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COMPREHENSIVE
CRIMINAL PROCEDURE

*Second
Edition*

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COMPREHENSIVE CRIMINAL PROCEDURE

Second Edition

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To my wife, Julie O'Donnell Allen — R.J.A.

In memory of my mother,
Joanne Matuszak Hoffmann — J.H.

In memory of my grandfather,
Harold Yates DeVenny — D.L.

To Louis Pollak,
mentor and friend — W.S.

Preface

Comprehensive Criminal Procedure provides a set of materials suitable for any criminal procedure course beyond those that focus primarily on state law issues. Many modern American law schools provide two mainstream criminal procedure courses. One course focuses primarily on right to counsel, Fourth Amendment, self-incrimination, and related areas, while the second course focuses primarily on post-arrest, trial, and appellate issues. Other law schools offer the first but not the second of these, and some offer a single survey course combining both the investigative and the adjudicative aspects of the subject matter. This book should work well for any of these courses.

In this second edition, we believe we have preserved the best features of the first edition, but we think that you will find that this is a new and better book. We have made revisions to take account of recent developments throughout the book, and have been especially attentive to the effects of the “War on Terror” for criminal procedure doctrine. Post-9/11 developments are taken up in various chapters, and are treated comprehensively in a new and expanded version of Chapter 7 that deals with complex crimes and crimes involving threats to national security. Many other chapters—indeed, more than half the book—have been thoroughly rewritten, with many new sections, re-edited and reorganized cases, and substitutions of new cases and materials for outdated ones. This is especially true of Chapter 5 (“The Fourth Amendment”), which has been almost completely revised, and now includes entirely new discussions on the meaning of both “search” and “seizure,” exigent circumstances, searches incident to arrest, the relationship between police discretion and racial profiling, and “special needs,” among other topics. Much the same can also be said for Chapter 6 (“The Fifth Amendment”), Chapter 7 (“Investigating Complex Crimes”), Chapter 10 (“Guilty Pleas and Plea Bargaining”), Chapter 13 (“Sentencing,” including the Supreme Court’s decision in *United States v. Booker*, handed down while the book was in production), and Chapter 14 (“Double Jeopardy”).

The book opens with a wide-ranging set of readings about the criminal justice system, followed by a chapter on the evolution of due process, a concept that dominates much of the field. With one exception, the book then follows the criminal process chronologically from investigation to appeal; that 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.

Following the right to counsel is a chapter chronicling the history of *Boyd v. United States*. We think it fair to say that the Supreme Court of the United States has been reacting to the *Boyd* case for the last century, and that the present law of search and seizure and the right to be free from compelled self-incrimination cannot be understood without a grounding in *Boyd* and its aftermath. The remainder of the book then unfolds in the promised chronological order.

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, intellectual rigor to these materials; we do not shy away from addressing intractable problems. Moreover, much of the present law reflects its past, and thus we have tried to give a picture not only of the law today but also of its history.

In addition to the careful attention given to the historical roots of modern law, we develop four other 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, the subject matter is criminal procedure, but procedure interacts in complex, 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 analyzed. Third, much of the modern law of criminal procedure is a direct consequence of the effort to eliminate racial discrimination in the United States, and can be understood only in that context. Last, the implications of limited resources must constantly be kept in mind. All too often neglected is that 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.

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 July 2004.

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Joseph L. Hoffmann
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