

Aspen College Series

Criminal Procedure

From the Courtroom to the Street



Roger Wright



Wolters Kluwer

Criminal Procedure

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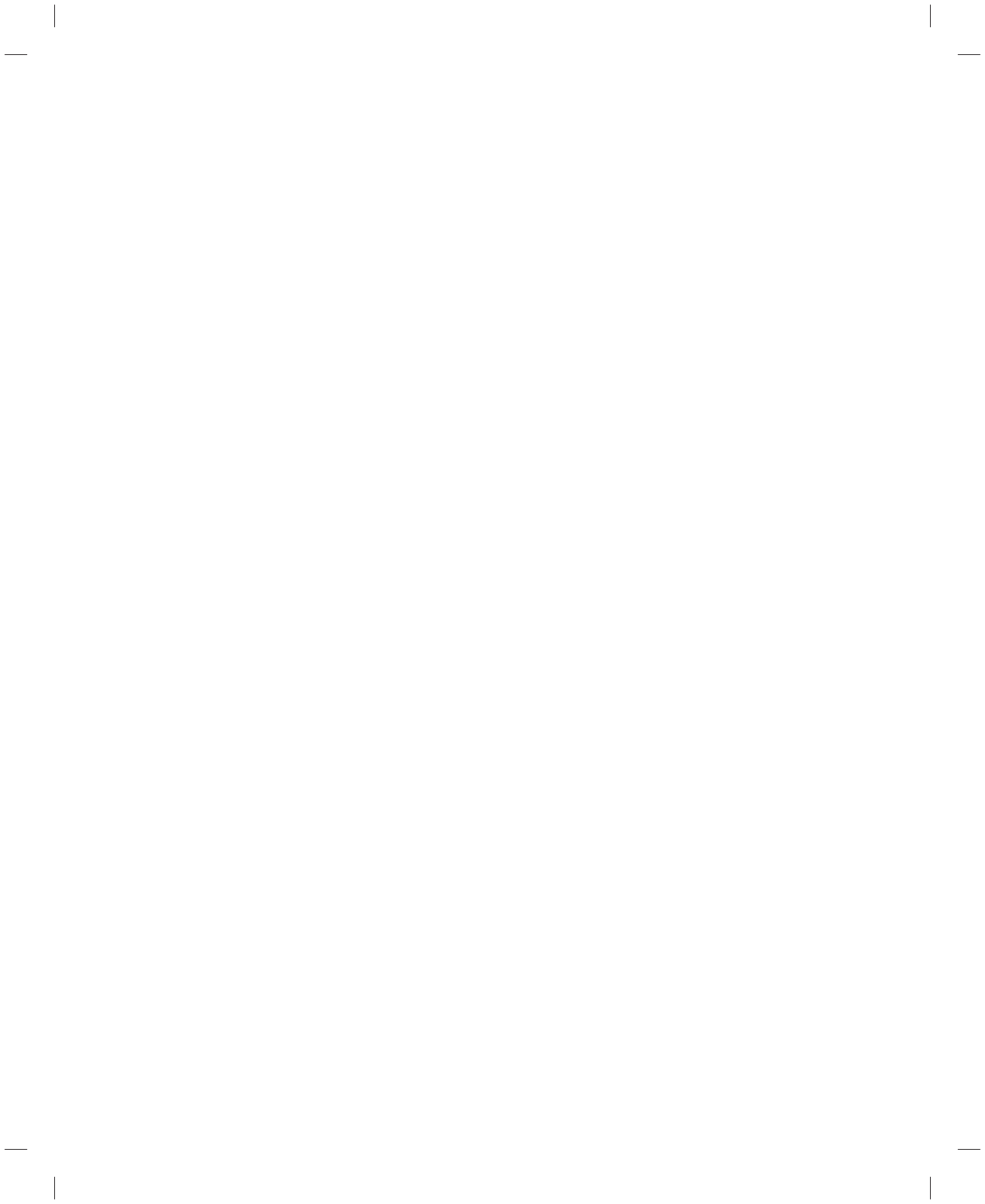
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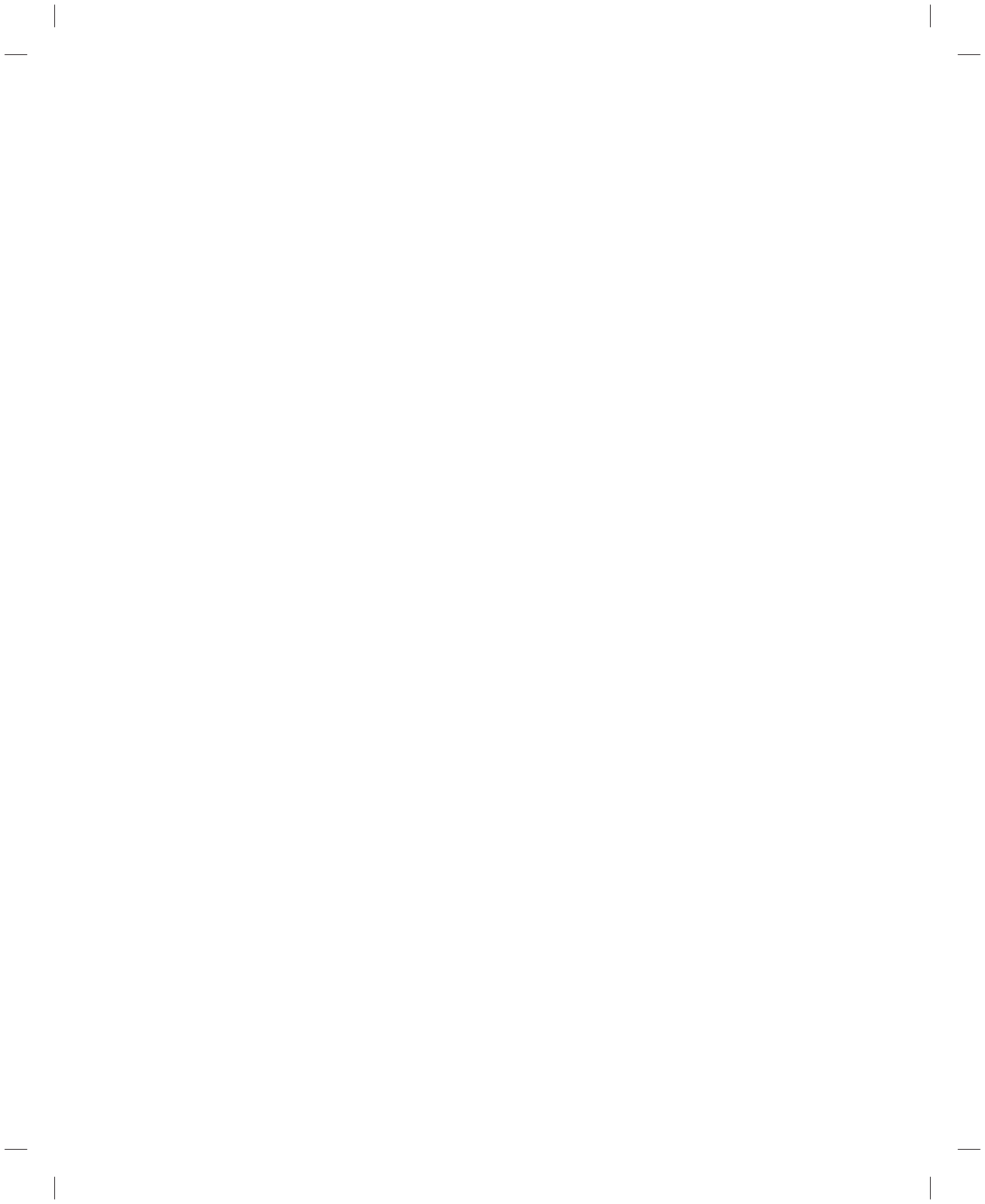
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Preface

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 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.

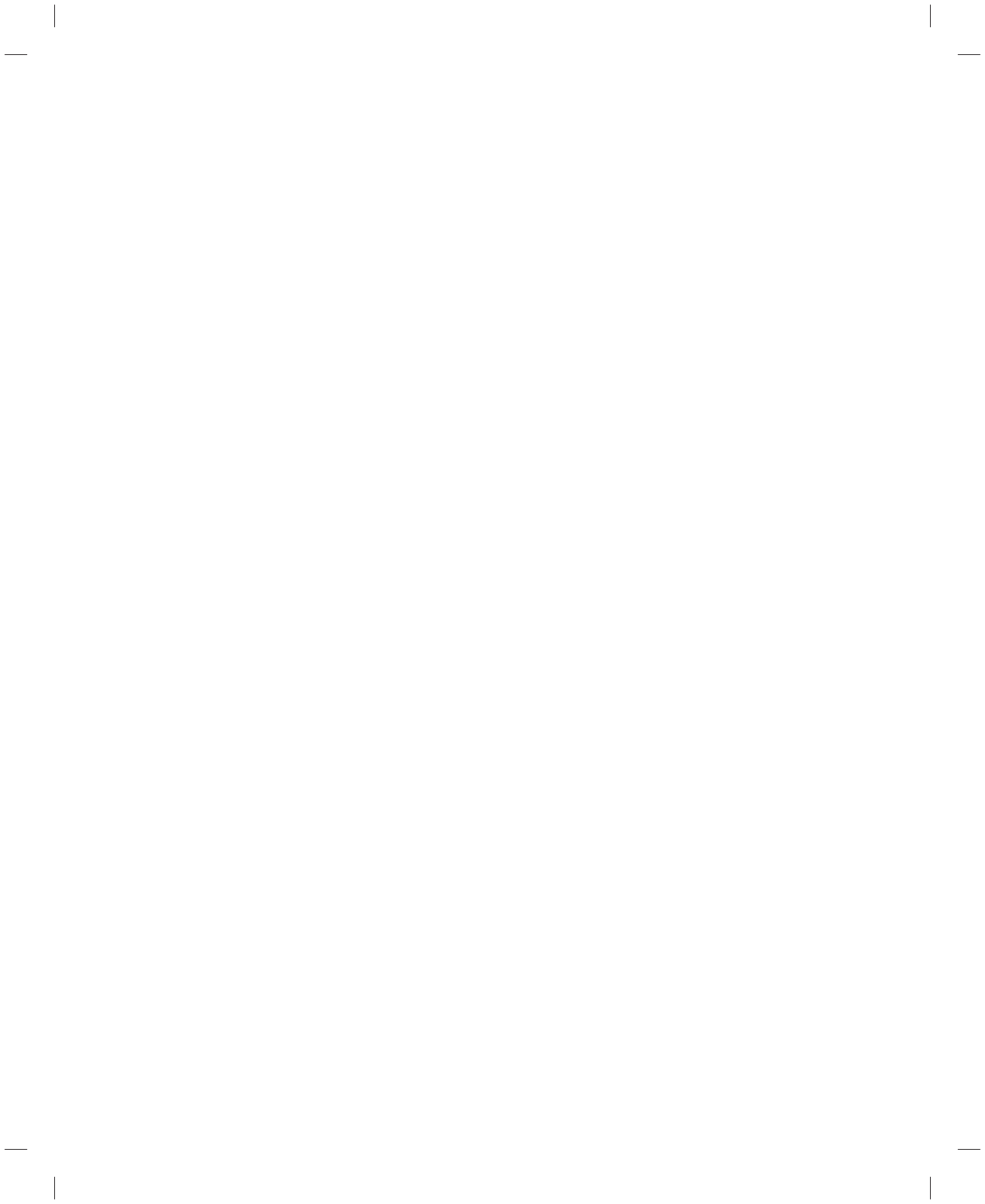
The issues surrounding the spoken word as evidence will be discussed in Section III. The landmark case of *Miranda v. Arizona* sets the stage for a detailed look at the implications and applications surrounding interrogations, confessions, and other settings that result in incriminating statements. The 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 Wright. Professor Walter, also an author, lawyer, and professor, served as my coach and confidante through the entire process. Thanks also go to Stacy and Sharon Roberts who allowed me to hide out in their houseboat while writing much of the book.

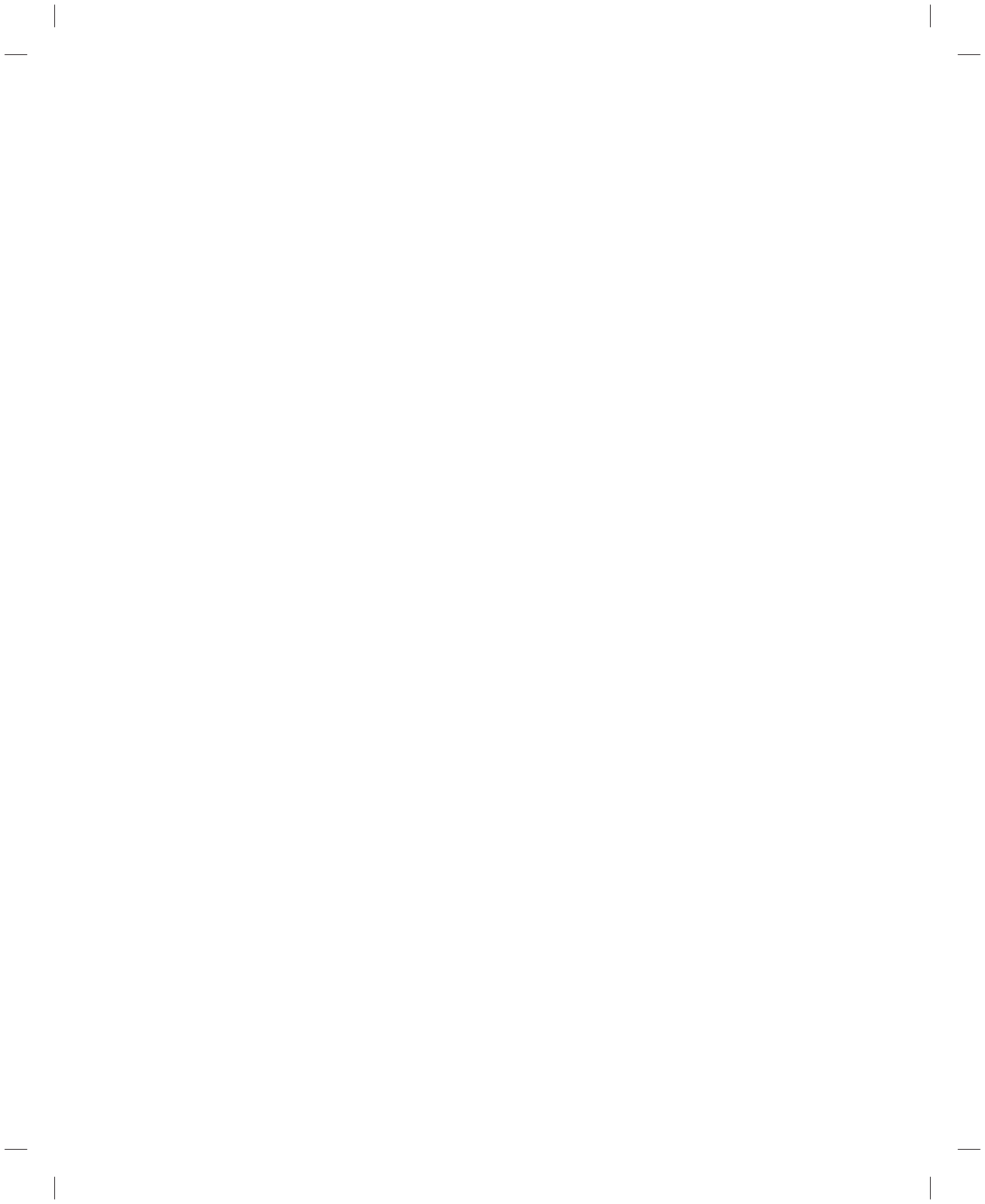


About the Author

Roger Wright is a professor of Criminal Justice at the University of Cincinnati. He earned his Juris Doctorate 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



“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?

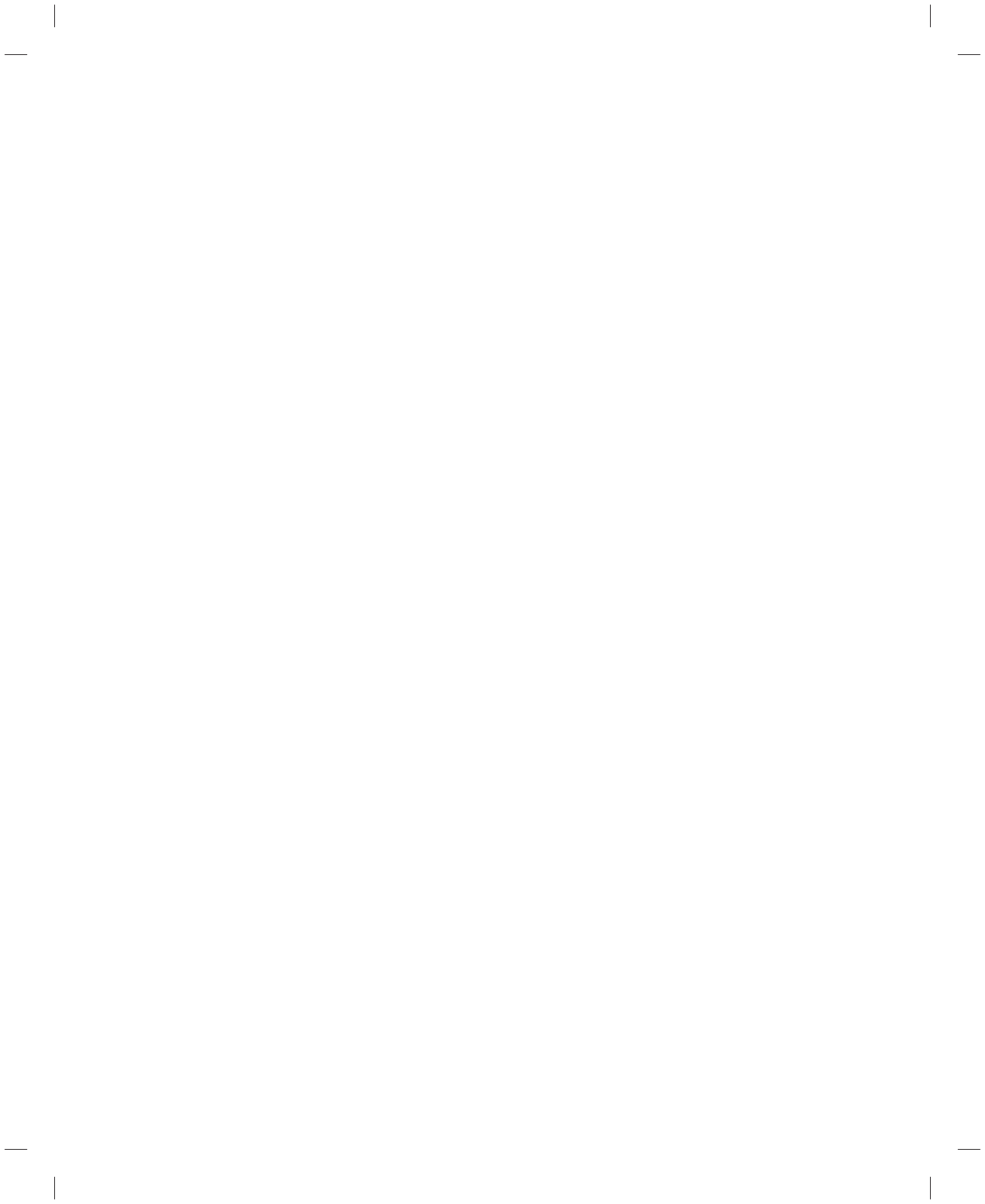
The police, suspecting that Jeremy is manufacturing methamphetamine, break into his mobile home by prying open the front door. They do not have a search warrant or any other legal justification. They do not find any evidence of a meth lab, but while searching Jeremy's bedroom, they discover a large marijuana 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 issue of guilt or innocence is 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.

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.

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

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, and trial 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 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

Impeachment

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

Statutory law

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

gamesmanship. The Supreme 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

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 statute provided a punishment of life in prison, 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? ■

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.

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 standard, called the **burden of proof**, is the level of probability of which the judge or

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.

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