
PREFACE

I wrote this casebook because I wanted to achieve a middle ground between two well-known approaches to the teaching of criminal procedure.

One approach focuses on federal constitutional rules and the Supreme Court cases that articulate them. These rules and general principles provide the minimum floor below which states—and Congress—cannot go. This approach turns criminal procedure into a sub-discipline of constitutional law with the Fourth, Fifth, and Sixth Amendments as the primary object of study.

Another approach focuses on state constitutional rules in order to achieve a more “on the ground” perspective that will be especially helpful for the law school graduates who will enter the legal profession as criminal lawyers. From that perspective, what the lawyer needs to understand is not just the constitutional prohibitions but, more importantly, the rules in that jurisdiction, which might be articulated in state constitutions, state statutes, and state rules of criminal procedure. (Proponents of this approach often note that to do otherwise is to privilege a hypothetical “law from nowhere” that does not really exist, in the sense that federal constitutional rules are always applied along with statutory rules).

Both approaches have merit, so I asked myself: *Why not do both?*

Criminal Procedure: Doctrine, Application, and Practice presents the constitutional cases decided by the Supreme Court, but legal requirements imposed by statute or by state law are highlighted in shaded call-out boxes in each chapter. These call-out boxes help the reader understand that local jurisdictions sometimes impose more demanding rules of criminal procedure (or sometimes more demanding interpretations or applications of the rule). If you are a client or a lawyer in that jurisdiction, that is really all that matters. However, these call-out boxes are modular and do not disrupt the flow of the main text, thus allowing students and professors alike the flexibility to emphasize and discuss those aspects of the law of criminal procedure that they consider most important, i.e., the general principles.

Another distinctive aspect of this casebook is highlighted in the volume’s subtitle: *Doctrine, Application, and Practice*. It is not enough to understand the principles and rules contained in caselaw and statute; it is also crucial to *apply* those rules to new fact patterns. So, each chapter includes Problem

Cases—again, set as modular call-out boxes—that ask the reader to engage with a set of facts. Acquiring the skill of “law application to fact” can be difficult for the law school student, but it is the hallmark of an accomplished lawyer or jurist.

Finally, each chapter concludes with a brief Practice & Policy section. The goal of the section is to discuss higher-order questions that require a critical reflection on where the law is going and where it ought to be going. The materials are presented at the end of each chapter because the reader requires a firm grounding in the doctrine before tackling these advanced topics. To achieve this critical reflection on the law, students working through the Practice & Policy sections will gain important exposure to empirical, normative, and philosophical methodologies. Also, the ability of the professor to assign and discuss these topics may depend on the credit-hour allocation for the course.

For professors who teach single-semester courses on either criminal investigations or criminal adjudication, please note that I have published versions of this casebook specifically designed for those classes. The titles of those volumes are *Investigative Criminal Procedure: Doctrine, Application, and Practice* and *Adjudicative Criminal Procedure: Doctrine, Application, and Practice*. Both of these “split” volumes start with the same introductory chapter from this volume, which provides an overview of the criminal process, highlights the constitutional debate over “incorporation,” and discusses competing frameworks for understanding and analyzing criminal procedure.

Please note that I have followed several conventions while selecting and editing the cases in the book. First, internal citations within the cases are omitted without indication, in order to make the cases more readable. Second, deletions within cases are marked by ellipses (. . .) rather than asterisks (* * *). Third, the ellipses at the beginning or end of a paragraph may indicate that sentences were deleted from the paragraph or that entire paragraphs or pages were deleted. In other words, the reader should not assume that ellipses at the end of a paragraph indicate that the deleted material was solely contained within that original paragraph. Fourth, ellipses were not used when numbered sections within a case make abundantly clear that entire sections of the opinion have been removed. Finally, parallel citations were removed without indication.

I hope that you enjoy the casebook. Please send suggestions for what you would like to see included in the next edition. I can be reached at jdo43@cornell.edu and would be happy to hear from you.

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