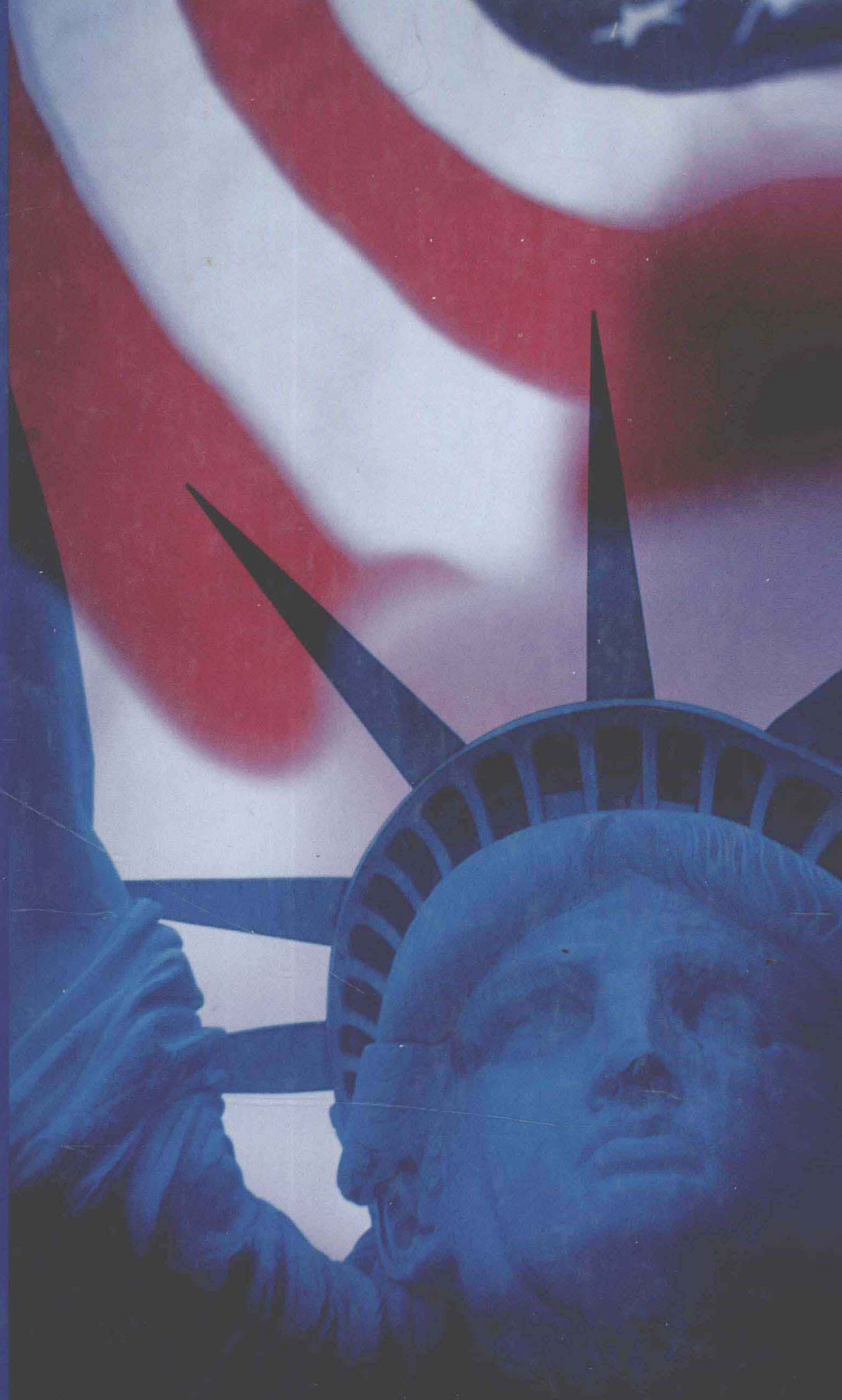


CRIMINAL LAW

FOURTH EDITION



SUE TITUS REID

Criminal Law

FOURTH EDITION

Sue Titus Reid, J.D., Ph.D.

Florida State University



Boston, Massachusetts Burr Ridge, Illinois Dubuque, Iowa
Madison, Wisconsin New York, New York San Francisco, California St. Louis, Missouri

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This book is dedicated to my former colleague, Marlyn Mather, Ph.D., who taught with me at Cornell College beginning in 1968, encouraged me through all of my law school classes, and who has remained a close friend through the years. Marlyn provided invaluable support throughout the difficult events that accompanied the writing of this text. If everyone had a friend like Marlyn, the world would be a much better place in which to live. Thanks, Marlyn, for almost thirty years of friendship and support.

About the Author

Sue Titus Reid, a professor in the Reubin O'D. Askew School of Public Administration and Policy at Florida State University, Tallahassee, has taught law students, graduate students, and undergraduate students in many states. She has served on the board of the Midwest Sociological Society and the executive staff of the American Sociological Association. She has served as chairperson, associate dean, and dean. In 1985 she held the prestigious George Beto Chair in criminal justice at the Criminal Justice Center, Sam Houston State University, Huntsville, Texas.

Dr. Reid's formal training in criminology began in graduate school, but her interest in the field dates back to her early childhood. She was strongly influenced in her career by her father, who was born in the jail where his father, the under sheriff of a small East Texas County, lived with his family. As a child, she helped her father in his grocery store and was quite disturbed when, on three separate occasions, he was victimized by criminals, one an armed robber. In each instance the offender took all the cash and checks; no one was ever apprehended.

Dr. Reid graduated with honors from Texas Woman's University in 1960 and received graduate degrees in sociology (M.A. in 1962 and Ph.D. in 1965) from the University of Missouri-Columbia. In 1972 she graduated with distinction from the University of Iowa College of Law. She was admitted to the Iowa Bar that year and later to the District of Columbia Court of Appeals. She has been admitted to practice before the U.S. Supreme Court as well.

Dr. Reid is unique among authors in the criminal justice field because of her distinguished qualifications in both law and the social sciences. She launched her publishing career with *Crime and Criminology* in 1976, and this text, now in its eighth edition, has been widely adopted throughout the United States and in foreign countries. Dr. Reid's other titles include *Criminal Justice*, fourth edition, *The Correctional System: An Introduction*, and *Criminal Law*, fourth edition. She has contributed a chapter to the *Encyclopedia of Crime and Justice*, as well as to other books, in addition to publishing scholarly articles in both law and sociology.



Dr. Reid's contributions to her profession have been widely recognized nationally and abroad. In 1982 the American Society of Criminology elected her a fellow "for outstanding contributions to the field of Criminology." Other national honors include the following: Who's Who among Women, Who's Who in Criminal Law, 2,000 Notable Women (Hall of Fame for Outstanding Contributions to Criminal Law, 1990); Personalities of America; and Most Admired Woman of the Decade, 1992. Her international honors include International Woman of the Year, 1991-92; International Who's Who of Intellectuals; and International Order of Merit, 1993.

Dr. Reid has traveled extensively to widen her knowledge of criminal justice systems in the United States and in other countries. In 1982 she was a member of the People-to-People Crime Prevention delegation to the People's Republic of China. Her several trips to Europe included a three-month study and lecture tour of 10 countries in 1985.

Preface

In the preface to my first text, *Crime and Criminology*, published in 1976, I stated that “during my eleven years of teaching . . . undergraduates, I was impressed with their eagerness to learn how law related to traditional topics covered in the [criminology] course, even to the point of enjoying reading judicial opinions.” The utilization of a modified case approach to teaching has been very successful, for that text is in its eighth edition.

In the study of criminal law, I believe it is even more important for students to be exposed to fact patterns of actual cases and to appellate judicial opinions of those cases. Yet it is unrealistic in an undergraduate course to cover the amount of material included in a law school course.

This text uses a modified case approach. The facts of cases and the reproduction of appellate opinions are included to illustrate rather than to extract points of law. This approach gives undergraduates a sample of the traditional case method utilized in many law courses without burdening the course with the massive amounts of material covered in an introductory criminal law course in law school.

It is important, however, for undergraduates to understand that principles of criminal law vary from state to state and between states and the federal system. Although it is not reasonable to survey all jurisdictions, a sampling of federal and state statutes and cases is utilized to convey the divergence (and in some cases, the agreement) within criminal law.

In recent years many jurisdictions have modified their criminal statutes; some have revised their criminal codes in their entirety. The Model Penal Code, drafted by the American Law Institute and first published in 1962, has influenced many of these revisions. Sections of that code are utilized throughout the text. The English common law, which has been a strong influence on the development of criminal law in the United States, is referred to as well.

The cases in this text are excerpted carefully to exclude complicated criminal procedural issues that are not necessary for an understanding of criminal law. Despite the focus on substantive criminal law rather than criminal procedure, it is necessary to discuss some constitutional principles that relate directly to criminal law, and that is done where applicable.

Statutes and case excerpts are included within rather than at the end of the text to facilitate their integration into the discussion of principles. Focus boxes are utilized to highlight recent cases that illustrate points discussed in the text, some statutes, or Model Penal Code provisions. Many of these inserts include current events, comments, or summaries that illustrate the principles discussed in the text and are designed to stimulate discussion in light of the current events. Within the text and the focus boxes international as well as national examples are used.

To facilitate the reader's study, each chapter begins with a brief outline of its contents and a list of key terms. Key terms are boldfaced within the chapters, and included in the glossary at the end of the text. Each chapter has a detailed summary designed to give the reader an overview of that chapter's material.

Each chapter concludes with study questions designed to facilitate the combined purposes of (1) learning substantive criminal law and (2) thinking about criminal law and the problems and issues it raises. Pictures are used to enhance the reader's interest while relating general principles and laws to current events.

The sequence of chapters follows that of the third edition, but new topics are added within most of the chapters. All reasonable efforts have been made to have the text current to the time of publication; thus, each legal case citation was checked as late as possible in the production process. But because many of the cases are recent, some will be granted appeals after this text is published. Many areas of criminal law have been changing rapidly, and it is reasonable to expect this trend to continue.

This edition contains numerous updates of subjects discussed in the third edition, along with new topics, cases, and other material. It begins with a chapter introducing criminal law, raising the issue of which acts should be covered by the criminal law and how society should react to them. Comparisons are made between criminal and civil law. In addition, Chapter 1 discusses the sources of criminal law as well as the limitations placed on criminal law by the federal and state constitutions. The nature of the adversary system is discussed. This edition features a 1995 U.S. Supreme Court case, *California Department of Corrections v. Morales*, updating the *ex post facto* discussion and a 1996 case, *Synder v. State*, holding that Wyoming's new sex offender registration law does not violate this important legal doctrine. The 1996 Supreme Court case, *United States v. Armstrong*, which concerns alleged racial discrimination in sentencing for crack cocaine violations, is mentioned, with a more detailed discussion of the case contained in Chapter 12.

Chapter 2 analyzes the elements of criminal liability, including the criminal act (as well as the failure to act), the criminal state of mind, and the attendant circumstances that must accompany acts for them to be considered criminal. Chapters 3 and 4 cover defenses to criminal acts. Chapter 3 discusses the nature of defenses and covers the more traditional defenses, such as entrapment, defense of persons and property, and insanity. A discussion of recent protests at abortion clinics illustrates the attempt to incorporate these behaviors into the traditional necessity defense. The defense of outrageous government behavior, introduced in the previous edition, is updated with reference to a recent case that takes the position that the defense no longer

exists and a 1996 case that upholds the defense. The insanity discussion is expanded to include the recent cases of John Salvi III and John E. du Pont.

Chapter 4 covers some of the more recently recognized defenses, such as posttraumatic stress disorder and domestic violence as well as recent developments in more traditional defenses, such as substance abuse. Featured in particular is the growing area of the battered person syndrome, including battered women who kill their husbands and other significant others as well as children who kill their abusive parents. Recent examples and cases are included. In addition, this chapter contains brief discussions of attempts to raise new defenses, such as the rough sex or the urban psychosis defenses.

Chapter 5's discussion of whether killing a fetus constitutes murder is expanded and includes recent cases and updates. The discussion of euthanasia has been enlarged, with particular attention given to doctor-assisted suicide in the United States and in other countries. The latest factual information and legal decisions in the case of Dr. Jack Kevorkian are included, along with recent statutory changes in this area. A new section on murder for hire is featured.

Chapter 6 continues the discussion begun in Chapter 5 on crimes against the person. Discussions of forcible rape and sodomy include recent feminist literature, recent date rape drug laws, and the 1996 cases of alleged rapes at West Point and in the U.S. Army. Recent statutory changes, such as the Violence Against Women Act, are noted. A new section on stalking notes the case involving film star Madonna, state and federal statutes, and legal challenges to some of them. All examples of terrorism are new, with an emphasis on the Oklahoma City bombing, the Unabomber, and the bombing of U.S. government facilities in Saudi Arabia. The 1996 Antiterrorism and Effective Death Penalty Act is introduced, along with an enhanced discussion of hate crimes.

Chapter 7, Property Crimes, which was reorganized in the previous edition, retains its basic approach but showcases recent data and examples. The latest legal challenges to the federal carjacking statute are included, along with official data on the probability of becoming a carjacking victim. The Motor Vehicle Theft Prevention Program, which is part of the 1994 Violent Crime Control and Law Enforcement Act, is noted, along with the portion of that 1994 statute that adds the death penalty to the federal carjacking statute. The legal implications of that change are explored.

The previous version of Chapter 8 illustrated the rapidly changing nature of American legal systems, noting, for example, the changes in New York's harassment statutes. In this edition, the expanding litigation in the area of child pornography is a focus of Chapter 8 and includes the 1995 update of *Knox v. United States*. The most recent events, such as the conviction of Heidi Fleiss on prostitution and other charges, have been included, along with recent changes in regulations concerning carrying weapons. Sodomy statutes are changing rapidly, too, and some of those are discussed. The 1985 U.S. Supreme Court case of *Bowers v. Hardwick* is discussed in light of the 1996 decision from the state of Georgia, *Christiansen v. State*, also upholding the state's sodomy statute. The Communications Decency Act of 1996 is noted, along with the U.S. Supreme Court's decision during its 1996-97 term. The Court considered whether the statute violates free speech.

Chapter 9's discussion of crimes against the government includes such recent events as those of Lori Helene Berenson (treason against the Peruvian government), Earl Pitts (FBI agent who confessed to spying against the United States), Mark Fuhrman (perjury in the O. J. Simpson case), and F. Lee Bailey (confined for contempt of court).

Chapter 10 features an expanded and updated discussion of AIDS and how that disease may be related to criminal activity. Chapter 11 contains the same focuses on three target areas of criminal activity, but at the suggestion of several reviewers, the title has been changed to reflect those: Business, Organized, and Drug-Related Crimes. Much of the chapter and most of the boxed inserts were rewritten and include a new focus on money laundering, one on insider trading prosecutions, and another on computer criminals. The text features a new section on health care fraud as well as extensive revision of the section on environmental crime. The discussion of state computer crime statutes is updated with a 1996 New Mexico Supreme Court case. The discussion on money laundering contains a reference to the Suspicious Activity Reporting (SAR) requirements enacted in April 1996. The 1996 Supreme Court case upholding forfeitures of the property of innocent people who are involved with criminals, *Bennis v. Michigan*, is a focal point. The section on drug-related crimes discusses the rise and fall of the Cali cartel, along with the future of drug trafficking in the United States.

Chapter 12 was revised extensively in the third edition, and in this edition it has been changed further. Although many departments offer other courses that include sentencing, it is thought that a general chapter that concentrates on the criminal law issues of the subject should be retained here. With that in mind, the coverage of specific sentences, such as probation, fines, capital punishment, and so on, were deleted. The chapter retains its previous focus on the approaches to sentencing and especially the use of sentencing guidelines. Extensive attention is given to the federal guidelines, complete with the legal challenges to them, especially the case involving the Los Angeles police in the beating of Rodney King. New to this edition are discussions of the three strikes and you're out and truth in sentencing features of recent legislative changes. Constitutional issues in sentencing remains important to this chapter, with an expanded coverage of gender and race and sentencing. The latter features the 1996 case of *United States v. Armstrong*, decided by the U.S. Supreme Court, and holding that the 100 to 1 ratio of sentences for those convicted of crack cocaine (who are usually African American) compared to those convicted of powder cocaine (usually white) does not necessarily suggest race discrimination.

Each chapter of the text contains study questions, and an instructor's manual provides multiple-choice questions, along with many ideas and suggestions for teaching the course. Case, name, and general indexes enable readers to find information quickly, while Appendix A provides a reprinting of key amendments to the U.S. Constitution. Appendix B features a legal case citation, along with an explanation of how to read and interpret it.

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Acknowledgments

The revision of a criminal law text is a major effort, for criminal law changes rapidly. Cases and statutes must be checked numerous times from the beginning to the completion of the manuscript. This work is tedious, and I am grateful to my legal research assistant for help with that work. Dan Cox, student in the Florida State University College of Law and the Rubin O'D. Askew School of Public Administration and Policy, worked for me during the summer of 1996 and checked all of the cases and statutes that were retained from the previous edition. When I checked all of the recent cases and statutes, I knew how valuable Dan's work had been!

The revision of a text can be a very difficult process; at best it is extremely time consuming, and the problems associated with this edition were magnified by changes within publishing companies. The original contract was proposed by Tom Romaniak, who was my editor at Brown & Benchmark. Tom commissioned the reviews of the first draft and provided me with significant support during the purchase of the company by McGraw-Hill.

My new editor at McGraw-Hill, Nancy Blaine, moved quickly and efficiently in reviewing the manuscript for this text and making arrangements for its contract and production. Because of her diligence and the skill and hard work of Christina Thornton-Villagomez, project manager, and her staff, the manuscript was published on time.

Many of my professional colleagues have assisted us with this revision, but special thanks go to the reviewers for the excellent suggestions they provided:

Barbara L. Jones
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Lorain County Community College

An instructor's manual, prepared by Diane M. Daane, University of South Carolina, Spartanburg, is available to professors who adopt the text. It includes multiple choice and discussion questions for each chapter, learning objectives, and suggested readings.

During the writing and production of this edition significant changes were occurring in the publishing world as well as in my own little world. Throughout the work I received the support of my colleagues in criminology, such as Professors David A. Fabianic of the University of Central Florida, John Smykla of the University of Alabama at Tuscaloosa, Laura Myers and Jerry Dowling of Sam Houston State University, and William G. Doerner and Michael J. Lynch of Florida State University. Alex del Carmen, who finished his Ph.D. in criminology at Florida State while I was working on this book, provided computer assistance during the traumatic days of learning to use new equipment. To Alex, his wife, Denise, and their young son, Gabriel, I say thanks for your friendship and help. I am also grateful to Herzel Asher for his assistance with computer problems during the production of the book.

Special thanks go to my colleagues in the Rubin O'D. Askew School of Public Administration and Policy of Florida State University. Governor Askew, for whom the school is named, and Lance deHaven-Smith, Director, have supported my scholarship as well as my legal interests, and on many occasions I welcomed their smiling faces and words of encouragement. Dr. Carlene Thornton continued the support she began with earlier works, while Ann Chlapowski, Eleanor McNealy, Mary Rollins, and Velda Williams rescued me from technical problems associated with the printer and the copy machine and always had kind words for me.

My friend and legal advisor, H. H. A. Cooper, who is an expert in international and national terrorism among other fields in criminology and law, provided knowledge, support, and enthusiasm for this venture and others. My attorneys, Thomas W. Brooks and Robert Sniffen, were invaluable during all phases of the writing and production of this book. As always, my family, my sister, Jill Pickett, her husband, Roger, and their children, Clint Daniel and Rhonda Sue, provided love, support, and reasons for breaks from the weary schedules.

To my criminal law students at Florida State University: I owe a special thanks for their support during our classes and their reactions to the third edition. Their enthusiasm and their cooperation kept me going on some rather difficult days. I wish all of them the best in their respective future careers.

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