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CRIMINAL LAW:
A CONTEMPORARY APPROACH
Cases, Statutes, and Problems

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CRIMINAL LAW: A CONTEMPORARY APPROACH

Cases, Statutes, and Problems

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On January 31, 2005, Aspen Publishers lost a great author, colleague, and friend with the death of E. Allan Farnsworth, the Alfred McCormack Professor of Law at Columbia Law School and author of the seminal student treatise, *Contracts*, Fourth Edition, by Aspen Publishers.

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To Julia, David, and Peter, with love and deep appreciation

&

For J.K. and H.D. Bloch, my loving guides from beginning to end

K.E.B.

To Tara, Moira, Rosemary, and Phillip

K.C.M.

PREFACE

This book aims to engage students and educators in a vibrant conversation about criminal law. To bring the subject to life, we supplement traditional criminal law materials with real-life examples and problems from the criminal justice system. We underscore the importance of various sources of criminal law, with a particular emphasis on statutes. To address the variety of learning styles teachers are likely to encounter in the classroom, we offer and support multiple teaching methods, including dialogues, role-plays, exercises, and media presentations. We offer materials that graduate in difficulty, allowing students to build confidence before tackling more challenging criminal law problems. We furnish materials to address issues of professionalism at the heart of criminal practice.

To support a community of learners participating in an intellectually dynamic experience, we adopt a set of four guiding principles.

(1) *Highlight a statutory approach to criminal law*

Recognizing the importance of statutes in criminal law and throughout the modern legal world, we balance the traditional use of cases by giving substantial time and attention to statutes. In doing so, we hope to:

- Emphasize statutes as an important source of criminal law
- Develop student skills in statutory analysis and interpretation
- Expose students to the current debate about the proper approach to statutory interpretation

(2) *Present criminal law through a variety of lenses that encourage interactive learning from diverse perspectives*

For example, the materials offer students opportunities to:

- Contrast the punishments of colonial times in America with punishment options today

- Follow the media and legislative response to Maryland cases that authorized manslaughter, rather than murder, convictions for defendants who killed their spouses and argued for mitigation because their spouses had or may have committed adultery
- Watch a prosecutor describe his first contact with a case involving the death of a child and hear why he insisted that it should be treated as murder rather than manslaughter
- Listen to the defense attorney in that case explain his strategy for persuading the jury to reject the second-degree murder charge
- Read an excerpt from Fredrick Douglass's autobiography, explaining why some individuals born in the 1800s may not have known their true ages
- Reconceptualize the provocation theory of homicide, with an excerpt by Professor Victoria Nourse
- Peruse a firsthand account of the fire in the *Welansky* case, and consider the impact on Welansky's liability of a theory about the rapid escalation of the blaze for which witnesses have apparently only recently emerged

We juxtapose material from a variety of sources to engage students and underscore the importance of context in understanding criminal law. In the book itself, we present ideas through traditional media, such as cases, statutes, and scholarly articles, and through newspaper clips, a couple of cartoons, a photograph, and a poster.

To encourage engaged learning, abundant problems populate the pages of the text. They call upon students to analyze and apply their intuition and learning about criminal law to real and fictional situations, often asking students to assume a designated professional role.

A snapshot of engaged learning is commonly one of lively discussion. We hope that these materials will spawn such discussions, by making students not only think, but also feel, reflect, and remember.

The course book recognizes that criminal law is the product of many types of lawmaking, *inter alia*, statutes, appellate, trial court, and jury decisionmaking, practical and strategic influences, human dynamics, scholarship, and executive function. Our goal is to provide students with an opportunity to consider the characteristics and roles of each source of law. Chapter 3, for example, focuses on making criminal law. It includes not only study of the institution and application of the "common law," but also three divergent perspectives on statutory interpretation, as well as material on executive and jury decisionmaking. The text emphasizes statutes from a wide variety of jurisdictions, as well as the Model Penal Code.

Our text, like a number of others in the field, treats topics that may prove challenging to address for reasons beyond their intellectual complexity. Coverage includes issues that may resonate deeply on a personal level, like sexual assault, domestic violence, racial prejudice, homophobia, and gender bias. Our goal in the text, and especially in the ancillary

materials, is to offer a choice of methods, and detailed guidance, if desired, for approaching these topics.

(3) *Furnish and support a variety of teaching methodologies to assist educators in reaching students across the learning spectrum*

Our book is designed to give educators flexibility in presenting the materials. For example, we have tried to adhere to a principle of graduated difficulty within chapters. We start each chapter with basic concepts and then move on to successively more complex material. In this way, students begin their study of topics with a common threshold of knowledge. This furnishes a platform for more advanced work or, for a topic that the educator chooses only to survey, a convenient place to conclude coverage.

We do not present information in the traditional format of “notes” after cases. Instead, we treat critical material as text itself. Additional issues that might have been covered in traditional post-case notes are included in problems or in the ancillary materials. This streamlines the book and, we hope, enhances instructor choice in determining whether to cover such additional material.

Maximizing instructor choice animates our approach to the ancillary materials. These materials supply educators with a range of approaches to convey information. Video (DVD) clips, each of which corresponds to a topic, problem, or case in the text, enable students to hear directly from one or more of the participants. Video suggestions for clips from commercially available movies, such as *The Wizard of Oz*[®], offer opportunities to study a topic through a dramatic representation of relevant concepts. Diagrams and other graphics supplement learning, especially for visual learners. Role-plays and exercises enhance opportunities for experiential learners. Writing exercises engage those who learn by putting pen to paper. Educators will find support for reaching students who learn by listening, reading, writing, seeing, collaborating, and experiencing.

(4) *Provide materials to explore professionalism*

Through the text and ancillary materials, we offer opportunities to explore the concept of professionalism. We introduce the idea briefly in Chapter 1. A substantial number of problems designate a role for students to assume in responding to the problem and encourage consideration of professional responsibilities. Appendix D concentrates on a number of vital ethics issues, including prosecutorial charging, confidentiality, perjury, and representing a guilty client. The ancillary materials also supply forums for introducing issues of professionalism.

We hope that our readers will share our philosophy of engagement and find the materials useful as a springboard for robust discussion.

Like most works of scholarship, our text builds on the knowledge and insights of those who have come before. Although we have tried to thank all of those who contributed most directly with explicit recognition in the Acknowledgments Section, we extend our gratitude to all those who have

traveled a similar journey and from whose wisdom and reflection we have benefited.

Editing Policy: Because this book is designed for classroom use, we have not adhered to some of the traditional conventions on scholarly citation. In the interests of concision and comprehensibility, we have generally deleted citations and footnotes without signifying those deletions. Consequently, readers should not rely on the various extracts from cases or other documents as exact replications of the originals.

We would appreciate any feedback that readers have the time and inclination to forward to us and would be delighted to address any questions that arise about the materials. We can be reached with the contact information below:

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