

# Understanding Criminal Procedure

VOLUME 2: ADJUDICATION

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VOLUME 2: ADJUDICATION

FIFTH EDITION

**Joshua Dressler**

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*To Dottie: You Make Life Possible*

—J.D.

*To Mom and Dad: Thank You for Everything*

—A.C.M.

*To My Family*

—R.S.





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# Preface

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The fifth edition of *Understanding Criminal Procedure: Adjudication* brings the volume up to date with the many legal developments since the last edition. Recent years have brought important changes and new debates to the forefront, both in areas governed by constitutional doctrine, such as the Confrontation Clause and the Trial by Jury provision of the Sixth Amendment, and in matters largely governed at the local level, such as the use of algorithms and big data in bail hearings and new rules on discovery. The new edition explains this entire landscape, in carefully organized chapters describing where we are, how we got here and where further developments may be expected.

As before, this volume covers the criminal process after the police investigation ends and the adjudicative process commences. This book is useful in criminal procedure courses (variously entitled *Criminal Procedure II*; *Criminal Procedure: Adjudication*; etc.) that follow the criminal process through the various stages of adjudication, commencing with pretrial issues—such as counsel, charging, pretrial release and discovery—and continuing with the trial itself and then post-conviction proceedings: sentencing and appeals. Its counterpart, *Understanding Criminal Procedure: Investigation*, is intended to be used in criminal procedure courses that focus primarily or exclusively on police investigatory process. The two books share the first three introductory chapters, as well as the chapter on defendant’s right to counsel, since those chapters cover issues that arise in both courses.

*Understanding Criminal Procedure: Adjudication* is primarily designed for law students. We have written the Text so that students can use it with confidence that it will assist them in course preparation, and professors can recommend or assign the volumes to students with confidence that they will improve classroom dialogue.

The treatise covers the most important United States Supreme Court cases in the adjudicatory portion of criminal procedure and, where pertinent, the Federal Rules of Criminal Procedure, federal statutes, and lower federal and state court cases are considered. The book addresses overarching policy issues of criminal procedure and considers in depth and objectively some of the hottest debates in the field. The authors have also included citations to important scholarship, both classic and recent, into which readers may delve more deeply regarding specific topics.

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 Text to another, if necessary.

*Gender policy of the Text.* Obviously, both men and women fill all the roles in the criminal justice system: lawyer, judge, police officer, legislator, criminal suspect, and victim. In the past, we have alternated between using male and female pronouns; in the new edition, consistent with what is now a common practice, we use the non-gendered “they” when discussing a hypothetical or generic party.

*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. Many people commented on drafts of chapters of the third edition. The text is much better because of their generous assistance. Mistakes and omissions are the result of our stubborn refusal to listen to advice.

For this fifth edition, we are also grateful for the research assistance of a great bunch of law students at The Ohio State University’s Moritz College of Law: Kristen Adams (’25), Em Lowes (’25), and Michael Rienzo.

We thank our families for their love and support.

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