

SOLUTIONS MANUAL

Copyrighted Material
TENTH EDITION

JOHN N. FERDICO • HENRY F. FRADELLA • CHRISTOPHER D. TOTTEN



Criminal Procedure

for the Criminal Justice Professional



CHAPTER 2

Criminal Courts, Pretrial Processes, and Trials

LEARNING OBJECTIVES

After reading this chapter, students should be able to...

- Explain the structure of the court system of the United States and of the student's state.
- Trace the progress of a criminal case through its various stages from initial complaint through appeal and post-conviction remedies.
- Understand the characteristics and functions of a complaint, an affidavit, a summons, a warrant, an indictment, an information, a motion, a subpoena, and a deposition.
- Explain the differences between preliminary hearings, grand jury proceedings, and arraignments.
- Understand the meaning of prosecutorial discretion and explain the difference between selective and vindictive prosecution.
- Understand why plea bargaining and discovery are essential to the administration of criminal justice.
- Understand the difference between venue and jurisdiction.
- Understand the rights, duties, and functions of the judge, the jury, the prosecuting attorney, and the defendant in a criminal trial.
- Explain the different types of evidence and the different evidentiary burdens of proof.
- Understand the powers of and limitations on judges in determining the sentence.
- Explain the major differences between appeal and habeas corpus.

OUTLINE

- I. **Structure of the US Court System**
 - A. Federalism and Dual Court System
 - B. Jurisdiction
 1. Geographical Jurisdiction and Venue
 2. Hierarchical Jurisdiction and Court Structure
 - a. Trial Courts and Original Jurisdiction
 - b. Appellate Courts and Appellate Jurisdiction
 - c. Nature of Mandatory and Discretionary Appellate Jurisdiction
 - d. Standards of Appellate Review
 - e. Concurrent and Exclusive Jurisdiction
 - C. Federal Courts
 1. Federal District Courts
 2. Federal Circuit Courts of Appeals
 3. U.S. Supreme Court
 4. Non-Article III Federal Courts
 - D. State Courts
- II. **Preliminary Pretrial Criminal Proceedings**
 - A. Charging
 1. Prosecutorial Discretion
 2. The Complaint
 - a. Affidavits
 - b. Warrant or Summons Issued on the Complaint
 3. Initial Appearance before a Magistrate
 4. Preliminary Hearing
 5. Indictments and Informations
 - a. Grand Jury
 - b. Waiver of Right to Grand Jury Indictment
 - c. Warrant or Summons Issued on the Indictment
 - B. Arraignment and Pleas
 1. Pleas
 - a. Requirement of Guilty Plea and *Nolo Contendere* Pleas
 - b. Judicial Approval of Guilty Plea and *Nolo Contendere* Pleas
 - c. Pleading Insane
 - C. Plea Bargaining
 - D. Preparing for Trial
 1. Motions
 2. Depositions
 - a. Exculpatory Evidence
 - b. Impeachment Material
 3. Subpoena
 4. Competency to Stand Trial
- III. **Trial**

- A. Trial by Jury
- B. Bench Trial
- C. Jury Selection
 - 1. Summoning the Venire
 - 2. The *Voir Dire* Process
 - a. Strikes for Cause
 - b. Peremptory Challenges
 - 3. Impaneling the Petit Jury
- D. Starting Presumptions
- E. Evidence and Burdens of Proof
 - 1. Types of Evidence
 - 2. Burdens of Proof
- F. Order of Evidence Presentation at Trial
 - 1. Opening Statements
 - 2. Prosecution's Case-in-Chief
 - 3. Motion for Acquittal
 - 4. Defense Case-in-Chief
 - 5. Rebuttal Case by the Prosecution
 - 6. Closing Arguments
 - 7. Jury Instruction
 - 8. Verdict
- G. Sentencing
 - 1. Shared Responsibility
 - 2. Sentencing Schemes
 - a. Indeterminate Sentences
 - b. Determinate Sentencing
 - 3. Presentence Investigation Report
 - 4. Sentencing Options
 - a. Probation
 - b. Indeterminate Sanctions
 - c. Incarceration Rates
 - d. Parole after a Period of Incarceration
 - 5. The Sentencing Hearing
- H. Judgment
- I. Post-Trial Motions
 - 1. Motion for Judgment of Acquittal
 - 2. Motion for New Trial
 - 3. Motion for Revision or Correction of Sentence
- J. Remedies after Conviction
 - 1. Appeal
 - 2. *Habeas Corpus*
 - a. Federal *Habeas Corpus* for State Prisoners
 - b. *Habeas Corpus* Relief for Federal Prisoners
 - c. State Post-Conviction Relief

SUMMARY

This chapter is designed to help criminal justice students and professionals understand the dual structure of the court system in the United States, the pretrial processes used by the criminal courts that lead up to a trial, the criminal trial process, and the primary events that occur after someone is convicted at trial, including sentencing, appeal, and post-conviction relief. It includes information on the structural organization of both federal and state courts, various sub-types of court jurisdiction, and an overview of all of the pretrial criminal proceedings used to process criminal defendants through the courts from initial appearance through the eve of trial. Although a review of the chapter should make clear that each jurisdiction's court system has its own unique characteristics, the criminal pretrial process presented in this chapter should serve as a framework for the further study of one or more of these systems. When researching a specific court system, one should seek guidance from the applicable constitution, statutes, rules of court, and rules of evidence for that jurisdiction. The information contained in this chapter can enhance the justice professional's perception of his or her role in the entire criminal justice system and the importance of properly performing that role to the effective and just operation of the system.

KEY TERMS

abuse of discretion	clear and convincing evidence	exclusive jurisdiction
affidavit	clearly erroneous	exculpatory evidence
affirmative defense	closing arguments	fact-partial challenges
allocate/allocation hearing	competency to stand trial	felony
<i>amicus curie</i>	complaint	grand jury
an appeal of right	concurrent jurisdiction	harmless errors
appeal	correctional system	hung jury
appellant	courts of general jurisdiction	immunity
appellate jurisdiction	courts of limited jurisdiction	impeachment
appellee	cross-examination	indeterminate sentencing
arraignment	de novo	indictment
arrest warrant	defendant	inferences
bail	demonstrative evidence	information
bench trial	deposition	initial appearance
bench trial/non-jury trial	determinate sentencing	intermediate courts of appeals
beyond a reasonable doubt	direct evidence	intermediate sanctions
bind over	direct examination	jail
briefs	discovery	judgment
burden of persuasion	<i>en banc</i>	judicial notice
burden of production	evidence	jurisdiction
case-in-chief		jury deliberations
circumstantial evidence		jury instructions

jury nullification	prejudicial error	scientific evidence
litigants	preliminary hearing	scientific jury selection
magistrate/justice of the peace	preponderance of the evidence	selective prosecution
mandatory appellate	presentence	sentencing
mandatory sentencing	investigation	sentencing departures
misdemeanor	presentence	sentencing hearing
motion	investigation report	standard of review
motion for acquittal	presumption	state court of last resort
<i>nolo contendere</i>	presumption of	strikes for cause
not guilty by reason of insanity	innocence	subpoena
opening statements	presumption of sanity	subpoena <i>duces tecum</i>
oral arguments	principal challenges	summons
original jurisdiction	prison	testimonial evidence
pardon	probable cause	trial by jury
parole	probation	trial <i>de novo</i>
peace	probation revocation	trier-of-fact
peremptory challenges	hearing	upward departures
petit jury	prosecution	venire/jury panel
petition for a writ of certiorari	real/physical evidence	venue
petitioner	reasonable articulable suspicion	verdict
plain error	rebuttal	victim impact statement
plea bargaining	redirect examination	vindictive prosecution
	respondent	<i>voir dire</i>
		writ of certiorari
		writ of <i>habeas corpus</i>

DISCUSSION QUESTIONS

1. Draw a diagram of the hierarchy of federal and state courts with criminal jurisdiction in your state. Indicate whether each court has original or appellate criminal jurisdiction. Further explain the specifics of each court's subject matter jurisdiction (for example, if he hears only misdemeanors or whether it has a limited appellate jurisdiction).
2. What is the difference between jurisdiction and venue?
3. What is a writ of certiorari? Under what circumstances might a court of last resort, like the U.S. Supreme Court, grant certiorari?
4. Discuss the similarities and differences among the three types of charging documents (i.e., a complaint, an indictment, and an information).
5. Explain the purposes of an initial appearance and how it differs from an arraignment.

6. What is an affidavit? What documents in the pretrial criminal justice process are usually supported by affidavits?
7. What is a grand jury and what are its functions? Compare and contrast the similarities and the differences between preliminary hearings and grand jury proceedings.
8. What are the four types of pleas that defendants in most U.S. jurisdictions might enter at an arraignment?
9. Describe the things that are supposed to happen at a Rule 11 or similar state law proceeding at which a defendant enters a plea of guilty or *nolo contendere*. Be sure to include a discussion of the rights that a defendant waives when entering one of these pleas.
10. Describe the types of information that must be disclosed by a prosecutor to the defense as part of the mandatory criminal discovery process.
11. What is a motion to suppress evidence? Why is it particularly important to constitutional criminal procedure and, therefore, criminal justice professionals – especially law enforcement officers?
12. Before a court is permitted to allow a criminal defendant to stand trial, plead guilty, or waive constitutional rights, the court must be satisfied that the defendant is competent to engage in any of these activities. What is meant by competency? Describe the legal standard for determining competency to stand trial and waive rights in a criminal case.
13. What is the difference between a jury trial and a bench trial? When does a criminal defendant have the right to jury trial? Why might a defendant waive that right and opt for a bench trial?
14. Explain the process of assembling a venire panel and how it gets narrowed into petit jury through the *voir dire* process.
15. What is the difference between a challenge for cause and a peremptory challenge? Describe the limitations the Equal Protection Clause places on the use of peremptory challenges.
16. What is the difference between a presumption and an inference? What two presumptions set the evidentiary starting points in all criminal trials?
17. What is the difference between direct evidence and circumstantial evidence? Give an example of each.
18. Describe the order of presentation of evidence during a criminal trial.

19. What are the different burdens of proof? Identify with particularity the levels of proof that play an important role in various criminal procedures.
20. Why is it important to differentiate a verdict from a judgment?
21. What are the primary differences between indeterminate sentencing schemes and determinate ones?
22. What is a presentence investigation report? What information is usually contained in one? Why are these reports important to the criminal sentencing process?
23. Name and briefly describe three ways in which a defendant can obtain relief from the courts after a verdict of guilty.

STUDENT ACTIVITIES

1. Have students research and define in a short paper the difference between an indictment and an information. What types of situations might dictate the use of each?
2. Divide students into groups and have them create a “board game” of the criminal court process beginning with an arrest and finishing with an appeal process.
3. Create a mock trial and give students various assignments and roles to play regarding police, defense, prosecution, judge, jurors, etc.