

California Criminal Litigation in Action

California Criminal Litigation in Action

THIRD EDITION

Laura Berend & Jean Ramirez

PROFESSORS OF LAW
UNIVERSITY OF SAN DIEGO SCHOOL OF LAW



CAROLINA ACADEMIC PRESS
Durham, North Carolina

Copyright © 2016
Carolina Academic Press
All Rights Reserved

Library of Congress Cataloging-in-Publication Data

Berend, Laura, author.

[Criminal litigation in action]

California criminal litigation in action / Laura Berend and Jean Ramirez. -- Third edition.

pages cm

Includes bibliographical references and index.

ISBN 978-1-61163-148-7 (alk. paper)

1. Criminal procedure--California. I. Montoya, Jean, author. II. Title.

KFC1155.B47 2015

345.794'05--dc23

2015036409

Carolina Academic Press
700 Kent Street
Durham, NC 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.cap-press.com

Printed in the United States of America

*We dedicate the third edition of this book to our spouses,
Bill Ziegler and Kellie Cardona.*

Contents

Introduction	xi
Chapter 1 · Arrest	3
Questions and Notes	7
Procedural Stages in a Criminal Case	8
COUNTY OF RIVERSIDE and Cois Byrd, Sheriff of Riverside County, Petitioners, v. Donald Lee McLAUGHLIN, et al.	9
Questions and Notes	18
Chapter 2 · Charging	25
Uniform Crime Charging Standards	26
Questions and Notes	37
Evaluating the Data	39
Charging Exercise	43
Felony Complaint	44
Victims’ Bill of Rights—Marsy Rights	56
Chapter 3 · Arraignment and Interviewing	59
Questions and Notes	61
Interviewing	62
Interviewing Exercise	67
ABA Standards for Criminal Justice	68
California Rules of Professional Conduct	72
Cal. Evid. Code §§ 950–956.5	72
Adult In-Custody Defendants (“3rd Dayers”)	74
Chapter 4 · Pretrial Release	77
In re DAVID ANTHONY YORK et al. on Habeas Corpus, In re JOHNNY CADENAZ et al. on Habeas Corpus, In re PAUL BLAISE ATKINS et al. on Habeas Corpus	80
Questions and Notes	85
In re GEORGE CHRISTIE III on Habeas Corpus	86
Questions and Notes	88
Bail Review Exercise	89

Chapter 5 · Preliminary Hearings	113
Laura Berend, Proposition 115 Preliminary Hearings: Sacrificing Reliability on the Altar of Expediency?	114
Proposition 115 Changes	116
Thomas Paul WHITMAN, Petitioner, v. The SUPERIOR COURT of Santa Clara County, Respondent, The PEOPLE, Real Party in Interest	118
Questions and Notes	125
The PEOPLE, Plaintiff and Appellant, v. Steven WIMBERLY, Defendant and Respondent	127
Questions and Notes	130
Preliminary Hearing Exercise	131
Non-Hearsay Preliminary Hearings	133
Hearsay Preliminary Hearings	135
Chapter 6 · Grand Jury Proceedings	137
Questions and Notes	138
UNITED STATES, Petitioner, v. John H. WILLIAMS, Jr.	140
George H. BERARDI, Petitioner, v. The SUPERIOR COURT of San Diego County, Respondent; The People, Real Party in Interest.	146
Questions and Notes	153
Grand Jury Exercise	155
Indictment	156
ABA Standards for Criminal Justice	158
Chapter 7 · Discovery	161
Information	162
Discovery	164
Questions and Notes	165
Arnulfo MAGALLAN, Petitioner, v. The SUPERIOR COURT of Monterey County, Respondent; The People, Real Party in Interest	166
Questions and Notes	171
Discovery Exercise	173
Criminal Discovery Statutes	173
ABA Standards for Criminal Justice	175
Chapter 8 · Motions	179
Motions Exercise	182
Local Rules, County of San Diego, Superior Court, Div. III: Criminal	192
Chapter 9 · Trial Preparation	197
In re ANTONIO CORDERO, JR., on Habeas Corpus	197
Questions and Notes	207
ABA Standards for Criminal Justice	208
Case Evaluation Exercise	209
Excerpts from the Preliminary Hearing Transcript in People v. Battistone	210
Chapter 10 · Plea Bargaining	229
The PEOPLE, Plaintiff and Appellant, v. Jose Luis LABORA, Defendant and Respondent	230

Questions and Notes	234
Plea Bargaining	235
Jose PADILLA, Petitioner, v. KENTUCKY	237
Questions and Notes	242
Plea Bargaining Exercise	244
ABA Standards for Criminal Justice	245
Change of Plea Forms	250
Chapter 11 · Sentencing	263
People v. Superior Court (Du)	266
Questions and Notes	274
People v. Williams	275
Questions and Notes	281
Sentencing Exercise	283
Terms of Probation	312
ABA Standards for Criminal Justice (4th ed. 2015)	315
Chapter 12 · Selected Statutes and Court Rules	317
Crimes	318
Jury Instructions	323
Sentencing-Related Statutes	331
Rules of Court: Sentencing	348

Introduction

The book is a primer on criminal litigation in the trial courts. The book is based on the fictitious but realistic criminal case of *People v. Roger Battistone* and tracks the case from arrest through sentencing. Students learn by doing. When the class addresses bail, students participate in a simulation exercise as a prosecutor, defense counsel, or judge at a bail review hearing. Similarly, students participate in simulation exercises on charging, interviewing and counseling, preliminary hearings, grand jury proceedings, discovery, motions, plea bargaining, and sentencing. Along the way, students become familiar with the various stages of a criminal case by applying the law found in judicial opinions, statutes, rules of court, professional responsibility rules, local rules, and jury instructions, to the facts of the *Battistone* case.

Jurisdiction, Disclaimer, and Dates

The case is set in the jurisdiction of Ocean Beach in San Diego County in the State of California. Ocean Beach and San Diego are very real and beautiful cities in the very real and beautiful San Diego County in Southern California where we have the good fortune to live and teach. Cases, statutes, and other legal and written sources are also real. However, any similarities to people, places, or fact situations are the product of our combined imaginations and are purely coincidental. References to years are in relation to the present; for example YR-0 refers to this year, and YR-22 refers to twenty-two years ago.

Second Edition

In addition to updating the materials, we have expanded references to professional responsibility obligations throughout the text. The materials are informed by our personal experiences in criminal trial practice, our teaching experience, our return to practice during sabbatical leaves, our research, and the generous contributions and helpful critiques from the San Diego criminal practice community. As they have transitioned from students to alums to seasoned lawyers, our students have continued to enrich our teaching.

Third Edition

In large part, the third edition was necessitated by the recent sea change in California corrections policy. This policy shift is driven primarily by fiscal concerns and overcrowding in state prisons. It is driven somewhat by a resurgence of interest in rehabilitation, as opposed to punishment. The related legislation provides for some prison sentences being served in county jails (Realignment), and lesser penalties for some theft- and drug-related crimes (Proposition 47).

Acknowledgments

The first edition of this book benefitted greatly from the contributions of the following people and organizations:

Desirae Wooden, for creating Rosie's "injuries," and Sue Hegle, for modeling Rosie's injuries.

Gabrielle Cerda, M.D., and Barb Dodd-Waddington, R.N., for sharing their medical expertise.

Vince Brunkow, Federal Public Defenders of San Diego, Inc., Jacqueline Crowle, Department of the Alternate Public Defender, County of San Diego, and Lisa Rodriguez, Office of the District Attorney County of San Diego, for sharing their legal expertise.

Cheré Smith and Roger Stattel, University of San Diego School of Law, for providing technical support.

The former criminal clinicians at the University of San Diego School of Law, who may have contributed to the original Battistone arrest report.

Professor Daniel Rodriguez, Dean of the University of San Diego School of Law, for awarding research grants to prepare these materials.

For the second edition, Professors Berend and Ramirez thank the University of San Diego for approving their sabbaticals with the San Diego County Office of the Alternate Public Defender and the San Diego County Office of the District Attorney, respectively. Both sabbatical terms offered experiences that updated our criminal trial court skills and enriched our teaching and this book.

We thank former Dean Kevin Cole and the University of San Diego School of Law for supporting the completion of the second edition of this book with a research grant.

First and foremost, we express our gratitude to Deputy District Attorney Lisa Rodriguez for her extraordinary assistance with this edition, being available for questions, teaching classes with us, mentoring our students, critiquing this book, and for being generally a cheerful and indispensable resource. We are very proud of this University of San Diego School of Law alumnus and former student who became familiar with the case file and some of the materials in this book when she was a law student.

We thank Jacqueline Crowle, retired from the San Diego Office of the Alternate Public Defender, for her helpful comments and suggestions to both editions. We deeply appreciate Deputy District Attorney Chris Lindberg's assistance with the chapter on the grand jury and for bringing that chapter alive in the classroom. We are grateful to the many other capable and generous alums and other San Diego criminal practitioners who have contributed their expertise to our teaching and our classes over the years, and enabled us

to forge a mutually beneficial relationship between our students and the criminal practice community.

We thank Andrew Burnett, University of San Diego School of Law class of 2012 for his extraordinary research assistance, technical abilities, steadfast support, and boundless energy in preparing this edition. We also thank Eric Yaeckle and Kevin Fard, University of San Diego School of Law class of 2010, for their research assistance.

We thank our indispensable executive assistant, Leilani Sharrett, for her creativity in preparing exhibits and documents, and for creating the CD that accompanies this book. We thank Leilani and Roger Stattel, our technology specialist, for their invaluable technical expertise, endless patience, and constant availability.

We appreciate Carolina Academic Press's Tim Colton's steadfast availability for unraveling a seemingly endless number of formatting and code dilemmas that surfaced as we prepared this edition.

For the third edition, we continue to acknowledge Lisa Rodriguez, recently installed as a San Diego County Superior Court Judge, formerly the Chief of the Complaints & Extraditions Division of the San Diego County District Attorney's Office, and both then and now widely considered a leading authority on sentencing in the California state courts. She has generously given of her time and expertise on multiple topics covered in our text.

We also acknowledge Keisha Mello-Hall and Bardia Moayedi for their research assistance.

Copyright Acknowledgments

We thank the following for permission to reproduce their copyrighted material:

California District Attorneys Association, for giving us permission to reproduce portions of the Uniform Crime Charging Standards.

Office of the General Counsel, Judicial Council of California, Administrative Office of the Courts, for giving us permission to reprint selected materials from CALCRIM jury instructions.

