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BOOK REVIEWS

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CRIMINAL PROCEDURE SOURCEBOOK. Edited by B. James George, Jr., and Juris Cederbaums. (Practicing Law Institute with Roscoe Pound—American Trial Lawyers Foundation, New York City, 1970. 2 Vol. pp. XV, 1016. $25.00). *Reviewed by William S. McAninch**

A decade ago few law schools offered a separate course in criminal procedure. Today it is perhaps the most demanding and complex requirement of the freshman year, and all indications are that the volume of important cases is mushrooming. While much of the past rapid development might be attributed to the relatively aggressive orientation of the Warren court with a concomitant suggestion that it will now subside, the Burger court may well be equally prolific, reflecting both a desire to tailor prior decisions to present philosophy and to facilitate the criminal process's coping with the crushing backlog of cases.

As the judicially decreed right to counsel is dilated from just the felony trial,[1] the legislative response indicates that the constitutional obligation will be fulfilled by a large segment of the bar.[2] The necessity of a close familiarity with the intricacies of criminal procedure can hardly be overstated.

An excellent point of departure for related research is the two volume CRIMINAL PROCEDURE SOURCEBOOK. Its basic orientation follows the criminal process from arrest through extraordinary review with an occasionally surprising configuration in format explained in the editor's forward. The basic approach to each volume consists of edited opinions of important United States Supreme Court decisions with implications developed in adequately documented editorial notes, most of which are reasonably thorough. A hint of the rationale of this format is indicated by the editor's suggestion that the SOURCEBOOK might be used in a criminal procedure course. Whatever the purpose, such an approach could hardly be more appropriate for the

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1. *See, e.g.*, preliminary hearing, Coleman v. Alabama, 399 U.S. 1 (1970); line-up, United States v. Wade, 388 U.S. 218 (1967); and on appeal, Douglas v. California, 372 U.S. 353 (1963).

2. *See, e.g.*, Defense of Indigents Act, S.C. CODE ANN. § 17-281 (1969).

practitioner. In a field of law where each year's decisions alternatively develop and undermine those of recent vintage and with constant tension between federal and state judiciaries, even the most basic research requires more than black letter summaries. Were such a strictly black letter approach adopted, any work in such a volatile area of the law might well be uselessly dated at publication. Additionally, these incalculable variables preclude the utility of immoderate prediction.

The advantages of the SOURCEBOOK's sensible alternative of developing trends of state and lower federal court responses to important Supreme Court opinions is suggested by the recent case of *Harris v. New York*.[3] Its approval, for purposes of impeachment, of a confession which would be inadmissible in the prosecution's case in chief could hardly have been anticipated by even a close reading of *Miranda v. Arizona*[4] whose comments suggest such a statement's inadmissibility for *any* purpose.[5]

In editorial notes, following reproduction of the bulk of *Miranda's* majority opinion, the SOURCEBOOK develops issues concerning its retroactivity, and the meanings of "custody" and "unfocused". Additional areas studied include investigations, threshhold statements, the adequacy of warnings of rights, waiver of rights, tacit admissions, derivative evidence, successive confessions, interrogations by foreign authorities and by private parties, *Miranda's* impact, congressional reaction,[6] and the use for impeachment of inadmissible confessions.[7]

After attempting to reconcile the Supreme Court's former approval of the use of illegally seized evidence for impeachment[8] with its subsequently indicated skepticism about the effect of limiting

3. 91 S. Ct. 643 (1971).

4. 384 U.S. 436 (1966).

5. The *Harris* statement would have been inadmissible in the prosecution's case in chief for failure to comply with *Miranda* warning requirements; its voluntariness was not contested.

6. The Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. § 3501 *et. seq.* (1969), is frequently considered in the SOURCEBOOK; usually with the suggestion that while the underpinnings of a *McNabb-Mallory* type doctrine might be altered by congressional action, judicial supremacy could seem to render a constitutional case such as *Miranda* immune from congressional alteration.

7. Analyses of other effects of *Miranda* such as its impact on the independent viability of the *McNabb-Mallory* doctrine, Escobedo v. Illinois, 378 U.S. 478 (1964) and Massiah v. United States, 377 U.S. 201 (1964) follow reproduction of those opinions.

8. Walder v. United States, 347 U.S. 62 (1954).

instructions to the jury,[9] the SOURCEBOOK's modest attempt at prediction turned out to be incorrect in light of the recent *Harris* decision. However, while that prediction was dictated by a long list of state and lower federal court cases, the editors did cite *Harris* at the New York Appellate Division level[10] and discussed a related application of the "harmless error" rule; the reader would certainly have been alerted as to the possibilities.

Most aspects of criminal procedure are treated in a similarly thorough manner. Exceptions include the complete absence of editorial analysis of developments in the law of "stop and frisk" and the total omission of issues of adequate state grounds,[12] removal to federal courts and federal injunction of state prosecution.[13]

While use of the SOURCEBOOK would have been facilitated by inclusion of an index and table of cases in volume one, the reasonably detailed table of contents provides adequate entree. Periodic supplementation will be required to keep the work current but the binding precludes the use of pocket parts.

On balance the SOURCEBOOK is a modestly comprehensive guide to complex issues in a developing area of the law which will involve an increasing number of attorneys. It should prove a valuable tool for the experienced practitioner as well as for the neophyte attorney.

9. Bruton v. United States, 391 U.S. 123 (1968).
10. People v. Harris, 31 App. Div. 2d 828, 298 N.Y.S. 2d 245 (1969).
11. United States v. Baratta, 397 F.2d 215 (2d Cir. 1968).
12. *See, e.g.*, Henry v. Mississippi, 379 U.S. 443 (1965).
13. Perhaps this omission was in anticipation of recent limitations on the availability of such relief. *See, e.g.*, Younger v. Harris, 91 S. Ct. 746 (1971).