

Criminal Procedure in New York (Book Review)

J. Walter McKenna

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

Recommended Citation

McKenna, J. Walter (1960) "Criminal Procedure in New York (Book Review)," *St. John's Law Review*: Vol. 35 : No. 1 , Article 18.
Available at: <https://scholarship.law.stjohns.edu/lawreview/vol35/iss1/18>

This Book Review is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact lasalar@stjohns.edu.

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.

* Assistant District Attorney, Bronx County, N.Y.

In the book under review here, the authors have put forth forty-one chapters totaling 863 pages in which they have set out, in detail, by means of a text treatment, the procedures authorized by the Code of Criminal Procedure of New York, the New York City Criminal Courts Act and leading New York decisions for the prosecution of persons accused of crime. The plan of the book obviously was to follow in sequence the ordinary steps in a criminal prosecution beginning with the arrest concept. Perhaps it would have been wiser for the authors to have set out in a different part of the book certain chapters dealing with matters which do not ordinarily arise in the usual criminal prosecution such as "Coroners' and Medical Examiners' Proceedings" in Chapter 8, "Statute of Limitations" in Chapter 9, "Examination of Witnesses on Commission" in Chapter 26. A few other chapters could have been dealt with in the same way or completely omitted. In this manner a closer sequence of the usual prosecution steps could have been obtained.

Although footnotes are omitted, this is not detrimental to this type of book. Also omitted are a table of cases cited in the text and a table of statutory citations to the New York Code of Criminal Procedure and the New York City Criminal Courts Act. It seems to this reviewer that the latter omissions subject the book to valid criticism. However, the user of this book will find an excellent table of contents and an index prepared with meticulous care and skill.

Preceding twenty-one of the chapters there are "Practical Suggestions" in heavy black-face type. This is a feature which will delight many lawyers—especially lawyers who seldom appear in criminal cases. Perhaps a book entirely devoted to "Practical Suggestions" in criminal procedure might be a venture worth undertaking. One of the basic difficulties in authoring a book on New York criminal procedure is how to make clear the differences between the procedures followed in the City of New York and those followed in upstate rural areas and in cities like Buffalo, Rochester and Syracuse. Many of these differences are of major importance. This difficulty reveals itself in attempting to state one set of practical suggestions for use both in New York City and elsewhere in the state. This feature of the book would have been more valuable to "upstate lawyers" if an "upstate lawyer" had prepared "Practical Suggestions" for their particular use. Nevertheless, the "Practical Suggestions" presented in this book are most helpful.

This review must now be focused on the content of the book as distinguished from its format. In determining content the difficulty that presents itself concerns the extent of coverage of the subject which is necessary to make it an adequate working tool for the practicing lawyer. It appears that this work would still be adequate even though the following chapters were entirely omitted: Chapter 8, "Coroners' and Medical Examiners' Proceedings"; Chapter 9, "Statute of Limitations"; Chapter 11, "The Privilege Against Self-

Incrimination and Immunity"; Chapter 25, "Examination of Witnesses, Conditionally"; Chapter 26, "Examination of Witnesses on Commission"; Chapter 38, "Rights of Defendant, Compensation of Counsel, and Compromise of Crimes." Some of the material in these chapters might have been inserted in other parts of the book.

Having taught the subject of Criminal Procedure for many years, this reviewer has long believed that a carefully prepared diagram or series of diagrams can save many hours of oral explanation. In the important Chapter 7, entitled, "Jurisdiction and Organization of Courts," the insertion of a series of diagrams would have shortened the chapter and caused it to be understood with greater ease.

A final comment seems necessary. Innumerable sections of the Code of Criminal Procedure and decisions of the New York courts were quoted verbatim in this text. Since it is difficult to conceive of a lawyer using the book who does not own or have access to a Code of Criminal Procedure or the New York opinions, it would have been far more profitable for the reader if the authors had offered an explanation rather than a mere repetition of the code sections. For example, in Chapter 5, "Preliminary Examination," there were at least thirty-one quotations, mostly from the Code of Criminal Procedure, but some from case opinions. Incidentally, in this otherwise adequately written chapter there was a failure by the authors to indicate that the defendant has a right to be sworn as a witness as well as to make the unsworn statutory statement. It might be an unusual situation wherein he would be called on as a witness, but, nevertheless, this right exists.¹

This book has been the subject of close and careful scrutiny. Certain constructive criticisms have been made. However, in no sense does this mean that the very competent authors have not written a most useful work in a field where the need was great. While it should not be classified as a monumental work, not only the members of the criminal law bar, but also general practitioners can add it to their law libraries with confidence that it will serve them well when they represent persons accused of crime.

J. WALTER MCKENNA.*

¹ *People v. Reynolds*, 32 N.Y. Crim. 323, 155 N.Y. Supp. 121 (Sup. Ct. 1914).

* Professor of Law and Director of the Criminal Law Institute, St. John's University School of Law.