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Virginia Criminal Procedure

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BOOK REVIEW

VIRGINIA CRIMINAL PROCEDURE. By Ronald J. Bacigal. Norcross, Ga.: The Harrison Company, 1983. pp. xi, 287. \$55.00.

*Reviewed by Murray J. Janus**

Professor Ronald J. Bacigal of the T.C. Williams School of Law has made a valuable contribution to the criminal justice system with the recent publication of this book. Not only is the book well-written, but it is succinct and of a size that will easily fit into a lawyer's briefcase to accompany him to court. The manner in which the book is written is such that it can be readily understood by laymen interested in the law or used as the text for a course on criminal procedure in law school or college, and yet the book is detailed enough and specific enough that its most valuable potential use is for the everyday practitioner of criminal law. The talent to serve all of these different purposes within the confines of one short book is unique, and Professor Bacigal is to be commended for it. No novice Virginia criminal lawyer fresh from law school should undertake to represent a citizen accused of a crime without having this handy book in his library.

The organization of Professor Bacigal's book follows a natural and commonsense order. That is, after his introduction, he simply tracks the chronology of a criminal case, starting with chapters on arrests, stop and frisk, search and seizure, followed by right to counsel, preliminary hearing, grand juries, pretrial motions, leading up to sections on the various aspects of the trial itself. Indeed, Professor Bacigal does not stop there; he also discusses sentencing and appellate review.

The chapters not only are logically set forth, but also are appropriately subdivided into readable sections. The section titles are set forth at the beginning of each chapter, so that the reader knows specifically what will be discussed. The footnotes are given at the end of each section, thus saving the reader the trouble of having to flip to the end of the chapter or even to the end of the book as is frequently the case in legal treatises and articles. This arrangement greatly enhances the reference value of the book. Another praiseworthy point is that the sections and chapters are

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cross-referenced. There is also a good combination of Virginia case law and the federal case law.

Perhaps one of the better aspects of the book is the index. A legal book is only as good as its index, and inadequate or confusing indices have been the subject of criticism from practicing lawyers for many books in the past, including the Virginia Code. That fault is not present here, for this index is handled well.

There are twenty-one chapters in the book. Professor Bacigal cites not only the most current Virginia law, but also applicable federal case law and constitutional law. The book reads well and is not only conveniently footnoted but well-footnoted. Certain areas of criminal law, such as search and seizure, are more complicated than others and Professor Bacigal does a good job of setting forth the law, even in these complex areas. Other areas of the book, such as the discussion of discovery, are less academic but more practical. In these areas, there are few cases; but the combination of the rules and the statutory law is set forth very well. There are other areas of the law, such as contempt, which are not dealt with often and are therefore probably unfamiliar to young practitioners; these areas are not only included but also handled well.

If there is one chapter in the book of more significance than the others, it is probably Chapter Four, which addresses search and seizure. Not only is this the longest chapter in the book, with the most subsections, but it comprehends an area of criminal law which is both one of the most complicated and certainly the most rapidly changing. As a matter of fact, by the date of publication, part of the book was, through no fault of the author, outdated by the Supreme Court decision in *Illinois v. Gates*.¹ The *Gates* case, as a practical matter, watered down the two-pronged test which had previously governed the issuance of search warrants based on tips and which had been articulated in the earlier Supreme Court cases of *Aguilar v. Texas*² and *Spinelli v. United States*.³ A supplement which has been written but not yet published adds the *Gates* case; but again, sometime during the current term, the Supreme Court could make the entire chapter obsolete by abolishing or strictly limiting the exclusionary rule. (Indeed, some legal scholars predict that abolition is exactly what the Supreme Court has in mind if the appropriate case comes along.) Regardless, Professor Bacigal handles the search and seizure chapter extremely well, given the problems inherent in the subject matter. His subsections cover all of the relevant areas and are easy to read and excellently presented. The case law includes the most recent Virginia cases, United States Supreme Court cases, and federal circuit court opin-

1. 103 S. Ct. 2317 (1983).

2. 378 U.S. 108 (1964).

3. 393 U.S. 410 (1969).

ions. Law review articles are cited where appropriate. As a matter of fact, Professor Bacigal is recognized as an expert on search and seizure within his specialty of criminal law.

All in all, the areas of Virginia criminal law and procedures have been the subject of too few treatises. Indeed, heretofore one of the few works which could serve as a primer for Virginia criminal law was *Virginia Model Jury Instructions*⁴ with its comments. By contrast, Professor Bacigal's book at times almost seems to be a "how to do it" book, especially when he writes on how to advise a new client.

In conclusion, the book is succinctly written and a welcome addition to the library of any practicing attorney. The problem with most criminal law books is that they are useful only until the next advance sheet comes out and are virtually outdated after a session of the legislature. Professor Bacigal has prepared to meet that problem and has already prepared his first supplement, although the book is only six months old. The continued publication and distribution of the supplements will be essential to allowing the book to maintain the excellent potential it already has shown.

Give the professor an "A" for effort and an "A" for result.

4. MODEL JURY INSTRUCTIONS COMM., VIRGINIA MODEL JURY INSTRUCTIONS: CRIMINAL (1983).

