

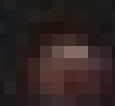
Understanding

CRIMINAL PROCEDURE

FOURTH EDITION

VOLUME 2: INVESTIGATION

James J. Brundage
James M. Brundage



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UNDERSTANDING CRIMINAL PROCEDURE

Volume 1: Investigation

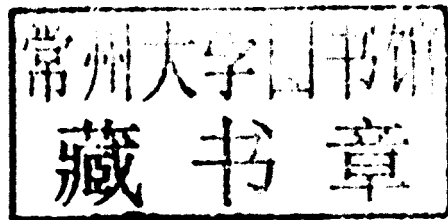
Fifth Edition

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UNDERSTANDING CRIMINAL PROCEDURE

Volume 1: Investigation

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To Dottie: My Partner in Life

— J.D.

To Barbara and Roger Michaels: Thank you, for everything

— A.C.M.

PREFACE

This two-volume text is intended for use in law schools, although we can report with pleasure that legal scholars, practicing attorneys and judges have found it of value in their work.

The first volume is intended for use in criminal procedure courses focusing primarily or exclusively on police investigatory process. Such courses are variously titled: *Criminal Procedure I*; *Criminal Procedure: Investigation*; *Criminal Procedure: Police Practices*; *Constitutional Criminal Procedure*; etc. Because some such courses also cover the defendant's right to counsel at trial and appeal, the first volume includes a chapter on this non-police-practice issue. (This chapter is also included in Volume Two.) This fifth edition incorporates the many significant changes in the law that have occurred since publication of the last edition.

The second volume of UNDERSTANDING CRIMINAL PROCEDURE covers the criminal process after the police investigation ends, and the adjudicative process commences. This book is useful in criminal procedure courses (variously entitled *Criminal Procedure II*; *Criminal Procedure: Adjudication*; etc.) that follow the criminal process through the various stages of adjudication, commencing with pretrial issues — such as counsel, charging, pretrial release and discovery — and continuing with the trial itself and then post-conviction proceedings: sentencing and appeals.

Because UNDERSTANDING CRIMINAL PROCEDURE is primarily designed for law students, it is written so that students can use it with confidence that it will assist them in course preparation. Indeed, frequently professors recommend or assign the volumes to their students to improve classroom dialogue. Based on the experience of prior editions, as well, we are confident that this fifth edition of UNDERSTANDING CRIMINAL PROCEDURE will continue to prove useful to scholars, practicing lawyers, and courts.

The Text covers the most important United States Supreme Court cases in the field. Where pertinent, the Federal Rules of Criminal Procedure, federal statutes, and lower federal and state court cases are considered. The broad overarching policy issues of criminal procedure are laid out; and some of the hottest debates in the field are considered in depth and, we think, objectively.

Readers should find the Text user-friendly. Students who want a thorough grasp of a topic can and should read the relevant chapter in its entirety. However, each chapter is divided into subsections, so that readers with more refined research needs can find answers to their questions efficiently. We also include citations to important scholarship, both classic and recent, into which readers may delve more deeply regarding specific topics. And, because so many of the topics interrelate, cross-referencing footnotes are included so that readers can easily move from one part of the Text to another, if necessary.

Gender policy of the Text. Obviously, women as well as men fill all the roles in the criminal justice system: lawyer, judge, police officer, legislator, criminal suspect, and victim. Accordingly, in even-numbered chapters, we use the male pronoun to describe hypothetical and generic parties in the criminal justice system; in odd-numbered chapters, women get equal time. Based on comments we have received about this policy, most readers like the approach or, at worst, find it only temporarily distracting.

PREFACE

Acknowledgments. Many persons helped make these volumes possible. We can name only a few here. Professors Lee Lamborn and the late Joseph Grano read and commented on every page of every chapter of the manuscript for the first edition. Professor George Thomas did the same with the second edition. Various people have commented on drafts of chapters of later editions. The text is much better because of their generous assistance. Mistakes and omissions are the result of our stubborn refusal to listen to advice.

For this fifth edition, we are also grateful for the research assistance of three excellent law students at The Ohio State University's Moritz College of Law: Kelle Hinderer (2009); Susan Landrum (2009); and Sarah Grimm (2010).

We thank our families for their love and support.

Joshua Dressler
Alan C. Michaels
March, 2010

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