

Cases and Materials on Criminal Law Procedures (Book Review)

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In section 506, Doctor Jaeger has presented the status of the statute of frauds complete with its modifications in those states which have adopted the Uniform Commercial Code. In the succeeding section, 506B, another table indicating current modifications to the statute of frauds may be found. The author has provided by these useful tables material which would have taken pages to expound, and thus creates a ready reference for the busy practitioner in ascertaining the requirements of his statute, either under the Uniform Sales Act or the Uniform Commercial Code.

In retrospect, the first three volumes of Doctor Jaeger's revision of Williston's treatise are highly recommended for their comprehension and completeness of treatment, the keen degree of analysis of subject matter, and concise arrangement and scholarship. Doctor Jaeger's extensive and erudite cultivation of the various fields of contract law has yielded a bountiful and rewarding harvest. For this, the Bench and the Bar will be eternally grateful.

DONALD H. DALTON.*



CASES AND MATERIALS ON CRIMINAL LAW PROCEDURES. By J. Walter McKenna. New York: Alpert Press, 1960. Pp. 501. \$10.00.

In writing this volume, Professor McKenna has drawn upon his long experience as a teacher and practitioner in the field of criminal law and has produced an excellent book. While ostensibly designed as a casebook and text for law students, it should prove valuable to any lawyer who is not well grounded in criminal procedures.

The cases and materials are arranged in such a sequence that the reader can easily follow, step by step, the procedures and events that flow from an arrest in a criminal proceeding. Commencing with the arrest, the author focuses attention upon and illuminates the myriad problems that may or will be encountered as an accused's case progresses toward trial. The multitude of procedural matters to be considered before, during, and after trial are thoroughly explored.

While it was manifestly impossible for the author to develop and treat all the manifold incidents and questions encountered in

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various criminal proceedings, it is remarkable that so wide a range of matters has been so deftly handled.

One of the outstanding facets of this work is the eleven diagrams of criminal law procedures which the author has painstakingly fashioned. They outline such matters as "Basic Arraignment Techniques"; "Basic Steps in Conduct of Preliminary Examination"; "Basic Motion Practice Technique"; "Steps in the Trial of a Criminal Case" and others. The aim of these eleven diagrams of criminal law procedures is to outline the step by step development of a criminal proceeding from arrest through trial.

The value of the diagrams as a mnemonic tool for the student cannot be overstated. It should prove of inestimable aid to the practitioner as a handy "checklist" to avoid mistakes and pitfalls in the course of representing an accused in a criminal action.

As the reader peruses the volume, the cases and material guide him from the moment of arrest through the period of police custody and the considerations attendant thereon, such as the right to counsel, period of detention and the like, into the arraignment to charges and preliminary hearing. Thence the author traces the development of the proceeding to the grand jury and the ultimate indictment or information, and the arraignment thereon. In addition to devoting an entire chapter to motions, demurrers and pleas addressed to the indictment or information, the author has included considerations of other motions in various different situations.

The numerous aspects of the trial and incidental problems that are bound to arise during it are handled well. Also, the author does not neglect the importance of post-conviction procedures and problems, including appeal, the application in the nature of a Writ of Error Coram Nobis, and state and federal habeas corpus.

Each chapter contains a terse introductory comment by the author. Virtually all topics and sub-topics are preceded by citations which direct the reader to appropriate sections of the New York Code of Criminal Procedure and Federal Rules of Criminal Procedure, as well as relevant provisions of the New York and United States Constitutions and helpful treatises or other material.

Only problems affecting appeals have not been covered in depth, but, as the author himself explains, they are better dealt with in specialized works in this area.

The selection of cases is well balanced and reflects good judgment and planning. Generally, the cases pithily drive home the point which Professor McKenna seeks to develop.

For example, *United States v. LaVallee*, 270 F.2d 513 (2d Cir. 1959), aptly and forcefully illuminates problems of police custody before arraignment to charges. (It also, incidentally, reveals the possible availability of federal habeas corpus as a post-conviction corrective process.) In *LaVallee*, the United States Court of Appeals, Second Circuit, determined that the relator, Joseph Corbo, who had been convicted of murder in the first degree for killing a New

York City police officer, was entitled to the requested relief on the basis of evidence which convinced that court that a confession he made to the police and an assistant district attorney before arraignment had been coerced. It is startling that this was predicated upon a perusal of the "cold printed record" almost ten years after the killing. Upon this same evidence, a state trial court and jury had found Corbo guilty, a judgment which the highest appellate tribunal in the state unanimously shared, as did a United States District Judge after an "independent" review of the evidence.

It is also remarkable and an insight into the handling of such matters in the federal judiciary, that the U.S. Court of Appeals' conclusion was founded not so much upon evidence of coercive measures directed against Corbo, but rather upon alleged improper treatment of a co-defendant, Rudolph Santobello, who had not even joined in the petition for habeas corpus. Since the District Court had rejected Corbo's claims as so obviously lacking merit that no hearing was even warranted, the case is extraordinary in pointing up the lengths to which a federal appellate court may go in redetermining factual issues resolved many years earlier by the state courts including the court of last resort.

Many other cases selected by Professor McKenna are equally thought-provoking and interesting. They illustrate the various subtleties and paradoxes of criminal procedures and expose many problems of which only the specialist in this field would ordinarily be cognizant. Thus, the reader will discover that each main topic has been broken down into several sub-topics.

While virtually all law schools in this country include a study of criminal law in their curricula, relatively few offer a separate and distinct course in criminal procedure. Where procedure is lumped together with a substantive study of criminal law, it is generally relegated to a position of minor significance and frequently is dealt with in a very cursory manner. It is regrettable that this is the case, since it necessarily means that few young lawyers (and older ones, too) are properly prepared to try a criminal case. The writer, who appears in the criminal courts almost daily, can recall all too many instances where hapless defendants have been inadequately represented by attorneys of their own choosing or in some instances, by assigned counsel.

Professor McKenna has been teaching a course in criminal procedure for many years. This book favorably reflects his vast knowledge and experience in this field. While geared predominantly to New York and federal procedure, the author has culled cases and materials from other jurisdictions as well. The book, therefore, should undoubtedly be readily adaptable for use in any law school which might determine to include a course in criminal procedure in its curriculum.

The type of course for which this book has obviously been written is not designed as an academic exercise to fill out a law school

program and then promptly to be forgotten after passing an examination. This is one of the so-called "bread-and-butter" courses. It involves matter that, in one way or another, will confront most attorneys at some point in their practice. Proper training in this field could be the difference between imprisonment and liberty (or perhaps life and death) for a client accused of crime.

It is important to both society as a whole and the individual who may suddenly become the object of a criminal prosecution that the criminal laws be fairly and effectively administered, not only by the courts, but by prosecutors and defense attorneys as well. To this end, it is incumbent upon our law schools to promote these ideals by placing somewhat greater emphasis upon instruction in criminal procedures than is now the case in many such institutions.

IRVING ANOLIK.*



CRIMINAL PROCEDURE IN NEW YORK. By Floyd I. Paperno and Arthur Goldstein. New York: Acme Book Co., 1960. Pp. 863. \$19.75.

There can be no disagreement with the publisher's viewpoint that the members of the legal profession have sought in vain for well-written and authentic materials in the field of Criminal Procedure. The authors of the book under review have attempted to fill this void. This book review will present an evaluation of their efforts.

The background of the authors would seem to qualify them to undertake this task. They are members of the New York bar; in addition, Mr. Arthur Goldstein was formerly a trial attorney in the United States Department of Justice and Mr. Henry Schober, who furnished the information for the practical suggestions, was formerly the Chief of the Appeals Bureau of the Queens County District Attorney's office.

The format of a book of this type must be planned with great skill. Certain recognized aids must permit a speedy finding of answers to problems. This is usually accomplished by the insertion of various tables of citations to cases and statutes, a proper table of contents and a detailed index. Unless they are present, the usefulness of the book to the busy practitioner is diminished.

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