

CRIMINAL PROCEDURE

Fifth Edition

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CRIMINAL PROCEDURE

Fifth Edition

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Preface

This text is intended primarily for use by law students during their study of criminal procedure. There is, to be sure, no substitute for careful examination of the basic sources—the appellate opinions, statutes, and critical commentary which are to be found in the modern casebooks dealing with this subject. It is neither intended nor expected that this Hornbook on criminal procedure will be of particular use to the student who has not grappled with those materials. Rather, this book has been prepared on the assumption that the diligent student may find a textual treatment of the subject useful as he or she¹ undertakes the necessary process of reviewing and synthesizing the regularly assigned materials.

We have sought to analyze the law governing all of the major steps in the criminal justice process, starting with investigation and ending with post-appellate collateral attacks. Of course, a complete review of all the fine points relating to each and every step in the process would require more than one volume. Accordingly, we have varied the depth of our coverage, taking into consideration both the significance of the particular procedure and the attention typically given to it in a law school criminal procedure course. For every step in the process, however, we have covered, at a minimum, the major themes underlying the governing legal standards and those basic issues that the case law and literature suggest to be the most pressing. We have also sought to go beyond describing the law as it currently stands, exploring as well its historical roots and underlying policies. We believe this approach will prove useful to law students.

This book is based upon our third edition seven-volume Criminal Procedure treatise, as subsequently updated. We have retained most of the analysis from that larger work, but not much of the supporting documentation. Our supposition in this regard is that a law student who uses a collateral text in connection with course preparation or review is primarily interested in explanation rather than citations to authority. In general, descriptions of lower court rulings and statutory provisions are not followed by illustrative citations, although a specific case or statute noted in the text often will be cited. Supporting citations for descriptions of positions taken by commentators are treated in largely the same manner. So too, brief quotations that are largely illustrative of a line of cases usually are not footnoted.

In all instances, readers desiring the full documentation can turn to the treatise, which is readily available on Westlaw as database CRIMPROC. For the most part, the section numbers used this book are the same as those utilized for like subject matter in the treatise (instances in which this is *not* the case are set forth in the *Table of Cross-References* herein). Using key

1. To make our sentence structure as we usually use) should be read to refer to short and direct as possible, we generally both male

and female actors unless the con-have not used the phrases he or she or text clearly indicates otherwise.

phrases in the hornbook is another way to locate comparable materials in CRIMPROC.

We have treated the opinions of the Supreme Court of the United States somewhat differently, both because of their special significance and because these are the opinions most frequently included in assigned course materials. We have always made reference to the leading Supreme Court opinions which deal with the topic at hand, although we have not included string-citations of Supreme Court rulings on settled points. While our cut-off date for Supreme Court opinions was the end of the October 2008 term (i.e., June 2009), after each successive term an updated pocket part will be published.

The authors come away from this project impressed, as always, with the richness of literature in the field. We remain indebted not only to the authors of the articles cited both in the Hornbook and the treatise, but also to many others whose work we could not include without overloading the footnotes. A project of this type also necessarily builds on past endeavors and necessarily reflects the assistance of those who have worked with us on those endeavors. We are especially indebted in this regard to Yale Kamisar, our co-author on *Modern Criminal Procedure*, *Basic Criminal Procedure* and *Advanced Criminal Procedure*.

Over the years, on this project and others, we have received the benefit of the excellent work of many student research assistants. Their number has grown far too long to mention them all, but the size of the group makes us no less appreciative of the individual contribution of each of these students. We also are deeply indebted to our faculty assistants, who have seen this project through from start to finish.

While we both stand responsible for the work as a whole, Wayne LaFave had the initial responsibility for chapters 3, 5-7, 9-10, 12-13, 17-18 and 21; Jerold Israel for chapters 1, 2, 8, 11, 14-16, 19-20, and 23; Nancy King for chapters 22 and 24-28; and Orin Kerr for chapter 4. Each of us would appreciate hearing from readers who have criticisms or suggestions relating to the chapters for which we have initial responsibility.

We would also like to recognize the support of our families. Labor of love though it may be, preparation of a text such as this can be terribly demanding, and we appreciate greatly the patience of our families in this regard.

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July 2009

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The authors of this Hornbook are also the co-authors of a seven-volume treatise, *Criminal Procedure* (3rd ed. 2007, with annual updates), available in most law libraries and readily accessible on Westlaw in database CRIMPROC. The subjects discussed in this Hornbook are dealt with in somewhat greater detail in the Treatise. In addition, while the citation of supporting authority in this Hornbook must of necessity be very limited, many additional citations to appellate cases, legislation and court rules, as well as articles and other secondary authorities, are available in the Treatise. Users of this Hornbook desiring either additional discussion of a particular subject or supporting authority regarding a specific topic will thus find it useful to consult the Treatise. Such consultation can in most instances be very easily undertaken, as the overwhelming majority of the sections in this Hornbook have, as their counterpart in the Treatise, a section with exactly the same number. Thus, for example, to find more about the subject matter discussed in section 20.4 of this Hornbook, consult section 20.4 of the Treatise. (Especially where the section numbers are the same in both works, the subsections will usually be the same as well, though this is not inevitably the case.) The following cross-reference table, consequently, is limited to those few instances in which the applicable Treatise section has a different number.

Hornbook	Treatise
1.2	None
1.3	1.2
1.4	1.3
1.5	1.8
1.6	1.4, 1.9
1.8	1.5

*

WESTLAW® Overview

Criminal Procedure offers a detailed and comprehensive treatment of the basic rules, principles and issues relating to the law of criminal procedure. To supplement the information contained in this book, you can access Westlaw, West's computer-assisted legal research service. Westlaw contains a broad array of legal resources, including case law, statutes, expert commentary, current developments and various other types of information.

Learning how to use these materials effectively will enhance your legal research abilities. To help you coordinate the information in the book with your Westlaw research, this volume contains an appendix listing Westlaw databases, search and techniques, and sample problems.

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