

ASPEN CASEBOOK SERIES

**CRIMINAL PROCEDURE:
INVESTIGATION AND RIGHT TO COUNSEL**

Third Edition

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To my family. — R.J.A.

To my wife and best friend, Mary. — J.H.

To my parents, Robert and Sarah Livingston. — D.A.L.

To my parents, Dave and Ruth. The finest people I have ever known. — A.D.L.

In memory of my grandmother and first teacher, Velma Louise Carey. — T.L.M

Preface to the Fourth Edition of Comprehensive Criminal Procedure

Comprehensive Criminal Procedure is a casebook for all introductory courses in criminal procedure law, including both investigation and adjudication courses as well as comprehensive and survey courses. The casebook focuses primarily on constitutional criminal procedure law, but also covers relevant statutes and court rules. The casebook is deliberately challenging—it is designed for those who wish to explore deeply not only the contemporary state of the law, but also its historical roots and theoretical foundations. The casebook incorporates a particular emphasis on empirical knowledge about the real-world impacts of law-in-action; the significance of race and class; the close relationship between criminal procedure law and substantive criminal law; the cold reality that hard choices sometimes must be made in a world of limited criminal justice resources; and, finally, the recognition that criminal procedure law always should strive to achieve both fairness to the accused and justice for society as a whole.

The casebook opens with a wide-ranging set of readings about the criminal justice system, combining hard data with expert commentary. The nature of due process adjudication is then introduced, because so much of criminal procedure law either has been constitutionalized or operates within the shadow of the Constitution. With one major exception, the casebook then follows the processing of a criminal case more or less chronologically, from initial investigation through appeal and habeas corpus. The major exception is Chapter 3, which contains a thorough examination of the right to counsel. Counsel is the linchpin of criminal procedure, obviously so with respect to its constitutional aspects but even more critically so with respect to its statutory and common law aspects. Without adequate counsel, a suspect or defendant is, with rare exceptions, lost. The most elaborate procedural protections are of little value to one who knows neither what those protections are nor how they can be used to best advantage.

Following the right to counsel chapter is a chapter chronicling the history of *Boyd v. United States*. We think it fair to say that the U.S. Supreme Court has been reacting to the *Boyd* case for more than a century, and that the present law of search and seizure (as regulated by the Fourth Amendment) and the right to be free from compelled self-incrimination (pursuant to the Fifth Amendment) simply cannot be understood without a grounding in *Boyd* and its aftermath. Moreover, within the past three years, the Court has explicitly revived at least some aspects of *Boyd*, and it is also becoming increasingly clear that *Boyd* has great relevance for contemporary controversies over government searches of cell phones, computer files (encrypted or otherwise), DNA and other databases, and many other kinds of digital data. This casebook encourages thoughtful reflection upon *Boyd* and an awareness of its significance to the thoroughly modern dilemma of privacy versus security.

In this fourth edition of the casebook, we welcome to our author team Tracey L. Meares of Yale University, whose nationally recognized expertise in the law and policy of police investigations has enriched the casebook tremendously. This new edition reflects our continuing commitment to keeping the casebook fresh and up-to-date, with an emphasis on the criminal procedure issues that are important in contemporary American law and society. Specific revisions in the fourth edition include: the Introduction chapter has been updated with new scholarly writings that provide an overview of important aspects of criminal procedure; the Right to Counsel chapter incorporates the new wave of structural reform litigation over the often-crushing caseloads and frequently inadequate resources of public defender offices; the Fourth and Fifth Amendment chapters have been completely rewritten to reflect the latest legal, social, and empirical developments in such areas as police discretion (including stop-and-frisk and police use of force) and data searches; the chapter on the Jury and the Criminal Trial has been revised to include the latest twists and turns of *Crawford* doctrine; the Sentencing chapter has been updated to include the most recent evolution of *Apprendi* doctrine; and all chapters have been updated, re-edited, and streamlined to improve their clarity and teachability.

As usual, we have endeavored to keep editing of cases at a minimum, opting at times for textual description over a series of edited excerpts. Editing is unavoidable, however. In all cases and materials reproduced here, we have kept the original footnoting sequence. Wherever our own footnotes might be confused with those of the primary material, our own footnotes are identified by the legend “—Eds.” There are three printed versions of this casebook: the hardcover volume (which includes everything) and two paperback volumes, one for use in Criminal Investigation courses and the other for use in Criminal Adjudication courses. As with prior editions, both of the paperback volumes include the Introduction, Due Process, and Right to Counsel chapters, plus a part of the Grand Jury chapter. The pagination of both paperback volumes remains identical to the pagination in the hardcover volume. This fourth edition contains U.S. Supreme Court and lower court cases and legislative materials current through December 2015.

Ronald J. Allen
Joseph L. Hoffmann
Debra A. Livingston
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INVESTIGATION AND RIGHT TO COUNSEL

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