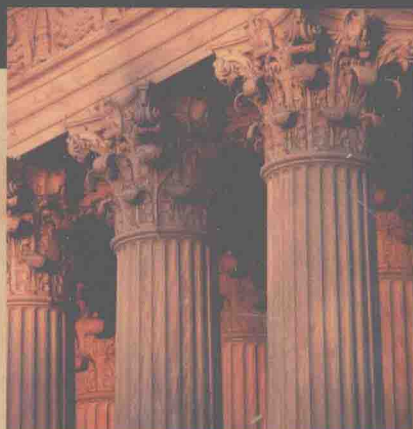


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Welfare, and secure our Posterity, do ordain and establish this Constitution for the United States of America.

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CRIMINAL PROCEDURE



FIFTH EDITION

Joel Samaha

Fifth Edition

CRIMINAL PROCEDURE

JOEL SAMAHA

University of Minnesota

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For Sally, Doug, and my students

About the Author

Professor Joel Samaha teaches Criminal Law, Criminal Procedure, Introduction to Criminal Justice, and The Supreme Court and the Bill of Rights at the University of Minnesota. He is both a lawyer and an historian whose primary research interest is the history of criminal justice. He received his B.A., J.D., and Ph.D. from Northwestern University. Professor Samaha also studied under the late Sir Geoffrey Elton at Cambridge University, England.

Professor Samaha was admitted to the Illinois Bar in 1962. He taught at UCLA before coming to the University of Minnesota in 1971. At the University of Minnesota, he served as Chair of the Department of Criminal Justice Studies from 1974 to 1978. He now teaches and writes full time. He has taught both television and radio courses in criminal justice and has co-taught a National Endowment for the Humanities seminar in legal and constitutional history. He was named Distinguished Teacher at the University of Minnesota in 1974.

Professor Samaha is an active scholar. In addition to his monograph, *Law and Order in Historical Perspective*, an analysis of law enforcement in pre-industrial English society, he has transcribed and written a scholarly introduction to a set of criminal justice records in the reign of Elizabeth I. He has also written several articles on the history of criminal justice, published in *Historical Journal*, *The American Journal of Legal History*, *Minnesota Law Review*, *William Mitchell Law Review*, and *Journal of Social History*. In addition to *Criminal Procedure*, he has written two other textbooks, *Criminal Law* and *Criminal Justice*, both in their fifth editions.

Preface

Balancing the power of government to enforce the criminal law against the rights of individuals to come and go as they please without government interference is the central problem in the law of criminal procedure. It's also the heart of *Criminal Procedure*, Fifth Edition. It's a problem that fascinates my students, stimulates them to think, and provokes them to discuss it not only in class but also with their friends and family outside class. I'm not surprised. The balance between government power and individual rights has fascinated me for more than forty years, beginning in 1958 when I was lucky enough to study criminal procedure at Northwestern University Law School under the sparkling Claude R. Sowle and the legendary Fred E. Inbau. Professor Sowle, a brilliant advocate and a distinguished teacher, emphasized the philosophical underpinnings of the law of criminal procedure. Professor Inbau, a famous interrogator and highly respected student of the law of interrogation, spoke from the 1930s right up to his death in the late 1990s with the authority of one who has actually applied abstract principles to everyday police practices.

In 1968, I began work on what would eventually become my *Law and Order in Historical Perspective*, a reconstruction of the criminal process in sixteenth-century England. In 1971, I taught criminal procedure for the first time. I have done so ever since—during the regular terms, during the summers, and in the evenings. My students have included undergraduates, graduate students, and law students. That many of these students are now police officers, corrections officers, prison wardens, criminal defense attorneys, prosecutors, and judges testifies to their enduring interest in the law of criminal procedure and to their commitment to the application of formal law to informal real-life decision making.

Criminal Procedure, Fifth Edition, like its predecessors, reflects my conviction that the best way to learn the law of criminal procedure is to understand general principles and *critically* examine the application of these principles to real problems. By critically I don't mean *negatively*. *Criminal Procedure* isn't aimed at "bashing the system." Rather, it examines and weighs the principles that govern the balance between government power and individual life, liberty, privacy, and property. It tests the weight of strong, honest feelings about this balance in the bright light of reason, logic, and facts. *Criminal Procedure* proceeds on the assumptions that the general principles governing the balance between government and individuals have real meaning only in the context of a specific reality, and that reality makes sense only when seen in the light of general principles applied to facts.

BALANCING CONFLICTING INTERESTS

Criminal Procedure is organized according to the central theme of balancing conflicting interests. First, the law of criminal procedure balances the interest in obtaining the correct result in particular cases against the interest in fair process in all cases.

This balancing of result and process is an example of the timeless puzzle of the ends justifying the means. In criminal procedure, the end is the correct result in the case at hand; the means is the process by which the result is obtained. The law of criminal procedure recognizes the importance of obtaining the correct result—that is, the ends both of freeing the innocent and convicting the guilty. But the law of criminal procedure also promotes the value of enforcing the law according to fair procedures. In other words, in the law of criminal procedure the end doesn't justify the means. In fact, when forced to choose, the framers of our constitutional system decided that the means of fair procedures have to trump the end of correct results. Or, to put it another way, fair proceedings for *all* people is more important than convicting even *one* guilty person by unfair means.

FACTS NOT HUNCHES

Hunches or whims aren't enough to back up government invasions of liberty, privacy, and property. The U.S. Constitution and the constitutions of the states demand that the government back up all invasions of liberty, privacy, and property with facts. No police officer can justify detaining a person by claiming that she had a "hunch" that something was wrong. The greater the invasion, the more facts that government officers have to produce to back up their invasions. So, to detain a person briefly on the street, police officers need only a few facts that create a "reasonable suspicion" that crime *may* be afoot. On the other hand, in order to convict defendants and send them to prison, the government has to prove that defendants are guilty "beyond a reasonable doubt." This reliance on facts to back up government action lies at the heart of our constitutional democracy.

HEARING BEFORE CONDEMNATION

"A law that hears before it condemns" is the foundation of our constitutional system, said the great nineteenth-century lawyer Daniel Webster. A law that "hears before it condemns" is a law that deprives persons of life, liberty, privacy, and property only according to fair procedures. In the case of invasions before conviction, courts review street stops and frisks, arrest, searches, interrogation, and the conduct of identification procedures. In the case of conviction, courts are required to "hear" cases, either by trials or by approving guilty pleas, *before* defendants are "condemned" by conviction. This review by courts, known as judicial review, is an essential element of our legal system.

ORGANIZATION OF THE TEXT AND CASES

Criminal Procedure is a text-casebook. It contains text that explains, analyzes, and critically assesses the general principles, constitutional provisions, and court rules that govern the law of criminal procedure. *Criminal Procedure* also relies heavily on cases carefully selected and edited for nonspecialists—those who apply these principles, provisions, and rules to actual events. The combination of text and cases presents a balanced but critical discussion of constitutional provisions as law enforcement officers, prosecutors, defense attorneys, judges, and juries actually apply them in three real-life settings—on the street, at the police station, and in court.

OVERVIEW OF THE CHAPTERS

Chapters 1 through 3 consist of an overview of the structure, process, and the constitutional provisions governing both the law and practice of criminal procedure. The book is based on the assumption that thinking critically about criminal procedure requires an understanding of our constitutional system. So, Chapter 1 describes the balances in the law of criminal procedure—ends and means, federal and state, executive, judicial, and legislature. Chapter 2 describes the steps in the formal criminal process from its inception on the street to final appeals in the courts. It also invites students to think critically about the role of discretion in decision making throughout the criminal process. Chapter 3 describes the constitutional framework of federalism, the separation of powers, and checks and balances. Then the chapter examines and critically analyzes the underpinnings of due process of law.

Chapters 4 through 10 arrange the constitutional provisions of criminal procedure chronologically as they occur in real life. Chapters 4 through 8 describe and critically examine searches and seizures. Five chapters on the subject of searches and seizures may seem like a lot. Why so many? Because government searches and seizures affect far more people than any other criminal procedure. Probably as a result of both this disproportionate effect and the complicated business of applying it in real life, there are more search and seizure cases than that of any other subject in the law of criminal procedure.

Chapter 4 describes and analyzes the search and seizure clause of the Fourth Amendment. It requires students not only to understand but also to think critically about the answer to two questions: When is a government action a search? When is a government action a seizure? Chapter 5 describes and critically examines the myriad of brief encounters between police and individuals that take place on the street. It requires students to think critically about when brief detentions and patdowns on the street are “reasonable searches and seizures.” Chapter 6 describes and critically examines arrest, the Fourth Amendment seizure that means taking suspects into custody, usually by taking them to the police station. It requires students to think critically about three questions: When is a detention an arrest? What amounts to probable cause? What is the proper manner of arrest?

Chapter 7 describes and critically examines searches for evidence. It examines both searches with and without warrants. It requires students to think critically about when warrants are required, the exceptions to the warrant requirement, and the manner in which searches are conducted. Chapter 8 describes and critically examines searches whose purpose is not obtaining evidence. These are searches that go beyond ordinary law enforcement inventory searches that take place after arrest but are not specifically for the purpose of gathering evidence. Chapter 8 also examines school searches, employee drug testing, and searches of prison visitors. It requires students to think critically about the application of the Fourth Amendment to subjects not directly related to criminal law enforcement.

Chapters 9 and 10 describe and critically examine two highly publicized and widely known procedures—(1) police interrogation and confessions; and (2) police identification procedures, including lineups, “mug shots,” and DNA testing. These chapters require students to think critically about the right to remain silent and the use of physical evidence to convict criminal defendants. The chapters also require students to think critically about the need for, the fairness of, and the reliability of interrogation and identification procedures in obtaining the truth.

Chapters 11 and 12 describe and critically examine the remedies against the government when officials violate the constitutional rights discussed in Chapters 4

through 10, Chapter 11 focuses on what we call process remedies. The main process remedy, the exclusionary rule, as well as entrapment, expungement, and others are described and critically examined. Chapter 12 concentrates on suing the government for the injuries that result from constitutional violations and other illegal official actions. Both chapters invite students to think critically about the nature, value, and purposes of the various remedies against mistakes and misconduct by government officials in the enforcement, prosecution, and disposition of criminal laws.

Chapter 13 covers court proceedings before trial—mainly the decision to charge, bail, and the right to counsel. Chapter 14 describes and assesses the determination of guilt, both by formal trial and by guilty pleas. Chapter 15 describes and evaluates proceedings following conviction—sentencing, appeal, and *habeas corpus*. Chapter 15 requires students to think critically about sentencing guidelines and mandatory minimum sentencing, and about judicial review after conviction, mainly by means of appeals and *habeas corpus*.

FLEXIBILITY OF CRIMINAL PROCEDURE

Some criminal procedure courses and many criminal procedure texts—particularly those designed for undergraduates—cover only the law of arrest, search, and seizure, interrogation, and identification procedures. In other words, these courses and texts focus on police practices—the contacts between individuals and the police on the street and at the police station. They usually cover the constitutional framework of criminal procedure, and they sometimes include discussions of the exclusionary rule. *Criminal Procedure* lends itself to this type of course because instructors can use either Chapters 4 through 10, which can stand alone, without covering either Chapters 1 through 3 on the general principles and constitutional provisions or Chapters 11 and 12 on remedies for illegal official conduct. Instructors who wish to teach the exclusionary rule and the constitutional provisions can add Chapter 3 and Chapter 11, which covers the exclusionary rule.

Criminal Procedure is also suitable for courses that cover the entire criminal process, from the early encounters between individuals and the police on the street to procedures following conviction. And, for students in courses covering only police practices, Chapters 1 through 3 and 11 through 15 should fill the gap should they wish to read about the subjects not covered in courses limited to police practices in the law of criminal procedure.

TEXT AND CASES

This is a case-textbook, meaning that it contains both text and extended excerpts of actual court opinions that apply the general principles discussed in the text to concrete cases. The text and case excerpts complement each other. The text enriches the understanding of the cases, while the cases enhance the understanding of the text. The cases are not just examples, illustrations, or attention grabbers, although surely they are all of these. The cases explain, clarify, elaborate, and most of all, apply the general principles and constitutional provisions to real-life situations. Moreover, the cases are excellent tools for introducing and developing the critical thinking skills of students of all levels.

The cases and the text are independent enough of each other that they can stand alone. They are set off clearly from each other in design—the text appears in a one-column format, while edited cases appear in two columns. The separation of text from cases allows instructors who favor the case analysis approach to emphasize cases

over text, leaving the text for students to read if they need to do so in order to understand the cases. Instructors who favor the text approach can focus on the text, allowing the students to read the cases as enrichment or as examples of the principles, constitutional provisions, and rules discussed in the text.

The **case excerpts**—edited carefully for non-lawyers—present students with

- a full statement of the facts of the case
- the application of the law to the facts of the case
- key portions of the reasoning of the court
- the decision of the court
- key portions of the dissenting opinions and, when appropriate, parts of the concurring opinions

Case questions at the beginning of the case focus on the main point in the edited cases. The **case history** gives a brief procedural history of the case. And the **case discussion** at the end of the case excerpts test whether students know the facts of the case, whether they understand the law of the case, and whether they comprehend the application of the law to the facts of the case. The case discussion also provides the basis for developing critical thinking skills, not to mention provoking exciting class discussions on the legal, ethical, and policy issues raised by the edited case.

PEDAGOGICAL AIDS

However organized and presented, the law of criminal procedure is a complicated subject that embraces a host of technical concepts. I've tried to help students work through these complexities, primarily by writing clear, direct prose. But there are special features as well. Each chapter contains a **Chapter Outline** and a list of the **Chapter Main Points**. I've also boldfaced key terms in the text, which appear in a list of **Key Terms** at the end of each chapter. The key terms also appear in the **Glossary** at the end of the book. **Review Questions** at the end of each chapter provide a good test of whether students have identified and understood the main points in the chapter. Students frequently comment that the combination of the Chapter Outline and Chapter Main Points at the beginning of the chapter tell them what they should look for as they read and that the Key Terms and Review Questions at the end of each chapter tell them whether they have found and understood what they looked for.

Decision Points, consisting of brief excerpts of both actual cases and hypothetical cases, focus on the practical application of principles discussed in the text and in the full excerpts. The Decision Points not only reinforce students' understanding of the law but also provide them with the opportunity to think critically about a variety of problems in the practical applications of the law to real life.

NEW TO CRIMINAL PROCEDURE, FIFTH EDITION

New Cases There are 27 new cases and many re-edited existing cases in *Criminal Procedure*, Fifth Edition. There are three reasons why. First, there are new developments in the law of criminal procedure. Second, I continue to find cases that explain the law better and apply the law to the facts in clearer and more interesting ways. Third, some cases from previous editions require re-editing after continued use in the classroom.

More Emphasis on State Constitutional Law One of the most overlooked and surprisingly little-known aspects of the law of criminal procedure is that states

have the power to interpret their own constitutions differently from parallel provisions in the U.S. Constitution. States can't lower a federal constitutional right but they can raise the federal minimum constitutional standard. I've continued my search for state cases that raise constitutional minimums under their own constitutions. Several of the new cases reflect this emphasis.

“The Rest of the Story” Too often we forget that the cases involve real people; they don't just decide an impersonal legal principle. Students frequently want to get beyond the confines of the case excerpt; they wonder what happened to criminals and their victims before, during, and after the crime; they even want to know what they looked like—like Paul Harvey's “the rest of the story.” This “rest of the story” is difficult and even impossible to know in most cases. But, I've been able to do it for 6 case excerpts: the historic forced confession case of *Brown v. Mississippi* in Chapter 3; *Kyllo v. U.S.*, a case of heat sensors to detect marijuana growing inside a house in Chapter 4 that the U.S. Supreme Court will decide after this book goes to press; the landmark U.S. Supreme Court stop-and-frisk case, *Terry v. Ohio* in Chapter 5; the famous *Miranda v. Arizona* in Chapter 9; the landmark case of *Mapp v. Ohio* on the exclusionary rule in Chapter 11; and another landmark case, *Gideon v. Wainwright* in Chapter 13. In this feature you'll see photos and illustrations as well as the words of participants in the case, describing their prior lives and their lives after the decisions. My students really liked this feature when I tried out the stories in my classes. I hope you will too.

Interactive CD-ROM Linked to the Internet The words I used to introduce the CD-ROM included with *Criminal Procedure*, Fifth Edition, capture the essence of the purpose of the Internet links. Criminal procedure is a fascinating subject, as I hope you're already finding out from the book. But the book is only a glimpse at the riches you can find on the Internet. I designed this CD-ROM to introduce you to those riches. I want research to be as exciting for you as it has been for me for 40 years.

Approximately fifty text references to the CD-ROM are highlighted with an icon. Some of these links enrich your knowledge of a case and its principles by taking you to oral arguments, briefs, and other case documents. Others provide research opportunities for you to compare the principles, constitutional provisions, statutes, and court opinions in the book with those in your own states. Still other links take you to cases and other materials that contrast with those in the book. You can access these cases and other materials by a few clicks on the hot links on the CD-ROM. I tried them out in my classes and my students really liked them.

Four goals have guided the creation of the links:

1. *Make them as specific as possible.* I've tried to make it possible by a single mouse click for you to get to specific cases, briefs, oral arguments, transcripts, statutes, and constitutional provisions. Of course, I couldn't by one click get to cases, statutes, or constitutional provisions in your own state. But, even for research in your own states I've tried to get you as close as possible to your state's constitution, criminal codes, and cases. I've also included hints for searching within your own state codes, constitutions, and cases.
2. *Make them stable.* We all know the frustration of clicking on a potentially valuable link and finding the dreaded “This page can't be found...” message. I've tried to avoid this by using only stable sites. Fortunately, virtually all of the sites linked here are those of state and U.S. governments. We are blessed with

this great fact about the contents of these sites: Cases, statutes, constitutional provisions, and other such materials don't disappear or get replaced, they just keep growing, and getting deeper and richer. This is one government program that I think we all agree we want to keep growing!

3. *Make them meaningful.* All of these links take you to information and analysis that enriches and deepens your understanding of the concepts in criminal procedure. Although my students were sometimes frustrated because they couldn't find what they were looking for or because it took them so long and it was so hard to find what they were looking for, *every single one* thought what they found was worth finding when they found it. That was worth all of the work I put into creating the links. I hope you have the same experience. If you don't, be sure and let me know. You can reach me at jsamaha@umn.edu. Of course I'd be happy to hear if you had a good experience and what it was.
4. *Make them interesting.* "Unfortunately, everything that's worth knowing isn't interesting," I have to remind my students. But, fortunately in criminal law a lot that's worth knowing is interesting too. I believe, and my students agree, that the links go to interesting as well as meaningful places. I hope you and your instructors will agree.

SUPPLEMENTS

Instructor's Manual with Testbank This valuable resource has been fully updated and includes such key features as learning objectives, a detailed chapter outline, class discussion topics and student activities, as well as recommended readings and a test bank—all designed to help you smoothly correlate and plan your classes.

Criminal Procedure: A Microsoft® PowerPoint® Tool These PowerPoint presentations were created by the author for use in his own Criminal Law class. They were such a success that we have provided them for use with *Criminal Procedure*, Fifth Edition, also. The slides cover the key topics, concepts, terms, and laws on a chapter-by-chapter basis.

Student Study Guide Students will be able to supplement their classroom experience with this integral tool that provides a detailed outline, key words and concepts with definitions, and a practice test bank for each chapter.

Web Site for *Criminal Procedure*, Fifth Edition Designed exclusively for this text, this Web site, located at <http://cj.wadsworth.com>, offers a variety of online resources for students and instructors. Students can enhance their learning experience with book-specific and chapter-based resources. Web links, periodicals, and InfoTrac College Edition offer valuable and reliable sources for researching specific topics. Projects and Quizzing activities provide immediate feedback and can be emailed to instructors. Online homework assignments integrate Web site research with textbook activities. Student study tips provides a well-developed guide to encourage student success. Instructor downloads and Web links for professionals offer an array of resources for curriculum development.

The Wadsworth Criminal Justice Video Library You can select from an exciting collection of videos to enrich your lectures, including the *Court TV Library Series* video, *A&E American Justice Series* videos, *National Institute of Crime File* videos, *ABC News* videos, and *MPI Home* videos. Available to qualified adopters.

ExamView® Helps you create and customize tests in minutes. You can easily edit and import your own questions and graphics, change test layout, and move questions. Test appears on screen just as it will print. Also offers flexible delivery and the ability to test and grade online.

Black's Handbook of Basic Law Terms Coming from the premier publisher of legal textbooks, West Group, this paperback dictionary includes key terms used in the criminal justice field. It fully defines more than 7,500 terms, is readable and easy to use, is authoritative and up to date, and is built on the tradition of the world's most widely used law dictionary.

The Field Guide to Law Enforcement Provides clear, concise, and current statements of the rule of law commonly encountered by police officers in the field.

Careers in Criminal Justice Interactive CD-ROM (Dual platform Windows®/Macintosh®) This engaging self-exploration provides students with an interactive discovery of the wide range of careers in criminal justice.

Seeking Employment in Criminal Justice and Related Fields, Third Edition Assists students in developing a job search strategy through resumes, cover letters, and interview techniques.

Guide to Careers in Criminal Justice This concise booklet provides a brief introduction on opportunities in law enforcement, courts, and corrections—and how to land these jobs.

InfoTrac® College Edition Opening the door to the full text of countless articles from hundreds of publications, this online library is expertly indexed and easy to use. Updated daily with articles going back as far as four years, students, through a simple keyword search, can quickly generate a comprehensive list of related articles from thousands of possibilities. (Available to North American college students only.)

Also available: *InfoTrac® College Edition Activities for Criminal Justice*

Internet Investigator III An updated version of our popular tri-fold brochure, this version includes current URLs that direct students to relevant Web sites for information on research, statistics, careers, the courts, and more as well as fun sites to blow off a little criminal justice steam!

Internet Activities for Criminal Justice This 60-page booklet illustrates how to best utilize the Internet for research through various searches and Internet activities.

Internet Guide for Criminal Justice Developed with the novice user in mind, the first half of this 80-page booklet provides the vocabulary and background information necessary for successfully navigating the Internet while the second half concentrates on criminal justice-related web sites as well as project ideas.

ACKNOWLEDGMENTS

Writing a book always accumulates a lot of debts. Acknowledging these debts hardly repays them, but the past (and hopefully the future) success of *Criminal Procedure* requires that I acknowledge some of the people to whom I owe debts, even if I can't repay them.

The thousands of University of Minnesota students—including police officers, corrections officers, probation and parole officers, prison wardens, prosecutors, defense attorneys, and judges who have taken my courses in the last twenty-six years—contributed more than they can ever know or than I can ever put into words. They asked stimulating questions, participated in lively discussions, and told me bluntly—sometimes even irreverently—what they *really* thought about *Criminal Procedure*. The book is much better because of their honesty.

I'm also grateful for the guidance of the following pre-revision reviewers, whose excellent suggestions are reflected in this edition of *Criminal Procedure*: Ken Agran, University of California, Irvine; Robert G. Hewitt, Edison Community College; Tom O'Connor, North Carolina Wesleyan; Nonso Okereafoezeke, Western Carolina University; Gregory B. Talley, Broome Community College; and John M. Wyant, Illinois Central College.

Past teachers, without even knowing it, have also influenced *Criminal Procedure*. Professors Claude Sowle and Fred Inbau, who taught me the law of criminal procedure at Northwestern University Law School, sparked an interest that became a life-long fascination with the subject. Sir Geoffrey Elton, Glare College, Cambridge, guided and stimulated my curiosity about the history of criminal procedure and taught me how to conduct disciplined research in the primary sources of sixteenth-century criminal justice administration. Finally, Professor Lacey Baldwin Smith, Northwestern University, the best teacher I ever had (and I've had lots!), provided me with an outstanding example of how to transfer my own excitement about a subject I love to my students. He also taught me how to transform my convoluted English into readable prose.

Ruth Cottrell, the best production editor ever, as always made the production of the book seem easy when I know better. The application of Lura Harrison's careful editing saved the book from a lot of errors and made it clearer. The people at Wadsworth deserve special mention. Sabra Home gave me unqualified encouragement throughout the revision of *Criminal Procedure*, Fifth Edition. She has no idea how much her warmth, encouragement, and support have meant to me. Terri Edwards and Jennie Redwitz kept me on track with all kinds of deadlines and details that I'm not good at keeping or even noticing. Susan DeVanna has patiently helped me with the CD-ROM, and since I'm technology challenged, she had a big job. Dawn Mesa has gotten the PowerPoint presentations into shape for instructors.

Thanks for far more than I deserve to my loyal friend Sally. She keeps on praising me and putting up with me even though I don't deserve either. Year after year and edition after edition she just never lets up on her fantastic detective work, leg work, eye work, and just plain grunt work. I don't know how or why she does it, but I'm grateful. Without Doug, my personal assistant, I acknowledge a simple, indisputable fact: I couldn't physically do my work. But there's more. He's always there to take me here and there and everywhere, fill out forms, and do the other paper work I can't do. And, if that's not enough, without his companionship to fill the void created when my sons grew up, my inspiration would surely have flagged. And he does all this, as does Sally, in the face of my mercurial temperament.

I'm happy to give credit to my students, my teachers, my editors, and Sally and Doug for making this a better book. For the book's shortcomings, of course, the responsibility is all mine.

Joel Samaha

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