

LEGAL EASE

ABOUT THE AUTHORS

Andrea Campbell is the author of many books, including *Forensic Science: Evidence, Clues and Investigation* and *Rights of the Accused*. She holds a degree in criminal justice and teaches workshops online involving forensic science disciplines and other technical subjects. She is a trained forensic artist and sculptor, and a Diplomate and Fellow with the American College of Forensic Examiners, as well as a member of the International Association for Identification. Andrea lives in Arkansas with her husband, Michael. She enjoys walking in the woods, and playing Pinochle and dominoes with her family.

Ralph C. Ohm is a Municipal Judge for Hot Springs, Arkansas. He holds a Juris Doctor degree from the University of Arkansas, Little Rock, School of Law. Ralph is a member of the American, Arkansas, and Garland County Bar Associations. He is also affiliated with the Arkansas Trial Lawyers Association and Association of Trial Lawyers of America and licensed to practice before the U.S. Supreme Court, Arkansas Supreme Court, 5th, 8th, and 10th Circuit Court of Appeals; Federal District Courts of Arkansas; and all Arkansas State Courts. Ralph and his family live in Lonsdale, Arkansas. He and his wife, Derri, are the proud parents of daughter Ashlyn. Active in the community, Ralph is on the vestry of St. Luke's Episcopal Church, the Board of Directors for the Lonsdale Volunteer Fire Department, and is a member of Arkansas Spa Pacers.

Third Edition

LEGAL EASE

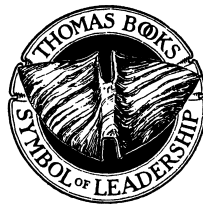
A Guide to Criminal Law, Evidence, and Procedure

By

ANDREA CAMPBELL

and

RALPH C. OHM



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To my husband, Michael, for all his encouragement
-A.S.C.

For my loving family
-R.C.O.

DISCLAIMER

This book is designed to provide information in regard to the subject matter covered. It should not be interpreted as legal advice. The authors assume no liability or responsibility to any person or entity with respect to any loss or damage caused or alleged to be caused, directly or indirectly, by the information and illustrations in this book.

In regard to state statutes, procedures, and court rulings, it should be noted that different jurisdictions have their own guidelines and prescriptions. When fact checking, readers should examine their own state's dominion.

PREFACE

The criminal justice system is a huge machine with many working parts. There are a thousand different outcomes all from the same beginnings. Since criminal law—substantive, procedural, and constitutional—are the grease that keeps the justice wheel moving, it behooves its industry workers (the police, prosecutors, defenders, and law students) to know and learn its principles. But where to start?

Because we believe that criminal law is necessary, helping you to understand it and want to use it is our goal. You know, there's a wonderful, naive quote by actor Leslie Nielsen in the science-fiction film *Forbidden Planet*. As he and his compatriot attempt to enter a private dwelling occupied by a demented inventor and his daughter, with the express purpose of finding evidence of malice, he turns to the other somewhat reticent fellow under his command and says, "We're all part monsters in our subconscious, that's why we have laws and religion."

As cheesy as that film looks to us today, Nielsen's scriptwriter was right on the mark—we are, all of us, part monsters in our subconscious. The term to describe this monster character embedded in our psyche is often referred to as "the dark side."

In fact, society in general, having a tendency to deny that such a thing exists often acts in ways that help to suppress that logic and may, in some instances, *encourage* criminal behavior. It's not surprising that when an atrocity occurs in a quiet neighborhood such as in the case with Jeffrey Dahmer (who was convicted of stalking and cannibalizing young male victims) for his neighbors to exclaim, "He was such a nice, quiet boy! Who would have thought?"

Who would have thought indeed. Well, there are people who think about criminal mentality and motive—men and women who bump up against the mentally ill and evil in our society every day. Over time, these seasoned individuals have developed a method of finding, stopping, and helping to punish those individuals who continue to express their "dark sides," often with menacing regularity.

This book provides an expansive and practical guide to the various aspects of law. Our task was to organize and explain the practicality of law through all phases of the criminal justice system. To that end, this book is divided into three parts.

Part One, *Criminal Law Explained*, explains the evolution of law, defines what criminal conduct is and breaks it down into its elemental parts. After this, an entire chapter is devoted to providing an explanation of the tools to help you look up your own laws, principles, and precedents. And in Part One we begin to see that there are punishments, yes—but also defenses and justification for unintended conduct and the remedies of the court to understand them.

Part Two, *Criminal Procedure and Evidence*, teaches the steps of constitutional arrest, search, and seizure. It follows with a rather thorough explanation of our constitutional rights, the equitable rules our founding fathers fought so hard for, which is not only a sacred trust, but a true living document. Later we learn more about law enforcement, the prosecutors, and the defenders, and how it is personified by persons who try to practice lawful ideals in the most difficult of circumstances. They are dedicated to balancing the right of society to feel secure against safeguarding an individual's right to privacy and freedom.

Part Three does just what the section heading sets out to do, takes us on "A Walk Through the Criminal Justice System," incorporating the viewpoints of all the players involved, and culminating where everything in law is supposed to lead—into court.

If you are interested in criminal law, you must not be frustrated by the formal, archaic, or unusual words. Of course, there are technical terms and the law perpetuates a written language that tends to be syntactically complex and dense, mostly because of its historical roots. The unusual sentence structure is meant to be precise. The telegraphic speech of the court—"Objection! Hearsay." "Not offered for the truth of the matter, Your Honor." "Overruled."—is really quite efficient, allowing a brief interruption for what otherwise is predictable content. But don't let the jargon of legal pomposity keep you out of what is thought to be an exclusive club! Embrace it. Embrace it because law stories are about people on edge and they need the law, and, more importantly, they may need you to sort it out for them.

The object of this volume is to give groups who are new to the scene (and even those who aren't), an easy-to-read book of reference for all those nuances the law presses onto the system. So whether the reader needs a primer on search and seizure, a blueprint for the rules of order for the court, or the definitions and parameters of a crime, the authors hope the savvy professional will approach this book as the unconditional resource.

ANDREA CAMPBELL

INTRODUCTION

Just as progress drags reality, media, and technology into a new dawn, so we see communication, crime, and law bringing up the rear. The impetus for this third edition of *Legal Ease* is due to fascinating new laws, such as: one made to curb offender's rights, another to protect the right to a morally unacceptable premise like picketing at funerals; and a sweeping reversal of thought in making animal cruelty on video an expression under the First Amendment. You will also read that young people are better protected so that juveniles who commit crimes of a nonlethal nature will not have their entire lives ruined by a long stint in prison; also, that schools will be made to think twice about strip-searching a student for drugs; and finally, that anti-bullying laws will undergo more state scrutiny in answer to the recent upswing in student suicides as the result of continuous humiliation and terrorizing using media and social networks to disburse cruel information.

With each new presidential administration comes change and *Legal Ease* explains some of the Obama mistake-ridden changes to immigration laws, including deportation and its connection to identity theft—a crime of astounding and increasingly growing proportions (the number of U.S. households that fell victim to some type of identity theft rose to 8.6 million in 2010, costing victims about \$13.3 billion).

Locally, we have talked to police in Hot Springs, Arkansas, who describe changes because of jail overcrowding—felony law modifications called, “decriminalizing crimes” by one police officer—and also sweeping changes in local law such as penalties for smoking in a car with children under 14 years of age.

In the national limelight are new problems with jurors tweeting and falling asleep at trials, and just basically not understanding a judge's instructions about “reasonable doubt” and circumstantial evidence. Plus, with each new technological advance and equipment come new problems. The same tools that we depend on to stay connected like the Blackberry, and the Global Positioning System are also being used to advance crime, in addition to crime-solving.

Internationally, just this past summer London, England, was grappling with unrest due to a bleak economic outlook, high unemployment—especially among young adults—and students out of school with enough testosterone and discontent for rioting. Couple this with Britain’s depleted police ranks for summer vacation and you have the catalyst for what became mobs rebelling, setting fires, and with the aid of Blackberry’s speed and privacy—organized looting. Unlike the visible and highly traceable Facebook and Twitter, social media via Blackberry helped to fuel the riots with messages such as, “If you’re down for making money, we’re about to go hard in east London.” Others shared information on where to find *select booty*—high ticket items like expensive stereo stores, designer clothes, alcohol and bicycles in order to loot. According to the *Associated Press* in London, “Many of the masked or hooded youths have been photographed typing messages on their cell phones while flames engulf cars and buildings.” Interestingly, America’s own Occupy Wall Street movement whose motto is, “the banks got bailed out, we got sold out,” began as a sit-in September 17, 2011 in Zuccotti Park located in New York City’s Wall Street financial district. This event though, took on an *anti*-technology stance; the so-called 99 percent who demanded to be heard used repeated phrasing—like playing telephone from ear to ear—to disburse their own information.

Another new technological advance, Global Positional System (GPS) tracking, is even giving the Supreme Court pause. In a recent hearing judges were told that police could slap GPS devices on cars and track the movements of the owner without asking a judge for prior approval. Government lawyer, Michael Dreeben, told Supreme Court justices that FBI agents don’t need a warrant if they want to rummage through the justice’s trash or tail them around-the-clock with a team of agents. The court, of course, has previously ruled that people have no expectation of privacy in those circumstances. Justice Samuel Alito summed up the Orwellian comparison when he said, “With computers around, it’s now so simple to amass an enormous amount of information. How do we deal with this?”

Dreeben said the concerns presented today were the same or similar to what happened thirty years ago with beeper technology. He said the court needn’t make special rules for GPS devices just because they allow police to be more efficient. GPS devices, for example, eliminate time-consuming stake-outs.

This very issue arose when a federal appeals court threw out a drug conspiracy conviction of nightclub owner, Antoine Jones. FBI agents and local police tagged his car with GPS tracking which led authorities to a suburban home used for stashing drugs and money. Jones was sentenced to life in prison before the appeals court overturned his conviction. Appellate judges

thought police should have secured a warrant first and pointed to the length of surveillance as a factor in their decision.

The still puzzling thing is: how do you set limits on police? And if GPS tracking is in question, what about video surveillance? In London for example, cameras are ubiquitous and while that may seem like a heavy-handed Big Brother methodology—remember that English authorities have successfully discovered ways to prevent terrorist attacks with this same structure in place.

The result is always the same: how to balance the people's privacy with the kind of intrusiveness technology allows? Other appeals courts have ruled that search warrants are necessary for GPS tracking. The decision as to its usage and capabilities has yet to be universally decided.

And lastly, forty-nine U.S. states “allow” their residents to carry concealed weapons. Illinois remains the only holdout. Typically each state has set its own stipulations for concealed carry permits. For example, New York has “stringent” rules that ban licenses to those convicted of misdemeanors, plus, they must demonstrate a legitimate need and also participate in firearms training. Other states, not so much. An act, the *National Right to Carry Reciprocity Act* under consideration currently, would force states to accept concealed carry permits from other states. Those in favor of course, claim citizens could then protect themselves anywhere.

These difficult subjects and other concerns are highlighted in this latest edition of *Legal Ease* along with new case stories. We hope you think these issues are as important as we do.

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AUTHOR'S NOTE

No man is above the law and no man
is below it; nor do we ask any man's
permission when we require him to obey it.
—Theodore Roosevelt

As you read through this book, you will notice that the same subject may be addressed in several different chapters. For example, the term *mens rea* will appear in the first chapter and it may also appear when we talk about prosecutor charging, and, again, when we speak of intent. This unique form of cross-referencing demonstrates the word in all its different contexts.

You will also note that separate boxes may appear offset from the text, and marked with words such as “Caution,” “Other Notes,” or “FYI.” The *Caution* is to alert you to certain kinds of information that may prove helpful to you in your particular career, or, which are stumbling blocks to be aware of in regard to commonly practiced procedure. *Other Notes* are other similar areas of importance, and *FYI* notes are just interesting tidbits about the subject itself. None of these should be interpreted as concrete rules, because each police unit or lawyer's office has its own standards and modes of operation. They are simply areas of concern that have presented themselves to management in the past, and they may be beneficial to you in the future.

LEGAL EASE

Part One

CRIMINAL LAW EXPLAINED

Chapter 1

THE EVOLUTION OF LAW

The life of law has not been logic; it has been experience.
—Oliver Wendell Holmes Jr., *The Common Law*

Every generation in the history of America has been concerned with crime. The Wild West was characterized by vigilantism where posses of angry young men took justice into their own hands. The Civil War period was rife with riots, looting, and mob violence. During the Roaring Twenties, bootlegging was a common occurrence and gangsters gunned each other down on city streets. The Great Depression told tales of banks that were “knocked over” by infamous characters such as Bonnie and Clyde, while dazed citizens followed their cross-country escapades in their daily newspaper.

In fact, crime sprees and criminal dilemmas are the stuff of legends. And the laws that sprung up around them are not static. Laws, sanctions, and the norms that society live by are dynamic, because criminal law grows and changes as if it carries the breath of the people who fought the system. Historically, criminals have been banished, beheaded, impaled, burned, flogged, mutilated, and chained to everything from trees to grinding wheels to the oars on great ships. Lawbreakers have also been enslaved, exiled, and imprisoned.

The criminal procedures used today are fruit borne from the seeds of long-accepted practices of conviction, trial, and error. The beginnings of law and the horrible struggles of war, torture, and inequalities in history paint a glorious if brutal picture. As professionals you will find the foundations

of law not only helpful to know and understand, but the historical perspectives may inspire you to read about another time. Many criminal procedures you use today have the past as their underpinnings.

HAIL CIVILIZATION

When a culture becomes complex enough to support a various number of people and ideas, the unity and close proximity of its inhabitants form a civilization. That community mindset helps to preserve its past, sponsors innovation, and transmits its inherent style and values. Civilization first emerged some five to six thousand years ago. First, small agricultural villages in the Mesopotamia river valley near the Tigris and Euphrates rivers evolved. Shortly thereafter, in Egypt, around the Nile, communities sprung up. These social organizations had more complex rules for conduct than those that guided cave dwellers or the earliest farmers. In fact, the very word civilization is borrowed from the old French but taken from Latin meaning *civilis*, relating to private rights, state law, and public right, but with an important distinction—it was for city dwellers only.

A civilization evolves only with the aid of a firm foundation, and establishing authority requires a balance between those doing the governing and