

Index

- adversarial system, 24–5, 167, 173, 203
- affirmative defenses, 35, 86, 110–14, 125, 127, 143
- Allen, Ronald, xii, 54–5, 70, 73, 82–3, 89, 107, 147
- Alschuler, Albert, 223
- Amar, Akhil, 154, 163–4, 194, 211, 222
- appellate asymmetry, 3, 17, 96, 131, 138–9, 194, 196–207, 209–11, 231
- Ayling, Corey, 128–9, 134
- bail hearing, 95
- benefit of the doubt, xi, xv, 29–30, 59, 64–6, 76, 89, 91, 109, 117, 123–7, 131–2, 136, 138–9, 141, 232
- Bentham, Jeremy, 89, 147, 151, 168–9, 171, 232
- Berger, Maria, 159, 161
- Black, Hugo, 34, 131, 186, 204
- Blackmun, Harry, 35, 45
- Blackstone, William, 63, 66, 74–5, 88, 119, 130, 196
- Brandeis, Louis, 189, 226
- Brennan, William, 45, 90, 132–3
- capital punishment, 55, 57–61, 197
- Cardozo, Benjamin, 147, 162, 223
- Cassell, Paul, 126, 182
- certainty
 - moral, 33, 35, 38–40, 51, 54, 80
- Chambers, Harry, 11
- civil law, 8, 44, 48, 51, 55–6, 64, 66–7, 97, 109–10, 130–1, 161, 190–1, 219, 230
- Cohen, John, 42, 47–8
- common law, xii, 1, 4, 6, 18, 32–4, 57, 81–2, 90, 120, 134, 151, 155–6, 173–4, 183, 188–9, 196, 223, 229
- confessions, 8, 15, 19–20, 65, 81, 125–6, 128–37, 151, 166–7, 171–84, 189, 193, 209, 214–15, 217–18, 223–4, 229
- corroboration of, 172–3, 178–82, 184, 214, 229
- Miranda* rule, 126, 148, 157, 173–8, 180–3, 192, 209, 216, 224–5, 230
- voluntariness test for, 65, 125, 132–3, 135, 137, 172–8, 180–1, 184, 209, 224, 229
- Damaška, Mirjan, 217–18
- Dekay, Michael, 66, 68, 73, 119
- Dripps, Donald, 71
- due process, 31, 64, 91–2, 126, 156
- Dworkin, Gerald, 9
- epistemology, xi, 2–3, 7, 9, 30, 33, 58, 60, 64, 118, 121, 157, 171, 179, 233
- legal, 2, 89, 110, 117, 122, 214

- error, xiii, 1–5, 7–10, 12–14, 16–17,
 20–1, 29–30, 41, 46, 48, 58–60,
 68–9, 72–5, 87, 89, 92, 99, 113–14,
 117, 119, 123–4, 127–34, 136, 142,
 144, 155, 160, 164, 190, 194–206,
 209–11, 214, 230–2
 distribution of, 2–3, 29–30, 56, 64,
 66–8, 73–7, 89, 105, 117–18, 123–4,
 127–38, 142, 144–5, 177, 211, 214,
 232
 false acquittals, xv, 1, 11–12, 14–15,
 20, 25, 29, 67–76, 88, 108–9, 112,
 117–19, 123–4, 126, 128, 130–2,
 134, 138–40, 144, 150–2, 160, 177,
 190, 196, 198, 204–6, 209, 211
 false convictions, xv, 1, 11–12, 20, 25,
 29, 55, 58–9, 67–77, 85–8, 108–9,
 111–12, 114, 117–19, 123–6,
 128–32, 134, 138–40, 144–5, 150,
 152, 160, 163, 177, 195–7, 204, 207,
 209–11, 214
 false verdicts, 1, 4, 8, 10–11, 13, 15,
 126, 130, 137, 140, 205, 210, 230
 invalid verdicts, 13–14, 71, 142, 195,
 204, 210
 reduction of, 1–3, 117, 119, 123–4,
 130, 136, 204
 relative costs of, xv, 8, 13, 22, 25,
 33–4, 43, 51, 55–6, 61, 66, 68–76,
 87–9, 105, 111–13, 117, 123, 126–8,
 130, 132–3, 136, 138, 140, 144, 157,
 164, 183, 202, 209, 216
 evidence
 circumstantial, 54, 82–4, 163
 rules of, 3, 5, 7, 14–15, 73, 76, 108,
 117–20, 122–4, 127–32, 136, 138,
 141, 145, 147, 155, 177, 183, 191,
 194–5, 207–10, 213–14, 216, 231–2
 eyewitness testimony, 17–19, 23, 33, 41,
 43, 53–4, 79, 82, 84, 97, 120, 122,
 129, 131, 134, 137, 140, 143, 147,
 151–2, 155, 157–9, 162–6, 169,
 172–3, 187–8, 199–200, 206,
 216–17, 219, 222–4, 230, 232
 false arrest, 97, 173, 229
 Feeney, Floyd, 70
 Ferrer, Jordi, xii
 Frankfurter, Felix, 93, 155
 Friedland, Martin, 202
 Friedman, Richard, 100, 129, 203
 Friendly, Henry, 152, 163
 Galilei, Galileo, 5–6
 Ginsberg, Ruth Bader, 35
 Gold, Victor, 22
 Goldberg, Arthur, 132, 152–4, 160,
 220–2
 Goldwasser, Katherine, 129–30
 grand jury, 15–17, 86, 95–7, 219, 232
 Grano, J., 154
 guilt
 material, xv, 10–13, 67, 69–70, 72–3,
 75, 83, 85, 96, 100–4, 106–8, 114,
 118–20, 135, 145, 150–1, 211
 probatory, xv, 12, 96, 102, 105
 Hand, Learned, 27, 78
 Hart, H. L. A., 9
 Huff, Ronald, 71
In re Winship, 34–5, 45, 51, 56, 64, 73,
 80, 91
 innocence
 material, xv, 10–12, 66, 68, 73,
 75, 85–6, 96–108, 113–14, 118–20,
 132, 146, 151
 presumption of, xi, xv, 11–12, 29–30,
 43, 56, 89–98, 100–1, 103–7, 109,
 111–12, 117, 125, 180, 207, 232
 probatory, xv, 12, 96, 98–9, 103–7, 110
 inquisitorial system, 152, 156
 jury system, 7, 24, 34–5, 53, 214–15,
 218–19
 Kamisar, Yale, 70, 192
 Kelsen, Hans, 9
 Kramer, Geoffrey, 49
 Langbein, John, 222
 Laudan, Larry, 57, 81
 Laufer, William, 91, 98
 Leipold, Andrew, 70

- Leiter, Brian, xi, xiii
 Leo, Richard, 126, 179
 Levy, Leonard, 222
 Lillquist, Erik, xii, 60, 66

 Maimonides, Moses, 63, 144
 Marshall, Thurgood, 90, 132
 May, W., vii
 Mayo, Deborah, xiii
 McCormick, Charles, 117, 121, 165, 169,
 190, 213, 232

 Newman, Jon, 29

 Peirce, Charles Sanders, 207–9
 Posner, Richard, 15, 105, 158, 169,
 192
 Powell, Lewis, 1, 4, 7, 204, 230
 principle of indifference, 75, 97, 106,
 123–4, 128, 135, 144, 169, 206,
 227
 privacy, right to, 154, 162, 219–22
 probability, 19–20, 33, 44–7, 56, 65–6,
 72–3, 75, 77–9, 81, 84–5, 100–1,
 104–7, 128, 140, 182
 probable cause, 86, 95–6, 133, 137, 173,
 178, 182, 185–6, 190, 192, 219–20,
 224, 228–9, 232
 probative value, 5, 13, 20–2, 24–6, 49,
 120–2, 135, 157, 160–1, 177
 procedure, rules of, 141, 143, 207,
 231
 proof
 beyond a reasonable doubt, xi–xii, xv,
 4, 10, 15, 29–57, 60–2, 64–6, 71,
 77–9, 81, 85–7, 90–2, 95–7, 99,
 101–2, 104, 107–14, 129, 132–5,
 141–2, 150, 154, 161, 195, 198, 201,
 219
 burden of, xi, xv, 29–30, 33, 43, 45, 48,
 51, 89–92, 94, 99, 109–12, 114, 117,
 162, 232
 clear and convincing evidence, xv, 56,
 64, 86, 112, 133
 preponderance of the evidence, xv, 44,
 56, 64–5, 78, 86, 110–12, 132, 135,
 145, 178
 standard of, xii, xv, 4, 10, 13, 15, 17,
 29–32, 34–5, 44–5, 47, 50–1, 54–7,
 60–1, 64–8, 70, 72–83, 85–9, 91–3,
 97, 104–5, 107–9, 112–14, 117–19,
 121, 123–8, 144–5, 154, 195, 214,
 231–2
 objective, 81
 subjective, 77, 107

 questions of fact, 216
 questions of law, 206, 216

 Rawls, John, 9
 Rehnquist, William, 93, 192
 relevance, xi, 4–5, 10, 13, 15–26, 44, 66,
 73, 75, 84, 86, 97, 102, 104, 109–10,
 117, 120–6, 128–9, 134–41, 143,
 145, 149, 151–2, 157, 159, 161,
 163–9, 173, 175–6, 178–85,
 187–91, 196, 198, 201, 205, 210,
 214–21, 225, 227–32
 reliability, xi, 8, 17–18, 31, 50, 77, 82, 86,
 120–3, 129, 136, 138, 141, 144–5,
 147, 149, 158–9, 171, 176, 179–81,
 184, 190–1, 213, 215, 217, 230
 rights, 1–4, 6–9, 14, 18, 31–2, 34–5, 44,
 47, 51, 55, 59, 64, 66–7, 69, 71, 78,
 90–1, 93–6, 118–19, 123, 128,
 132–4, 137–9, 143, 148–58, 160–2,
 164, 170, 173, 175–8, 183, 185–6,
 189–90, 194, 196–201, 203–4,
 213–15, 217–230
 rules
 discovery, 91, 124, 143
 exclusionary, 10, 15–23, 25–6, 86, 91,
 120–2, 125, 129–30, 132–40, 147,
 149, 151–3, 156–61, 164–70, 172,
 174–7, 179, 181–6, 188–91, 199,
 206, 210, 214–17, 220, 222–4,
 226–7, 229–30, 232
 procedural, 141, 194, 218

 Saltzburg, Stephen, 131, 135
 Seeberger, R., 180
 Seidman, Daniel, 130
 Shapiro, Scott, 194
 Shaviro, Daniel, 46

Shaw, Lemuel, 33–5, 38	Underwood, Barbara, 78, 114
Sheppard, Steve, 98	Uviller, Richard, 154
Silent Defendant, ix, 147, 150–3, 155, 159, 222	van Kessel, Gordon, 157, 171
Silent Witness, ix, 147, 162–3, 171, 221	verdicts
Souter, David, 45	false, 3, 6, 8, 13, 131, 177
Starkie, Thomas, 46, 80	true, 3, 6, 8, 13, 32, 88, 123, 125, 131, 144, 177
Stein, Alex, 129–30, 175	valid, 12–14, 31, 62, 71, 73, 88, 130, 138, 141, 162–3, 190, 195, 220, 231
Stephan, Paul, 112, 114	Voltaire, 63
Stith, Kate, 202, 205–6	
Sundby, Scott, 98	
	Warren, Earl, 209, 226–7
Taruffo, Michele, xii	White, Byron, 20, 91–2, 115, 177
Thaler, Jeff, 98	Wigmore, John Henry, xii, 164, 221
thought experiment, 5–7, 120, 123, 147, 191, 213, 232	
Tribe, Laurence, 47, 98	Zeisel, Hans, 70, 139