CRIMINAL PROCEDURE:
THE POST-INVESTIGATIVE
PROCESS
Fourth Edition
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THE
POST-INVESTIGATIVE
PROCESS

Fourth Edition

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Preface to Fourth Edition

Historically, the course that most law schools call “Criminal Procedure” focuses on vital Fourth, Fifth, and Sixth Amendment issues, but pays scant attention to the subject matter of this book — the equally vital aspects, both practical and theoretical, of the adjudicatory process.

Happily, in recent years, law schools have added a separate course on criminal adjudication and placed it on a co-equal footing with the traditional “Crim. Pro” course. It is no exaggeration (and no disrespect to the traditional Criminal Procedure course) to call this book and the course it is intended for, “the real criminal procedure.”

This Fourth Edition continues the previous editions’ focus on both the theoretical and practical aspects of the “bail to jail” aspects of American criminal procedure. Thus, it presents the major policy issues raised by the most important cases, as does any criminal procedure book, but it also discusses many practice-related issues, such as motion practice, the content and format of indictments, the impact of various parts of the system on the guilty plea process, and ethical standards and dilemmas facing lawyers (both prosecutors and defense counsel) in criminal cases. No lawyer who has handled a criminal case would contest the statement that these real-life issues are critical to an understanding of the criminal process and a capacity to serve as a competent, ethical prosecutor or defense lawyer.

This new edition also takes full advantage of the electronic age of legal scholarship, providing references where appropriate to web pages and other Internet resources (even including a current “blog”) that go beyond the traditional citations to case law and secondary legal authorities.

Substantively, the Fourth Edition is an up-to-date teaching tool that reflects the upheavals that have taken place most recently in criminal adjudication: in sentencing (particularly the Apprendi-Booker-Gall-Alleyne line of Supreme Court sentencing decisions); in Sixth Amendment Confrontation Clause case law; and also in death penalty and habeas corpus jurisprudence and legislation.

We endeavor to keep this book fresh and current by publishing cumulative online annual supplements shortly after the close of each term of the United States Supreme Court, in time for use by students and teachers in the fall. Each supplement also contains the complete Federal Rules of Criminal Procedure as most recently amended. This new edition incorporates Supreme Court decisions through its 2012–13 term, and also includes one decision from the start of its 2013–14 term.

As this edition was going to press, the Supreme Court decided the case of Woodall v. White, 134 S. Ct. 1697 (April 23, 2014), which time unfortunately did not allow for us to include in this edition. We commend this new decision to our readers’ attention, especially regarding the sharp disagreement among the Justices over the near-preclusive deference federal habeas corpus courts are required, under the Anti-Terrorism and Effective Death Penalty Act (discussed in Chapter 18), to give to state court decisions applying or interpreting Supreme Court precedent, and as to the Justices’ differing views of the import and the applicability of Mitchell v. United States, 526 U.S. 314 (1999) (defendants’ right not to have their silence at sentencing used against them, discussed in Chapter 15). We will cover this potentially important decision, and any other significant
Preface to Fourth Edition

Supreme Court cases decided during the remainder of the Court’s 2013–14 term, in our first online annual supplement to the Fourth Edition, in time for the start of the fall 2014 semester in most U.S. law schools.

Our goal is simple: to provide law students with teaching materials that advance the students’ understanding of the post-investigative facets of criminal procedure law and the many important hands-on issues that arise in the practice of criminal law. To those who have taught and learned from our earlier editions, we trust that you find this new edition as clear, as helpful, and as thought provoking as you have in the past. To our new readers, welcome!

Neil P. Cohen
Stanley E. Adelman
Leslie W. Abramson
May 2014
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Our deans and colleagues at our respective schools have also generously supported this endeavor in numerous ways, for which we also remain grateful.

We humbly thank them all.
Dedication

First Edition
To Amy, Andy, Jack, and Nancy, and the wonderful memories of Fred

N.P.C.
To Nancy
D.J.H.

Second Edition
To Marcella Bridges
N.P.C.
To Nancy, Kelly, and Pamela
D.J.H.

Third Edition
To Dr. Riva Nelson
N.P.C.
To Jenny and Rob
S.E.A.

Fourth Edition
To the memory of our colleague Don Hall, who passed away during the preparation of this edition. His many contributions to previous editions are reflected throughout the fourth edition. Don was a good friend, brilliant teacher, and careful scholar. He is missed by everyone who was fortunate enough to know this wonderful human being.

N.P.C., S.E.A., L.W.A.
To Ben Peloquin
N.P.C.
To Pat
S.E.A.
To Lisa, Sam, Shel, and Will
L.W.A.
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