Preface to the Fourth Edition

As in previous editions, the Fourth Edition of *Criminal Law and Procedure for the Paralegal* takes a practical approach to teaching paralegal students about criminal law, criminal procedure, the criminal justice system, and the role of paralegals in that system. In this new edition the law has been updated where necessary and the examination of subjects whose significance has emerged or increased since the last edition was published has been expanded. Some of the most significant expansions of subject matter coverage[1] in this edition relate to:

- **Prosecutorial Discretion.** Historically, prosecutors relied on one or more of three different reasons to support their exercise of prosecutorial discretion. Since the last edition of the textbook was published many prosecutor's offices have asserted a number of different reasons for exercising prosecutorial discretion. Those new reasons and the increased use of prosecutorial discretion that has resulted from relying on them has not been without controversy and has piqued public interest and debate. Without delving into the merit or lack of merit of the public policy preferences embodied in those new justifications for exercising prosecutorial discretion, this edition features an expanded examination of prosecutorial discretion that includes examination of the reasons historically relied upon to justify its exercise, the imposition of limits on its exercise imposed by the legislative branches, and the power of the judicial branch to enforce those limits. The examination of this subject is also enhanced by a new sidebar that examines the power of the executive in the American political system to dispense with a law (usually referred to as "dispensing power"), i.e., to refuse to enforce a law with which the executive disagrees.
- **Cybercrime and Searches of Personally Owned Electronic Storage Devices.** Recognizing that since the last edition of the textbook was published cybercrime and the use of search warrants to search electronic storage devices has increased, coverage of those subjects has been expanded in this edition. With respect to cybercrime, new material that discusses the types of crimes cybercrime statutes define has been added. That discussion, which looks at the Computer Fraud and Abuse Act (CFAA), introduces the students in a general way to the crimes defined in the Act by examining the two legal principles on which the violation of most of the Act's criminal statutes must be based.[2] Coverage of searches of personally owned electronic storage devices has been expanded to include a discussion of court orders that require persons to enter their passwords or use their biometrics to allow law enforcement agents to access the device a court has

authorized law enforcement agents to search. In conjunction with examination of that subject, this edition also contains new material that introduces the students to and briefly examines the issues those orders raise with respect to the privilege against self-incrimination.

- **Legislative Jurisdiction of the States.** With little elaboration, earlier editions of the textbook told students that like the federal government states have the power to exercise extra-territorial legislative jurisdiction. Recognizing that American states continue to increase their use of that form of jurisdiction, coverage of that subject has been expanded in this edition. New to this edition is a discussion of what law determines whether a state can exercise extra-territorial legislative jurisdiction, the principles of law under which a state can exercise that type of jurisdiction, and the different conclusions reached by state courts about whether under their domestic law a state has inherent power to exercise extra-territorial legislative jurisdiction or whether a statute formally exercising it is required. Also new to this edition is an examination of state legislative jurisdiction on Indian reservations.
- **Eighth Amendment and Cruel and Unusual Punishment.** Since the last edition of the textbook was published the Supreme Court decided *Bucklew v. Precythe*.[3] In that case the Supreme Court definitively answered questions about the meaning of the Eighth Amendment's cruel and unusual punishment clause and about what under that Amendment constitutes a cruel method of execution that were left without definitive answers by an earlier plurality decision. This edition incorporates the Court's teaching in the *Bucklew* decision in an expanded discussion about what constitutes cruel and unusual punishment under the Eighth Amendment, and a brief examination of what a prisoner sentenced to death must show to establish that under the Amendment the method of execution to be used on him is cruel.
- **Habeas Corpus.** The examination of the writ of habeas corpus has been expanded by the addition of a Historical Analysis sidebar that looks at the history of the writ of habeas corpus in Anglo-American law, the original grounds on which it could be issued, the judicial expansion of those grounds beginning in the 1950s, and the more recent legislative contraction of those grounds.

Organization of the Textbook

The textbook is divided into four sections, each of which covers a specific subject area. Each section contains a brief introduction to its subject

and a brief description of the topics of each chapter in the section. At the beginning of each chapter there is a statement of chapter objectives. That statement tells the student what he or she is expected to learn from the chapter. Each chapter also has at least one introductory paragraph that explains what the chapter will cover, thereby reinforcing for the students what they should expect to learn. When a new legal term or possibly unfamiliar non-legal term is introduced, it is defined in the margin of the page on which the term first appears. In most instances, legal terms are also discussed within the body of the text. Those terms then appear at the end of the chapter in a list called "Chapter Terms." At appropriate points throughout the book there are discussions about the kind of work paralegals employed in investigative agencies, defense attorneys' offices, and prosecutors' offices often perform.

Most chapters also contain edited cases. In most instances the cases provide examples of the legal principles discussed in the body of the text and often provide further explanation or discussion of those principles. In some instances a case is included to provide historical context to a legal principle discussed in the text. Each case is followed by a "Case Focus" text box that contains questions aimed at focusing the students' attention on the point or points the case was included to illustrate. The cases do not introduce new subjects. Thus, instructors who do not want to assign cases for reading can do so without forfeiting coverage of any subject.

Many chapters also contain sidebars, two of which are recurring. One of the recurring sidebars is the "Eye on Ethics" sidebar. The Eye on Ethics sidebars discuss ethical issues that relate to a subject discussed in the chapter. The other recurring sidebar is the "Historical Perspective" sidebar. The Historical Perspective sidebar provides students with historical background to the development of some legal principle or legal institution discussed in a chapter. Non-recurring sidebars provide more depth or context to certain subjects.

At the end of each chapter there is a list of questions called "Review Questions." The review questions are tied to the chapter objectives and are designed to test whether the student has achieved those objectives. Many chapters also contain a section called "Additional Reading" that lists articles, books, and other material for students who are interested in reading more about a subject covered in the chapter.

Introducing Students to the Criminal Justice System

Unless they already work in the criminal justice system it is the author's experience that most paralegal students have, at best, an imperfect

understanding of how the criminal justice system operates, who its primary actors are, and the limits imposed on those actors. In particular, students have little understanding of either the vast array of general and specialized law enforcement agencies that investigate crimes or the number and kind of different prosecuting offices. The chapters in Section I introduce the student to the criminal justice system. The first chapter gives the student an overview of the criminal justice process by breaking it into distinct phases. The students will encounter those phases again in Section IV, which discusses criminal procedure in a phase-by-phase manner. In Chapter 2 the students are introduced to the legal concept of crime and learn the distinction between civil and criminal law. This chapter also provides the students with a brief history of the development of criminal law. Chapter 2 also introduces the students in a general way to some of the different ways in which crimes are classified (e.g., felony/misdemeanor and *malum in se/malum prohibitum*) and explains why understanding those classifications is important.

The third and fourth chapters of Section I introduce students, respectively, to the various types of law enforcement agencies that investigate crime and the different offices that initiate criminal prosecutions. In conjunction with its examination of the different types of law enforcement agencies found at the different levels of the American political system, Chapter 3 also examines the various types of investigations they conduct (e.g., informal and formal). Chapter 3 introduces the student to the grand jury and explains how grand jury investigations are conducted. Included in Chapter 3 is a discussion of administrative subpoenas and their use by administrative agencies to conduct criminal investigations, both important subjects because of the number of federal and state criminal investigations done by administrative agencies using that form of legal process. Also discussed in that chapter is the role paralegals often play in those investigations.[4]

Chapter 4 not only introduces the student to the different prosecuting offices found in the American political system, but it also discusses the nature and exercise of prosecutorial discretion. The chapter also introduces the student to the separation of powers principle and explains how that principle limits the role of the judicial branch in the investigation and prosecution of crime.

Substantive Law and Procedural Law

Sections II through IV address the subjects of criminal law and procedure. Section II is a short section consisting of one chapter that examines the distinction between substantive criminal law and criminal

procedure. Section III covers the subject of substantive criminal law and Section IV covers the subject of criminal procedure.

Approach of the Textbook in Relation to Substantive Criminal Law

Teaching substantive criminal law, even to the limited extent that it is done through a textbook for paralegal students, presents major challenges that are only exacerbated when the book is aimed at a nationwide audience. The existence of more than 51 different criminal codes in the American political system and the uncounted number of different crimes defined in those codes, often using some of the same terms which, in different jurisdictions often have different meanings, presents instructors with a daunting pedagogical challenge and makes it a nearly Sisyphean task to try to discuss even a substantial minority of offenses in any meaningful way.

Some paralegal textbooks try to meet this challenge by devoting much space to discussion of the Model Penal Code and examining the crimes and legal principles that code defines, usually to the exclusion of any discussion of federal crimes and the Federal Criminal Code. Other textbooks take a catalog-like approach placing criminal statutes into different categories and then briefly describing a large number of the federal and state crimes contained in each of those categories.[5]

The Model Penal Code approach and the catalog approach both have serious drawbacks and do not serve the needs of paralegal students who may work in the field of criminal law. It makes little sense to place a heavy emphasis on discussing the Model Penal Code and the terms and crimes it defines when that code has not been adopted in full in any state and when, to the extent it has been adopted, most of the states adopting it have chosen, to greater and lesser degrees, to use different terminology, define their terms somewhat differently, define their offenses differently, and give their offenses different names. Given the recognized expansion in the reach of federal criminal law,[6] the fact that the Federal Criminal Code is used throughout the United States, and the fact that the Federal Criminal Code is significantly different in structure and approach from that of the state criminal codes based on the Model Penal Code, it makes little sense to ignore federal crimes and the Federal Criminal Code. At the same time the brief snippet-like discussions of various crimes found in the books that use the catalog approach provide a paralegal student with little that will help her do her job in a prosecuting or defense attorney's office or to understand what actually constitutes any particular crime.

This textbook takes a different approach to teaching paralegal students about criminal offenses. Instead of following either of the above routes this textbook uses what the author refers to as the elemental analysis approach. The elemental analysis approach does not focus on a particular code or on particular offenses. Instead, it teaches students that all crimes are defined by elements, discusses the fundamental elements that are used to define all crimes in Anglo-American criminal law, and then teaches students how to find and learn about the elements of any criminal offense.

The elemental analysis approach, which the author has used in his classes, eliminates the pedagogical problems inherent in teaching about criminal law in a nation of more than 51 different criminal codes while at the same time teaches students a method that they can use to learn about and understand any type of Anglo-American criminal statute without regard to the jurisdiction, without regard to the type of offense, and without regard to the terminology used. The elemental analysis approach thus provides a paralegal student with knowledge that will enable her to perform any type of task given to her that requires her to have some understanding of a criminal statute, even if the statute is one with which she is wholly unfamiliar or it is one of the many new or recently amended criminal statutes regularly churned out by our many legislative bodies.

The subject of criminal offenses is examined in Chapter 10 and Chapter 11. Chapter 10 introduces the students to the broad range of criminal statutes that exist and the broad range of conduct at which those statutes are aimed. To facilitate student understanding, the chapter uses an offense classification scheme that places criminal statutes into one of seven different categories and, as examples to illustrate in a general way the type of misconduct at which offenses in each category are aimed, identifies offenses in each category whose names (e.g., incest, arson, perjury, and treason) capture, albeit in a non-technical way, the type of criminal conduct to which the offenses in each category apply.

The textbook does not completely forego a discussion of specific crimes. In connection with providing its overview of the different types of offenses, Chapter 10 discusses in a general way a few important, frequently prosecuted, and sometimes highly technical or widely misunderstood offenses. Consistent with the elemental approach to teaching about criminal offenses, each offense discussed is discussed in relation to the elements that define it. The following specific offenses are discussed:

- Each of the three anticipatory offenses is discussed. These are highly technical offenses which can be confusing and are difficult for students to understand.

- The offense of theft is examined. Theft in its various forms and under different names is one of the most frequently charged and most complex general property crimes. In many statutory forms it contains two *mens rea* elements and consists of multiple alternate elements which themselves often have multiple alternate definitions, thereby making theft a highly technical offense. Theft is also an offense in connection with which most paralegals in prosecutors' offices will frequently be given some form of assignment. In its examination of the offense of theft the textbook notes three acts which theft statutes usually condemn and examines two of those acts.[7] The textbook includes a brief discussion of theft's historical antecedents: the common law crimes of larceny, embezzlement, and false pretenses,[8] but spends no time discussing the details of those crimes or the hyper-technical differences that distinguish them from each other. The author sees little value in devoting time to examining common law crimes that no longer exist and whose technical aspects today are of little interest to anyone other than law school academics and legal historians.
- Chapter 10 includes a discussion of the two different types of homicide statutes: those that define homicidal crimes as murder and manslaughter and those that define homicidal crimes as first degree murder and second degree murder. Few students are aware that there are two distinctly different statutory approaches to defining crimes involving the intentional killing of a human being and virtually none are aware that there are important differences between how, under each approach, those forms of homicide are defined. The textbook also examines the offense of felony murder because few paralegal students have ever heard of that offense and fewer still have even a vague understanding of it.
- Chapter 10 also includes a brief discussion of the offense of forgery. That discussion examines the modern form of the offense which, in many jurisdictions, is broadly defined to include the making or delivery of a document that is false in any material way. The book also examines how in many jurisdictions the offense has been updated for the digital age by defining the term "document" to include electronic documents and the term "signature" to include electronic signatures. Because the breadth of the offense of forgery is widely misunderstood by the public, as well as by many prosecutors and defense attorneys, and because of how the offense has been updated for the digital age, it was considered important to include a discussion of it.
- Chapter 10 also introduces students in a general way to the subject of cybercrime and the type of misconduct at which the Computer Fraud and Abuse Act (CFAA) is aimed. The discussion of the CFAA explains where the offenses defined in it fit in the offense classification scheme

used in the chapter and examines the two types of misconduct that are elements common to most of the Act's criminal statutes.

- Finally, the chapter analyzes the offense of wire fraud. That analysis includes not only an examination of the use of the wires element of the offense, but an extended examination of the offense's scheme element. Paralegal texts virtually ignore any discussion of the federal scheme offenses of which wire fraud is one. Examination of the offense of wire fraud is important for a number of reasons. The first reason follows from the nature of the offense itself. Wire fraud: a) is one of the broadest in scope and one of the most frequently charged of all federal crimes; b) was enacted in the 1950s to prosecute fraud schemes furthered through the use of the telephone, radio, and television, but since has become a valuable tool to prosecute frauds furthered using the electronic communications system, which includes the prosecution of most cybercrimes; c) is broad enough that it is used to prosecute simple fraud schemes, public corruption, and sophisticated business frauds; and d) prosecutions usually involve large volumes of digitally stored documents and other electronic evidence, overhear tapes, and video recordings and for that reason it is one of the prosecutions in relation to which paralegals in federal prosecutors' offices are frequently given assignments. The second reason to examine wire fraud and particularly its scheme element is because that element is used in and has the same meaning in other important federal crimes such as mail fraud, bank fraud, and securities fraud. That makes an understanding of that element even more important, particularly for paralegals who may work in federal prosecutors' offices or in federal regulatory agencies such as the FDIC, Federal Reserve, SEC, or FTC. A third reason to examine the offense of wire fraud is because many states have adopted criminal statutes that either contain a scheme element as part of the offense they define[9] or are state-level statutory clones of a federal scheme statute[10] and attorneys and courts in those states often look to federal decisional law to give meaning to that element of their statute. Given the widespread use of the scheme element in so many federal and state statutes it is a gross disservice to paralegal students not to examine it and show how it is used in a criminal statute that employs it.[11]

Building on the introduction to the concept of elements provided by the discussion of offenses in Chapter 10, Chapter 11 provides students with an introduction to and an extended discussion of the fundamental elements that are used to define all crimes in American criminal law. In keeping with the philosophy that it disserves students to ignore the Federal Criminal Code, the discussion of fundamental elements is done with

reference to that code, the Model Penal Code, and the common law concepts on which the terms used in both codes are based. The text devotes significant space to the discussion of *mens rea* and explains the fundamental difference between the approach taken to that concept in the Federal Criminal Code and the approach taken to it by the Model Penal Code and necessarily then, by the states that have patterned their criminal codes after the Model Penal Code. The chapter also examines the *actus reus* element of criminal offenses. The chapter discusses how some criminal statutes make the performance of an act criminal and how other criminal statutes make causing a specified result criminal and discusses what constitutes the *actus reus* under those two different types of statutes. Finally, the textbook examines the element of causation and introduces students to the concept of cause in fact, the importance of distinguishing causation from correlation, and the concept of proximate cause.

Building on that foundation, the textbook proceeds to discuss how to find the elements of an offense and how to determine the meaning of those elements. In connection with that latter discussion the book examines the use of terms in the definitions of offenses that themselves are defined in a definitions section of a criminal code that then carry that meaning wherever those terms are used in it, and the use of special or limited definitions that are applicable only when a term is used in the definition of a particular offense or in relation to a particular category of offenses. The Illinois theft statute is used to illustrate how to go about finding and learning the meaning of the elements of an offense. The book then employs a hypothetical prosecution referral to illustrate how a paralegal would combine the factual information contained in the referral with the law as explicated in the Illinois theft statute to prepare a report that will assist a prosecutor in making a charging decision or which a prosecutor can use as the basis of a prosecution memorandum, if his office uses them, or that a defense attorney can use in evaluating a client's case.

Chapters 12 through 15 cover affirmative defenses. On its face it may seem incongruous to devote more space to discussing affirmative defenses than to criminal offenses, but because there are far fewer affirmative defenses than criminal offenses, a somewhat greater degree of uniformity in their definitions, and because most of them apply to multiple offenses and some, such as the constitutionally based defenses, apply to all offenses, a more thorough discussion is not only possible, but useful and warranted. The textbook does not catalog and examine all of the affirmative defenses nor does it provide a comprehensive analysis of the defenses it examines. Instead, the textbook analyzes the broad contours of the defenses it examines and discusses a few of the major variations in those contours that exist in different jurisdictions.

The first section of Chapter 12 provides the students with a general introduction to the concept of defenses in criminal law. That section

discusses simple defenses and affirmative defenses and distinguishes between them. That section also provides a general discussion of affirmative defenses that tells students what such defenses are and examines the three burdens (assertion, production, and persuasion) that are associated with all affirmative defenses. The first section of Chapter 12 also introduces students to a five- category system for classifying the different affirmative defenses. That system is then used as a framework for discussing affirmative defenses in that chapter and the succeeding affirmative defense chapters. The classification system employed in the textbook uses the following categories: 1) excuse defenses; 2) justification defenses; 3) failure of proof defenses; 4) offense modification defenses; and 5) non-exculpatory public policy defenses.[12]

Finally, the first section of Chapter 12 explains that as is the case with criminal offenses: 1) affirmative defenses are defined differently in different states and 2) different states may give some of the defenses different names. Continuing the elemental approach taken with respect to criminal offenses, all the chapters dealing with affirmative defenses focus the students on the elements of each defense.

The second section of Chapter 12 introduces the students to a number of excuse defenses, the most important of which are the insanity defense, intoxication, entrapment, and duress. The discussion of the insanity defense includes an examination of its history, the classic statement of the defense in *Queen v. M'Naghten*,[13] how the defense operates, legal questions presented by the defense, and statutory modifications of it.[14] Chapter 12 also contains a lengthy sidebar about "horse-shedding," which discusses the importance of witness preparation and how it is ethically done.

Chapter 13 examines justification defenses such as self-defense and necessity and Chapter 14 examines failure of proof and defense modification defenses such as mistake, impossibility, Wharton's Rule, and the closely related inevitably incident conduct rule.

Chapter 15 examines a number of non-exculpatory defenses, including the defense of double jeopardy and its separate sovereigns doctrine[15] together with a discussion about what constitutes jeopardy. Also examined in that chapter are bills of attainder, ex post facto laws, and outrageous government conduct

Approach of the Textbook in Relation to Criminal Procedure

Section IV (Chapters 16 through 21) of the textbook covers criminal procedure and examines that subject differently than most textbooks.

Instead of focusing on the specific procedural rights the textbook focuses on the different stages of the criminal justice process and examines both what occurs at each stage and what rights are applicable at that stage. One result of that approach is that some rights, albeit different aspects of those rights, are discussed in more than one chapter. The chapters in Section IV examine the criminal justice process chronologically starting with the investigative stage and concluding with the post-trial stage. It is the author's belief that this organization helps the student to understand not only the flow of the criminal justice process but also how the procedural rights operate.

Chapter 16 examines the law of search and seizure as it relates to searches for physical objects and for electronically stored data. That examination includes a description of how searches for physical objects are conducted, how searches of personally owned electronic storage devices are conducted, and how searches of the systems of electronic service providers are conducted. The chapter also examines the two different views courts have developed about how the rules relating to overbreadth and particularity should be applied to searches for electronically stored information and how the plain view rule applies to searches of electronically stored information. In conjunction with its examination of the law of search and seizure the chapter also examines the exclusionary rule. That examination includes a sidebar that discusses the history of the rule. Chapter 16 also introduces students to the three categories used by courts (consensual encounters, investigative or Terry stops,[16] and arrests) when called upon to determine the legality of a particular police/citizen encounter. The discussion of Terry stops includes a discussion about the reasonable suspicion necessary to support such a stop and about how that suspicion may be established.

Chapters 17 examines the privilege against self incrimination and how it operates during the investigative stages of the criminal justice process. Chapter 18 examines procedural rights at the charging stage, Chapter 19 examines procedural rights during the pre-trial stage, and Chapter 20 examines procedural rights during the trial stage including how the privilege against self-incrimination operates during that stage.

Chapter 21 examines post-trial rights. That examination includes a discussion of post-trial motions and sentencing. The examination of sentencing includes an examination of the Eighth Amendment's cruel and unusual punishment clause and what constitutes cruel punishments and cruel methods of execution, and what a prisoner must show to prove a method of execution to be used on him is cruel. The chapter also examines appeals, the writ of habeas corpus, and the grounds for issuing it. Finally, the chapter examines clemency and the process by which a person convicted of a crime can apply for it.

ENDNOTES

1. The Instructor's Manual contains a complete list of subject matter updates, subject matter expansion, and substantive edits.
2. The CFAA defines a number of offenses, all of which are highly technical and beyond the scope of this textbook. The students may encounter the CFAA again in one of their civil law classes or, because the CFAA is hybrid statute that provides plaintiffs with remedies against defendants who engage in conduct that violates any of the Act's criminal statutes, if they become employed at a firm that does civil litigation. The textbook does not examine any state cybercrime statutes. Not all states have such statutes and among those that do those statutes vary greatly in their terms and have had little judicial construction thus making the actual operation of those statutes somewhat opaque.
3. 139 S. Ct. 1112 (2019).
4. This is a subject that is often ignored by other criminal law textbooks for paralegals.
5. Virtually all of the textbooks supplement their examination of criminal offenses with discussions of crime and related issues that are more appropriate to a sociology class or criminal justice class but which have nothing to do with the work of paralegals. This textbook takes students on no such detours.
6. *Gamble v. United States*, 139 S. Ct. 1960 (2019).
7. The discussion of theft examines unauthorized control theft and theft by deception, but because its meaning is fairly self-evident, does not examine theft of property through a threat of force.
8. The author realizes that some states continue to call offenses by these names. Despite the use of those names, the offenses to which the names are attached are, for the most part, based on Model Penal Code offense definitions and as such they do not carry the technical baggage of the common law offenses from which their names were taken.
9. *See, e.g.*, the Illinois offense of Computer Fraud: *A person commits the offense of computer fraud when he knowingly: (1) Accesses or causes to be accessed a computer or any part thereof, or a program or data, for the purpose of devising or executing any scheme to de-fraud, or as part of a deception*, 720 ILCS §5/16D-5(a) and the Florida offense of Fraudulent Transactions: *(1) It is unlawful and a violation of the provisions of this chapter for a person (a) in connection with the rendering of any investment advice or in connection with the . . . sale . . . of any investment or security (1) To employ any device, scheme, or artifice to defraud*, Fla. Stat. Ann. §517.301.
10. *See, e.g.*, The Illinois offense of Financial Institution Fraud: *A person commits the offense of financial institution fraud when the person knowingly executes or attempts to execute a scheme or artifice: (1) to defraud a financial institution*, 720 ILCS §5/16H-25(1), which is virtually identical to 18 U.S.C. §1344 and to the Kentucky offense of Securities Fraud: *It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, (a) To employ any device, scheme, or artifice to defraud*, Ky. Rev. Stat. §292.320, which is virtually identical to 15 U.S.C. §77(q)(a)(1).
11. It has been the author's experience that many students find discussion of the corruption and economic crimes prosecuted with the mail and wire fraud statutes interesting. That is particularly true with economic crimes such as the two mail fraud cases contained in the text, which introduce them to concepts which at best most paralegal students only vaguely understood when they signed up to take the course.
12. The author recognizes that there is some debate about whether certain defenses should be included in one category or another. To a large extent that is a function of how the defense is defined. Entrapment is an example of such a defense. Some states define entrapment subjectively which logically puts it in the excuse category while other states define it objectively which logically places it in the failure of proof category. The text does not burden the students with these types of distinctions and instead places such defenses in the category in which, based on the definition used in a majority of the states, it logically should be placed. The text discusses the different forms of the defense there and simply notes that under the alternative definition the defense would be in a different category. The author also recognizes that depending on the jurisdiction some defenses may fit into two categories. Intoxication, which can either be a defense or simply negate the specific intent element of a crime, is one such defense. Again, the text does not burden the students with that level of technical information and simply explains the defense while noting its additional application.
13. 8 Eng. Rep. 718 (1843).
14. *E.g.*, Kan. Stat. Ann. §21-5209.
15. *Gamble, supra* note 6.
16. *Terry v. Ohio*, 392 U.S. 1 (1966).