

Preface

This project began when Sam taught a course on criminal evidence and began the process of searching for a good textbook on the subject. Both Sam and Teresa practiced criminal law in the trenches for some time and realized that law school did not adequately prepare us in learning and applying the Rules of Evidence. Sure, our professors taught us the Rules, and we passed bar examinations with evidence sections. However, it's one thing to learn the Rules in an academic context and it's an entirely different process to use the Rules correctly when the witness is sitting on the stand and starts to say something you know is improper. You stand up and say, "Objection!" while you quickly start fumbling through the Rules. Sometimes you're lucky and the judge says, "Sustained." Other times, she'll look at you and say, "Counsel, what is the basis for your objection?" Despite everything you learned in school, trials force you to apply the Rules quickly and force you to grapple with them in a very real way. Your opponent might have a response to your objection and you might be in for a good argument for which you have had no time to prepare in advance.

Sam felt that students would better understand the Rules of Evidence if they came in the context of actual cases—more like how lawyers learn evidence—and so he searched diligently for a textbook with that approach. He could find none, so he began a process of compiling cases to give to his students. David Herzig from Aspen took the opportunity to meet with Sam and expressed enthusiasm for a project of this nature. Teresa soon jumped on board and this book was underway.

For you, the student, why does all of this matter? We believe that the Rules of Evidence, which you will learn about in this book, were born out of the experience of several centuries of criminal trials. Lawyers and judges faced real problems and felt like some evidence actually caused juries to make poor decisions. Trials are about a search for the truth, and the Rules reflect this belief that juries will better determine the truth once certain "bad" evidence has been excluded from their consideration. Of course, this is a debatable issue. But for our purposes, we hope that the Rules will come alive for you as you get a little sense of what it's like to stand in trial and object to the admissibility of some piece of evidence. You're arguing that this evidence might unfairly sway the jury. Your opponent might disagree. This book is about those everyday debates that occur in every court in the nation. At the end of the day, we hope you gain an appreciation for the Rules and come up with your own suggestions for how the Rules can be improved for trials in the future.