

CRIMINAL LAW AND PROCEDURE

CASES AND MATERIALS

NINTH EDITION

RONALD N. BOYCE

DONALD A. DRIPPS

ROLLIN M. PERKINS

FOUNDATION PRESS

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CRIMINAL LAW AND PROCEDURE

NINTH EDITION

by

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E2009001252

FOUNDATION PRESS

NEW YORK, NEW YORK

2004

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395 Hudson Street
New York, NY 10014
Phone Toll Free 1-877-888-1330
Fax (212) 367-6799
fdpress.com

Printed in the United States of America

ISBN 1-58778-719-9



TEXT IS PRINTED ON 10% POST
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INTRODUCTION TO THE NINTH EDITION

The Perkins & Boyce materials have long stood for what is best in traditional legal education. The close reading of decided cases remains central to any sound legal training, and criminal law in the United States has become the creature of statutes rooted, more or less directly, in the common law. Moreover, the inevitable connections between substance and procedure make it highly useful to have at hand at least some significant treatment of procedure while treating criminal law proper. The Perkins & Boyce materials reflect these mutually-reinforcing aspects of legal education and prevailing doctrine.

In preparing the new edition I have sought to retain the distinctive approach of the original. At the same time, I have sought to update the materials, on two levels. At the purely doctrinal level new developments in the law—constitutional, legislative, and judicial—demand recognition in any accurate survey of criminal law in the United States. At another level, legal education has moved in an increasingly theoretical direction, impelled partly by the knowledge that many doctrinal outcomes flow from controversial premises of public policy and partly by the increasingly interdisciplinary character of legal studies.

The revision attempts to keep the materials doctrinally current, and to enable a discussion of the underlying normative issues as deeply as any given instructor should think desirable. I have, however, subjected these two aims to an important constraint. I have long thought that theoretical discussions divorced from doctrine generate more heat than light, and I have also long suspected that the typical law student does not carefully attend to elaborate note materials. Thus, the revision includes no law review articles, no "notes and questions," and so on. Indeed, in my view a casebook cannot hope to exhaustively catalogue the decisions (that has become, in this age of computers, as needless as it is tedious). Thus not only have I not added additional note materials; in many instances I have excised some notes I thought both unnecessary and distracting.

The corollary of this approach is that supporting materials will be available in print and electronic form to instructors to supply the necessary background and raw materials for discussing the cases on the deeper plane so many of them deserve. My hope is that many instructors now using other materials may come round to the view that the particular illuminates the general as nothing else can. Abstract propositions decide few concrete

cases precisely because concrete cases are the best tests of abstract propositions.

There are three primary changes to the text. First, I have extensively revised the first chapter. We now begin with an examination of the nature of the criminal sanction, in contrast with the coercive tools of social control available through purely civil processes, seeking the positive purposes of criminal justice. We turn then to the various negative side-constraints on criminal justice—such principles as legality, equality, autonomy, and responsibility. Both the purposes of, and the limits on, the criminal sanction are illustrated by decisions of the Supreme Court; but the influence of these conflicting principles is pervasive, operating both on legislatures and on judges interpreting uncertain statutes.

Second, in my judgment the materials on sexual assault called for a fuller and more modern treatment than they received in the last edition. Developments here have been extensive and ongoing. The traditional definition of rape is being broadened by judicial decisions, and legislators have adopted a wide array of specific statutory reforms designed to impose criminal liability in many instances not covered by traditional rape law. The new materials on sexual assault provide a much fuller account of these developments.

Third, criminal law in the United States is now nearly universally founded on statutes. In their generality or uncertainty, the statutes often provide the point of departure rather than the end of analysis. The interpretation of criminal laws is somewhat different than the interpretation of other laws. I have tried to capture these realities by inserting actual statutes, some using common-law terminology and some derived from the ALI Model Penal Code. One simple yet very valuable teaching technique is to ask the students to analyze the facts of the principal cases under the statutes of a different jurisdiction. I have also tried to emphasize the challenge of statutory interpretation in an age of element, rather than offense, analysis, by incorporating some representative element analysis cases in the responsibility materials.

My own judgment, having now used the materials twice, is that the course works better by taking the general part—at any rate the responsibility material—before turning to specific crimes. I have not reorganized the materials to reflect this preference, as it is largely a matter of taste, easily enough handled by assigning sections of the book out of strict order.

The procedure portion of the book poses special challenges. At most law schools criminal law and criminal procedure are separate courses, and indeed procedure itself is often divided into two three-hour courses, one devoted to police investigation and one to adjudication. How much procedure to include in a book designed in large part for the first year criminal law course is a question I shall continue to consider in the years to come. All I have done to the procedural materials is update them to reflect patent changes in doctrine. The press of time precluded any thorough-going revision of this portion of the book, even if I had formulated a firm view on how

best to handle the undeniably important linkages between substance and process.

In law, as in life, one sure way to fall behind is to try and stand still. The aim of the revision is to provide maximum flexibility to the individual instructor. Those who have taught out of the Perkins & Boyce materials before will find them little changed beyond what developments require. Other instructors—especially those new to teaching law or new to teaching the criminal law course—are invited to base their conversations about the great issues of criminal justice on actual cases, which seem so often to outrun the hypothetical, and are at the end of the day the object as well as the subject of both our teaching and our scholarship.

DONALD A. DRIPPS

Minneapolis, April, 2004

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