

**Capital Punishment  
and the  
Judicial Process**

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# Capital Punishment and the Judicial Process

FOURTH EDITION

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# Preface to the Fourth Edition

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Since the 1994 publication of the first edition of *CAPITAL PUNISHMENT AND THE JUDICIAL PROCESS*, numerous substantive and procedural changes in capital jurisprudence have occurred. For example, in 2008, a divided Supreme Court rejected an Eighth Amendment challenge to lethal injection as a means of execution. That same year, the Court struck down legislative efforts to punish by death those who rape or sexually abuse children. Credible evidence continues to mount suggesting that Texas has executed two factually innocent prisoners: Cameron Todd Willingham and Carlos DeLuna.

During the past five years, New York, New Mexico, Illinois, New Jersey and Connecticut have abolished or refused to revive the death penalty. More recently, Rhode Island's governor disapproved of a federal request to transfer a prisoner for purposes of exposing him to the death penalty, and Oregon's governor announced that he would permit no more executions to occur while he was in office. These developments reflect, at least in some parts of the country, a waning of the longstanding enthusiasm for—and unquestioning political embrace of—capital punishment that seemed to sweep across the United States in the 1980s and 1990s. This trend—as important as it is—does not mean that the death penalty in the United States has reached an end. Many states, particularly those in the Old Confederacy, continue to execute. But the evolution of public opinion on the death penalty suggests that the nation has entered a new phase of the capital punishment debate. How this turn of events will play out in the coming years is uncertain, but it is our hope that this casebook will provide a foundation for addressing emerging issues and assist those who participate in the debate.

For all that has changed, certain facts remain incontrovertible. The death penalty is far more likely to be sought against those who kill white victims, and the quality of representation provided by many capital defense lawyers is abysmal. Since 1973, 140 persons in 26 states have been released from death row due to evidence of their innocence. As Justice O'Connor observed in 2001, "If statistics are any indication, the system may well be allowing some innocent defendants to be executed."

We continually seek to keep the casebook current with the full range of developments affecting the death penalty and to raise issues that reflect not only contemporary practices but also emerging trends and challenges that face those who practice and study in this area. It is difficult to believe that we embarked on writing this casebook nearly twenty years ago and that we now have completed the fourth edition. We could not have accomplished this task without the immeasurable support of students, staff, colleagues, our law schools, and the outstanding professionals at Carolina Academic Press.

We are deeply indebted to Linda Carter and Jon Yorke for their valuable time and tremendous suggestions, particularly with respect to the international law issues in Chapter 18. Their wise counsel and generous contributions greatly improved our coverage. Dawn Tomlins, Misty Akins, Donna Wade, and Cyndee Jones provided outstand-

ing secretarial support, much needed advice, and calm friendship. Every year, our students contribute valuable insight and ideas for the casebook. We particularly wish to thank Erin McMillan, Ashley Hodges and Nicholaus Hancock for their research assistance on the fourth edition. The University of Oklahoma and the University of Tulsa continue to provide support and for that we are most grateful. Darin Fox, Director of the OU Law Library, and his remarkable colleagues Jennifer Gerrish and Joel Wegemer, were tremendously helpful in updating the statutes and tracking down arcane facts. Our loyal publisher, Keith Sipe, and devoted senior editor Linda Lacy of Carolina Academic Press have unfailingly supplied encouragement, expert guidance, and warm friendship for nearly two decades.

In 1994, we dedicated our first edition to Marley Brennan Coyne, by far our most significant work product. As the fourth edition goes to press in 2012, Marley is preparing to enter the University of Pennsylvania as a freshman. As always, this casebook is dedicated to her.