CRIMINAL PROCEDURE:
CASES, MATERIALS, AND
QUESTIONS
Fourth Edition
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DEDICATION

To the Texas Tech School of Law that has provided me with an incredibly nurturing and sustaining environment for the past nine years, my former Dean, Walter Huffman, whose gentle persuasion helped convince me to come to Texas Tech, and my current Dean, Darby Dickerson.
Fourth Edition Preface

This book is designed for a complete criminal procedure course. It can be covered tightly in four hours or quite leisurely in five hours. In my judgment, much of criminal procedure is the sort of material that ought to be part of a good citizen/lawyer’s repertoire. Consequently, this book and course are not designed exclusively for future criminal law practitioners. Rather, the book and course are designed as a roadmap for those who wish to learn about governmental limitations on police and/or trial procedures in the criminal context.

The presentation of the materials is focused, rather than scatter-gun. That is, each case is presented, lightly edited (deletions not usually noted in the material), with a series of focused questions and notes (mostly questions) following it. It is contemplated that the students will read the case, focus on the question, reread the case, and be prepared to discuss some or all of the questions in class. Because the cases are lightly edited, the total number of pages per class might seem unusually long. However, most classes will involve studying only three or four cases. Because of this precise focus, the material should be manageable.

As a matter of editing style, law review articles and other collateral material are usually not cited in the questions and notes. This is not because of the author’s belief that they are unimportant. My primary reason for generally not including collateral sources is to ensure that the student’s focus will not be directed away from the precise questions in the book.

There are many people to thank: John Fischer for research assistance in the 1st edition, William Cross for research assistance in the second edition, Clint Buck for research assistance on the third edition, and Ronald Miller for research assistance on the fourth edition. The UNC Law Center for financial assistance for the first and second edition, the Texas Tech School of Law for its incredible support in preparing the third edition, and my wife, Judy, for emotional assistance. A number of colleagues across the country have contributed to my understanding of criminal procedure, but I would like to particularly acknowledge two of them. Arthur LaFrance, of Lewis and Clark, who, coauthored my first criminal procedure casebook with me. Undoubtedly some of his influence remains in this book. The late Professor Laura Webster of Mercer Law School, a former Philadelphia Public Defender, taught me much about, among other things, criminal procedure.

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THE FOURTH AMENDMENT

The Right of the People to be Secure in their Persons, Papers, Houses, and Effects Against Unreasonable Searches and Seizures Shall Not be Violated, and no Warrant Shall Issue But upon Probable Cause Supported By Oath or Affirmation Specifically Describing the Place to be Searched and the Person or Thing to be Seized.

THE FIFTH AMENDMENT

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in active service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process; nor shall private property be taken for public use, without just compensation.

THE SIXTH AMENDMENT

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have Assistance of Counsel for his defense.

THE FOURTEENTH AMENDMENT

SECTION 1

All persons born or naturalized in the United States, and subject to the jurisdictions thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.