

Twelfth Edition

# Basic Criminal Procedure

Kamisar | Israel | LaFave | King | Kerr



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# **BASIC CRIMINAL PROCEDURE**

## **CASES, COMMENTS AND QUESTIONS**

### **Twelfth Edition**

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## Preface to the Twelfth Edition

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Aside from two introductory chapters on the right to, and the role of, counsel, this volume—based on our much larger *Modern Criminal Procedure* (12th ed. 2008)—deals almost exclusively with “police practices” and other investigative alternatives (see Ch.11, dealing with grand jury investigations). The success of the previous editions of “*Basic*” confirms our belief that when allocated 30 (or even 45) class hours for criminal procedure (or a third or half of the crowded first-year criminal law course for procedural problems), many teachers will find it more useful and meaningful to explore in depth a few fundamental and closely related areas (e.g., search and seizure, right to counsel, confessions and lineups) than to make a whirlwind tour through the investigatory process, joinder and severance, speedy trial, “trial by newspaper” (and TV), criminal discovery, sentencing appeals, post-conviction review and all of the other topics treated in the 29 chapters of our larger book, we have kept the first twelve chapters intact and omitted all others.

Chapters 7 and 8 have been completely reorganized and cover significant new material. Chapter 7 now considers the law of undercover investigations, including both Fourth Amendment issues and entrapment law. The new Chapter 8, titled “Network Surveillance,” covers evidence collection from communications networks such as the telephone, the Internet, and the postal networks. It addresses both constitutional regulations and the statutes that regulate network crime investigations.

The long extracts from Fred Inbau and Yale Kamisar’s articles which introduced the chapter on police interrogation and confessions (Ch. 9) in previous editions have been deleted in favor of new introductory segments on the “third degree” (and its close relationship to current torture techniques) and police professionalism and the rise of the interrogation manual. These segments draw heavily from Richard Leo’s new book, *Police Interrogation and American Justice* (2008). The confessions chapter also contains new segments on the Central Park Jogger case and false confessions generally and on the legitimacy and plausibility of *Miranda*.

Some instructors will welcome Ch. 11 (grand jury investigations) for providing an opportunity to compare and contrast police work with other investigative alternatives. However, we suspect other instructors, pressed for time, will pass quickly through Ch. 11 or even skip it entirely. But particular attention should be paid to the last section of this chapter: Fifth Amendment history and values. This section is designed to facilitate exploration of the general policies underlying the privilege against compelled self-incrimination. There is much to be said for taking up this material with the confessions chapter.

A final point about the organization of these materials. Although we have a separate chapter on the scope of the exclusionary rules (Ch. 12), which includes a section on the “fruit of the poisonous tree,” we believe the *Miranda* “poisoned fruit” cases, *Patane* and *Seibert*, shed so much light on the significance of *Dickerson*, the case that reaffirmed *Miranda*’s constitutional status (or perhaps one should say shed so much light on the lack of significance of *Dickerson*) that we decided to place *Patane* and *Seibert* in the confessions chapter, a few pages after *Dickerson*.



This volume includes significant developments up to January 31, 2008. Important developments thereafter will appear in annual supplements, which will also contain relevant federal court rules and statutory materials. The first annual supplement to this book, which will be published about two months after this volume appears, will contain all notable cases handed down by the Supreme Court during the 2007-08 Term. It will also include various extracts from the new criminal procedure literature.

Case citations in the text and the footnotes of judicial opinions and in the writings of commentators have been omitted without so specifying. Numbered footnotes are from the original materials; lettered footnotes are ours.<sup>1</sup> Omissions from the text of the original are indicated by asterisks and brackets.

If there are cross-references to cases beyond pages 924 (the end of *Basic Criminal Procedure*), the citations to these cases can be found in the Table of Cases.

One or more of the authors has been fortunate enough to participate actively in four major criminal procedure projects: The American Bar Association's *Standards for Criminal Justice*; The American Law Institute's *Model Code of Pre-Arrest Procedure*; The National Conference of Commissioners on Uniform State Laws' *Uniform Rules of Criminal Procedure*; and the ongoing revision of the *Federal Rules of Criminal Procedure*. We are indebted to the members of the various committees with whom we have worked for providing us with many leads and insights. We are also indebted to the many users of this book who have offered helpful suggestions on content as to this edition and previous editions. That list, like the list of our student research assistants over the years, has now grown far too long to mention each person individually.

We are especially appreciative of the able secretarial assistance provided on the twelfth edition, too often under great stress, by Perla Bleisch, Joyce Kenney, Mary Lebert, Carol Robison, and Tori Stamps.

YALE KAMISAR  
WAYNE R. LAFAVE  
JEROLD H. ISRAEL  
NANCY J. KING  
ORIN S. KERR

PS. An additional note from Yale Kamisar, Wayne LaFave, Jerold Israel, and Nancy King: We are delighted that Orin Kerr has agreed to join us in this venture. We greatly appreciate the important contributions he has made to the new edition.

May, 2008

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1. Standard abbreviations are used throughout. On occasion a book or article is used so frequently in a chapter as to call for a shorter citation form. Here we have given the full citation to the book or article in the first footnote of the chapter and indicated there the shorter citation form. For our own books, we simply have used the shorter citation form throughout the book. These are:

LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* (4th ed., 2004), available on

Westlaw under the database SEARCHSZR and cited as SEARCHSZR § \_\_\_\_.

LaFave, Israel, King, and Kerr, *Criminal Procedure Treatise* (3d ed. 2007), available on Westlaw under the database CRIMPROC and cited as CRIMPROC § \_\_\_\_.

Articles collected in Kamisar, *Police Interrogation and Confessions: Essays in Law and Policy* (1980) are usually cited as Kamisar Essays.

# Acknowledgments

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# Table of Cases

The principal cases are in bold type. Cases cited or discussed in the text are roman type. References are to pages. For Commonwealth v. \_\_\_\_\_, People v. \_\_\_\_\_, State v. \_\_\_\_\_, United States v. \_\_\_\_\_, see the name of the other party. For Ex parte \_\_\_\_\_, In re \_\_\_\_\_, In the Matter of \_\_\_\_\_, see the name of the party. For People ex rel. \_\_\_\_\_, State ex rel. \_\_\_\_\_, United States ex rel. \_\_\_\_\_, see the name of the first party. Where a case is discussed in another case, reference is made only to the first page at which it is cited. No reference is made to discussion of a principal case in the Notes and Questions that follow that case.

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