

## **LEGAL EASE**

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Second Edition

# LEGAL EASE

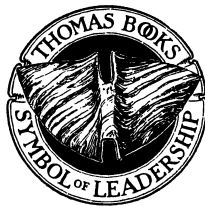
**A Guide to Criminal Law,  
Evidence, and Procedure**

*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

**T**his 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

**T**he 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 script writer 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

In the first edition of *Legal Ease* we talked about how laws evolve and change as if they were a living, breathing entity. And that is never so apparent as in this newer, second version, where we bear witness to how a nation's laws reflect its' happenings. If we could apply metaphor here: laws truly are a mirror, holding up to its face, images of societal change. The events of men and women in desperate situations, entwined within the law in sometimes unbelievable ways, show us a continuing story of how a country deals with population growth, lack of resources and opportunities for all, immigrant expansion, open borders and fanatical hate. There are those same people behind the mirror, who, unfortunately, are so dependable in their delinquent and depraved ways, they will always try to take shortcuts to gains or relief by breaking the law, and creating change and transformation in how we should behave.

Laws also paints a picture of how a nation suffers. A huge revolution was precipitated by the events of September 11, 2001, when radical, Islamic terrorists brought the World Trade Center towers down to Ground Zero in New York City, when our Pentagon in Washington, D.C., was attacked, and when a plane went down in Pennsylvania, never reaching its target because of passengers who bravely decided to take law into their own hands to prevent another tragedy—a human missile from hitting its target.

Now, because of these catastrophic measures, where a country experiences terrorism in new and bolder ways, its' lawmakers begin to find methods for prevention—and anti-terror bills morph into the Patriot Act, a federal administration decree that extends government's reach, and supercedes state protections into what were once, the private records and the movements of its citizens. We are experiencing a nation closing in on itself and asking its people to *bear with* the extra searches at airports, to ignore new, more intrusive privacy and wiretap capabilities, to shore up under identification requests, library, and computer monitoring, and to support other, enveloping steps for our safety.

This new tack filters down to the states, granting regional and local law enforcement more protection, more power, and more depth in terms of service in order to fuse our government assistance into a monitoring, cognizant body. How does this manifest itself? Of course, it makes travel more difficult with additional searches and demands on time, and, for example, toll collection monitoring in New Jersey is now the norm; police dogs can do more, being called in to sniff this and that, and in many states, it's a felony to kill or injure a service animal; the hate crimes statutes become more apparent adding extra years to sentencing; fleeing pursuits are more dangerous and, in the commission of a felony in Mississippi, can add many months onto a felon's prison time; schools are more wary and now able to do drug-testing under new authority; and whistle-blowing is encouraged, both in terms of business fraud, and to counterterroristic threatening and plots.

This shift has also snaked its way into new state laws as well: 9-1-1 calls may be used at trials, DNA collections for felons are everyday protocol, death sentences are available for teens who commit heinous crimes, and gang affiliations are noted on records, and, in Florida, citizens can use deadly force against muggers, carjackers and other attackers, and the idea for personal protection is spreading.

With the advent of new forms of information collection on its citizens, comes more and more computer crime such as identity theft, human trafficking, and statutes for child safeguards against pornography, kidnapping, sexual solicitation, and pedophilia.

A nation protecting itself is alarming, intriguing, and constantly creating new laws, new wrinkles, and new human stories. We hope you are as excited about this fresh, updated look at law as we have been.

## ACKNOWLEDGMENTS

We would like to express our appreciation to the people and associations mentioned here: Paul Bosson and the Prosecuting Attorney's office of Hot Springs; Tom O'Neal, Director of Pupil Personnel; Sgt. Bill Livingston, Lt. Willie McCoy, and the Hot Spring's Sheriff's Department, including Corporal Corky Rowlett and Deputy Judy Daniell; the Hot Springs Municipal Court; the Hot Springs Bail Bond Company; Cummins Prison Administrators; Omar Almobarak; Marsha King and the Law Library; John Ott and the *Law Enforcement Bulletin*; Chief of Police Gary Ashcraft, Corporal Michael Buck, Corporal Steve Cooley, and the Hot Springs Police Department; the Public Relations Department of the FBI including Rex Tomb and Ernie Porter; and Steven Mross with *The Sentinel-Record*, the best police beat reporter around. For their support and vote of confidence we'd also like to thank Kim Kruglick for his reading and commenting on certain sections of the book, Daryl Clemens, Martin White, Jr., Penny Warner, and Carmel Thomaston. And a tip of the hat to Publisher Mike Thomas, who saw the benefit of this work and helped us to make it a reality.



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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, shaded 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 their 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 forms a civilization. That community mindset helps to preserve its past, sponsors innovation, and transmits its