

Criminal Appellate Procedure CASES AND MATERIALS.

James A. Strazzella

CRIMINAL APPELLATE PROCEDURE CASES AND MATERIALS

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610 Opperman Drive
St. Paul, MN 55123
1-800-313-9378

Printed in the United States of America

ISBN: 978-0-314-26757-3

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PREFACE

Criminal law and procedure principles are formed, conveyed, and re-shaped by appellate courts decisions. The procedural rules associated with appeal are likely to shape the contours of what is decided, when it is decided, and under what other conditions and limitations. Time pressures more and more tempt casebooks to submerge the appeal process that brought the underlying issue to a decision point. Yet, the process of an appeal, with its associated procedural doctrines, is worth its own focused study—at least if a lawyer is to understand both the remedies appeal might provide and the way the process shapes the rules themselves.

The selective nature of this textbook is meant to afford a meaningful platform to teach an understanding of: the appellate processes; the source law supporting them; the rationales for appeals; and the important procedures surrounding them. It is also meant to afford a basis for enhancing case-reading skills and an appreciation of the way judicial opinions mold law. As a teaching textbook, the versions of the cases examined, as well as the supplementing notes, are meant to challenge students while avoiding an attempt to present all jurisdictional variations, to supply the latest cases for the sake of currency, or to otherwise act as a reference tool.

The materials should allow the student to take away a sense of the growing power and limitations of appeals (both defendants' and prosecutors'), their history, the outline of modern procedure, a grasp of the development of certain constitutional provisions, a better grasp of important procedural terminology, some comparative points, the response of non-case mechanisms enlisted to remedy perceived problems, and an appreciation of how present-day statutes and rules are shaped by the historical and other forces examined here. The book also tries to convey not only the appellate procedure that would concern a responsible appellate attorney; but it should also imply the reciprocating responsibilities to which a trial-level attorney should be attuned.

The text draws on both federal and state sources—constitutional, statutory, court rules, and case law. The important role of federal constitutional law (and its limitations) in the appellate process should certainly emerge from these pages, but much law remains varied among the 50 states and the District of Columbia, and the federal jurisdiction. The importance of this point is underscored by the fact that the vast percentage of criminal prosecutions (roughly over 95% or so) are brought in the state systems*—and will therefore follow the direct appeal route in state systems. For most cases, that will be the end of the review process.

* See JAMES STRAZZELLA (REPORTER), *THE FEDERALIZATION OF CRIMINAL LAW* 19 & supporting data (ABA 1998).

In all of this, I hope the importance of careful attention to lawyering on behalf of others comes through.

JAMES STRAZZELLA

Philadelphia 2011

ACKNOWLEDGMENTS

My thanks go to Temple University's Beasley School of Law for research support, especially made possible by the James G. Schmidt Chair Fund, and to the many able Temple Law students who lent important research assistance. There are too many to list here but their help is nevertheless still very much appreciated. Brittany Wilson, Tracie Kogura, Scott E. Goldstein, Brigid Landy, Aditi Aggarwal, and Christopher Boyle lent recent important assistance. Jennifer R. Kelly, who ably saw the final manuscript into manageable format, and Kara A. Klaiber, Esq. provided invaluable help in seeing the work through the final stages. The continual helpful suggestions made by Betsy Moore, Esq. bear particular mention.

Finally, beyond my own teachers, I owe an immense debt of educational gratitude to the lawyers and judges from whom I had the privilege of learning first hand over the years—including my clerkship judge, Samuel J. Roberts, and John A. Terry, who advised my first work in intense appellate litigation. Sometimes those insights were dispensed in the form of questions from the bench, but they often occurred in innumerable seminars for the nation's appellate judges, in which I was a fortunate participant for so many years. Among all of these, I acknowledge a special debt to Frank Q. Nebeker—the consummate and principled appellate advocate, judge, and friend who taught me so much.

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