

August 2015

Book Review: Justice Without Trial: Law Enforcement in a Democratic Society

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Recommended Citation

Hoffman, Allan S. (1968) "Book Review: Justice Without Trial: Law Enforcement in a Democratic Society," *Akron Law Review*: Vol. 1 : Iss. 1 , Article 7.

Available at: <http://ideaexchange.uakron.edu/akronlawreview/vol1/iss1/7>

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BOOK REVIEWS

JUSTICE WITHOUT TRIAL: *Law Enforcement in a Democratic Society*. By Jerome H. Skolnick. New York: John Wiley & Sons, Inc. 1966. Pp. 270.

It is a well recognized fact that the vast bulk of criminal convictions are obtained by inducing the accused to plead guilty. Consequently, the natural conclusion to be drawn is that American criminal justice is for the most part administered outside of the judiciary—hence the title of this book: *Justice Without Trial*. The work is an examination by a sociologist (narrower in scope than the title might indicate) into the operation of a city police department, and “. . . how those who are charged with enforcing criminal law in a constitutional democracy come to interpret rules of constraint—thereby giving these life and meaning—and to analyze the practical dilemmas they face” (p. vii).

The author's source material comes from an extensive study of the police department of “Westville, California” (statistically identical with Oakland) over the course of several years, during which Dr. Skolnick gathered his information as a “participant-observer,” accompanying and observing the police in the routine performance of their duties. The author also spent two weeks in a comparable Eastern city and briefly visited police in two other cities. Westville was chosen for the most comprehensive study apparently for two reasons: first, because it appears to be a fairly representative middle-sized city; and second, because “. . . Westville is generally regarded as a model of efficiency and modernity . . .” in “. . . the top stratum of American criminal justice administration” (p. 25). Thus the selection of Westville enabled Skolnick to confine his discussion of problems in police administration of criminal justice to those inherent in the American police system.

Since the sociological perspective is stressed, the book does not make specific recommendations, but only draws conclusions which the reader may then interpret according to his own values. The study's basic conclusion was summarized by the author as follows: “The police in a democratic society are required to maintain order, and to do so under the rule of law. As functionaries charged with maintaining order, they are part of the bureaucracy. The ideology of democratic bureaucracy empha-

sizes initiative rather than disciplined adherence to rules and regulations. By contrast, the rule of law emphasizes the rights of individual citizens and constraints upon the initiative of legal officials. This tension between the operational consequences of ideas of order, efficiency, and initiative, on the one hand, and legality, on the other, constitutes the principal problem of police as a democratic legal organization" (p. 6).¹

In other words, what our police departments face is a demand by the public that criminals be brought under legal sanctions, and a demand by the courts that constitutional rights be carefully protected while working towards that end. The result is a conflict between the popularly synonymous "law" and "order." The individual policeman who sees his task as the maintenance of order (and he is commonly trained to view any departure from the orderly and ordinary as potentially dangerous) and who receives pressure from his superiors to achieve a high "clearance rate," tends to regard the courts' demands that he always operate within the rule of law as an undue interference with the performance of his job. To use one of Dr. Skolnick's illustrations, when a police officer sees a white soldier and a negro girl enter a hotel, his immediate assumption is that an act of prostitution is about to be committed, and in the face of what is to him obvious criminality, constitutional restrictions which he must observe in order to obtain a conviction are frustrating. To presume innocence in the above fact situation seems to the policeman to be ignoring the realities which he encounters daily (pp. 202-203).

Although this is only one illustration of the approach taken by Skolnick in this book, it should serve to illustrate the method of attack. If the book is judged by the standard of what it actually is—a sociological study of the behavior of the police department of a representative American city—it is difficult to fault. The thoroughness of the author's research, the exceptionally effective style of writing, and the general soundness of the conclusions drawn, all combine to make this work a valuable addition to our studies of police processes and practices. Anticipating the most obvious criticism of the work, its failure to treat of several pertinent areas (such as the searching of dwelling houses and the police problems created by the homosexual), the author notes that ". . . case studies of the kind presented here

¹ (*Italicized in text*).

may meet the scientific demand for replication, while studies seeming more rigorous are frequently not redone. . . . We may confidently predict that this study will by no means be the last word on police" (p. 41).

ALLAN S. HOFFMAN

SEX OFFENDERS. By Gebhard, Gagnon, Pomeroy & Christenson. New York: Harper & Row, 1965. Pp. 875.

The expenditure of countless words dealing with sexual problems in the past three centuries indicates an almost compulsive Anglo-Saxon pre-occupation with this subject. Regrettably, however, our society's legal accomplishments in this area have not been as notable as our interest in the subject would lead one to expect.

Among all of the publications on sexual problems that have appeared, it was probably the Kinsey Report of 1948¹ that struck the most telling blow at censorship and made the greatest contribution toward relaxing the social and legal restrictions on public discussion of sexual matters. Out of the storm of acclaim, condemnation, and controversy which followed the publication of this 1948 volume, one unmistakable fact emerged—that a truly scientific approach to human sexual behavior could be developed.

There has been a long-standing interest in sex offenses and sex offenders, and with the growth of the behavioral sciences this subject has been given increasing attention. Articles have been written, legislatures have either revised old statutes or enacted new ones, and the news media have published numerous studies of sexual offenses.

Nevertheless, despite all of this coverage of modern sexuality, little is known about sex offenders. Because of this, the Institute For Sex Research of Indiana University, founded by Alfred Kinsey, has added another volume to its growing library of publications concerning human sexual behavior. Kinsey's protégé, Dr. Paul Gebhard, and his associates have, in their volume entitled *Sex Offenders*, compiled and published data in an attempt to determine whether persons who have been convicted

¹ Kinsey, *Sexual Behavior in the Human Male* (1948).