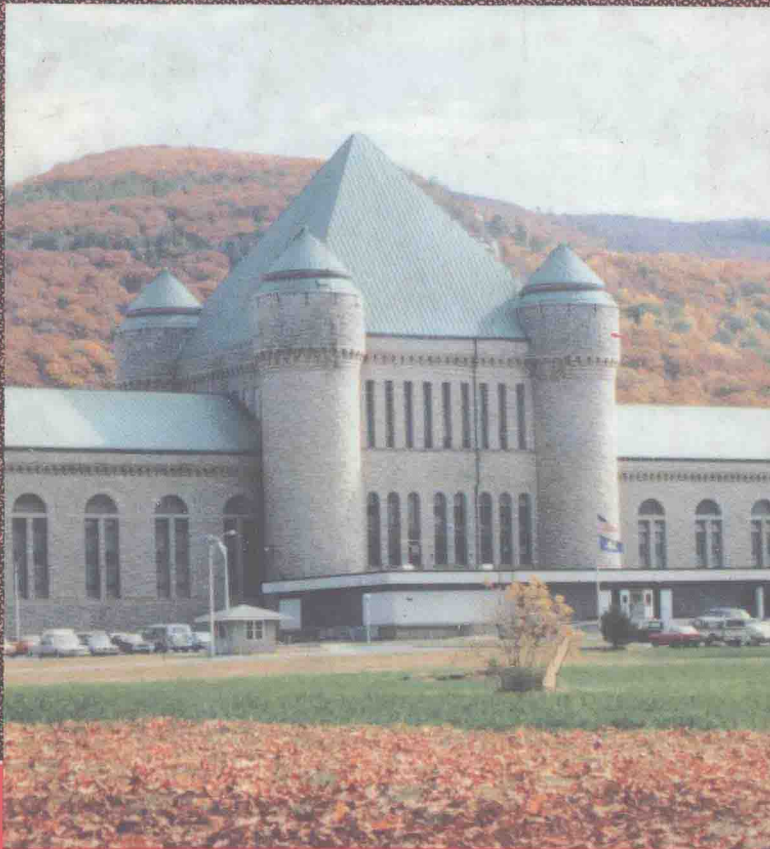




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CRIMINAL LAW AND PROCEDURE



DANIEL HALL

CRIMINAL LAW AND PROCEDURE

Daniel Hall



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FOREWORD

Since my appointment to the federal bench in 1979, I have witnessed many significant changes in the fields of criminal law and criminal procedure. The 1990s are likely to prove to be more turbulent than the 1980s. It is this dynamic aspect of the law which accentuates the importance of using a thorough and up-to-date text. *Criminal Law and Procedure* is such a textbook.

The year preceding the production of this book bore witness to many events which will prove to be of great consequence in criminal law. First, the United States Supreme Court changed not only in its membership, but in ideological balance. Second, and related to the first observation, a number of important decisions were rendered by that court. Daniel Hall has incorporated many of those decisions into this book, providing not only a complete analysis of the law, but one that is current.

In addition, Daniel has made this book interesting to read. His presentation of legal terms and review questions and problems will be extremely helpful to the student.

During his tenure with my court, Daniel proved to be an effective and energetic educator, whether working with his legal studies students or the court's interns. This enthusiasm and energy are found in *Criminal Law and Procedure*, providing the student and instructor with a thorough and easy-to-read text.

Gene E. Brooks, Chief Judge
United States District Court
Southern District of Indiana

PREFACE

This text is written primarily for the paralegal and legal studies student. However, it may be used successfully in any undergraduate criminal law class.

The text has been written with an understanding that criminal law and procedure may be taught as one course or two; that both associate- and bachelor-level students will be reading it; and that some students will already have a significant exposure to the law, while others will have none. With this understanding of the diversity of the programs and students enrolled therein, this book has been organized so that any undergraduate course in substantive criminal law, criminal procedure, or a combination of the two—whether used by two-year or four-year students—may successfully use this book.

The text is broken into two sections: criminal law and criminal procedure. Section 1, criminal law, contains eight chapters. Included in Section 1 are: two introductory chapters, *mens rea* and *actus reus*, crimes against person and property, parties and inchoate crimes, and defenses. In Chapter 1 the student is exposed to basic structural information. Federalism, separation of powers, and a special examination of the judicial branch are included. Chapter 2 introduces the student to criminal law itself, including such topics as sources of criminal law, the power of government to control behavior, and purposes of punishment. These chapters will be invaluable to the student who has had little exposure to the law. For the more advanced students, the instructor may wish to omit these chapters, in whole or part, from the required readings.

Section 2, criminal procedure, begins with a discussion of the history and impact of the United States Constitution on criminal procedure. The chapters discuss the pre-trial process, trial procedure, sentencing, appeal, and habeas corpus. The right to counsel,

interrogations and confessions, searches, seizures, and arrests are also examined. There are five chapters in this section. Two appendices have been included: The Constitution of the United States and selected excerpts of the Model Penal Code.

One complaint I have heard (and had) about other texts designed for paralegal students is the absence of cases. Cases serve an important function. First, they expose legal studies students to case analyses. Second, cases increase students' interest in the material because they involve real people who are involved in genuine conflicts. Most students are intrigued by this fact. Third, cases reinforce the legal principles discussed in the text. As such, well-edited case excerpts have been included. I considered many factors when determining which cases would be included, such as: how engrossing the facts were, the age of the case, readability, understandability, and clarity. In short, I selected the most recent, pedagogically valuable case I could find.

Should an instructor want to omit some, or all, of the cases from the students' readings, this may be done without loss of material, as the text stands alone. The cases simply illustrate the subject matter discussed.

I have included two question sections at the end of each chapter. For lack of better terms, one has been named "Review Questions" and the other "Review Problems." Generally, the questions sections require students to define terms or explain basic concepts discussed in the chapter. The problems sections require more of the student; that is, the student is required to apply facts to a legal problem.

The author wishes to extend his gratitude to a number of people who were helpful to him. First, to Jay Whitney of Delmar, who has been responsible for the writing of this book, from start to finish. Most of all, I appreciate the confidence he had in my ability. Thanks also to Glenna Stanfield of Delmar for her assistance in every way, especially for fielding all my calls and questions.

Thanks to the Hon. Gene E. Brooks, Chief Judge of the United States District Court for the Southern District of Indiana, for all of his assistance and for proving to me that a federal judge can be both compassionate and humorous, except while playing cards. Also, special thanks to Bob Katzmann for the encouragement and friendship he extended, and to P.T. for understanding why I had to miss the occasional film, philharmonic, or Sugar. The same is extended to Kevin for listening and to Professor Harold Norris of the Detroit College of Law for dedicating his life to the defense of civil liberties and the education of young lawyers.

Finally, for those who reviewed and commented on the manuscript:

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