

<i>Requirements for Entering a Plea</i> .....	1150
<i>Withdrawing a Plea</i> .....	1161
COMPETENCY TO STAND TRIAL .....	1164
<i>Psychiatric Examinations</i> .....	1166
<i>Competency Hearings</i> .....	1167
<i>Fifth Amendment Issues</i> .....	1172
<i>Commitment and Review Upon Finding of Incompetency</i> .....	1173
DOUBLE JEOPARDY .....	1174
<i>Types of Proceedings</i> .....	1175
<i>Attachment of Jeopardy</i> .....	1177
<i>Retrial Following Mistrial</i> .....	1179
<i>Retrial Following Dismissal</i> .....	1184
<i>Multiple Charges and Offenses</i> .....	1186
<i>Collateral Estoppel</i> .....	1195
<i>Dual Sovereignty</i> .....	1200
<i>Appeal</i> .....	1203
<i>Guilty Pleas</i> .....	1207
<i>Sentencing</i> .....	1209
<b>III. TRIAL</b>	
RIGHT TO COUNSEL .....	1215
<i>Scope and Application</i> .....	1215
<i>Waiver of Counsel and Pro Se Representation</i> .....	1221
<i>Ineffective Assistance of Counsel</i> .....	1226
<i>Conflict of Interest</i> .....	1235
<i>Government Intrusion Into Attorney-Client Relationship</i> .....	1239
RIGHT TO JURY TRIAL .....	1240
<i>Waiver of Right to Trial</i> .....	1243
<i>Jury Composition and Unanimity</i> .....	1244
<i>Constitutional Challenges to Jury Selection Procedures</i> .....	1245
<i>Statutory Challenges to Jury Selection Procedures</i> .....	1248
<i>Voir Dire</i> .....	1249
<i>Challenges for Cause</i> .....	1253
<i>Peremptory Challenges: Generally</i> .....	1255
<i>Peremptory Challenges: Equal Protection Issues</i> .....	1256
INFLUENCES ON THE JURY .....	1260
<i>Juror Disqualification and Substitution</i> .....	1261
<i>Contamination by Extraneous Influences</i> .....	1262
<i>Visible Extra Security Measures and Prison Garb</i> .....	1268
<i>Contact Between Jury and Judge</i> .....	1269
<i>Pretrial and Trial Publicity</i> .....	1274
AUTHORITY OF THE TRIAL JUDGE .....	1279
<i>Mandatory Disqualification or Recusal</i> .....	1279
<i>Contempt Power</i> .....	1287
<i>Civil Contempt</i> .....	1289
<i>Criminal Contempt</i> .....	1293
PROSECUTORIAL MISCONDUCT .....	1296
<i>Improper Comments</i> .....	1296
<i>Other Types of Misconduct</i> .....	1305
<i>Appellate Review</i> .....	1311
FIFTH AMENDMENT AT TRIAL .....	1312
<i>Compulsion</i> .....	1313
<i>Testimonial Communication</i> .....	1315
<i>Self-Incrimination</i> .....	1318
<i>Defendant's Right to Refuse to Testify</i> .....	1318
<i>Witness's Right to Refuse to Testify</i> .....	1321
<i>Conflicts with a Defendant's Sixth Amendment Rights</i> .....	1324
SIXTH AMENDMENT AT TRIAL .....	1325
<i>Public Access</i> .....	1325

<i>Confrontation Clause</i> .....	1330
<i>Hearsay and the Confrontation Right</i> .....	1340
<i>Joint Trials and the Confrontation Clause</i> .....	1344
<i>Compulsory Process</i> .....	1346
PROOF ISSUES .....	1351
<i>Proving Elements Beyond a Reasonable Doubt</i> .....	1351
<i>Affirmative Defenses</i> .....	1355
<i>Presumptions</i> .....	1357
IV. SENTENCING	
SENTENCING GUIDELINES .....	1363
<i>Offense Level</i> .....	1364
<i>Criminal History</i> .....	1375
<i>Career Offenders</i> .....	1378
<i>Sentencing Range</i> .....	1379
<i>Departures</i> .....	1382
<i>Presentence Investigation Reports</i> .....	1393
<i>Imposition of Sentence</i> .....	1400
<i>Improper Considerations in Determining Sentence</i> .....	1403
<i>Credit for Time Served</i> .....	1410
PROBATION .....	1413
<i>Imposition and Duration of Probation</i> .....	1413
<i>Conditions of Probation</i> .....	1415
<i>Revocation</i> .....	1417
SUPERVISED RELEASE .....	1423
RESTITUTION .....	1426
CAPITAL PUNISHMENT .....	1430
<i>Proportionality</i> .....	1430
<i>Statutory Capital Punishment Schemes</i> .....	1435
<i>Improper Influences in Capital Cases</i> .....	1445
<i>Death Qualification</i> .....	1452
<i>Stays and Holds</i> .....	1454
<i>The Federal Death Penalty Act of 1994</i> .....	1455
PAROLE .....	1456
<i>Repeal of the Parole Commission and Reorganization Act</i> .....	1456
<i>Due Process Considerations in State Parole Decisions</i> .....	1457
<i>Parole Revocation</i> .....	1459
V. REVIEW PROCEEDINGS	
NEW TRIAL .....	1463
APPEALS .....	1468
<i>Jurisdiction</i> .....	1468
<i>Notice of Appeal</i> .....	1473
<i>Federal Government Appeals</i> .....	1475
<i>Concurrent Sentence Doctrine</i> .....	1477
<i>Preservation of Rights for Review</i> .....	1479
<i>Plain Error</i> .....	1484
<i>Harmless Error</i> .....	1491
APPELLATE REVIEW OF SENTENCES .....	1497
<i>Correction and Reduction of Sentence Under Rule 35</i> .....	1502
<i>Constitutional Challenges</i> .....	1503
HABEAS RELIEF FOR STATE PRISONERS .....	1507
<i>Jurisdiction and Venue</i> .....	1508
<i>Filing Deadlines</i> .....	1510
<i>Cognizable Issues</i> .....	1511
<i>Exhaustion and Procedural Bar</i> .....	1519
<i>Delayed Petitions</i> .....	1530
<i>Second or Successive Petitions</i> .....	1530
<i>Dismissal of Petitions</i> .....	1532
<i>Evidentiary Hearings</i> .....	1533

# THE GEORGETOWN LAW JOURNAL

Volume 85

April 1997

Number 4

## TWENTY-SIXTH ANNUAL REVIEW OF CRIMINAL PROCEDURE

### CONTENTS

FOREWORD: PUNISHMENT AND PROCEDURE: PUNISHMENT THEORY AND THE CRIMINAL-CIVIL PROCEDURAL DIVIDE . . . . .	775
BY CAROL S. STEIKER	
INTRODUCTION . . . . .	820A
The 1996-97 Supreme Court Term— <i>Certiorari Granted</i> . . . . .	820B
I. INVESTIGATION AND POLICE PRACTICES	
OVERVIEW OF THE FOURTH AMENDMENT . . . . .	821
<i>Government Action</i> . . . . .	821
<i>Conduct Constituting a Search or Seizure</i> . . . . .	822
<i>Probable Cause</i> . . . . .	826
THE WARRANT REQUIREMENT . . . . .	832
<i>Particularity of Warrants</i> . . . . .	836
<i>Execution of Warrants</i> . . . . .	842
WARRANTLESS SEARCHES AND SEIZURES . . . . .	847
<i>Investigatory Detention of Persons</i> . . . . .	847
<i>Investigatory Detention of Property</i> . . . . .	858
<i>Warrantless Arrests</i> . . . . .	860
<i>Search Incident to Valid Arrest</i> . . . . .	863
<i>Seizure of Items in Plain View</i> . . . . .	868
<i>Exigent Circumstances</i> . . . . .	872
<i>Consent Searches</i> . . . . .	880
<i>Vehicle Searches</i> . . . . .	891
<i>Container Searches</i> . . . . .	895
<i>Inventory Searches</i> . . . . .	897
<i>Border Searches</i> . . . . .	901
<i>Searches at Sea</i> . . . . .	906
<i>Administrative Searches</i> . . . . .	910
<i>Special Needs</i> . . . . .	914
<i>Abandoned Property</i> . . . . .	919
ELECTRONIC SURVEILLANCE . . . . .	920
<i>Orders for Electronic Surveillance</i> . . . . .	921
<i>Statutory Postauthorization Duties</i> . . . . .	929
<i>Suppression</i> . . . . .	933
<i>Grand Jury Witnesses</i> . . . . .	935
<i>Pen Registers and Trap and Trace Devices</i> . . . . .	937
<i>Stored Wire and Electronic Communications</i> . . . . .	937
<i>Electronic Surveillance Exempted from Title III</i> . . . . .	938
IDENTIFICATIONS . . . . .	940
<i>Right to Counsel</i> . . . . .	940
<i>Due Process</i> . . . . .	943
<i>Evidentiary Hearings</i> . . . . .	948

# THE GEORGETOWN LAW JOURNAL

## TWENTY-SIXTH ANNUAL REVIEW OF CRIMINAL PROCEDURE

FORWORD: PUNISHMENT AND PROCEDURE: PUNISHMENT THEORY AND THE  
CRIMINAL-CIVIL PROCEDURAL DIVIDE  
BY CAROL S. STEIKER

UNITED STATES SUPREME COURT AND COURTS OF APPEALS: 1995-1996

27 JUL 1997



<i>Right to Legal Assistance</i> .....	1539
<i>Remedies and Appeals</i> .....	1540
<i>Capital Cases</i> .....	1544
HABEAS RELIEF FOR FEDERAL PRISONERS .....	1545
<i>Jurisdiction, Venue, and Cognizable Issues</i> .....	1546
<i>Filing Deadlines</i> .....	1549
<i>Exhaustion and Procedural Bar</i> .....	1550
<i>Delayed and Second or Successive Motions</i> .....	1553
<i>Disposition of Motions Under the Section 2255 Rules</i> .....	1554
<i>Right to Legal Assistance</i> .....	1557
<i>Remedies and Appeals</i> .....	1558
VI. PRISONERS' RIGHTS	
SUBSTANTIVE RIGHTS RETAINED BY PRISONERS .....	1561
<i>Right of Access to Courts</i> .....	1561
<i>Freedoms of Speech, Association, and Religion</i> .....	1565
<i>Rights Related to Searches, Seizures, and Personal Privacy</i> .....	1570
<i>Rights Related to Living Conditions, Medical Care, and Disciplinary Treatment</i> .....	1572
<i>Rights to Procedural Due Process</i> .....	1581
<i>Right to Equal Treatment</i> .....	1589
<i>Right to Assistance of Counsel</i> .....	1591
<i>Rights of Pretrial Detainees</i> .....	1591
PROCEDURAL MEANS OF ENFORCEMENT UNDER 42 U.S.C. § 1983 .....	1595
<i>Provisions' Applicability and Relief</i> .....	1595
<i>Available Remedies</i> .....	1602
<i>Affirmative Defenses</i> .....	1606
SUPREME COURT CASE INDEX .....	1617

CUSTODIAL INTERROGATIONS . . . . .	949
<i>Miranda Rights</i> . . . . .	950
<i>Custody</i> . . . . .	951
<i>Interrogation</i> . . . . .	954
<i>Limitations and Exceptions to the Miranda Rule</i> . . . . .	956
<i>Waiver of Miranda Rights</i> . . . . .	957
<i>Assertion of Miranda Rights</i> . . . . .	960
<i>Involuntary Confessions</i> . . . . .	963
THE EXCLUSIONARY RULE . . . . .	969
<i>Standing</i> . . . . .	970
<i>Exceptions Generally</i> . . . . .	971
<i>Good Faith</i> . . . . .	972
<i>Attenuation</i> . . . . .	976
<i>Independent Source</i> . . . . .	978
<i>Inevitable Discovery</i> . . . . .	979
<i>Collateral Uses</i> . . . . .	980
II. PRELIMINARY PROCEEDINGS . . . . .	983
PROSECUTORIAL DISCRETION . . . . .	987
<i>Selective Prosecution</i> . . . . .	990
<i>Vindictive Prosecution</i> . . . . .	995
PRELIMINARY HEARINGS . . . . .	995
<i>Gerstein Hearings</i> . . . . .	997
<i>Initial Appearances</i> . . . . .	1000
<i>Preliminary Examinations</i> . . . . .	1002
GRAND JURY . . . . .	1002
<i>Grand Jury Procedures</i> . . . . .	1008
<i>Review of Grand Jury Procedural Violations</i> . . . . .	1010
<i>Appeal of Grand Jury Orders</i> . . . . .	1012
<i>Grand Jury Powers</i> . . . . .	1020
<i>Grand Jury Secrecy</i> . . . . .	1025
INDICTMENTS . . . . .	1026
<i>Dismissal of Indictments</i> . . . . .	1034
<i>Evidentiary Challenges</i> . . . . .	1036
<i>Sufficiency of Indictments</i> . . . . .	1042
<i>Duplicity and Multiplicity</i> . . . . .	1048
<i>Amendments and Variances</i> . . . . .	1054
JOINER AND SEVERANCE . . . . .	1056
<i>Joinder and Severance of Offenses</i> . . . . .	1059
<i>Joinder and Severance of Defendants</i> . . . . .	1067
<i>Review of Misjoinder and Failure to Sever</i> . . . . .	1072
BAIL . . . . .	1074
<i>Pretrial Detention</i> . . . . .	1080
<i>Rebuttable Presumption of Dangerousness</i> . . . . .	1081
<i>Detention Hearings</i> . . . . .	1082
<i>Amendment and Review of Detention and Release Orders</i> . . . . .	1084
<i>Release Pending Appeal</i> . . . . .	1085
<i>Violation of Release Conditions</i> . . . . .	1088
DISCOVERY . . . . .	1088
<i>Government's Constitutional Disclosure Duties</i> . . . . .	1100
<i>Government's Statutory Disclosure Duties</i> . . . . .	1116
<i>Defendant's Statutory Disclosure Duties</i> . . . . .	1119
SPEEDY TRIAL . . . . .	1119
<i>Safeguards Against Preaccusation Delay</i> . . . . .	1121
<i>Constitutional Safeguards Against Postaccusation Delay</i> . . . . .	1125
<i>Statutory Safeguards Against Postaccusation Delay</i> . . . . .	1136
GUILTY PLEAS . . . . .	1136
<i>Plea Bargaining</i> . . . . .	1144
<i>Consequences of a Plea</i> . . . . .	