

EVIDENCE
CASES AND MATERIALS
TWELFTH EDITION

ROGER C. PARK
RICHARD D. FRIEDMAN

FOUNDATION PRESS

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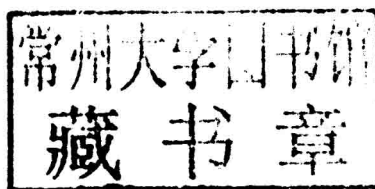
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*For Suzanne,
always my best friend,*

R.C.P.

*For Joanna,
with love and gratitude,*

R.D.F.

PREFACE TO TWELFTH EDITION

We are pleased to present the Twelfth Edition of this coursebook, which was first published in 1968. This is the first edition that does not bear the names of any of the original authors, David Louisell, John Kaplan, and Jon Waltz. But it bears their mark throughout. We have preserved much of the substance of the early editions and have tried to preserve the style and flair that have made the book a successful teaching tool for so many years. At the same time, we have made many changes, both large and small, to ensure that the book remains fresh and up to date.

Throughout the book, we have replaced some old materials that we thought had become tired and dated. But we have not hesitated to retain older materials that still work well. We have, of course, introduced recent cases and other materials as well. At some points, we have replaced old writings of other authors with Notes of our own. In general, we have tried to tighten the book up, editing down cases that we thought were lengthier than necessary.

In addition, we have made these particular changes that seem worth noting:

In Chapter I, Jon Waltz's essay, *Making the Record*, retains its value, but it was showing its age in numerous small ways, some of them significant. So we have tried to update it, without altering its style or most of its substance.

We have substantially reorganized Chapter III and given it a new title. In prior editions, this chapter was titled *The Hearsay Rule* and it held off any discussion of the confrontation right to a subsection at the end, titled *The Future of Hearsay*. Especially in light of the transformation ushered in by *Crawford v. Washington*, we believe this approach is no longer tenable. Accordingly, we now title the chapter *The Hearsay Rule and the Confrontation Right*. We introduce *Crawford* itself early and other Confrontation Clause cases as we address the hearsay subjects with which they are most closely connected. (There are now enough post-*Crawford* cases that we have had to compress our treatment of them; for example, we now include a description of the *Melendez-Diaz* case rather than an extended excerpt from it.) Throughout the chapter, we ask students (and teachers) to consider the relationship of hearsay and Confrontation Clause doctrines. We have also reorganized the presentation of the exceptions and exemptions to the hearsay rule. In response to comments from teachers, we have incorporated some traditional cases (though not ones used in prior editions) on the dying declaration exception. And we have folded into the hearsay chapter most of what was a separate chapter on forfeiture.

In what is now Chapter V, on non-governmental privileges, we have added a new subsection on inadvertent waiver.

What is now Chapter VII, covering writings, was particularly out of date, especially in its failure to cover electronically stored information, and so we have thoroughly revamped it.

In the preface to the Eleventh Edition, we noted that with some misgivings we were continuing the “one-book” approach of including appendices that contain the Federal Rules of Evidence, relevant legislative history of the Rules, and the California Evidence Code. The same note is appropriate here. (The Federal Rules reproduced here are the new version, revised throughout in 2011 as the result of a years-long restyling project.) Readers who appreciate this feature, or who dislike it, are invited to make their views known to the authors.

As in prior editions, we have sometimes deleted footnotes or citations (including citations with parentheticals) without any indication. Other deletions are indicated by the use of asterisks as ellipses.

We owe thanks to numerous people, including the staff of Foundation Press, for their patience and forbearance, and to Margaret Klocinski, for providing swift, capable, and cheerful secretarial assistance. As in the past, we have profited from the comments of many users of the book. Those who have contributed this way in the last couple of editions include David Leonard, whose untimely death leaves us deeply saddened, Jim Atkins, Norman Garland, Roger Kirst, John Leubsdorf, Christian Mammen, Paul McCaskle, Richard Marcus, Ruth Philips, and Peter Tillers. We owe special thanks to Fred Moss, who has made many helpful suggestions over several editions; we are glad that he continues to keep us on our toes. If we have omitted others by mistake, we offer apologies as well as thanks.

ROGER C. PARK
RICHARD D. FRIEDMAN

November 2012

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