

UNDERSTANDING
CRIMINAL PROCEDURE
Volume 1: Investigation

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UNDERSTANDING CRIMINAL PROCEDURE

Volume 1: Investigation

Sixth Edition

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MATTHEW  BENDER

To The Girls In My Life: Lucy Belle and Maya Shoshana

&

To Noah's Wonderful Caretakers: Izzy, Gabby, Sophie, Pam and Gus

— J.D.

To Barbara and Roger Michaels: Thank you, for everything

— A.C.M.

PREFACE

This 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.

This 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 on appeal, this text includes a chapter on this non-police-practice issue. This sixth edition incorporates the many significant changes in the law that have occurred since publication of the last edition.

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 this text to their students to improve classroom dialogue. Based on the experience of prior editions, as well, we are confident that this sixth edition 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 book 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.

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.

PREFACE

We thank our families for their love and support.

Joshua Dressler
Alan C. Michaels
January 2013

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