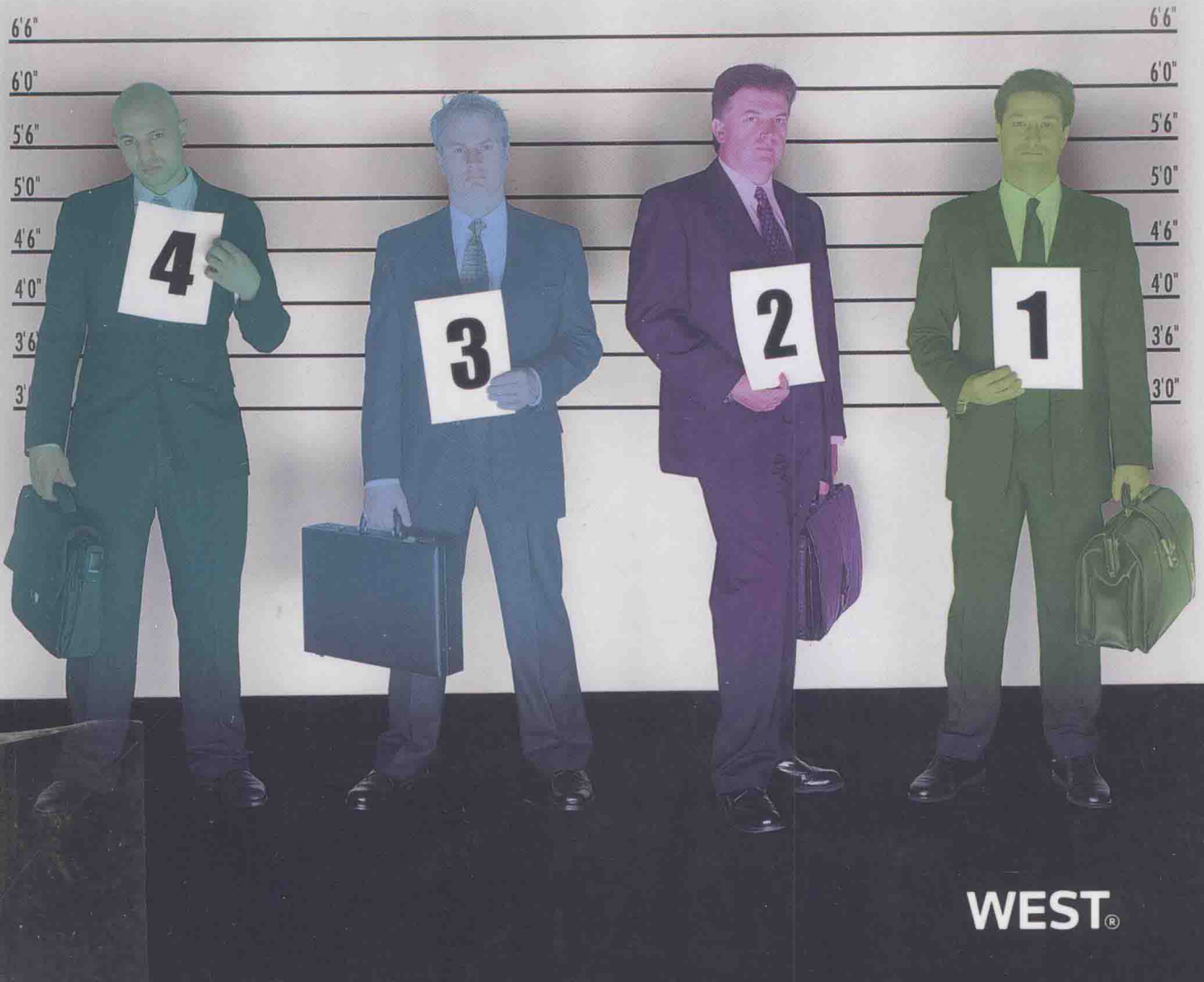


Basic Criminal Procedure

Thirteenth Edition

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BASIC CRIMINAL PROCEDURE

CASES, COMMENTS AND QUESTIONS

Thirteenth Edition

■ ■ ■

By

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PREFACE TO THE THIRTEENTH EDITION

Aside from two introductory chapters on the right to, and the role of, counsel, this volume—based on our much larger *Modern Criminal Procedure* (13th ed. 2012)—deals almost exclusively with “police practices” and other investigative alternatives (see Ch.11, dealing with grand jury investigations). The success of the previous editions of “*Basic*” confirms our belief that when allocated 30 (or even 45) class hours for criminal procedure (or a third or half of the crowded first-year criminal law course for procedural problems), many teachers will find it more useful and meaningful to explore in depth a few fundamental and closely related areas (e.g., search and seizure, right to counsel, confessions and lineups) than to make a whirlwind tour through the investigatory process, joinder and severance, speedy trial, “trial by newspaper” (and TV), criminal discovery, sentencing appeals, post-conviction review and all of the other topics treated in the 29 chapters of our larger book, we have kept the first twelve chapters intact and omitted all others.

Some instructors will welcome Ch. 11 (grand jury investigations) for providing an opportunity to compare and contrast police work with other investigative alternatives. However, we suspect other instructors, pressed for time, will pass quickly through Ch. 11 or even skip it entirely. But particular attention should be paid to the last section of of this chapter: Fifth Amendment history and values. This section is designed to facilitate exploration of the general policies underlying the privilege against compelled self-incrimination. There is much to be said for taking up this material with the confessions chapter.

A final point about the organization of these materials. Although we have a separate chapter on the scope of the exclusionary rules (Ch. 12), which includes a section on the “fruit of the poisonous tree,” we believe the *Miranda* “poisoned fruit” cases, *Patane* and *Seibert*, shed so much light on the significance of *Dickerson*, the case that reaffirmed *Miranda*’s constitutional status (or perhaps one should say shed so much light on the lack of significance of *Dickerson*) that we decided to place *Patane* and *Seibert* in the confessions chapter, a few pages after *Dickerson*.

This volume includes significant developments up to January 31, 2012. This has permitted inclusion of such major rulings from the Supreme Court’s 2011–12 Term as *United States v. Jones*, and *Perry v. New Hampshire*. Important developments thereafter will appear in annual supplements, which will also contain relevant federal court rules and statutory materials. The first annual supplement to this book, which will be published about two months after this volume appears, will contain all notable cases handed down by the Supreme Court during the 2011–12 Term. It will also include various extracts from the new criminal procedure literature.

Case citations in the text and the footnotes of judicial opinions and in the writings of commentators have been omitted without so specifying. Numbered footnotes are from the original materials; lettered footnotes are ours.¹ Omissions from the text of the original are indicated by asterisks and brackets.

If there are cross-references to cases beyond pages 930 (the end of *Basic Criminal Procedure*), the citations to these cases can be found in the Table of Cases. We have continued the tradition of an exceptionally detailed index, in part because students have found that detail useful in reviewing for exams.

One or more of the authors has been fortunate enough to participate actively in four major criminal procedure projects: The American Bar Association's *Standards for Criminal Justice*; The American Law Institute's *Model Code of Pre-Arrest Procedure*; The National Conference of Commissioners on Uniform State Laws' *Uniform Rules of Criminal Procedure*; and the ongoing revision of the *Federal Rules of Criminal Procedure*. We are indebted to the members of the various committees with whom we have worked for providing us with many leads and insights. We are also indebted to the many users of this book who have offered helpful suggestions on content as to this edition and previous editions. That list, like the list of our student research assistants over the years, has now grown far too long to mention each person individually.

We are especially appreciative of the outstanding secretarial assistance provided on the thirteenth edition, too often under great stress, by Karen Kays, Dorothy Kryskowski, Mary Lebert and Selah Woody. We are also indebted to Aurora Maoz for her valuable research assistance.

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WAYNE R. LAFAVE
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P.S. An additional note from Yale Kamisar, Wayne LaFave, Jerold Israel, Nancy King and Orin Kerr. We are delighted that Eve Brensike Primus has agreed to join us in this venture. We greatly appreciate the important contributions she has made to the new edition.

May 2012

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