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## West Virginia Cases on Criminal Procedure

Charles P. Wilhelm  
*Harvard Law School*

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BOOK REVIEWS

WEST VIRGINIA CASES ON CRIMINAL PROCEDURE. By Frank E. Horack Jr. Morgantown, West Virginia: Mimeograph. 1933. Pp. xi, 318.

The law of criminal procedure is important to the law student. Its importance is increased by the fact that the attorney newly admitted to the bar usually starts his practice by handling defenses of persons accused of crimes as he is appointed by the court for that purpose; and the impression he then makes upon the presiding judge, members of the bar, jurors and persons present in the courtroom may be of much influence thereafter for his success or failure as a practicing lawyer. This is especially true of a state so predominantly rural as West Virginia, for in most of its counties bar members, their respective characteristics and abilities, are known personally throughout the county to most of the people living in it.

It is fitting that in the law school of a state university, preparing its graduates particularly for the practice of law in that state, the criminal procedure of the particular jurisdiction should be emphasized. Procedure seems to be peculiarly local in its nature, as compared to the broad principles of the common law; and one of the benefits a student in such a state university law school should receive, it seems to the reviewer, as compared to the training in law had at those institutions which are called "national" in scope, is an intimate knowledge of the *local* procedure, either civil or criminal. To meet this need it is difficult to envisage a collection of code and case material which would better meet the requirements of practical instruction in criminal procedure in West Virginia than the, as the author modestly calls it, "experimental collection of cases" gathered by him on this subject.

It is not often that even the preface of a book contains really valuable material, but this one is an exception in that regard. In it the author makes two points which will bear repeating again and again. One is that the *administration* of justice must be emphasized, — as compared, one can infer from the author's statement, with the rules, principles and standards of law in the abstract; and the other that the value of law review articles has been, in general, in active practice, placed far too low. While it must be conceded that decided cases are the primary authority, yet the

cases themselves may often be found most easily, grouped in the handling of a topic as presented in a law review article. If the practicing attorney does not value the law review article for its intrinsic value, he may well do so, at the least, for its worth as a bountiful source of authoritative legal materials.

The arrangement of the great mass of material represented by the over two hundred cases collected is pleasing and effective, and lends itself readily to use. An especially good point is the placing of appropriate code sections before the cases dealing with the items to be illustrated. West Virginia is one of the so-called common law states, yet there is so much of its law of criminal procedure embodied in statutes that the value of a study of the cases would be greatly impaired without the ready access to the necessary code sections provided for in this way. The treatment of the subject is thorough, and the whole field of criminal procedure is covered in the sixteen chapters into which the case book is divided. The last two chapters, only, deal with the actual criminal trial, which chapters are mentioned by the author in the preface as numbers XVI and XVII, apparently by mistake, the chapters being actually numbers XV and XVI. The arrangement of the contents into three parts, — Limitations on Prosecutions, Proceedings Prior to Trial, and Trial (Limited to Procedure Peculiar to Criminal Prosecutions) is logical and workable; and the numerous sections and subsections into which the chapters of the three large groups are divided makes all the case and code material readily available for use for instruction or in the practice. The treatment by chapters, sections and subsections is so complete and minute that lack of space prevents a more adequate description of it. The author is to be commended for the great effort which, it is apparent, he has devoted to the structure of the work.

The mechanical aids to the ready use of the material in the book, aside from the table of contents, as discussed above, are excellent. Easy access to the cases is provided by a complete table of cases, and to the pertinent code provisions by a table of statutes. Justice cannot be done this book without reference to the treatment of law review material, as set forth in footnotes wherever appropriate to the topic under consideration. It is exhaustive, and liberal use of the materials to which attention is there called cannot but greatly broaden the student's knowledge of the subject. The number of cases cited in the footnotes is also to be com-

mended, as aiding in the complete treatment of the point under discussion. There is no index to the book, but due to the complete treatment of the material therein contained in the Table of Contents the lack of one is not felt.

It is believed that this casebook will prove not only of value to law students as a means of instruction to them, but also to the attorney in general practice. An attorney using the book in his practice will have to note the caution given by the author in the preface, — that all the cases in the book are not the last authority on the particular point for which cited. With the aid of a good citator this difficulty is easily overcome, and the assistance upon questions of criminal procedure to be derived from the use of the cases in this volume will greatly outweigh that small drawback.

It is to be regretted that occasionally one has difficulty in making out a line or two upon a reading of the cases and of the notes, but this seems to be an inherent difficulty in turning out a book by the method used in presenting this one to the public, and in no place is the trouble so pronounced that it prevents one from using the book to good advantage.

The collection of law in this casebook upon criminal procedure in West Virginia is so complete and so excellent that the interested public may well look forward to a similarly complete volume, by the same author, upon the criminal law, — as distinguished from the law of criminal procedure, — of the state.

—CHARLES P. WILHELM.

Harvard Law School.

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GOVERNMENT BY JUDICIARY. By Louis B. Boudin. New York: William Godwin, 1932. Two volumes. Pp. xvi, 583, 579.

The extent of the power exercised by American courts over political and constitutional questions is appreciated by a scant few of our citizens. One may venture to suggest that the average lawyer has reflected little upon this important element in our political life, which his profession has, partly as advocates and partly as judges, brought to its present stage. Whether judicial review of legislation and the position of dominance which it has given the courts under our constitutional system is or is not desirable is a problem of solemn significance to the electorate, about which it should be fully and correctly informed.