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CRIMINAL PROCEDURE

**Adjudication and
Right to Counsel**



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CRIMINAL PROCEDURE: ADJUDICATION AND RIGHT TO COUNSEL

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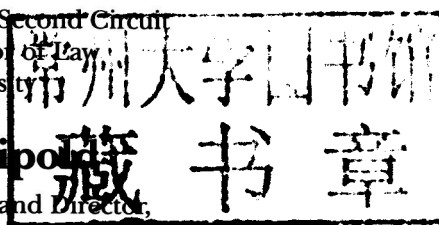
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While it is unusual to dedicate a book to a present member of the team of authors, we dedicate this edition to Bill Stuntz in recognition of the many contributions that he has made to it and its predecessors. Since joining the third edition of the precursor to this book, *Constitutional Criminal Procedure*,

Bill has influenced virtually every page of all succeeding editions, and he was critical to the evolution of that book into *Comprehensive Criminal Procedure*. Much more important, Bill's friendship and example have affected us in such innumerable and profound ways that we wished to make this small gesture of gratitude to thank him for being a part of our lives.

Preface

Criminal Procedure: Adjudication and Right to Counsel contains the first three as well as the last ten chapters of *Comprehensive Criminal Procedure*, Third Edition. Many modern American law schools provide two mainstream criminal procedure courses. One course focuses primarily on criminal investigations, including the right to counsel, the Fourth Amendment, self-incrimination, and related areas; the second course focuses primarily on adjudication, including all pretrial, trial, sentencing, and appellate issues. *Comprehensive Criminal Procedure* provides a set of materials suitable for any criminal procedure course beyond those that focus primarily on state law issues. This book, *Criminal Procedure: Adjudication and Right to Counsel*, by contrast, covers only the subject matter of the second course described above. We offer it in this format because of the convenience of a smaller and less expensive set of materials for those offering and taking such a course.

Criminal procedure is one of the most fascinating and important fields of legal study. More than any other area of law, criminal procedure determines the relationship between government and citizen, and thus defines the legal system's stance toward the demands of autonomy, privacy, and dignity. It often does so through adversarial legal processes. Thus, the study of criminal procedure leads naturally to fundamental problems of reasoning, decision making, and political and social theory, in addition to standard law school questions about the meaning of a constitutional or statutory provision, or the implications of a precedent. The subject demands, and we have tried to bring to these materials, intellectual rigor; we do not shy away from addressing intractable problems. Moreover, much of the present law reflects its past, and thus—although our emphasis is squarely on the law and practice of criminal procedure today—we have also provided, where appropriate, a full account of the relevant history.

In addition to the careful attention given to the historical roots of modern law, we develop a number of important subthemes while pursuing the overarching theme to this book—that the criminal process significantly forms the boundary between the government and the citizen. First, we draw attention to the real-world implications of alternative regulatory regimes. All too common in this field is the notion that if there is a problem, the courts should remedy it. Often courts are unable to remedy problems, and sometimes their solutions are worse than the initial problems. Second, although the subject matter of the book is criminal procedure, procedure interacts in complex and profound ways with substance. In appraising any procedural matter, especially one involving a judicial determination of a procedural right, the power of legislatures to indirectly eliminate the right through changes in substantive criminal law (or directly through statutory changes to the procedure in question) must be taken into consideration. Third, we explore throughout the book

the complicated relationships, and occasional conflicts, between those institutions—primarily courts, legislatures, prosecutors, and juries—that share responsibility for processing criminal cases. Fourth, much of the modern law of criminal procedure is a direct consequence of the effort to end racial discrimination in the United States, and can be understood only in that context. Fifth, we address the growing concern about accuracy in criminal justice and the problem of erroneous convictions. Finally, the implications of limited resources must constantly be kept in mind. Criminal procedure is instrumental to the construction of a civilized society, and a dollar spent here is a dollar that cannot be spent somewhere else. One can have more expensive criminal procedure, or one can have more hospitals, roads, or welfare programs. One cannot, however, have it all.

The book opens with a wide-ranging set of readings about the criminal justice system, combining hard data with expert commentary. The nature of due process adjudication is then introduced, because so much of criminal procedure law either has been constitutionalized or operates within the shadow of the Constitution. With one major exception, the book then follows the processing of a criminal case more-or-less chronologically, from the start of the adjudicatory process through appeal and habeas corpus. The major exception is Chapter 3, which contains a thorough examination of the right to counsel. Counsel is the linchpin of criminal procedure, obviously so with respect to its constitutional aspects but even more critically so with respect to its statutory and common law aspects. Without adequate counsel, a suspect or defendant is, with rare exceptions, lost. The most elaborate procedural protections courts can devise are of little value to one who neither knows what those protections are nor how they can be used to best advantage.

In this book, we welcome to our author team Andrew D. Leipold, one of the most respected scholars working in the area of criminal procedure today. Andrew has contributed greatly to the improvements you will see herein. Those improvements include a comprehensive revision of Chapter 3, on the right to counsel; a new Chapter 10, on pretrial screening and the grand jury, that brings together materials previously found in separate chapters; a revised Chapter 11, on the scope of the prosecution, that includes not only speedy trial, joinder, and severance but also adds a new section on venue; up-to-the-minute presentations of *Crawford* doctrine in Chapter 14, on the jury and the criminal trial, and of *Apprendi* doctrine in Chapter 15, on sentencing; and coverage of the latest empirical research and recent policy debates about habeas corpus in Chapter 17, on appellate and collateral review.

In addition to these specific additions and changes, and the inclusion of every important criminal procedure decision in recent years, we have pursued two main goals throughout this book. First, we have sought to make the book more accessible for students without sacrificing any of the rigor and sophistication that we believe has been the hallmark of the book from its inception. Second, we have maintained our emphasis on keeping the book current—meaning that, wherever the theoretical or doctrinal framework of criminal procedure law has changed significantly since earlier editions, we have reworked our coverage of the relevant material to ensure that the book does not become mired in the past but instead continues to highlight the issues and the controversies of the present day.

We have endeavored to keep editing of cases at a minimum, opting at times for textual description over a series of edited excerpts. Editing is unavoidable, however. In all cases and materials reproduced here, we have kept the original footnoting sequence. Wherever our own footnotes might be confused with those of the primary

material, our own footnotes are identified by the legend “—EDS.” This book contains Supreme Court and lower court cases and legislative materials current through August 2010.

Please note that all page numbering in this book is identical to the page numbering in *Comprehensive Criminal Procedure*, Third Edition. This is for the ease and benefit of professors and students in classrooms where both books may be in use at the same time.

Ronald J. Allen
William J. Stuntz
Joseph L. Hoffmann
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Andrew D. Leipold

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