

Michigan Law Review

Volume 66 | Issue 2

1967

Sullivan, Hardin, Huston, Lacy, Murry & Pugh: The Administration of Criminal Justice; and Hall & Kamisar: Modern Criminal Procedure: Cases, Comments & Questions

John Kaplan
Stanford University

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Criminal Procedure Commons](#), and the [Legal Education Commons](#)

Recommended Citation

John Kaplan, *Sullivan, Hardin, Huston, Lacy, Murry & Pugh: The Administration of Criminal Justice; and Hall & Kamisar: Modern Criminal Procedure: Cases, Comments & Questions*, 66 MICH. L. REV. 413 (1967). Available at: <https://repository.law.umich.edu/mlr/vol66/iss2/11>

This Review is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

THE ADMINISTRATION OF CRIMINAL JUSTICE. By *Francis C. Sullivan, Paul Hardin, III, John Huston, Frank R. Lacy, Daniel E. Murray, and George W. Pugh*. Brooklyn: Foundation Press. 1966. Pp. 798. \$12.

MODERN CRIMINAL PROCEDURE: CASES, COMMENTS & QUESTIONS. By *Livingston Hall and Yale Kamisar*. St. Paul: West. 1966. Pp. xxii, 881. \$12.

One result of the avalanche of Supreme Court and lower court decisions on the procedural rights of criminal defendants has been the awakening of student interest in the administration of criminal justice. Instruction beyond the first-year criminal law course has blossomed in law schools throughout the nation, and criminal procedure is fast becoming one of the most popular elective courses in the law school curriculum. The experience at Stanford is not atypical. Until two years ago, criminal procedure was not regularly taught as a separate course, although, of course, some procedural issues were covered in the crowded first-year criminal law course and a few questions concerning the rights of criminal defendants were presented in the constitutional law and evidence courses. Two years ago, however, a criminal procedure course was offered which attracted forty-five students, and last year the enrollment was 140—nearly the size of the entire third-year class.

With commendable rapidity, considering the recency of interest in the field, the ever-alert law book publishing industry has provided teachers and students of criminal procedure with the two books of materials here under review. The two works, while covering in the main the same material, differ widely in outlook and in organization. *Modern Criminal Procedure* is much the more conventional in both these respects. It concentrates almost entirely on the constitutional areas, and groups its materials doctrinally. Thus, twelve of its seventeen chapters are clearly constitutional in focus. These include: "The Nature of Due Process"; "Arrest"; "Search and Seizure"; "Wire Tapping and Eavesdropping"; "The Right to Counsel"; "Police Interrogation"; "The Plea of Guilty"; "Trial by Newspaper"; "Double Jeopardy" and "Federal Habeas Corpus." Moreover, four of the remaining chapters deal with areas which in great measure are on the way to constitutionalization: "Entrapment"; "Bail"; "Discovery"; and "Vagrancy Offenses." Although the book's preoccupation with constitutional doctrine unnecessarily restricts its coverage of the problems of criminal procedure, it contains more than enough material to occupy fully a three-hour semester course. Indeed, the materials fairly bristle with difficult, unsettled, and fascinating issues.

Although the chapters of the Hall and Kamisar work vary in

quality, on the whole they are excellent. The two most important, "Search and Seizure" and "Interrogation," are not only complete but a model of succinctness and intelligent editing; they are replete with astute questions that point to future problems and a fine selection of the important comments. In fact, only the chapter on federal habeas corpus, which, considering its importance, is far too skimpy (it contains only *Fay v. Noia*, *Henry v. Mississippi*, and *Townsend v. Sain*), and the chapter on double jeopardy, which is quixotically organized, fall any distance short of the book's general standard of excellence. And, if at times the work strikes a polemical note, this is not only understandable but is actually an aid to its teaching.

Nor are Hall and Kamisar completely restrained by any narrow view of criminal procedure. Thus, their chapter entitled "Miscellaneous Problems," while still focusing on the constitutional aspects, covers summary punishment for criminal contempt, confrontation and cross-examination in post trial and quasi-criminal proceedings, and cruel and unusual punishment; similarly, another chapter, the only one with a primarily non-constitutional orientation, considers the ethical problems of the criminal defense attorney. Although it is arguable that both these chapters contain too much material not technically on criminal procedure, the fact remains that if this material were not taught in this course the chances are it would not be taught anywhere in the law school curriculum. On the other hand, as long as Hall and Kamisar have given us a casebook dealing with the constitutional aspects of criminal procedure, they should have included a chapter on speedy trial, which will probably be the next of our constitutional guarantees to undergo vigorous and important expansion in the next few years.

The Administration of Criminal Justice is considerably less conventionally organized than the Hall and Kamisar book. Rather than being arranged doctrinally, it is arranged chronologically, beginning with the arrest, continuing through the verdict, and culminating with a final chapter on "fairness." This format makes it much easier both to deal with a number of nonconstitutional areas and to use comparative material to good advantage. Indeed, with respect to the latter, the genesis of the book in the Ford Foundation's Comparative Study of the Administration of Justice makes itself apparent in the richness and pertinence of the foreign materials. The chronological rather than doctrinal orientation of *The Administration of Criminal Justice* thus seems to have the advantage of giving the student a picture of criminal procedure as an ongoing process as well as allowing him to assimilate a good deal of nonconstitutional material.

The authors' approach, however, is comparatively inefficient as a method of conveying constitutional doctrine which, after all, involves

the most difficult and rapidly changing areas of criminal procedure. For example, in chapter four, "Legal Controls on Arrests," we are presented with both *Monroe v. Pape* and a newspaper story which asserts that threats of suit are not effective to deter the police from illegal activities. It is well over a hundred pages later, in the chapter on "Method of Investigation," that the pros and cons of the exclusionary rule are examined. The chronological organization of *The Administration of Criminal Justice* has another disadvantage. Since the authors have not included a chapter on post-conviction remedies, they have used the "Method of Investigation" chapter to cover the substantive issue in *Townsend v. Sain* and to shoehorn in that case's far more significant habeas corpus discussion. Unfortunately, no substantive points were considered in *Fay v. Noia* and therefore the book makes no mention of that case. The chronological method, moreover, increases the likelihood of using materials which are taught in other courses, specifically evidence. Thus, the "Method of Investigation" chapter includes *Manguson v. State* (the effect of circumstantial evidence), *State v. Valdez* (admissibility of lie detector testimony pursuant to stipulation), and *State v. Lindemuth* (the admissibility of truth serum tests). Other examples are scattered throughout the rest of the book, for instance, *People v. Spitaliareli* (admissibility of a withdrawn plea of guilty).

Despite these shortcomings *The Administration of Criminal Justice* is a carefully and intelligently edited book. I find that, even from the doctrinal view, its section on free press and fair trial is better than that of Hall and Kamisar, and that its comparative materials are a valuable help throughout. On the other hand, as between the two I must come down on the side of *Modern Criminal Procedure* for two reasons: first, it is more efficient in communicating large areas of difficult doctrine in a relatively short (three hour) course; and second, although the two books were published less than a year apart, the later Hall and Kamisar work avoided the misfortune which befell *The Administration of Criminal Justice* in going to press between *Escobedo* and *Miranda*. (As if this were not enough, *Modern Criminal Procedure* already has a supplement, while *The Administration of Criminal Justice*, which needs one far more, does not).

While one cannot quarrel with the quality of either of these books, it seems to this reviewer that a criminal procedure course cannot fulfill its function unless it is far more closely integrated with the substantive rules of criminal law. The task of integration is obviously a difficult one, for, as these two books unfortunately demonstrate, we have not yet even completely solved the simpler problem of integrating the constitutional with the non-constitutional aspects of criminal procedure. On the other hand, we all know that our procedural rules greatly influence the types of substantive cases that

come to the attention of the courts, and it is equally clear that a great part of our procedural doctrine is the direct result of decisions on questions of substantive law. Indeed, it can be argued that only when the substantive and procedural law of crimes are considered together can we hope to make much headway in either.

*John Kaplan,
Professor of Law,
Stanford University*
