while searching Jeremy's bedroom, they discover a large marijuana plant growing in a clay pot. When Jeremy returns home, the police arrest him for illegal possession of marijuana, a controlled substance.*

*Jeremy asks the trial court judge to throw out the marijuana evidence, arguing that the*

*police violated his rights by searching his home without a warrant. Is that a criminal procedure issue? Yes. If the court excludes the evidence, the case would likely be dismissed and Jeremy would go free. Did he have an illegal marijuana plant? Of course. However, in the American criminal justice system, the procedure by which evidence is obtained is also important. Determining whether evidence was obtained legally is a criminal procedure issue. The determination of guilt or innocence is a substantive law issue. ■*

The chapters in Section I address the sources of law and the steps in the criminal justice process from arrest to sentencing. While these issues are often addressed during introductory criminal justice courses, they are discussed here because they are critical to understanding criminal procedure. Chapter 2 describes

the role of appellate courts in developing the rules of criminal procedure. Chapter 3 addresses the constitutional right to due process and its impact on criminal procedure. Finally, Chapter 4 looks at the complex issues surrounding the exclusionary rule and its exceptions.





# Chapter 1

## Introduction to Criminal Procedure



Chapter 1 examines the various sources of law that impact the study of criminal procedure. The chapter also outlines and explains the steps involved in the criminal justice process from investigation to sentencing.

### Sources of Law

Where does criminal law come from? Who wrote the rules of criminal procedure? Why? In this chapter you will examine the various sources of criminal law and procedure. Again, the distinction between substantive criminal law and the rules of criminal procedure must be recognized.

### The U.S. Constitution and Bill of Rights

The U.S. Constitution is the primary source for **criminal procedure**. The original document was ratified in 1787. Four years later, the **Bill of Rights** was added to ensure that the citizens of the United States were apprised of certain basic rights. Included are those rights that directly impact the administration of criminal justice such as the right to jury trial, the right to speedy trial, and the protections against unreasonable search and seizure and self-incrimination. As you work through this textbook you will examine the impact of those individual rights on the procedures used by police and the courts. The U.S. Supreme Court looks to the U.S. Constitution to make its decisions regarding the rules of criminal law and procedure.

### State Constitutions

Every state in the union has its own state constitution. State laws and procedures must comply with their own state constitutions, and they must comply with the provisions of the U.S. Constitution. State constitutions may provide more protection of individual rights than required by the U.S. Constitution but never less. One vivid example

#### **Criminal procedure**

The body of laws and rules that determine how police, lawyers, judges, and courts enforce and apply criminal law.

#### **Bill of Rights**

The first ten amendments to the U.S. Constitution. Ratified in 1791.

is the implementation of the death penalty. Though the U.S. Supreme Court has determined that death is an appropriate punishment in certain cases, some states do not allow it. Likewise, a state might adopt a law requiring that a parent must be present during the interrogation of a juvenile. Even though that is not required by the U.S. Constitution, a state could mandate it within its jurisdiction.

## Appellate Courts

### Appellate court

A court charged with reviewing the decision of a lower court.

The specific rules of criminal procedure are developed primarily by **appellate courts**. An appellate court examines the proceedings that occur during investigation, arrest, trial and sentencing of a criminal defendant to determine if proper procedure was followed. The appellate courts must base their decisions on the U.S. Constitution as well as the applicable state constitution. They must also follow the previous decisions of higher appellate courts which are similar to the case at hand. An appellate court does not determine the accuracy of facts or the guilt or innocence of a defendant. That is the role of the trial court. If a losing party appeals to an appellate court, that court will then examine the record and determine if all proceedings were proper. Generally speaking, any court that is charged with reviewing the decision of a lower court is acting as an appellate court. In some jurisdictions, a trial court will hear appeals from administrative law hearings as well as minor local courts such as mayor's courts. Each jurisdictional system has its own appellate court system. The ultimate and final appellate court is the U.S. Supreme Court.

In most circumstances, the U.S. Supreme Court interprets and applies the U.S. Constitution. There are also situations in which state appellate courts apply their own state constitutions. It is common for state legislatures to codify the rules set by the appellate courts. A rule is codified when it is approved by a legislative body and included in the written laws of the **jurisdiction**.

### Jurisdiction

The authority of a court system to hear cases, and a government's power to enact laws; determined by geographical areas or subject matter.

While most of the rules of criminal procedure result from decisions of the U.S. Supreme Court, state legislatures may enact rules that are specific to their state. This is permissible so long as the rule of law does not infringe on the U.S. Constitution. For example, the U.S. Supreme Court has identified criteria for determining whether one's Sixth Amendment right to speedy trial has been violated. Yet some individual states have enacted specific statutory time limits. That is acceptable as long as the state rule complies with the Supreme Court criteria. Chapter 2 will provide a detailed examination of the role of appellate decisions in developing criminal procedure.

## The U.S. Supreme Court

The highest appellate court in the land is the U.S. Supreme Court. The Court consists of nine justices including the Chief Justice. Its members are appointed by the president of the United States with the advice and consent of the U.S. Senate. The Supreme Court Building is in Washington, D.C., directly behind the U.S. Capitol. Once confirmed, a Supreme Court Justice serves a lifetime appointment, only leaving the judgeship if he or she resigns, retires, dies, or is impeached. When the President must replace a justice, it usually results in massive media coverage and political gamesmanship. The Supreme

**Impeachment**

The process for the involuntary removal of a public official from office.

Court generally acts as the ultimate and last appellate court. In the rare instances of a civil lawsuit between state governments, between the federal government and a state, and those involving a foreign minister or counsel, the Court serves as the original trial court. The Chief Justice also serves as the presiding judge if the U.S. Senate must hold a trial regarding the **impeachment** of the President of the United States.

**Statutory Law****Statutory law**

Law written and enacted by legislative bodies such as state legislature or the U.S. Congress.

Criminal laws are drafted by local, state, and federal legislatures. These representative bodies decide what behaviors should be considered criminal in their particular jurisdiction. The elected representatives may determine that using a gun to rob a store should be a crime. They then would write and approve the appropriate language and enact it into law. Such laws are referred to as **statutory law**. The federal government, every state, and many local jurisdictions have statutory criminal laws. As mentioned previously, legislative bodies may also codify the rules of criminal procedure. This type of rulemaking is usually in response to decisions of appellate courts, and the legislative body simply includes the rules in the state or local statutes. Many legislators claim to be in favor of strong enforcement of criminal laws as they run for office. Thus, it would be unusual for a politician running for a legislative office to advocate rules of criminal procedure that would inhibit law enforcement's ability to fight crime.

A criminal statute could be determined to be unconstitutional. For example, it would be acceptable for a city to enact a criminal statute prohibiting residential yard sales. However, if the statute provided a punishment of life in prison, the penalty section of the statute would be considered unconstitutional because it violates the Eighth Amendment's protection against cruel and unusual punishment. The punishment would be excessive for the crime.

**State Versus Federal Procedure**

The Tenth Amendment to the U.S. Constitution states the following:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

**Dual sovereignty**

The principle that both the federal and state governments exercise jurisdiction over specific legal issues.

As a result, the U.S. criminal justice system operates under a system of **dual sovereignty**. States generally have the right to regulate and administer the criminal laws within their jurisdiction. However, the rules in the Bill of Rights guaranteeing citizens' individual rights and protection against governmental intrusion cannot be taken away by any state government. The Fourteenth Amendment states that citizens of the United States cannot be deprived of their due process of law. As a result, while states may enact their own rules of criminal procedure, they cannot infringe on the guaranteed rights of the Bill of Rights.

All American jurisdictions must guarantee those rights, but they are permitted to enact substantive criminal laws unique to their specific jurisdiction. As previously

indicated, the death penalty provides one of the most dramatic examples. The U.S. Supreme Court allows death as a punishment but still requires that its administration comply with the requirements of the Eighth Amendment protection from cruel and unusual punishment. In some cases, a criminal behavior will be a violation of multiple jurisdictions. For example, if an individual robbed a federally insured bank in Louisville, Kentucky, that person could be prosecuted by both the Commonwealth of Kentucky and the federal government. The ability of both jurisdictions to prosecute the offense is referred to as **concurrent jurisdiction**.

**Concurrent jurisdiction**

When a criminal behavior is a violation of the laws of more than one jurisdiction at the same time.

## Criminal Versus Civil Law

The laws that regulate behaviors and provide social controls by imposing criminal sanctions and punishment are considered criminal laws. Such laws are designed to protect civilized society from harm and to maintain the public peace. A violation of a criminal law is considered a crime against society and the government. It is not only an act against an individual. **Civil laws** protect and regulate private and business interests such as contracts, domestic relations, property rights, and inheritance. Violations of civil laws do provide for incarceration. The remedies for civil wrongs usually involve the payment of money or compliance with a contract or court order. A civil order might mandate that an estate passes to a particular heir or that a property line is established at a specific location. The determination of child custody would be a civil issue. Some behaviors may be both criminal and civil. An action that violates a criminal law while also giving rise to a civil lawsuit would be considered both. Assault is one of the most common situations. If an individual hit another person with a baseball bat, the offender could, of course, be prosecuted criminally and jailed as punishment. The victim of the assault would also be able to file a civil lawsuit against the offender requesting monetary damages to compensate him or her for the injuries.

**Civil laws**

Laws and procedures that regulate noncriminal issues such as contracts, domestic relations, real estate, and personal injury civil lawsuits; violations do not include incarceration.

## On the Street

**Criminal or civil?**

Conrad writes an article for the company newsletter claiming that Dusty has been stealing money from the company by filing false travel expense reports. Conrad's allegations are not true. He wrote the article because his girlfriend has started dating Dusty. Dusty sues Conrad for \$140,000 claiming that he has been falsely defamed. Is this civil or criminal?

Veronica, angry at her boyfriend, gouges her name into the hood of his truck. Is this a criminal case or civil? In that circumstance, it could be both. Veronica's boyfriend could sue him civilly for the damage to his truck, and law enforcement could charge her criminally with vandalism. Veronica could be both criminally and civilly liable. ■

There are some significant distinctions between criminal and civil procedure. In a criminal case, a defendant must be proven guilty beyond any reasonable doubt. That

**Burden of proof**

The amount of proof necessary to prove a case; in a criminal case the burden of proof is proof beyond any reasonable doubt.

**Preponderance of evidence**

The burden of proof required in most civil cases. A fact is proven by a preponderance of evidence if it is considered more likely than not to be true.

standard, called the **burden of proof**, is the level of probability of which the judge or jury must be convinced in order to find the defendant guilty. In most civil cases, the winner must prove his or her case by a **preponderance of evidence** that requires only that the judge or jury find that it is more likely than not that the wrong occurred. The Fifth Amendment protection against self-incrimination does not apply to civil trials, so a civil defendant could be required to testify. However, a criminal defendant cannot be compelled to testify against himself or herself. There are many distinctions in the rules of evidence as well.

## The Criminal Justice Process: Investigation to Sentencing

The rules of criminal procedure affect virtually all steps of the criminal justice process. The study of criminal procedure requires an understanding of those steps and where they occur in the process. Law enforcement officers must comply with the Bill of Rights during the initial stages of a criminal investigation, the collection of evidence, arrest, and all stages leading to trial. Judges, prosecutors, and defense attorneys must be aware of the proper procedures in order to ensure a fair trial. This section identifies the sequential steps in the criminal justice process from investigation to sentencing.

### Investigation

A criminal case usually begins with the discovery of a crime. The police may become aware of the existence of a criminal act in a variety of ways. Often, the victim or a witness to the offense calls the police for assistance or to report the crime. A couple returns home only to discover their home has been burglarized. Someone calls the police because they are being threatened in a domestic violence situation. A third party observes a crime in progress and calls the police. In all of these situations, law enforcement responds and begins their investigation. The police often have a variety of roles upon the arrival of a crime scene. In addition to providing assistance to the victim, they must also preserve evidence, interview witnesses, and coordinate other investigative functions. There are also, of course, circumstances in which the police arrest a suspect during their initial response. The investigation of a criminal case does not end with the initial police response. In many cases, the investigation continues all the way to trial. The rules of criminal procedure apply during all steps of the investigation. If the evidence is not obtained in a proper manner, it could result in exclusion in court. The discovery and investigation of a crime does not always result in an arrest or prosecution. In many situations, the perpetrator is never determined or there is not sufficient evidence to continue the case. In those situations, the investigation may be suspended or terminated.

**Arrest**

Physical seizure of a person with the intention of accusing them of a criminal offense.

### Arrest

An **arrest** is the physical seizure of a person with the intention of accusing them of a criminal offense. That seizure may be obtained through physical force or voluntary

**Misdemeanor**

Offense generally considered less serious.

**Arraignment**

Court hearing in which formal charges are read to the defendant, and the defendant enters a plea.

**Felony**

A criminal offense for which the possible punishment is incarceration of one year or more.

**Bail**

The amount of money or other security that the defendant posts in order to guarantee his or her return to court if released from jail.

**Own recognizance**

Pretrial release of a defendant without the requirement of money or property as bail; defendant is released based upon his or her own reputation and circumstances.

**Indigent**

A criminal defendant who is unable to afford an attorney.

**Preliminary hearings**

Held to determine if sufficient probable cause exists in order to bind the case over to the grand jury.

submission. An arrest must be supported by sufficient proof that would lead a reasonable person to believe that the defendant has committed a crime. That standard of proof is probable cause. The physical arrest of an individual is his or her introduction into the criminal process. The defendant will be transported to a jail or the police station for booking. Booking involves identification procedures such as taking fingerprints and photographs and entering the arrest information into the court system. In some situations, the defendant may also be subjected to a lineup or other form of identification procedure. Once arrested, the defendant must be brought before the court within a reasonable period of time. If the arrest was made without a warrant, the defendant must receive a judicial probable cause hearing within 48 hours or the prosecution must prove it was an emergency situation [*County of Riverside v. McLaughlin*, 500 U.S. 44 (1991)]. In most jurisdictions, the first opportunity for the court appearance will be the following morning. If the arrest occurs on a weekend or in early morning hours, it may be the following day. Many large jurisdictions hold court for initial appearances on Saturdays and holidays to ensure a speedy appearance after arrest. Some local court systems allow the issuance of a citation to appear in court in lieu of a physical arrest.

**Initial Appearance/Bail Hearing/Arraignment**

In cases involving only **misdemeanor** charges, the first appearance in court is the **arraignment**. At arraignment, the defendant must enter a plea of guilty or not guilty. Some jurisdictions allow no contest pleas as well. If the charge is a **felony**, then the initial appearance is not considered an arraignment. At a felony initial appearance, the charges will be read. The defendant will not enter a formal plea at this point, but the court may address other collateral issues at this point such as the determination of **bail**, appointment of counsel, and the scheduling of the preliminary hearing. Bail is the amount of money or other security that the defendant posts in order to guarantee his or her return to court if released from jail. In some instances, courts may release a defendant upon his or her **own recognizance**, meaning the defendant is not required to post bail. The court may also determine if the defendant has the financial means to hire an attorney. If not, the court will consider the defendant to be **indigent** and appoint a public defender.

Initial appearances and misdemeanor arraignments occur in the court of lower jurisdictions. These courts hear only misdemeanor and preliminary felony issues. All other felony stages such as trial, the acceptance of pleas, and sentencing must be handled in the higher court. In most situations, if the defendant is charged with both misdemeanor and felony offenses, all charges will be transferred to felony court.

**Preliminary Hearing**

**Preliminary hearings** also occur in the lower court jurisdiction. The purpose of the preliminary hearing is to determine if sufficient probable cause exists in order to bind



**Grand jury**

Body of citizens selected to examine evidence in a criminal case and to determine if probable cause exists; upon determination of probable cause, they issue an indictment.

**Prosecutor**

Lawyer who represents the government in a criminal case.

**Double jeopardy**

Legal principle that prohibits a criminal defendant from being tried twice for the same offense.

**True bill**

Determination by a grand jury that probable cause exists to issue an indictment.

**Indictment**

The formal charging instrument issued by a grand jury in a felony criminal case.

**Information**

A written charging document prepared and presented by the prosecutor.

the case over to the **grand jury**. The **prosecutor** must present sufficient evidence to establish probable cause. The case does not have to be proved beyond any reasonable doubt at this point. The defense may cross-examine the witnesses. They may also present witnesses on their own behalf although that is not often done at this stage. If the judge determines that probable cause exists, then the case will be bound over to the grand jury. The judge may dismiss the case if there is insufficient evidence to prove probable cause. However, dismissal at the preliminary hearing is not considered **double jeopardy**, and the prosecution may refile the case.

Rapid indictment systems are now used by many local court jurisdictions. In those systems, felony cases may be presented directly to a grand jury immediately after the initial appearance. If an indictment is issued, then there is no need or constitutional requirement for a preliminary hearing. Many large urban cities use rapid indictment as it reduces expenses and restricts the defense opportunity to cross-examine witnesses prior to trial.

**Grand Jury**

The members of the grand jury must determine if probable cause exists to believe the accused has committed a crime and, if so, to determine the formal charges. The grand jury consists of a body of citizens selected from the general population of the jurisdiction. They listen to witnesses, examine evidence, and then render a decision. The evidence is presented by a prosecutor. Neither a judge nor a defense attorney is present. Though the hearing is primarily conducted by a prosecutor, the grand jury has the power to subpoena witnesses on their own. They can also subpoena a defendant, but that is unusual. The defendant, though required to appear if subpoenaed, does not have to testify because of his or her Fifth Amendment rights. Grand jury hearings are secret, and the transcript is sealed except under extraordinary circumstances. If the members of the grand jury determine that probable cause exists, then they return a **true bill** and issue an **indictment**. The indictment is considered the formal charge. If they do not believe that probable cause exists, they return a “no true bill,” which results in dismissal of the case. However, just like a preliminary hearing, dismissal by a grand jury does not result in double jeopardy. The prosecutor could present the charges at a later date if additional evidence was available.

The majority of states also provide for charges to be filed by **information**. The prosecutor prepares a written document formally charging the defendant and files it with the clerk of courts. This procedure allows the prosecutor to bypass the grand jury. Though allowed by law, most prosecutors’ offices prefer to use the grand jury process as it provides a more neutral and detached examination of the evidence.

**Felony Arraignment**

The arraignment for felony charges will be conducted by a judge in the court of felony jurisdiction. Once formally charged by either indictment or information, the



defendant must appear for arraignment. The formal charges are presented, and the defendant must enter a plea of guilty, not guilty, or no contest.

- *Guilty*: The defendant agrees that the charges are true and that he has committed the crime.
- *Not guilty*: The defendant denies that he is guilty of the charges.
- *No contest*: The defendant agrees that the facts alleged are true but does not agree that the facts constitute a violation of the law. The judge must rule on whether the defendant's actions actually constitute a violation of the law.

As previously mentioned, not all jurisdictions allow no contest pleas. They are allowed in federal cases.

### Pretrial Motions

There are a number of issues that may have to be determined before the actual trial begins. Those concerns are handled in hearings and conferences that take place prior to trial.

- *Pretrial scheduling*: The judge meets with the attorneys and examines issues such as the anticipated length of the trial, preparation time, special technology needs, and likelihood of a plea bargaining. They may also discuss whether jury sequestration will be necessary and if there are any witness availability issues. Often these questions are resolved through informal discussions. If not, the judge may hold hearings on the specific issues.
- *Competency hearing*: This is a hearing to determine if the defendant is competent to stand trial. This is not a determination of the insanity defense. It is to decide if the defendant has the capacity to understand and assist in his or her own defense.
- *Motions to suppress*: These motions determine the admissibility of specific evidence prior to trial. If the judge determines that evidence will not be allowed, the attorneys may not present it or discuss it during the trial.
- *Motion to change venue*: In the event that pretrial publicity has made it unlikely to provide a fair and impartial trial, the court may decide to move the case to another venue.

### Plea Bargaining

**Plea bargaining**  
Negotiation between the defense and prosecution in a criminal case.

**Plea bargaining** is the negotiation that occurs between the prosecution and defense in an effort to reach a resolution without going to trial. Such agreements might include pleading guilty to reduced charges or to some of the charges in exchange for others being dismissed. Plea bargains may also include an agreement to a less severe punishment. In some cases, the defendant agrees to cooperate in an investigation or provide testimony against others in exchange for a reduction or dismissal of charges.

**Alford plea**

A criminal defendant pleads guilty to an offense while contending that he or she did not commit the act constituting the crime.

Local courts take a variety of views toward plea bargaining. In some, judges do not allow the prosecution and defense to negotiate the sentence. Some states, but not all, allow the entry of an **Alford plea**.

An **Alford plea** allows the defendant to enter a plea of guilty while also contending that he or she did not commit the crime. The judge upon accepting the plea makes a finding of guilty. In *North Carolina v. Alford*, 400 U.S. 25 (1970), the defendant, Alford, was charged with first-degree murder and was facing the death penalty if convicted. He agreed to plead guilty to second-degree murder with a penalty of 30 years in prison. He contended that he only agreed to plead guilty because he believed that he was likely to be convicted. He stated to the judge when he entered his plea: “Yes, sir. I plead guilty on . . . from the circumstances that he [Alford’s attorney] told me.” Alford attempted to have his conviction overturned arguing that he was coerced because he was in fear of the death penalty. The U.S. Supreme Court allowed his plea and upheld his conviction. They said that Alford made a voluntary and knowledgeable decision by accepting the plea to the reduced charge in order to avoid the death penalty. However, in some jurisdictions, trial judges will only accept a guilty plea if the defendant states that he or she has committed the crime.

**Trial**

The trial is the proceeding in which a determination of guilt or innocence is made. In most cases involving the possibility of incarceration, the defendant has a right to trial by jury. If the defendant waives the right, the trial may be heard solely by the judge. In a jury trial, it is the judge’s responsibility to preside over the trial, rule on admissibility of evidence, instruct the jury on their duties, and ensure a fair and impartial process. The jury must listen to the evidence and determine whether the defendant has violated the law. If the trial is solely to the judge, it is called a bench trial. In a bench trial, the judge is also responsible for determining the verdict and, if guilty, the punishment. Some states provide for trials before a panel of judges in special circumstances. In the event of an **acquittal** or not guilty verdict, the process is over. If convicted, the trial proceeds to the sentencing phase.

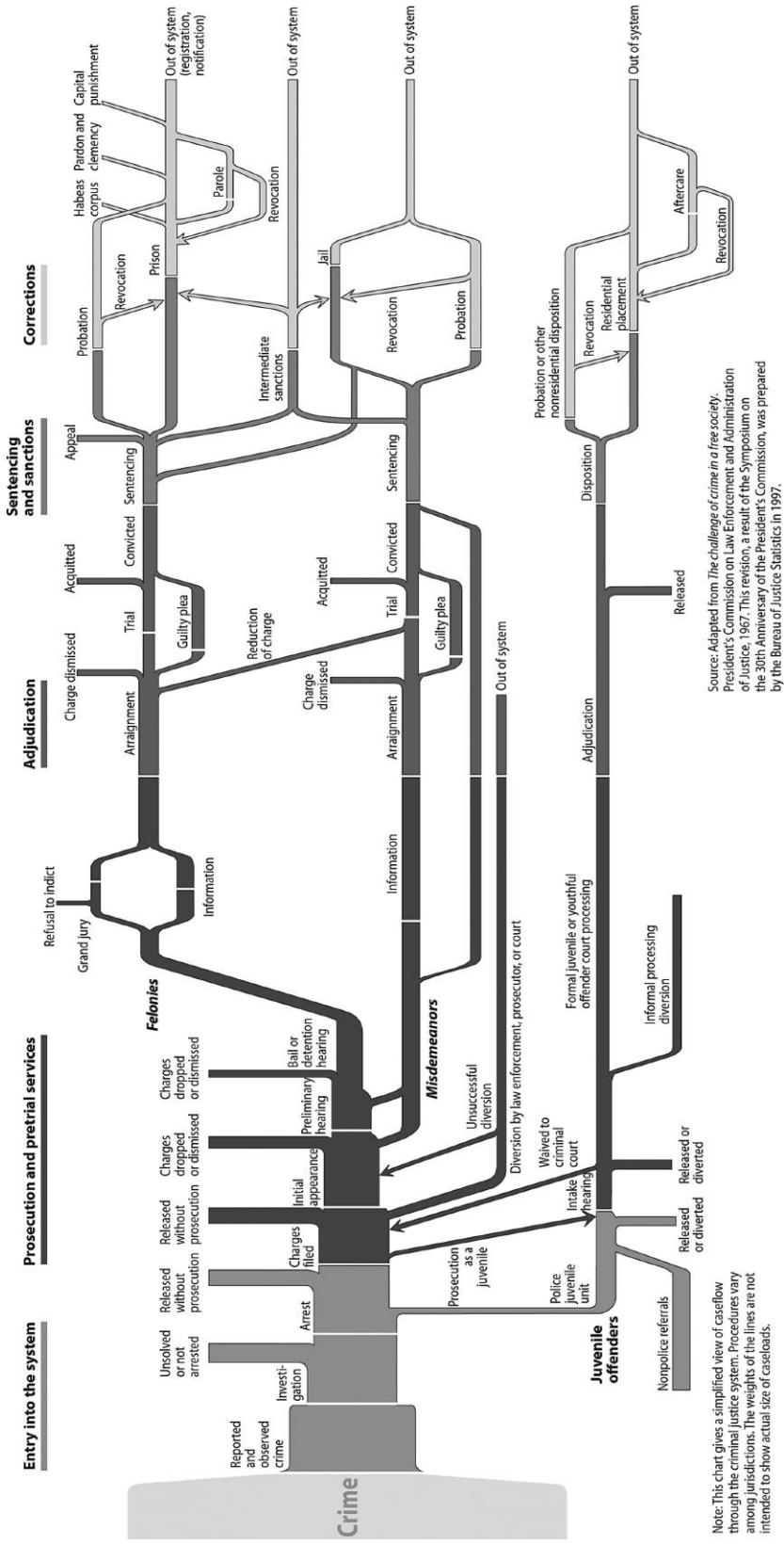
**Acquittal**

Determination by a judge or jury that a criminal defendant is not guilty of a crime.

**Sentencing**

In the event the defendant is found guilty of any of the charges, the judge must determine the appropriate sentence. In some states, the jury is responsible for recommending the sentence to the judge, while in others sentencing is the sole responsibility of the judge. In those states, the jury is not informed of the possible sentence. The role of the jury in death penalty cases is considerably different from other felony and misdemeanor cases. Even though individual jurisdictions have the right to determine the sentencing structure for their specific criminal offenses, those punishments must comply with the requirements of the Eighth Amendment’s prohibition against cruel and unusual punishment and the restrictive procedures for death penalty cases. Those issues are discussed in subsequent chapters.

## What is the sequence of events in the criminal justice system?



### Figure 1-1 Criminal Justice Process

## Misdemeanor Trial Process

The criminal process for misdemeanor-only cases varies somewhat from the felony track. The first appearance for a misdemeanor defendant is the arraignment. That occurs in a court of lower jurisdiction. Some courts have special courts such as municipal courts, mayor's courts, or city courts that handle only misdemeanor cases. Some systems provide courts that handle only traffic cases or other specific crimes such as domestic violence. Misdemeanor cases may require pretrial motions and conferences similar to those described in the felony track process. There are no preliminary hearings to determine probable cause. The charges are presented by formal complaint forms rather than information or indictment. Trials are conducted in the same manner. In the federal system, adult misdemeanor defendants are entitled to a right to a jury trial if they are facing the possibility of six months or more of incarceration. Some states provide for a jury trial if the defendant is facing any incarceration.

The U.S. Department of Justice provides a comprehensive flowchart that outlines the entire criminal justice process, as shown in Figure 1-1.

## Something to Ponder

As discussed in this chapter, the confirmation of a nominee to the U.S. Supreme Court is often a protracted and contentious process. In recent years it has increasingly become a very partisan exercise of which the media covers every detail. The nomination of a Justice to the Supreme Court is one of the most important duties of the executive branch. Yet the increasing partisanship by the Congress seems to make the process more about politics than the qualifications of the nominee. Would you like to see the nomination and confirmation process changed? And how? Does the current process insure that a qualified justice is selected?

## Summary

The American Criminal Justice system is complex in both its structure and application. Lawmakers and courts are continually wrestling with those complexities in an effort to protect the nation's citizens while ensuring a fair and equitable system. The balancing of these principles in an effort to attain justice never ends, and lawmakers are continually seeking ways to provide effective social controls while also protecting the privacy rights of citizens. Criminal laws are written in order to create those social controls. The rules of criminal procedure provide a framework in which those laws are enforced. As mentioned in the Section I introduction, we do not simply seek justice at all costs. Our right as citizens to live our own lives with minimal governmental interference is also important. So important, in fact, that the constitutional forefathers wrote a Bill of Rights to protect us from the government.

As you worked through this chapter, you studied the origins of criminal law and procedures. The rules of procedure are based on constitutional foundations and then interpreted and applied by the courts and criminal justice professionals. Chapter 1 also examined the structure of the courts and how a case travels through the criminal justice system. As you continue your adventure through this book, you will examine how those laws and rules are applied.

## Review Questions

1. Why are individual states allowed to enact their own criminal statutes?
2. How are the justices of the U.S. Supreme Court selected?
3. Explain the differences between civil law and criminal law.
4. Explain the difference between statutory law and case law.
5. What is dual sovereignty?
6. What are some of the advantages of plea bargaining?
7. At what stage of the criminal justice process may bail be considered?
8. What is the purpose of a preliminary hearing?
9. What are the advantages of a rapid indictment system?
10. What is an *Alford* plea?

## Legal Terminology

Acquittal	Grand jury
<i>Alford</i> plea	Impeachment
Appellate court	Indictment
Arraignment	Indigent
Arrest	Information
Bail	Jurisdiction
Bill of Rights	Misdemeanors
Burden of proof	Own recognizance
Civil law	Plea bargaining
Concurrent jurisdiction	Preliminary hearings
Criminal procedure	Preponderance of evidence
Double jeopardy	Prosecutor
Dual sovereignty	Statutory law
Felony	True bill

## References

- County of Riverside v. McLaughlin*, 500 U.S. 44 (1991)  
Criminal Justice Flow Chart, Bureau of Justice Statistics, Office of Justice Programs. Retrieved October 2018 from: <http://ag.ca.gov/cjsc/glance/pdf/BJSSflowchart.pdf>. *North Carolina v. Alford*, 400 U.S. 25 (1970)

# Chapter 2

## The Appellate Process



### Courts of record

A trial court that officially records its proceedings and renders final decisions.

### Remand

When an appellate court rules on a case and refers it back to the lower court with instructions to correct the error.

It is the duty of appellate courts to review the decisions of lower courts. The most common situation occurs when a criminal defendant is found guilty at trial and appeals the conviction. The appellate court does not review the finding of guilt or innocence but rather the procedures that were involved in reaching that verdict. They might examine the trial judge's determination of whether evidence was admissible. They also might examine whether a search conducted by the police complied with the Fourth Amendment or whether an interrogation was conducted properly. If the trial judge committed an error that unfairly impacted the outcome of a criminal trial, the appellate court could overturn the decision and send the case back for a new trial that must then be conducted according to their ruling. Only trials from **courts of record** may be appealed to courts of appeal. A court of record is a trial court that records and documents their official proceedings. Some jurisdictions may have lower courts, such as mayor's courts or small claims courts, which are not considered courts of records. Many jurisdictions also provide for referee hearings or administrative hearings. These nonrecord courts are usually appealed to a local trial court and then only a decision from that court can be appealed to a traditional court of appeals. As you will see, a decision of an appellate court may be appealed to a higher appellate court such as a state supreme court or the U.S. Supreme Court. When that occurs, the higher appellate court is examining the previous appellate decision.

An appellate court may agree with the decision of the lower court by affirming the decision. If they overturn the decision, the process of sending a case back to the trial court is called a **remand**. The remand will include the court's reasoning for the reversal which then serves as instructions for the lower court. The reasoning of the appellate court is also instructive to law enforcement, judges, and attorneys for future cases. In a sense, it is how we learn criminal procedure. For example, law enforcement now knows to advise custodial suspects of certain rights before conducting an interrogation. They know because of the reasoning and instruction provided by the U.S. Supreme Court in *Miranda v. Arizona*.

## On the Street

### How does an appeal work?

Alonzo was arrested for kidnapping. When the police questioned him, they failed to advise him of his right to counsel and right to remain silent as required by the U.S. Supreme Court in *Miranda v. Arizona*. He confessed to the kidnapping. At trial, Alonzo asked the trial judge to exclude his confession from evidence arguing that it was obtained illegally. The judge refused and allowed the jury to hear the confession. Alonzo is convicted so he decides to appeal. The appellate court would determine that the trial judge erred in allowing the evidence. They would likely overturn Alonzo's conviction and remand the case for a new trial. At the new trial, Alonzo's confession could not be presented into evidence. ■

If a defendant is found not guilty, the prosecutor cannot appeal. The Fifth Amendment to the U.S. Constitution provides that a criminal defendant cannot be twice put in jeopardy for the same offense. The protection from double jeopardy prevents the retrial of a defendant for the same charge if the defendant has been found not guilty even if new evidence is discovered. A not guilty verdict means the case is over. Double jeopardy, which is discussed in more detail in Chapter 15, does not prevent a defendant from being prosecuted for a different offense. An acquittal by the judge has the same result as a not guilty verdict. As a result, only the defendant may appeal a trial court verdict in a criminal case. The prosecutor cannot appeal. However, either party, prosecutor or defense, may appeal an appellate court's decision to a higher appellate court.

So why is it not double jeopardy for an appellate court to order a new trial? It is the defendant that is asking for the new trial so he or she is waiving protection against double jeopardy.

#### Interlocutory appeal

An appeal in a criminal case prior to the verdict. It occurs when there is a critical legal issue that must be decided before the trial continues.

In rare circumstances, a prosecutor may appeal a decision of a trial court judge before a verdict has been reached. This is referred to as an **interlocutory appeal**. It occurs if a legal dispute arises prior to the verdict that must be decided before the trial can continue. For example, if the trial judge ruled in a pretrial motion to suppress that certain evidence could not be presented, the prosecutor might file an interlocutory appeal to have the issue determined prior to the case being presented to the jury. Otherwise, the case could be lost and the prosecutor would never have an opportunity to argue the issue before an appeals court.

The lawyers on both sides of a criminal procedure issue play an important role in the appellate process. When they file an appeal, they must file a written memorandum called a brief, which provides the court with their claims of errors in the lower court and the reasoning for their arguments. In most appellate courts, the lawyers will also have the opportunity to appear in front of the panel of judges and orally argue their positions.



## The Federal Appellate Court Structure

The federal system and most state systems provide a two-tiered appellate process that allows an appeal to an intermediate appellate court. In the federal system, criminal trials are conducted in the U.S. District Courts. A defendant who has been found guilty has the opportunity to appeal to the U.S. Court of Appeals. Criminal defendants have a first right of appeal meaning that they are guaranteed one review by an appeals court. The reason for the appeal does not have to meet specific criteria. It may be of great constitutional significance or it may be frivolous. The Court of Appeals must review the case and render a decision. The prosecution or defense may then appeal to the U.S. Supreme Court. However, the U.S. Supreme Court is a court of discretion. They are not required to review the case. The appealing party must first file a **writ of certiorari**, which is a request to have the court consider the case. If the court refuses, then that acts the same as an affirmation of the lower court decision.

### Writ of certiorari

A petition asking an appellate court to review a case. When an appellant wants the U.S. Supreme Court to review his or her case, the appellant would file a writ of certiorari.

## The Federal Trial Courts

Criminal offenses which are violations of the U.S. Code are usually tried in the U.S. District Courts. The District Courts are geographically disbursed throughout the country. Most major cities have U.S. District Courts. The federal system also includes specialty courts that serve as trial courts. These courts include U.S. Court of Claims, U.S. Tax Courts, Military Tribunals, and the Courts of International Trade. Decisions of the specialty courts and the U.S. District Courts are appealed to the U.S. Court of Appeals.

## U.S. Court of Appeals

The first intermediate appellate court in the federal system is the U.S. Court of Appeals. There are 12 separate U.S. Courts of Appeal disbursed through 12 geographical regions called circuits. One of those circuits serves the District of Columbia, Washington, D.C. There is an additional U.S. Court of Appeals for the Federal Circuit which has national jurisdiction but only handles appeals based on subject matter. Decisions of the federal specialty courts are appealed to this circuit. A convicted defendant from the U.S. District Court would appeal to the U.S. Court of Appeals in the circuit in which the trial court sits. As previously indicated, the U.S. Court of Appeals serves as the first right of appeal in a federal case. The number of judges assigned to each court is determined by the U.S. Code. It varies because of the caseload discrepancies in the regions. The judges are nominated by the President of the United States and then affirmed by the U.S. Senate. They serve lifetime appointments.

Most decisions by the Court of Appeals are made by a panel of three judges. The judges rotate among all of the judges who serve in the particular circuit. Occasionally, all of the judges assigned to a circuit will participate in a decision. This occurrence is considered **en banc**.

### En banc

All of the judges on an appellate court review the case.



## U.S. Supreme Court

The U.S. Supreme Court consists of nine justices. As with the Courts of Appeal, the members are appointed by the President with advice and consent of the Senate. In today's partisan political environment, the public confirmation hearings for a Supreme Court nominee are often contentious. Once confirmed, they also have lifetime tenure and can be removed only by resignation, retirement, death, or impeachment. The U.S. Supreme Court is the court of last resort for both state and federal appeals. As a court of discretion, they only select cases of considerable constitutional significance. All final decisions of the court are en banc. They will typically decide about one hundred cases per year. They begin each year's term in October and work until the following June. Court hearings are open to the public but seating and access are limited.

## State Appellate Structure

The large majority of criminal cases in our country involve violations of state laws. State charges such as murder, robbery, theft, and drunk driving are prosecuted in state trial courts. State and municipal cases are appealed through the appropriate state



**Figure 2-1** Supreme Court Justices

*Steve Petteway, Collection of the Supreme Court of the United States*

appellate system. Each state has the right to determine its own appellate structure based on the individual state constitution. Most states utilize a two-tiered appellate system similar to the federal courts. Generally decisions of the trial courts are appealed to a state court of appeals where a first right of appeal is provided. Appeals from those courts are then appealed to a state supreme court, usually courts of discretion. There are a number of variances across the country. For example, a few states do not have an intermediate appellate court and have only a single-level supreme court. The names of the courts, while fairly consistent, may vary slightly. The State of New York refers to its trial courts as supreme courts, while its highest appeals court is called the New York Court of Appeals.

Most state appellate courts operate in a similar fashion as the federal system. They typically have a number of geographical circuits on which several judges sit. Not all of the judges will decide each case unless they decide to sit en banc. In most states, both courts of appeals judges as well as Supreme Court justices are elected by popular vote, but not all. The appellate judges in New York are appointed.

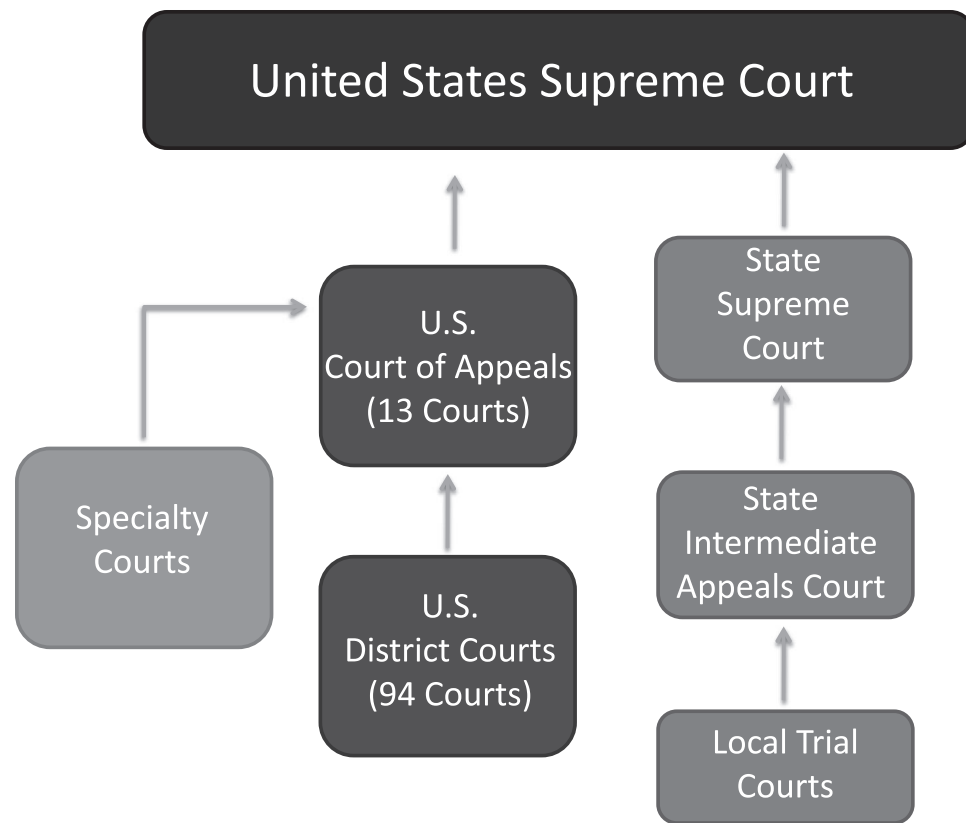
In the two-tiered state systems, the supreme courts are courts of discretion. They are generally not required to review any particular case. The appellant must request that the Supreme Court consider the appeal. Like the federal system, a decision not to review the case acts as an affirmance of the previous lower court. Some states, however, require mandatory review of all death penalty cases. In Ohio, death penalty cases skip the intermediate appeals court and go directly to the Ohio Supreme Court. Also, like the U.S. Supreme Court, all of the members of the State Supreme Courts participate in the decisions, sitting en banc.

The state appellate courts must apply the state laws and the state constitution. They must ensure that the U.S. Constitution is followed. State supreme courts often also have the duty of regulating attorney qualifications, bar exams, and attorney discipline within their state.

### **State Appeals to the U.S. Supreme Court**

In criminal cases, the losing party in a state appeal may appeal from the state supreme court to the U.S. Supreme Court. As previously discussed, the U.S. Supreme Court does not have to review the case. The appellant from the state supreme court must file a writ of certiorari to request review. If the U.S. Supreme Court refuses to review the case, the decision of the state supreme court stands. Because they hear only a relatively few appeals, they accept only those cases that have important constitutional significance. The U.S. Supreme Court Web site indicates they receive over 10,000 writs of certiorari annually and accept oral arguments in less than a hundred. The Court often adheres to an unwritten standard referred to as the Rule of Four. The practice allows four justices, rather than a majority, to decide to accept a case for review. The rule thus prevents a majority of justices from setting the court's agenda.

The U.S. Supreme Court may agree to examine a state criminal case because there are issues that involve application of the U.S. Constitution. As you will see in the subsequent discussion of due process, there are often constitutional concerns in criminal cases.



**Figure 2-2** Federal and State Courts

## The Role of the Executive Branch

### Pardon

An order by a state governor or the President of the United States forgiving the conviction of a criminal defendant or excusing a criminal act that may have been committed by an individual.

### Commutation

An order by a state governor or the President of the United States reducing the sentence of a convicted criminal defendant.

There are three branches of governments in the United States: executive, legislative, and judicial. The U.S. Supreme Court sits at the top of the judicial branch. It is the duty of that court to interpret and apply the Constitution of the United States. They are the court of last resort, and there is no further appeal. However, a convicted criminal may seek a **pardon** or **commutation** of sentence from the executive branch of the jurisdiction in which he or she was prosecuted. That is not considered an appeal. A pardon is an act of the executive branch that forgives the conviction. If the defendant is incarcerated, he or she would be released. A pardon from a state conviction can only be granted by the governor of the state in which the defendant was convicted. In some states, the governor is advised or assisted by a board that examines applications for pardons and commutations. If the conviction is from a federal court, only the President of the United States may grant a pardon. A commutation does not eradicate the conviction. A commutation is an act that reduces the sentence. It could result in the release of an inmate or in a shortening of the prison term. For example, a commutation might reduce a death penalty to life in prison.

While pardons and commutation are granted periodically, they often receive media scrutiny when an official leaves office. It is not unusual for a governor or the President to grant pardons immediately before the end of the term. Pardons are often criticized because the executive branch is, in a sense, superseding the action of the judicial branch.

### Notable Pardons and Commutations

In 1972, President Richard Nixon resigned from office in the wake of the Watergate scandal. His successor, President Gerald Ford, pardoned President Nixon for all crimes that he may have committed during his time in office.

Rick Hendrick, an automobile dealer and the owner of several championship NASCAR racing teams, including Jeff Gordon and Jimmy Johnson, was convicted in 1997 of mail fraud. The conviction arose from allegations of bribes paid to American Honda Motor Company. Three years later, he was pardoned by President William Clinton. President Clinton also pardoned his own brother, Roger Clinton, who was convicted of federal cocaine possession.

President George W. Bush commuted the 30-month sentence of Lewis “Scooter” Libby after he was convicted of perjury and obstruction of justice. As it was a commutation, Libby’s record of conviction stood and he was required to pay the fines and continue on probation. Libby’s conviction resulted from the investigation of the leak of the identity of CIA agent Valerie Plame.

President Barack Obama pardoned former Major League baseball star Willie McCovey from his tax evasion conviction. President Obama also commuted the sentence of Chelsea Manning who was serving 35 years for espionage and theft. Manning was a soldier in the U.S. Army and turned over classified documents to WikiLeaks. At the time of conviction, Manning was named Bradley Manning. During her time in Leavenworth Federal Prison, she transitioned to the female gender and became Chelsea Elizabeth Manning.

In August 2017, President Donald Trump pardoned Joe Arpaio, the controversial former Arizona sheriff who was facing incarceration for criminal contempt charges.

### Habeas corpus

A legal proceeding in which a government agency responsible for detaining an individual must appear in court to show cause as to why the detention is legal.

## Habeas Corpus

A writ of **habeas corpus** also provides a type of review. It involves a legal proceeding in which a government agency responsible for detaining an individual must be brought before a court to show cause as to why the detention is legal. It is seldom used today

because preliminary hearings, grand juries, and the state and federal appeal systems provide adequate judicial review. It is occasionally used as a remedy to bring a constitutional issue from the state to the federal two-tiered system. It is fairly common for death penalty issues to be brought before the federal system via writs of habeas corpus. As part of an effort to reform the use of habeas corpus actions, the U.S. Congress passed the Antiterrorism and Death Penalty Act of 1966 (AEDPA). The Act, codified as 28 U.S.C. §2254, banned successive writs by one individual and narrowed the grounds upon which a writ could be based.

## The U.S. Supreme Court and Criminal Procedure

It is the responsibility of the U.S. Supreme Court to interpret and apply the U.S. Constitution. When reviewing a case, they must examine the procedures used by legislatures, courts, lawyers, police, and judges and determine if they have complied with the U.S. Constitution and the Bill of Rights. In doing so, they provide reasoning and instruction. The Bill of Rights provides the foundation for their decisions. Their decisions are designed to ensure that procedures are consistent with the fundamental principles, such as the protection against unreasonable search and seizure, double jeopardy, self-incrimination, excessive bail, as well as the right to jury trial, effective counsel, and confrontation of witnesses. Criminal procedure decisions often require the Supreme Court to balance the actions of government and law enforcement against our desire for individual freedom and the right to privacy.

### How Does the U.S. Supreme Court Develop a Rule of Criminal Procedure?

When a criminal case is prosecuted in the United States, there may be a number of events that are impacted by the Bill of Rights. Evidence may be discovered as a result of a search. A defendant may be interrogated and, as a result, provide incriminating statements. The police might conduct a lineup in which a witness identifies a perpetrator. Jury members will be questioned and selected. The judge will determine the admissibility of testimony and evidence at trial and provide instructions to the jury. There may be other concerns such as pretrial publicity or double jeopardy. All of these issues are addressed by the individual rights set forth in the Bill of Rights. The defendant, of course, may appeal if convicted arguing that any one of these constitutional rights have been violated. If the U.S. Supreme Court reviews the case, they will determine if the procedures of the police and courts that led to the conviction comply with the Bill of Rights. In doing so, they may actually provide instruction as to how the matter should have been handled. In the famous case of *Miranda v. Arizona*, the Court decided the police must advise a suspect of certain constitutional rights if a suspect is subjected to a custodial interrogation. All law enforcement officers in the nation must now comply with that rule. In *Miranda*, the Court examined the procedures involved in the investigation and conviction of the defendant and determined that the Bill of Rights had been violated. They then provided their reasoning and instructions

for future interrogations. The Supreme Court's decisions are published in written documents referred to as opinions.

While states may enact their own constitutions and rules of criminal procedure, they cannot provide their citizens with less protection than required by the U.S. Constitution and the Supreme Court. On occasion an individual state will provide additional criminal procedure protections for their state criminal proceedings. For example, the U.S. Supreme Court has identified the criteria for determining if the right to speedy trial has been violated. Some states have developed rules that are more restrictive than those required by the U.S. Supreme Court. That is permissible so long as the state rule also meets the Supreme Court criteria.

## The Decision Process

If the U.S. Supreme Court agrees to review a case, the attorney for the prosecution and defense must submit written briefs. These legal briefs provide details of the case including the identification of the alleged errors of the trial and lower appellate courts. The briefs also include the arguments for the respective positions. The attorneys may then be allowed to appear before the court and present oral arguments. During the oral arguments, the individual justices may ask the attorney questions concerning their positions. There are no witnesses or evidence offered during the hearing. The justices will then confer and deliberate. The deliberation often takes several months but once they reach a decision, the justices will announce their decision in open court and provide the written opinion that details their reasoning.

## How to Read a Case Opinion

The official publication of the U.S. Supreme Court is called the U.S. Reports. They are published in hardbound books and are available in law libraries. However, they are now available online from a variety of sources. The official Web site of the U.S. Supreme Court is: [www.supremecourt.gov](http://www.supremecourt.gov). You may also find most opinions by conducting an Internet search by case name. Beware, however, that some nonofficial Web sites may only be providing analysis and not the actual opinion. It is beneficial to read the accurate opinion.

All appellate court decisions are identified by a citation that includes the case name and identifying numbers. Consider the following case example.

### MIRANDA v. ARIZONA

**384 U.S. 436 (1966)**

The title of this case is, of course, *Miranda v. Arizona*. The title will provide some, but not all, information about the origin of the case. In this case, the criminal defendant was Ernesto Miranda and the original charge was prosecuted

in Arizona. The name of a state in a criminal case title indicates the state from which it originated. However, some state cases might use the term “State” or “People.” For example, a title such as *State v. Johnson* would not identify the originating state. Occasionally, a state case will use the name of an attorney general or another government official. In the famous case of *Gideon v. Wainwright*, Gideon was the criminal defendant and the other party was Lewis Wainwright, the Secretary to the Florida Department of Corrections. If one of the parties in the title is the United States, then it is a federal case. In those cases, you must read the opinion in order to discover additional information. The “U.S.” in the citation identifies the case as an official opinion of the U.S. Supreme Court. The official reporter of the U.S. Supreme Court is the U.S. Reports. The first set of numbers indicates the volume of the U.S. Reports in which the opinion may be found. The second set is simply the page number. The number in parentheses indicates the year in which the decision was made. It is not when the case occurred. The *Miranda* case was a kidnapping and rape case that occurred in 1963 but the Court’s decision was presented in 1966.

**The Facts:** Each case will include its unique set of facts. The facts describe the crime, the actions taken by the police and courts, and any other pertinent events. The facts will often also identify the issues that are being addressed by the court.

**The Decision:** The case opinion will provide a discussion of the court’s reasoning and their ultimate ruling. The decision explains the interpretation of the law and its application to the facts of the case. The reasoning is instructive to the police, lower courts, and attorneys in understanding how the court expects the decision to be applied in future cases.

Decisions of the U.S. Supreme Court are seldom unanimous. The justices make their decisions after discussion and deliberation and ultimately rely on majority rule. If at least five of the nine justices agree, then they have reached a majority opinion. They will select one justice to be the primary writer of the opinion. Justices who disagree may write dissenting opinions indicating why they disagree with the majority. While the dissenting opinions are not law, they are sometimes very helpful in interpreting the actions of the court. If a justice agrees with the court’s decision but does not agree with the reason for the decision, the justice may write a concurring opinion. Though rarer, the Court will occasionally extend a **plurality opinion**. In that case, a majority of the justices are unable to agree on the holding and reasoning. The plurality is that of the most justices who agree on a particular outcome and point of law.

#### Plurality opinion

In a case in which a majority of the justices are unable to agree on the holding or reasoning, a plurality opinion represents the reasoning of the highest number of judges.

## Something to Ponder

State governors and the President of the United States have the power to commute or pardon the conviction and sentence of criminals within their jurisdiction. It is common