

## BOOK REVIEW

**Modern Criminal Law: Cases, Comments and Questions.** WAYNE R. LA FAVE. West Publishing Co., St. Paul, Minn., 1978. Pp. 1, 789.

Late in 1977, I received a flyer from West Publishing Company concerning a new criminal law casebook that was being completed by Professor LaFave. The table of contents indicated it might be an excellent book and I sent for a copy of the galley proofs. After a quick review of these galleys I decided to use it for the coming semester. It was a good decision, for Professor LaFave has written a fine casebook in Criminal Law. Not only does the book cover the essential material in a clear format, but his choice of cases is so good that it keeps the students interested and often intrigued—many of the cases revolve around sex crimes or heinous murder cases. The author has wisely used new cases that include and illustrate facets of similar classic cases used in earlier casebooks.

The book is divided into eleven chapters: 1. Purposes, Sources and Limits of the Criminal Law; 2. A General View of the Criminal Justice System; 3. Mental State; 4. The Act Requirement; 5. Homicide: Using Mental State and Other Factors to Classify Crimes; 6. Mental Disease or Defect; 7. Alcoholism and Addiction, Intoxication, Immaturity; 8. Justification and Excuse; 9. Attempts; 10. Conspiracy and Solicitation; and, 11. Parties, Liability for Conduct of Another. This format is logical and builds from one concept to the next. Material introduced in earlier chapters is picked up and reinforced in later chapters. Because of this logical sequence the material should be followed in the pattern developed by the author. One of my colleagues began with the homicide section. The results he experienced were not nearly as good as my own.

All the chapters were well structured and organized. I was particularly impressed by the chapter on Mental Disease or Defect. It developed in a clear, concise manner from problems relating to incompetency prior to trial, to problems dealing with disposition of persons deemed to be insane at the time of the commission of the act. All aspects of the total problem were well covered.

Although the chapter headings do not indicate it, this book deals in much greater detail with the problem of burden of proof and presumptions than did other criminal law books I have used. Although I found this material very interesting, some law professors may be concerned that this inclusion, together with that of the constitutionally oriented material, results in a lack of sufficient material on the substantive offenses. With the exception of homicide there is practically

no discussion of any of the crimes themselves. I explained to my class that they should learn the substantive offenses by seeing them in the context of cases concerning mental state, defenses, or other issues. There is no discussion of the various theft offenses. Many of my colleagues may find it necessary to give at least one lecture on that material. Such a lecture should be carefully scheduled since the book is so jam-packed with material you may get bogged down and not cover as much ground as you had originally anticipated. In my own three credit course, I was just able to finish the material but had no time even to give one class on theft offenses, as I had intended. Even without getting into theft and other substantive offenses, I often wished I had more time to cover the material in greater depth. Many of the note cases are themselves deserving of full discussion.

Professor LaFave has also included a brief chapter on the Criminal Justice System. I cannot decide whether it belongs or not. As a teacher of Criminal Procedure, as well as Criminal Law, I enjoyed teaching this section and had no complaints with what was included. It was, however, of necessity so sketchy that it really did not give the students much of a picture. Perhaps it should either have been expanded or deleted. Expansion, however, would have inevitably further reduced the available space for substantive Criminal Law. In a school where criminal procedure is generally taken by all the students, perhaps it may be appropriate to omit the chapter and give a lecture on theft offenses.

I was pleased that the entire Model Penal Code had been reproduced. It would, however, be helpful to emphasize in each chapter where the corresponding material would be found in the Model Penal Code.<sup>1</sup> Although I have instructed my students to read the Model Penal Code provisions, I often find that the absence of a direct reference results in failure of the students to go back and look for these provisions.

In polling my class, I found that the majority of the students liked this casebook. Naturally, since they have had no experience with any other criminal casebook, the poll may not be of great significance. However, I always find it easier to teach a class which finds the casebook interesting and enjoyable.

Since Professor LaFave has chosen new and topical material, his book should be popular. For instance, sentencing is an interesting topic by its very nature: it becomes even more interesting, how-

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<sup>1</sup> For example, page 3 in the book contains a footnote which refers to the factors the proposed Federal Criminal Code would consider in imposing sentence. A reference to the parallel section of the Model Penal Code at p.715 in the Appendix would have been helpful.

ever, when Professor LaFave discusses the issue by reference to the *Bergman* case<sup>2</sup> which is familiar to many people.

Naturally, a review is never complete without some indications of discontent. I, therefore, will mention a few personal opinions. Felony murder to me is one of the most fascinating topics in the study of criminal law. It vividly demonstrates how a court's philosophy on a particular issue can determine its interpretation of the applicable statutes and cases. I am convinced that the book has not sufficiently dealt with this topic. I realized this particularly as I read answers to my criminal law examination which did not demonstrate as much comprehension of this material as prior classes. In re-examining the material in the casebook I did not think there was enough coverage. Second, there are some instances where cases which have been placed in the notes are so edited that it is virtually impossible to use them.<sup>3</sup> Third, I do not believe it is wise to separate the cases of *Mullaney v. Wilbur*<sup>4</sup> and *Patterson v. New York*.<sup>5</sup> Both of these cases deal with the burden of proof. *Mullaney*, however, deals with the burden of proof in the context of a traditional voluntary manslaughter case while *Patterson* deals with it in the context of a manslaughter under extreme emotional disturbance. Although I can understand Professor LaFave's desire to bring in some material on diminished capacity and mental disease before dealing with *Patterson*, I believe that the issue of burden of proof is the most important and therefore *Patterson* should follow *Mullaney* immediately. At the very least there should have been a reference after *Mullaney* to alert the students to the existence of *Patterson* later on in the book.

Despite these minor concerns, Professor LaFave's book is excellent. It is readable and teachable. It is well-organized, well-edited, and, in my personal opinion, the best of the four criminal law books I have used so far.

It appears that generally, criminal law, criminal procedure, constitutional law and evidence are taught as separate courses. Professor LaFave's book, more than any other book I have used, blends these areas together. Perhaps Professor LaFave is suggesting a radical

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<sup>2</sup> *United States v. Bergman*, 416 F. Supp. 496 (S.D.N.Y. 1976). Bergman was a millionaire who was implicated in a nursing home scandal. His case made headlines throughout the country.

<sup>3</sup> E.g., W. LAFAVE, *MODERN CRIMINAL LAW: CASES, COMMENTS AND QUESTIONS* 288 (1978) (discussing *Commonwealth v. Root*, 403 Pa. 571, 170 A.2d 310 (1961)); W. LAFAVE, *supra* at 69 (discussing *Weems v. United States*, 217 U.S. 349 (1910)).

<sup>4</sup> 421 U.S. 684 (1975).

<sup>5</sup> 432 U.S. 197 (1977).

departure—take the criminal law aspects of evidence and constitutional law, add it to criminal law and procedure, and teach it as one, large, integrated course. This would necessarily require a major restructuring of the entire curriculum. It may, however, bear consideration.

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