
Introduction

I'm no dummy. Most students *never* read the Introduction to a book. I know that. I've studied plenty a textbook during my days in school, and rarely, if ever, did I actually take the time to read the Introduction. No, I usually jumped right in with Chapter One. After all, the Introduction doesn't actually *teach* you anything, does it? And even more importantly, you're never tested on it. So even though it's listed as required reading on your course syllabus for the first week or two of class, the Introduction is more like a "freebie" for that week. Or, perhaps if you're one of those very studious kinds, you might skim through the pages just to make yourself feel better about having done the required work. Well, this Introduction will be a little different from all the rest. For starters, it *will* teach you a thing or two about constitutional criminal procedure. Additionally, where most introductions can go on for pages, I promise to do my best to keep this short and sweet. And finally, who knows? Maybe you *will* be tested on it. So, take a minute or two, and keep reading!

Two quick items of business before we get into the meat of this Introduction: The first is a little preview of what this book is all about. The second is also a preview, but of what this book is *not* about. First things first. Each chapter deals with a single constitutional provision related to criminal procedure. Each chapter as well is formatted in exactly the same way, containing eight separate sections: the Chapter Introduction; Student Checklist; Supreme Court Cases; Case Questions; Hypothetical with Accompanying Analysis; Hypothetical for Student Analysis; Discussion Questions; and Test Bank. It's designed to be user-friendly, to let you work through issues and scenarios dealing with constitutional criminal procedure so that by the time you've completed a chapter, you actually "*get*" it.

Now that we've determined what the book *is* supposed to do, let's take a brief moment to talk about what it's *not* supposed to do. It's not a textbook. It's not designed to instruct you on every nuance of criminal procedure. It's not 300-plus pages of lengthy chapters citing to hundreds of cases, all in a monstrous hardbound volume. In fact, if you're reading this as your *only* source on constitutional criminal procedure, you will very likely have more questions than answers. My point is that you should be using this *with* other sources on constitutional criminal procedure, whether they are classroom discussions, a textbook, power points, or the like. That way, you'll get the full benefit of this book by mastering constitutional criminal procedure.

Having taken care of our two items of business, we are left with the final, and most important, part of this Introduction. . . .

THE TOP TEN THINGS TO REMEMBER WHILE WORKING THROUGH THIS BOOK:

It might not be the Late Show with David Letterman, but if you take the advice in this Top Ten List, you'll be better equipped to analyze the issues dealing with constitutional criminal procedure throughout this book. In fact, most items on the list apply whenever you study the criminal justice system, so keep them in the back of your mind.

10. **Sometimes, there is no right answer. . . .** Several of the issues you'll be presented with, whether in case questions, discussion questions, or hypothetical scenarios, don't *have* answers. At least, not yet. You may be faced on occasion with what's called an "issue of first impression." That is, an issue which has never been decided by a court. If that happens to be the case, you have a clean slate. But remember, for every argument you can make in favor of what you *think* should be the answer, I guarantee that someone could make the opposite argument. The law is very seldom black or white. Many times when it comes to the law, the "winner" isn't necessarily the person who has the stronger case. Rather, it's the person who can make the stronger argument. So be passionate and don't hold back.
9. **Sometimes there is a right answer, but you might not like it. . . .** You don't always have to agree with the law, but that doesn't change the fact that it's still the law. I often have students who dislike a law, and they give me very compelling arguments as to why they dislike it. Sometimes so compelling, in fact, that I find myself agreeing with them. So what do I tell them? Tough. You don't have to like it, but it is what it is. Unless you have aspirations to become a legislator, a judge, or even a Supreme Court Justice (and if you do, more power to you), you can't change what you don't like simply because you disagree with it. Remember when you were a little kid and you asked your parents, "Why do I have to do this?" What was their response? "Because I said so." Like it or not, the rules are the rules.
8. **Make sure to look at both sides of the coin. . . .** We *all* have opinions, and we're often very forceful in expressing them. How many of you have heard from a friend or relative, "Gee, with the way you can argue, you'd make a great lawyer." We tend to think that the more ammunition we have on our side, the more foolproof our argument is. But being able to get your point across means recognizing your weaknesses (or, in other words, your opponent's strengths) and being able to refute them. Don't be so one-sided that you can't anticipate counterarguments to your position. In fact, once or twice try to argue the *opposite* of what you believe in. Does it seem unnatural? Yes, especially at first. But, you'll find that if you can anticipate those counterarguments and head them off at the pass, you'll make a better adversary in the long run.
7. **Don't expect to hit a home run the first time at bat. . . .** Being able to understand and analyze constitutional criminal procedure takes time, and it takes practice. It doesn't happen overnight. Many of the issues in this book are extremely complicated; so complicated, in fact, that at times the Supreme Court Justices themselves can't even agree on what the law should be. Don't feel bad if at first some of it is a bit overwhelming. Consider, for example, the Supreme Court cases included in each chapter. Believe me, reading a judicial opinion can be *very* intimidating. It's nothing like reading your favorite crime novel, where you breeze through twenty pages in what

feels like less than five minutes. But with each additional case you read, you'll find it easier to grasp the writing style of an opinion, and it won't seem as though it was written in a foreign language. Keep the same basic premise in mind when you're working through the hypotheticals. There are a total of 24 hypotheticals in this book—12 that are analyzed for you, so you can practice, and another 12 without an analysis so you can test your skills. The more hypotheticals you work through, the easier they will become to analyze. Practice makes perfect.

6. **Don't always believe what you see on television.** . . . I can't even begin to tell you how many times I've been discussing an issue in class when a student raises his hand and says, "Well, when I was watching *Law & Order* the other night they said. . . ." Since when did *Law & Order* or *CSI* become the Bible of constitutional criminal procedure? Remember the purpose of these shows: entertainment. What might appear very realistic might actually be completely *unrealistic*. Even "reality" based programs and shows such as *Court TV* or *Cops* can unintentionally (or even intentionally) distort the criminal justice system depending upon what they show their viewers. Learn to watch crime shows with a grain of salt, and don't get your criminal justice education from a television set!
5. **Use plain English.** . . . When analyzing the issues within this book, learn to express your thoughts in a clear, concise manner. Too many students studying the criminal justice system get caught up in using what I call "legal language." This takes two forms. One is the frequent use of Latin phrases, such as *a fortiori* or *sine qua non* (huh?). The other is the use of extra-long words (which are usually two or three little words smashed together), such as "heretofore," "hereinafter," or "henceforth." Students fall victim to both of these pitfalls in an attempt to sound impressive and knowledgeable about a subject. The problem is, their good intentions backfire. They end up sounding impressed with themselves rather than actually impressing anyone else. Forget the legal jargon.
4. **Follow the trail of breadcrumbs.** . . . Why did Hansel and Grettel leave a trail of breadcrumbs? To find their way through the dense forest and back home again. Okay, so maybe it didn't work for them. But you've got your very own breadcrumbs in each chapter; they take the form of a Student Checklist. That checklist is designed to get you through the forest by simplifying and breaking down very complicated, multifaceted issues. Each checklist will take you through a step-by-step analysis of whichever constitutional provision you happen to be reading about. You'll find key vocabulary or "buzz words" in these checklists so you can analyze issues using the proper terms. Follow the checklist not only in your thought process but in your writing as well. Your analysis of an issue will not only be more thorough and comprehensive, but it will also be more accurate. I guarantee that unlike Hansel and Grettel, if you follow those breadcrumbs, they *will* work for you.
3. **The cops aren't *always* the good guys, and the "robbers" aren't *always* the bad guys.** . . . The same goes for lawyers and judges. Well okay, perhaps *most* of the time the cops are the good guys and the robbers are the bad guys, but that isn't always the case. Inevitably, some actors within the criminal justice system may not fully understand the law. Or even, perhaps, they don't care about the law. When analyzing any scenario, don't always assume that the accused is automatically guilty (remember that good ole' saying "innocent

until proven guilty”?). By the same token, don’t assume that the players on the government’s side are flawless either. Everyone makes mistakes, even the guy with the badge, the three-piece suit, or the black robe.

2. **Keep those scales balanced.** . . . The law discussed throughout this book comes from the amendments to the Constitution. So then, let’s return for a moment to our high school government class. What were the amendments designed to protect us from? Our nosey neighbor? Our overbearing mother? Our archenemy? No, from government. Don’t forget that the protections in the Bill of Rights and other constitutional amendments don’t even apply unless the government is somehow involved. Next, remember those scales of justice. Courts are constantly trying to strike a balance between two competing interests: the government and its desires to reduce crime and punish criminals, versus the individual, and his desires for liberty, freedom, and a fair trial. So when you’re analyzing any issue, make sure you first determine what interests are at stake, and then try to reach a resolution that won’t tip the scales.

And the Number One thing to remember when working through this book . . .

1. **Don’t treat this as just *any* other book on criminal procedure.** . . . Don’t read it only half-focused on the words while hoping that by osmosis the concepts magically seep into your brain. It won’t happen. This book is not about seeing how quickly you can finish it so you can get back to more important things, like watching television, texting your friend, or listening to your iPod. Everything in it has a very *real* application to a very *real* world. If you happen to be that police officer, lawyer, or judge involved in the case, you could very well have an individual’s freedom (or even life) in your hands. So take the time *now* to start caring. Learn about the cases, work through the issues, and follow the checklists. Instead of just dipping your big toe in the water and merely memorizing concepts for the shelf life of an exam or a semester-long course, why not dive in and get the full understanding of what constitutional criminal procedure is all about? *That* is what this book is designed to do. And I promise, if you do dive in and really *work* through it, you won’t sink.