Journal of Criminal Law and Criminology

Volume 92
Issue 2 *Fall*

Article 4

Fall 2001

Recent Books

0091-4169/02/9202-0429
THE JOURNAL OF CRIMINAL LAW & CRIMINOLOGY

Vol. 92, No. 2
Printed in U.S.A.

RECENT BOOKS

CRIMINAL LAW AND CRIMINOLOGY: A SURVEY OF RECENT BOOKS

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SIMON A. COLE, SUSPECT IDENTITIES: A HISTORY OF FINGERPRINTING AND CRIMINAL IDENTIFICATION (Cambridge, MA: Harvard University Press, 2001) 369pp.

Human awareness of fingerprints is ancient, even prehistoric. However, their legal and forensic use with which we are familiar is little more than one hundred years old. The perceived need to tie a person's identity to permanent physical marks began when the industrial revolution and increased social and geographical mobility in the early nineteenth century meant increased interaction with strangers, thereby engendering fears that "confidence men" and other criminals could easily assume new identities. Theories that a convicted criminal's punishment should be calibrated to his previous record led to the development of penal records and the need to know whether a person convicted of a new crime was the same person with prior convictions and furthered the need to discover identifying marks on the person which persisted through time, travel, and a name change. The first use of fingerprints as a means of identification took place in India in 1899. After a method of categorizing and indexing prints was formulated (thereby enabling the retrieval of filed records), fingerprinting replaced an exacting method of measuring eleven physical dimensions called "anthropometry," which had developed in the latter half of the nineteenth century. The crucial issue of a fingerprint's uniqueness was first addressed when print files were

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developed. All ten prints were treated as the identifying record, and the possibility that all the prints for two different persons would be identical was thought to be nil. That each individual fingerprint was unique was accepted almost immediately, the author states, when a single latent print was recovered from a crime scene and used to convict. (To date, the only proof that each fingerprint is unique is the lack of any contradictory instance.) "Points of comparison" became the preferred method of comparing two different print impressions and finding with a reasonable degree of certainty that the pattern of each print was the same (and therefore came, presumably, from the same person). However, there is still general agreement on how many "points of comparison" are necessary to make the finding. Who should decide whether the comparison is satisfactory also became an issue. The earliest trials regarded it as a jury question, but the courts soon regarded it as a question of scientific expertise.

Unlike the case with other forensic disciplines, an independent group of fingerprint expert witnesses has not developed; almost all fingerprint experts are employed by law enforcement agencies. The courts have also come to "black-box" the method of fingerprint comparison; i.e., once the credentials of the fingerprint examiner are established, no inquiry at trial is made into the validity of her method of comparison. Suspects confronted with fingerprint evidence, as a consequence, frequently plead guilty. The author is also concerned that the defense bar has failed to the question of whether a latent print found at a crime scene has deteriorated so much that a valid comparison can be made. Even if each fingerprint is unique, the author argues, two different prints can be similar enough that an insufficiently distinct latent print can yield a false positive. Changes in the law of scientific evidence from *Daubert* significantly changed the law of scientific evidence, and the whole future of fingerprint evidence may be in doubt as *Daubert* challenges are raised in the courts.

ALEXANDER DECONDE, GUN VIOLENCE IN AMERICA: THE STRUGGLE FOR CONTROL (Boston, MA: Northeastern University Press, 2001) 394pp.

The author examines the history of gun ownership in this country, as well as early attempts to control individual owner-

ship. As the country became more urbanized, local authorities attempted to control individual gun ownership, but in reaction to this movement, gun owners became more politically cohesive and were able to defeat most attempts. Such recent legislation and developments are examined in this book. The author compares the situation in other industrialized democracies and finds that many of the claims of gun control opponents are not supported by history, judicial interpretation, or the experience in other countries. Some claims of control proponents are also criticized, finding no basis for the claim that the Second Amendment confers an absolute or "natural right." The anti-control lobby has usually been able to frame questions of control as "either/or" for the right to possess guns. The author argues in favor of legislation by casting the issue in terms of public health and safety, defining proper reasons for gun ownership, and placing the burden on individual gun owners of showing they're fit under the legislatively defined categories.

PETER GRABOSKY ET AL., ELECTRONIC THEFT: UNLAWFUL ACQUISITION IN CYBERSPACE (Cambridge University Press, 2001) 235pp.

Digital technology creates great opportunities for theft, and criminal law has been slow to respond. The authors describe various types of cybercrime, such as securities fraud and identity theft, and examine the reasons why legal regulation alone has been inadequate. Some reasons include general limitations of criminal law: for example, prosecutions are cumbersome, costly, and produce uncertain results. Victims are thus often deterred from initiating prosecution, or even reporting the crime. Cybercrime presents further challenges: technology often changes too rapidly for effective legislation; cybercrimes often cross many jurisdictions and nations; the evidence is complicated and highly technical; and development of the necessary forensic skills is costly. Thus, law is a limited regulator of behavior in cyberspace, and individuals are seeking protection elsewhere.

Among the most important types of privately developed protection are antitheft technology and agreed codes of conduct among individuals and organizations interacting in cyberspace. The authors also examine how the legal response is increasingly adaptive. New legislation, for example, sometimes is "technology neutral," i.e. not conditioned on one type of a

rapidly changing technology. A dynamic of legal, market, and individual response will probably be the optimum. This evolving situation will require much research. The authors suggest several possible avenues for future investigation, including: the emerging forms of interaction between government and non-government actors; the effectiveness of new legislation; the decisional process of prosecutors deciding whether or not to prosecute; the types of cases chosen for prosecution; and, the extent and nature of transnational cooperation.

BERNARD E. HARCOURT, ILLUSION OF ORDER: THE FALSE PROMISE OF BROKEN WINDOWS POLICING (Cambridge, MA: Harvard University Press, 2001) 294pp.

The "order-maintenance" theory holds that disorderly behavior has a social meaning and signals that crime is tolerated in the community. Policy applications of this theory include aggressive policing and ordinances against certain kinds of deviancy. These innovations, however, come at certain costs. The author examines the methods and conclusions of the studies that are advanced as empirical support for a connection between community disorder and the crime rate, and finds that a correlation has not been shown. Also examined is the data regarding the success of specific policy applications of the order-maintenance theory. More study is still needed, the author concludes, to determine whether the drop in the crime rate can be attributed to aggressive policing, and whether the costs justify the benefits. The author asks why the order-maintenance theory is widely accepted if the empirical support is so weak. Contrasting the theories of Durkheim and Foucault, the author argues that the categories of orderly and disorderly are not so clear-cut and natural, and may originate as a means of social control. The author suggests that the rhetorical appeal of the order-maintenance theory lies in its transformation of disorderly behavior from nuisance to inherent harm. However, the author argues, policy implementations of the order-maintenance theory also entail costs and harms. While taking the normative meaning as fixed and natural is a theoretical error, the author argues, the turn to social meaning should be pushed further to examine how our policing and penal methods transform the subject and influence our assessments.

IBISH HUSSEIN, ED., 1998-2000 REPORT ON HATE CRIMES AND DISCRIMINATION AGAINST ARAB AMERICANS (Washington, DC: ADC Research Institute, 2001) 77pp.

A report from the Arab-American Anti-Discrimination Committee includes case summaries of physical and psychological attacks on Americans of Arab heritage during the period covered. (Although hate crime statistics are kept at the federal level, there is not a separate category for victims of Arab heritage.) Also reported are instances of institutional discrimination, such as airline passenger profiling and selective enforcement of immigration laws, and instances of discrimination in the media. In discussing the legal issues, the report notes that physical assaults, property damage, and other acts categorized as felonies under federal or state law may receive enhanced federal penalties if the crime is intended as an attack based on the victim's race, religion, or ethnicity. Speech generally does not constitute a "hate crime." However, prosecution is possible when the speech directly incites physical violence against the intended victim or the intended victim's group.

ASIM JABARI, ED., NOT GUILTY: TWELVE BLACK MEN SPEAK OUT ON LAW, JUSTICE, AND LIFE (New York: Amistad, 2001) 169pp.

Analogizing to the deep traditions of the jury system, the editor assembles contributors with a wide variety of backgrounds, viewpoints, and expressive styles. Some contributors offer contrasting thoughts on the problem of police relations. Other topics include widespread social assumptions about the criminality of any particular individual black man; how this can distort social relations and lead to the failure of law enforcement officials to distinguish the criminal and the law abiding; and the heightened risk of "stop and frisk" while pursuing the freedom to travel. Also considered is the counter-point problem of criminal victimization of African-Americans and the need for greater police protection in their communities. The authors relate how they have developed various coping strategies beyond an occasional lapse into fatalistic silence.

ALENA V. LEDENEVA & MARINA KURKCHIYAN, ECONOMIC CRIME IN RUSSIA (The Hague: Kluwer Law International, 2000) 300pp.

Certain practices customary under the Soviet regime have persisted in the post-Soviet era, the editors note in a synthesis of the various contributions to this collection, largely because the legal infrastructure necessary for a market economy has not developed. The state does not act as a neutral referee; rather, it is used as a shield by private economic interests against the market. Many government functions, such as law enforcement or dispute resolution, are performed by semi-legitimate and criminal organizations in competition with the post-Soviet state. The state itself is seen as inefficient and corrupt, and economic crimes, such as bribery, tax evasion, or money-laundering, are regarded as necessary coping mechanisms in the absence of legal business regulation. Thus, what is legislatively outlawed is in fact a "customary practice" in otherwise legitimate institutions. Overtly criminal organizations are also a significant problem. Lack of adequate enforcement mechanisms render legislation against economic crime ineffectual. Banks are unable adequately to trace transactions, for example, so laws against money-laundering go unenforced. Police in the post-Soviet state are modern and efficient, but have not developed a democratic culture and thus are not neutral enforcers of the law. Prosecution of particular instances of economic crime is seen as arbitrary and capricious, and the law does not have a general deterrent effect. The culture is compatible with a genuine market economy, and effective sanctions against economic crime have not developed. Long-term solutions are required. Recommendations include coherent legislation which systematically enhances democratic and civil principles, and which lead the economy to develop according to market criteria. Law enforcement institutions should be improved and should reflect democratic values. Only if professionalism is inculcated in future generations can economic crime be treated as such, rather than as the "customary practice."

JAMES NEFF, THE WRONG MAN: THE FINAL VERDICT ON THE DR. SAM SHEPPARD MURDER CASE (New York: Random House, 2001) 414pp.

The trial, appeals, and retrial of Sam Sheppard for the murder of his wife Marylin became one of the most famous

cases in American history. The author recounts the story up to recent developments. Numerous individuals, including the police, lawyers, forensic scientists, and journalists would play significant roles in the case.

Marylin Sheppard was brutally murdered in her Cleveland home in 1954. Her husband quickly became a suspect when his statement—that he was sleeping downstairs, heard Marylin cry, "Sam," ran upstairs, and was struck by an intruder—seemed incredible. Investigators concluded that the various items at the crime scene were a staged arrangement to suggest an intruder. The author examines the political and social atmosphere and the public statements by investigators which led to the assumption in local press stories that Sheppard was guilty. (Insinuations of guilt, for example, were derived from the mere fact that he hired a defense attorney.) The medical inquest into Marylin Sheppard's death named Sam Sheppard as the murderer, and he was soon convicted. The case set constitutional precedent when the Supreme Court reversed it in 1966 on the grounds of pre-trial publicity. Sheppard was acquitted at retrial, but failed to resume a normal life and died a few years later. The final third of the book concerns the development of evidence in the last decade against the Sheppards' window-washer, who had been a suspect early on, and who was convicted of another murder in the late 80s. This evidence included inculpatory statements he had made about the Sheppard murder and DNA tests that raised the possibility that his blood was at the crime scene. Based on these and other developments, Sheppard's estate, and his son, brought a wrongful conviction suit in the courts of Ohio. Although the estate lost that suit, the author argues that the totality of evidence, including other DNA tests and police files obtained by the author (which had not been introduced at the original trial or at the retrials), excludes Sheppard as the murderer. The author concludes with a suggested scenario, based on a psychological profile of the now dead window-washer, which would explain the appearance of the crime scene that had been among the strongest evidence against Sheppard for the prosecution's theory that Sheppard killed his wife and then arranged the scene to make it appear to be the work of an intruder.