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## Casebooks on Criminal Law

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## CASEBOOKS ON CRIMINAL LAW\*

Judges, lawyers and law teachers agree that law schools can do certain things for the administration of criminal justice: first, the law schools can help in the training of capable lawyers for service in the administration of criminal law, as judges, defense lawyers, prosecutors and in other capacities; second, the schools can assist in the writing and publication of books and articles on the criminal law, and in the drafting of proposed statutes, all designed to aid in administering criminal justice; third, the schools can promote the investigations and studies in the problems of criminal justice which are being conducted by many survey commissions and bar association committees, and which require adequate permanent reports and frequently call for careful legislative draftsmanship. In these three fields, respectively, of professional training, of legal writing, and of organized investigation, it is agreed that the law schools can promote better administration of criminal justice.

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\**A Selection of Cases on Criminal Law.* By Francis Bowes Sayre. Rochester: The Lawyers Co-operative Publishing Company. 1927. pp. xxix, 1135. Price, \$6.50.

\**Cases on the Administration of the Criminal Law.* Selected and arranged by Edwin R. Keedy. Indianapolis: The Bobbs-Merrill Company. 1928, pp. xx, 586. Price, \$5.00.

Granting that the law schools can perform these three services, what are they, in fact, doing for criminal justice? Since law school courses in criminal law are based largely upon casebooks, in which are collected authorities, including especially opinions and decisions of the courts in criminal cases, the casebooks themselves are an indication of the scope and emphasis of the law school course in criminal law. By examining these casebooks, therefore, the bench and bar are able to estimate the extent to which the law schools are performing the three tasks above mentioned.

The casebooks which are the subjects of these reviews are significant because they indicate the growing scope and the changing emphasis of the study of the criminal law in law schools. Professor Sayre's casebook is especially noteworthy for several reasons. First, it is the first casebook to give recognition to such modern features of criminal law administration as the juvenile court, the indeterminate sentence and probation. It seems fitting that a casebook from the Commonwealth of Massachusetts should pay due notice to probation, which found its origin there half a century ago, and which has attained its most notable success there. The editor's notes on these and similar topics are clear and accurate, and cite the recognized authorities. Whether or not these subjects are introduced in places and ways best calculated to help the student to see their full scope, function and methods of application in the actual administration of the criminal law is open to question.

Second, the casebook is noteworthy for its generous presentation of materials in addition to the reports of criminal cases as decided by the courts. These materials include an introduction by Dean Pound, quotations from periodicals, extracts from the works of scientists in the fields of social science, and extensive quotations of important statutes, such as the Massachusetts Compulsory Examination law, with valuable notes. An appendix sets out about fifty common law and statutory definitions of specific crimes. However, it is hard to see any valid reason for omitting any consideration in this book of modern statutory crimes like those created by liquor and drug legislation. It is hard to explain this omission to students, who notice the very extensive place which such offenses are occupying in modern court rooms and legislatures. Now that the Volstead Act is eight years old, and since some state liquor legislation is much older, there is a considerable amount of well-established law in regard to these offenses. It is also difficult to find adequate reason for postponing consideration of specific crimes until the last third of the book, and for using over a third of this brief space on common law larceny. The proportion of early English cases throughout the book is high.

A third noteworthy feature of this casebook, while not an innovation, is the inclusion of a chapter on criminal procedure, including forty-seven pages on "Modern Criminal Procedure." In his preface the editor states that he hopes that this chapter

on criminal procedure "may prove serviceable not only in familiarizing students with criminal procedure but also in affording an opportunity to study the places in the machinery where it creaks and particularly needs improvement." It may well be feared that this hope is not likely to be realized extensively. This is particularly true both because of the brevity of the treatment of "Modern Criminal Procedure"—less than four per cent. of the book—and also because of the non-functional organization or arrangement of the material throughout the book. For instance, the chapter on the primary subject of "Jurisdiction" is deferred until the middle of Book I, and appears three hundred pages away from the early chapter on procedure, between a chapter headed "Attempts. Solicitations" and a chapter on "Modifying Circumstances." Further, chapters on "Parties in Crime" and on "Former Jeopardy" appear at the end of Book I, which has the omnibus heading "General Principles." In spite of the brevity of this procedural material and in spite of the general artificialities of arrangement, this case-book, in respect to criminal procedure, sets precedents which will make later casebooks in this field its debtors.

The editor, in his preface, acknowledges his indebtedness to Professor Beale for permission to use many of the cases in the latter's *Cases on Criminal Law and on Legal Liability*. A "List of Important Treatises Dealing with Criminal Law" consists of twelve English authorities, and one American authority, namely, Bishop's "New Commentaries on the Criminal Law." There is an adequate index.

In his preface the editor says that the object of an elementary law school course in criminal law is to train experts for the "sorting out process" of guilt-finding, rather than for finding the "social treatment best calculated to change the motivating impulses of the individual delinquent." There is a great deal of truth in this statement. Much criminal litigation, especially in misdemeanors, presents no appreciable demand for the sociologist or staff psychiatrist. But the administrative problem is first, to determine what conduct shall be prosecuted as "guilty" conduct. Then comes the problem of "guilt-preventing." The editor sees the principal part of the lawyer's task to be "a determination whether given conduct falls within or without arbitrary pigeonholes which we call crimes." The reviewer questions the adequacy of this statement and suggests that the casebook itself wisely goes beyond such attempted simplification. The lawyer's task is complex. Technical guilt-finding is often the smallest part of the whole administrative problem. The judge, the prosecutor, and the defense lawyer repeatedly today must deal with an individual offender who is clearly guilty of several crimes. Frequently their problem is not merely what must the prosecution prove to "send him up"; nor what must the defense prove to "get him out"; it is not a mechanical, pigeonhole question; but it is a problem of individual and social diagnosis and adjustment, of choosing the proper alternative

procedure, penalty, institution or treatment for the individual offender. It is true that social sciences as such can not be taught in law schools, but their fundamental and inseparable contacts with criminal law administration must be dealt with sufficiently to meet the modern lawyer's needs.

In view of these considerations, the bench and bar may well expect the law schools to continue to extend, in the field of the criminal law, the scope of their professional training, of their legal writing and of their organized investigation. This case-book indicates and encourages excellent work in each of these three fields. It is well done from the standpoint of careful scholarship, its notes are useful, and it cites well-selected authorities. As to its use in the class room, some objections which the reviewer has indicated in this review are largely matters which the individual teacher may adjust to suit his own convictions. The book marks much definite progress. It perhaps strikes the attainable golden mean, for the present, between some of the conservative ideas of the past and the ideas held by some as to what the law school course in criminal law will be in the future.

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To meet the need for a casebook illustrating rules of procedure in criminal cases and practice in the criminal courts Professor Keedy has produced a book of great value. In his preface he explains that "the material is arranged in the chronological order in which the proceedings occur but is grouped under the title of the particular official or body of officials whose duties are involved in order to emphasize the administrative features of the problems." The book consists of fifteen chapters, in which are considered successively the functions of the police officers, the magistrate, the grand jury, the prosecuting attorney, the trial court, the executive, the petit jury, counsel for defense, and the court of review. The cases are, for the most part, very recent decisions by the highest state and federal courts in the United States. Interesting cases include one phase of the Sacco-Vanzetti case, and the famous "The" case, *State v. Campbell* (1908), 210 Mo. 202, 109 S. W. 706, in which the Missouri court reversed a felony conviction because the indictment omitted the word "the" from the formal conclusion. The notes quote extensively from judicial opinions, and from law journal articles, statutes and other authorities. The book is attractively printed and bound. The need for a well-organized casebook covering many fundamental points in criminal procedure and practice is admirably met by this volume.

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