STUDY GUIDE:
HOW TO USE THIS BOOK

This book approaches legal study differently than the typical casebook. Most obviously, it does not expect you to deduce legal rules from the case law. Instead, it explicitly sets out the rules for the various aspects of criminal procedure and then gives concrete examples of how that law works in practice. In addition to telling you plainly what the rules are, most chapters also include review questions so that you can apply what you have learned. Many chapters also reproduce significant portions of some of the seminal cases so that you can appreciate more fully the source of the legal rules.

The book also contains several other special features designed to aid your learning. Here are some tips on how to get the most out of this book:

1. Learning the Basics. The materials in this book teach the rules of criminal procedure through textual discussion, analysis of the relevant cases, and concrete examples. The text does not require you to extract principles from cases. By the end of each chapter, you should understand the basic features of the law discussed in that chapter.

   a. Key Concepts. Each chapter begins with a text box labeled “Key Concepts” and marked with the key icon. These boxes serve two purposes. First, they will alert you to the most important concepts that you should focus on when reading the chapter. Second, when you review the materials, you should be able to glance at the Key Concepts box for each chapter and readily recall the meaning of those concepts. In addition to appearing at the beginning of each chapter, the Key Concepts appear in the Detailed Table of Contents. You can use that table as a very quick overview of the course.

   b. Quick Summary. Each chapter ends with a “Quick Summary” of the contents, designated by the “summary folder” icon. These boxes do not contain all of the information you need to know from the chapter. You need to master details from the chapter, not just the summary principles. But, the summaries will give you a mental framework for organizing the material in the chapter. After reading each chapter, look at the Quick Summary and see how many details you can recall to accompany each principle.
2. Organization. Each chapter in this book addresses a particular principle of Criminal Procedure. Although later chapters build on earlier ones, the chapters are self-contained. True mastery of criminal procedure requires an ability to understand how different parts of the law interact with each other. To help you build that understanding, the book uses Overview Chapters and Overview Paragraphs to offer specific information about how rules relate to one another or to trials in general. When you see the overview icon at the beginning of a chapter, it means that the entire chapter is an organizational one, helping you relate rules to one another. When the icon appears beside a particular paragraph, it means that the paragraph positions the material within the broader scope of criminal procedure jurisprudence.

3. Black Letter Law. Understanding criminal procedure requires much more than simply learning the specific legal rules set out by the courts and legislatures. But, learning these specific legal rules is a necessary first step in the process. The federal law of criminal procedure comes from many sources: the text of the United States Constitution, court cases interpreting the Constitution, federal legislation, and the Federal Rules of Criminal Procedure. Much of this law applies to the states as well. In addition, many states have also created their own law of criminal procedure in many different areas.

To aid your understanding, we have summarized the relevant black letter law for each topic we cover. The law will be set out early in each chapter, after a brief introduction, and highlighted and blocked off in a grey box for easy reference. Key words or terms are underlined and then discussed immediately following the legal rule. Here is an example from early in the book:

Government surveillance will constitute a “search” and thereby implicate the Fourth Amendment if:

1. the defendant exhibited a subjective expectation of privacy in the area or item that was the object of the surveillance, and this expectation was one that society is prepared to recognize as reasonable and legitimate;

   OR if

2. law enforcement officers intruded onto a “constitutionally protected area” in order to conduct the surveillance.
In addition to understanding the black letter law, you will also need to know the source of the particular legal rule—for example, whether it is from the United States Supreme Court, a federal statute, or some other authority. Although this is not a traditional casebook, most of the law of criminal procedure derives from Supreme Court cases, and so it is important for you to know the names of the major cases in the field. Unlike many other criminal procedure books, this book does not discuss cases that have merely “historic” value—that is, cases that were once significant but have since been overruled. All of the cases that are referenced in the book are necessary to understanding the current state of the law as well as potential future developments.

A word of caution: unlike a subject such as evidence or civil procedure, many of the rules for criminal procedure have to be derived from case law. Frequently the rule is well-settled law, but occasionally the case law will be open to interpretation and there may be disagreement among the lower courts as to what the rule actually is. On these occasions the book will present the general consensus as to what the rule is, but will then note the disagreement and discuss the other possible interpretations.

4. Applying the Law. After each section explaining the specific rule under discussion, we provide one or more examples of how the rule applies in practice. These examples are intended to help you understand the scope of the rule, as well as to understand how courts apply the rule in different situations. Some of these examples are pure hypotheticals, while others are based on actual cases. In most instances, the name of the case will be provided so that you know the source of that particular aspect of the rule.

5. Open Questions. As noted above, some legal principles of criminal procedure are still open to dispute. Even when a principle is clear, its application may vary depending on the facts of the case. This book notes when legal issues are unresolved, as well as when application of a principle depends on the facts of the case. In addition to textual explanations, icons mark these points so they are easy to recognize:

The walking-flying fish indicates points of law that are still evolving. Evolving issues include (1) legal principles that most parties assume are settled, but that a thoughtful attorney might challenge; (2) issues on which a conflict exists among the federal circuits or between states; (3) unsettled questions raised by recent Supreme Court decisions; and (4) issues that courts have not yet
addressed. The evolving fish flags these issues, which are discussed further in the text.

The balancing scales indicate issues for which the legal principle is clear, but the court’s decision will depend on the facts of the case. Legal counsel’s ability to apply the governing principle to the facts is particularly important in these situations. When you study these issues, the legal principle may seem straightforward. Think, however, about how you would apply the principle to a variety of factual situations. Applying the principle, rather than simply knowing it, is critical to these issues.

6. Policy Debates. Although this book focuses on explaining what the law is and how it operates, it is impossible to fully understand criminal procedure without occasionally delving into the underlying policy issues that the rules raise and the ethical problems that attorneys face when applying these rules. Therefore, at various points in the text, indicated by the debate icon, the book will examine a policy debate in depth.

7. Practice Questions. One of the best ways to learn criminal procedure is to apply the knowledge to specific fact patterns. Most of the chapters include a number of review questions at the end that allow you to apply the law you have just learned. Some of these questions will have certain right or wrong answers; others will require you to consider both sides of the issue and then exercise your judgment as to the correct decision. The question icon will indicate a series of practice questions. Your professor may work through these questions in class with you, or may provide you with sample answers that are available in the Teacher’s Manual.

8. From the Courtroom. Although the book does not require you to learn the legal rules by looking only at cases, it is occasionally necessary for you to become familiar with the most significant cases in the field. This is because it is important to understand the source of the rules that you are learning, and because you need to know the policy arguments that are made by the Justices who are deciding these cases. Thus, at the end of most chapters, we have provided the primary source of some of the rules, so you can see how the law is explained by the courts. The gavel icon will introduce these significant cases.
9. How to Prepare for Class. You should read the assigned materials before class! All professors say that, but there is a particular reason to read these materials before class. With the case method, some students (especially in upper level courses) find that it is efficient to read the cases very lightly—or not at all—and wait for class to illuminate the principles contained in the cases. The materials in this book, however, teach the basics directly.

Your professor, therefore, may not review the basics in class. Instead, the professor may focus class on review questions, advanced problems, policy discussions, and simulations. If you do not know the basics, you will not benefit much from these classes.

10. How to Prepare for Exams. You should find these materials helpful both in preparing for the exam in this course and when reviewing for the bar exam. The techniques outlined below will help you prepare well for both exams:

1. Be sure that you understand the Key Concepts in each chapter. These appear both at the beginning of the chapter and in the Detailed Table of Contents.

2. Read over the Quick Summary for each chapter. In addition to understanding the summary, you should be able to recall details relating to each of the points in the summary.

3. Review the black letter law in each chapter to ensure you understand the basic legal provisions for each topic.

4. Review any Overview chapters and paragraphs to be sure that you understand how the different provisions of criminal procedure interact with one another. Reviewing the Table of Contents will also reveal important relationships.

5. Take special note of evolving issues and know how you would argue both sides of those issues. You may argue these issues some day in court and you almost certainly will have to argue some of them on an exam.

6. Pay special attention to “balancing scale” or fact-based principles. These principles often seem easy, but the essence of these rules lies in their application. You need to know how to apply these rules carefully to the facts of a problem, seeing arguments that both sides might raise.

Criminal procedure is a fascinating topic to study, involving fundamental issues of justice, fairness, and the proper extent of government power. So, let’s get started…