CONTENTS

Preface xxi
Acknowledgments xxiii
The Constitution of the United States xxv

CHAPTER 1

INTRODUCTION TO CRIMINAL PROCEDURE 1

A. The Participants in the Criminal Justice System 1
   1. Defendants 2
   2. Defense Counsel 2
   3. Prosecutors 2
   4. Victims 3
   5. Police and Other Law Enforcement Officers 3
   6. Magistrates and Judges 4
   7. Jurors 4
   8. Corrections Officials 4
   9. Public 5
  10. Media 5
B. Stages of the Criminal Justice Process 5
   1. Step 1: Pre-Arrest Investigation 6
   2. Step 2: Arrest 6
   3. Step 3: Filing the Complaint 7
   4. Step 4: Gerstein Review 7
   5. Step 5: First Appearance/Arraignment on Complaint 7
   6. Step 6: Grand Jury or Preliminary Hearing 8
   7. Step 7: Arraignment on Indictment or Information 9
   8. Step 8: Discovery 9
   9. Step 9: Pretrial Motions 9
  10. Step 10: Plea Bargaining and Guilty Pleas 9
  11. Step 11: Trial 10
  12. Step 12: Sentencing 11
  13. Step 13: Appeals and Habeas Corpus 11
C. The Purpose of Procedural Rules 12
   Powell v. Alabama 13
   Patterson v. Former Chicago Police Lt. Jon Burge 16
D. Key Provisions of the Bill of Rights 19
E. The Application of the Bill of Rights to the States 20
   2. The Debate over Incorporation 22
### Chapter 2

**Searches and Seizures**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.</td>
<td>Introduction</td>
<td>31</td>
</tr>
<tr>
<td>B.</td>
<td>What Is a Search?</td>
<td>32</td>
</tr>
<tr>
<td></td>
<td><em>Katz v. United States</em></td>
<td>32</td>
</tr>
<tr>
<td></td>
<td><em>United States v. Jones</em></td>
<td>38</td>
</tr>
<tr>
<td>1.</td>
<td>Open Fields</td>
<td>49</td>
</tr>
<tr>
<td></td>
<td><em>Oliver v. United States</em></td>
<td>49</td>
</tr>
<tr>
<td></td>
<td><em>United States v. Dunn</em></td>
<td>55</td>
</tr>
<tr>
<td>2.</td>
<td>Aerial Searches</td>
<td>59</td>
</tr>
<tr>
<td></td>
<td><em>California v. Ciraolo</em></td>
<td>59</td>
</tr>
<tr>
<td></td>
<td><em>Florida v. Riley</em></td>
<td>63</td>
</tr>
<tr>
<td>3.</td>
<td>Thermal Imaging of Homes</td>
<td>70</td>
</tr>
<tr>
<td></td>
<td><em>Kyllo v. United States</em></td>
<td>70</td>
</tr>
<tr>
<td>4.</td>
<td>Searches of Trash</td>
<td>77</td>
</tr>
<tr>
<td></td>
<td><em>California v. Greenwood</em></td>
<td>77</td>
</tr>
<tr>
<td>5.</td>
<td>Observation and Monitoring of Public Behavior</td>
<td>81</td>
</tr>
<tr>
<td></td>
<td><em>United States v. Knotts</em></td>
<td>81</td>
</tr>
<tr>
<td></td>
<td><em>Smith v. Maryland</em></td>
<td>85</td>
</tr>
<tr>
<td>6.</td>
<td>Use of Dogs to Sniff for Contraband</td>
<td>89</td>
</tr>
<tr>
<td></td>
<td><em>Illinois v. Caballes</em></td>
<td>91</td>
</tr>
<tr>
<td></td>
<td><em>Rodriguez v. United States</em></td>
<td>94</td>
</tr>
<tr>
<td></td>
<td><em>Florida v. Jardines</em></td>
<td>99</td>
</tr>
<tr>
<td></td>
<td><em>Florida v. Harris</em></td>
<td>104</td>
</tr>
<tr>
<td>C.</td>
<td>The Requirement for Probable Cause</td>
<td>109</td>
</tr>
<tr>
<td></td>
<td><em>Illinois v. Gates</em></td>
<td>110</td>
</tr>
<tr>
<td></td>
<td><em>Maryland v. Pringle</em></td>
<td>118</td>
</tr>
<tr>
<td>2.</td>
<td>Is It an Objective or a Subjective Standard?</td>
<td>120</td>
</tr>
<tr>
<td></td>
<td><em>Whren v. United States</em></td>
<td>121</td>
</tr>
<tr>
<td>3.</td>
<td>What if the Police Make a Mistake as to the Law?</td>
<td>125</td>
</tr>
<tr>
<td></td>
<td><em>Heien v. North Carolina</em></td>
<td>125</td>
</tr>
<tr>
<td>D.</td>
<td>The Warrant Requirement</td>
<td>130</td>
</tr>
<tr>
<td>1.</td>
<td>What Information Must Be Included in the Application for a Warrant?</td>
<td>131</td>
</tr>
<tr>
<td>2.</td>
<td>What Form Must the Warrant Take?</td>
<td>132</td>
</tr>
<tr>
<td></td>
<td><em>Andresen v. Maryland</em></td>
<td>132</td>
</tr>
<tr>
<td></td>
<td><em>Groh v. Ramirez</em></td>
<td>136</td>
</tr>
<tr>
<td>3.</td>
<td>What Are the Requirements in Executing Warrants?</td>
<td>141</td>
</tr>
</tbody>
</table>
Muehler v. Mena

b. Do Police Have to Knock and Announce Before Searching a Dwelling?
   Wilson v. Arkansas 147
   Richards v. Wisconsin 150

c. What If There Are Unforeseen Circumstances or Mistakes While Executing a Warrant?
   Maryland v. Garrison 154
   Los Angeles County, California v. Rettele 157

E. Exceptions to the Warrant Requirement 160
   1. Exigent Circumstances 161
      a. Hot Pursuit
         Warden, Maryland Penitentiary v. Hayden 161
         Payton v. New York 163
      b. Safety
         Brigham City, Utah v. Stuart 166
      c. Preventing Destruction of Evidence
         Kentucky v. King 168
      d. Limits on Exigent Circumstances
         Missouri v. McNeely 176
         Birchfield v. North Dakota 185
   2. Plain View
      Coolidge v. New Hampshire 195
      Minnesota v. Dickerson 198
   3. The Automobile Exception 200
      a. The Exception and Its Rationale
         California v. Carney 201
      b. Searches of Containers in Automobiles
         California v. Acevedo 205
      c. Searching Automobiles Incident to Arrest
         210
   4. Searches Incident to Arrest
      Chimel v. California 210
      Knowles v. Iowa 214
      Riley v. California 216
      Arizona v. Gant 226
   5. Inventory Searches
      South Dakota v. Opperman 236
      Illinois v. Lafayette 240
   6. Protective Sweeps
      Maryland v. Buie 243
   7. Consent
      Schneckloth v. Bustamonte 247
      Georgia v. Randolph 254
      Fernandez v. California 258
   8. Searches When There Are “Special Needs” 265
      a. Administrative Searches
         Camara v. Municipal Court of City and County of San Francisco 266
         New York v. Burger 271
City of Los Angeles v. Patel 275
b. Border Crossing
   United States v. Flores-Montano 283
   United States v. Ramsey 286
   United States v. Montoya-Hernandez 288
c. Checkpoints
   Michigan Department of State Police v. Sitz 294
   City of Indianapolis v. Edmond 297
d. Schools
   Safford Unified School District #1 v. Redding 302
e. The Government Employment Context
   City of Ontario v. Quon 311
f. Drug Testing
   Vernonia School District 47J v. Acton 319
   Board of Education of Independent School District
   No. 92 of Pottawatomie County v. Earls 327
   Ferguson v. City of Charleston 335
g. Searches in Jails and Prisons
   Florence v. Board of Chosen Freeholders of the County
   of Burlington 340
h. DNA Testing of Those Arrested
   Maryland v. King 349
9. Searches of Those on Probation and Parole
   United States v. Knights 361
   Samson v. California 364
F. Seizures and Arrests
1. Is a Warrant Needed for Arrests?
   United States v. Watson 367
2. When Is a Person Seized?
   United States v. Mendenhall 373
   California v. Hodari D. 380
3. For What Crimes May a Person Be Arrested?
   Atwater v. City of Lago Vista 384
G. Stop and Frisk
1. The Authority for Police to Stop and Frisk
   Terry v. Ohio 394
2. The Distinction Between Stops and Arrests 404
3. What May Police Do When They Stop an Individual?
   Hiibel v. Sixth Judicial District Court of Nevada 405
4. What Is Sufficient for Reasonable Suspicion?
   a. Reasonable Suspicion: General Principles
      United States v. Arvizu 409
   b. Reasonable Suspicion Based on Informants’ Tips
      Alabama v. White 413
      Florida v. J.L. 416
      Navarette v. California 419
CHAPTER 3

THE EXCLUSIONARY RULE

A. Is the Exclusionary Rule a Desirable Remedy for Unconstitutional Police Behavior? 451
   Hudson v. Michigan 452

B. The Origins of the Exclusionary Rule 456
   Weeks v. United States 457
   Mapp v. Ohio 459

C. When Does the Exclusionary Rule Apply? 465
   Herring v. United States 466
   Davis v. United States 474

D. Who Can Object to the Introduction of Evidence and Raise the Exclusionary Rule? 480
   Rakas v. Illinois 480
   Minnesota v. Carter 487
   Brendlin v. California 491

E. Exceptions to the Exclusionary Rule 495
   1. Independent Source 495
      Murray v. United States 496
   2. Inevitable Discovery 501
      Nix v. Williams 501
   3. Inadequate Causal Connection—Attenuation of the Taint 508
      Brown v. Illinois 509
      Utah v. Strieff 515
   4. The Good Faith Exception to the Exclusionary Rule 524
      United States v. Leon 525
   5. The Exception for Violations of the Requirement for “Knocking and Announcing” 542

F. Suppression Hearings 543
CHAPTER 4

POLICE INTERROGATION AND THE PRIVILEGE AGAINST SELF-INCrimINATION 547

A. Due Process and the Requirement for Voluntariness 548
   1. The Requirement for Voluntariness 548
      Brown v. Mississippi 549
   2. Determining Whether a Confession Is Voluntary 551
      a. The Length of the Interrogation and Whether the Defendant Was Deprived of Basic Bodily Needs 551
      b. The Use of Force and Threats of Force 551
         Arizona v. Fulminante 552
      c. Psychological Pressure Tactics 555
         Spano v. New York 555
      d. Deception 559
      e. The Age, Level of Education, and Mental Condition of a Suspect 559
         Colorado v. Connelly 560
   3. Is the Voluntariness Test Desirable? 565
   4. Coercive Questioning, Torture, and the War on Terrorism 566

B. Fifth Amendment Limits on In-Custodial Interrogation: Miranda v. Arizona 566
   1. Miranda v. Arizona and Its Affirmation by the Supreme Court 566
      Miranda v. Arizona 567
      Dickerson v. United States 581
   2. Is Miranda Desirable? 586
   3. What Are the Requirements for Miranda to Apply? 588
      a. When Is a Person “in Custody”? 588
         Oregon v. Mathiason 589
         J.D.B. v. North Carolina 592
         Berkemer v. McCarty 598
      b. What Is an “Interrogation”? 602
         Rhode Island v. Innis 602
         Illinois v. Perkins 609
      c. What Is Required of the Police? 613
         California v. Prysock 613
         Duckworth v. Eagan 616
   4. What Are the Consequences of a Violation of Miranda? 620
      Oregon v. Elstad 622
      Missouri v. Seibert 628
      United States v. Patane 634
   5. Waiver of Miranda Rights 638
      a. What Is Sufficient to Constitute a Waiver? 638
         North Carolina v. Butler 639
         Berghuis v. Thompkins 641
         Salinas v. Texas 650
      b. How Is a Waiver After the Assertion of Rights Treated? 655
         Michigan v. Mosley 656
6. What Are the Exceptions to *Miranda*? 679
   a. Impeachment 679
      *Harris v. New York* 679
   b. Emergencies 682
      *New York v. Quarles* 682
   c. Booking Exception 689

C. The Sixth Amendment Right to Counsel and Police Interrogations 690
   1. The Sixth Amendment Right to Counsel During Interrogations 691
      *Massiah v. United States* 691
      *Brewer v. Williams* 696
   2. The Sixth Amendment Right to Counsel Is Offense Specific 702
      *Texas v. Cobb* 703
   3. Waivers 707
      *Montejo v. Louisiana* 708
      *United States v. Henry* 718
      *Kuhlmann v. Wilson* 722

D. The Privilege Against Self-Incrimination in Other Contexts 726
   1. What Are the Requirements for the Privilege Against Self-Incrimination to Apply? 726
      a. Only Individuals May Invoke the Privilege 727
   2. When May the Government Require the Production of Documents and Other Things? 734
      *Fisher v. United States* 735
   3. May the Government Require Testimony If It Provides Immunity? 740
      *Kastigar v. United States* 741
      *United States v. Hubbell* 745

**CHAPTER 5**

**IDENTIFICATION PROCEDURES** 751

A. The Right to Counsel 752
   1. The Right to Counsel in Lineups 752
      *United States v. Wade* 752
2. Limits on the Right to Counsel in Identification Procedures
   - Kirby v. Illinois 763
   - United States v. Ash 768

B. Due Process Protection for Identification Procedures 775
1. Unnecessarily Suggestive Identification Procedures by Police Violate Due Process 775
   - Foster v. California 776
2. Limits on the Ability of Courts to Find That Identification Procedures Violate Due Process 779
   - Simmons v. United States 779
   - Neil v. Biggers 782
   - Manson v. Brathwaite 786
3. Requirement That Police Be Involved in Creating the Suggestive Identification Procedure 793
   - Perry v. New Hampshire 793

CHAPTER 6

RIGHT TO COUNSEL 801

A. Introduction 801
B. Appointment of Counsel 802
   - Gideon v. Wainwright 803
C. When the Right to Counsel Applies 805
   - Argersinger v. Hamlin 807
D. Standard for “Effective Assistance” of Counsel 809
   - Strickland v. Washington 809
   1. Conflicts of Interest 821
   2. Complete Denial of Counsel 823
   3. Strategic Decisions by Defense Counsel 823
      - Florida v. Nixon 823
   4. Right to Retain Counsel 828
   5. Right to Retain Experts 829
E. Right of Self-Representation 830
   - Faretta v. California 830
   - Indiana v. Edwards 838
F. Right of Counsel for Enemy Combatants 842

Table of Cases 843
Index 849