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## Book Reviews

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# BOOK REVIEWS

DECISION AT LAW. By David W. Peck. New York: Dodd, Mead & Co., 1961. Pp. vii, 303.

CORPORATION LAWYER: SAINT OR SINNER? By Beryl Harold Levy. Philadelphia and New York: Chilton Co., 1961. Pp. x, 175.

If you wish to gain an understanding of the fundamentals of your work, try to write a book that explains them to outsiders. If you lack time to write such a book, then read it. These two books deal with elements of the profession of law, one with the judge and the lawyer working to reach a decision, the other with the office lawyer averting controversy and the need for court decision.

The author of the first book, after years as a perceptive trial and appellate judge, has returned to practice with one of the firms highlighted in the second book. As judge and lawyer he has been intrigued with the process of application and development of the law, of which he was a part. Seeing court decisions as the core of law, he gives the uninitiated an insight into the legal process in action by following the development of the law through leading cases. The cases chosen begin before the cradle with pre-natal injuries. Continuing with a variety of the vicissitudes of life, they go on beyond the grave with estate taxes, life insurance, and circumstantial evidence on who killed whom.

Each chapter sets the general problem and shows how the law developed to meet it. "Between Two Houses" concerns the owner of the Campbell Soup Company who wanted to continue to live in New Jersey with his big business and low taxes, and his wife with their growing girls and the natural desire to move to the Main Line a few miles to the west. On his death both New Jersey and Pennsylvania claimed taxes on the whole estate and both won, a reminder of the plaintive title, "Death and Taxes Are Certain—But What of Domicile?"<sup>1</sup> Another chapter is written around Sandy McPherson and his famous Buick. With lawyer Brackett's aid Sandy recovered damages for injuries suffered when a wheel broke, and the opinion in the case made clear the heavy burden of care laid on manufacturers in our society.

The theme of the book, "the law becomes 'whatever the needs of life in a developing civilization require,'" brings to mind the notable lectures of the judge who wrote the opinion in favor of Sandy.<sup>2</sup> The book will be

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1. Tweed & Sargent, *Death and Taxes Are Certain—But What of Domicile?*, 53 HARV. L. REV. 68 (1939).

2. CARDOZO, *THE NATURE OF THE JUDICIAL PROCESS* (1921).

enlightening to pre-law students and other laymen, especially those who think of law as of technicalities all compounded. It will be entertaining and more to us already in law who so easily forget that law is always on the move and never faster than now.

The legal process in court is the focus of this book. Yet it does not overlook the all-pervasive work of the office lawyer who utilizes or foreshadows the law which his more conspicuous brother, the advocate, develops: "Contracts, rather than bread, are the staff of life. Behind the loaf of bread on the pantry shelf are a hundred contracts."<sup>3</sup>

It is with this other kind of lawyer that the second book deals, the office lawyer writ large. To quote Mr. Dooley, "No, sir, th' law is a diff'rent profission frim what it was when Dan'l Webster an' Rufus Choate an' thim gas bags used to make a mighty poor livin' be shoutin' at judges that made less."<sup>4</sup> In the contest of the saint with the sinner in the counselor to big business, the score is on the side of the saint because of the indispensable services to the economy:

Our contemporary credit-industrial economy of abundance could not have been fashioned without the brilliant imagination of the daring corporation lawyers of the 19th century who forged one device after another to lead the way, pressing far beyond the existing law.<sup>5</sup>

The obligations of the office lawyer are seen to be diverse. The client needs loyal and imaginative guidance in achieving his legitimate desires. Yet the lawyer will adhere to his own personal standards, and the public is entitled to candor on matters affecting it. As the volume also reminds, the opportunities of the corporate lawyer are greater and more complex as the clients become bigger, the government more active, and the public more demanding of a sense of responsibility to match the corporation's economic power. In our shrinking world international legal problems, say, with the Common Market, may become as common as interstate problems became when transportation developed in this country. In swiftly moving times it is no easier for the lawyer than for anyone else to see his position clearly, as Chief Justice Stone said a generation ago: "The changed character of the lawyer's work has made it difficult for him to contemplate his function in its new setting, to see himself and his occupation in proper perspective."<sup>6</sup> For vividness the book stresses the large corporate interests and their lawyers. Yet clients of every financial level need the same kind of thoughtful and imaginative services, which adjust the legal plans to the particular situations and opportunities.

The author, teacher as well as lawyer and administrator and philosopher,

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3. PECK, DECISION AT LAW 97 (1961).

4. LEVY, CORPORATION LAWYER: SAINT OR SINNER 15 (1961).

5. *Id.* at 26.

6. *Id.* at 137.

considers the education needed for lawyers. He would have the law schools aid the students to develop social sense in two complementary ways: first, through increased emphasis on practical problems; and second, through augmenting the case method by more materials drawn from economics and the social sciences, from jurisprudence and legal philosophy. He quotes a learned and acute historian of law: "The case method isolated the study of law from the living context of society."

The common purpose of these two books is to remind laymen and lawyers alike that the profession of law carries on its work in this living context of society.

ELLIOTT E. CHEATHAM<sup>o</sup>

CRIMINAL PSYCHOLOGY. Edited by Richard W. Nice. New York: Philosophical Library, Inc., 1962. Pp. 284.

This book consists of a collection of articles written by nine different authors. It is described on the outside cover as a "symposium" representing "a presentation of the application of modern psychological principles both to the courtroom and correctional settings." The various uses of psychology in the modern criminal courts is competently and interestingly set forth and analyzed within chapters entitled "The Psychiatrist's Role in the Administration of Criminal Justice," "Insanity as a Defense to a Criminal Act," "The Psychologist in Today's Legal World," "The Psychiatric Approach to Crime and Correction" and "The Future of Court Psychiatry." Broader presentations of the various problems of delinquent and criminal behavior, prevention and treatment are found in the introduction and in chapters entitled "Justice as a Psychological Problem," "The Definition of Mental Illness," "Treatment for the Criminal" and "Treatment of Offenders: The Family Influence."

Among the psychologists or psychiatrists contributing to this collection are Henry A. Davidson, Manfred S. Guttmacher, Joost A. M. Meerloo, Merrill T. Eaton, Jr., William H. Haines, and Robert E. Stephens, as well as the editor, Richard W. Nice. Two law professors, David W. Louisell and Henry Weihofen, round out the list.

Mr. Nice, the editor, has done a seemingly useful and unprecedented service in compiling within the covers of this well-balanced book so many different, but apparently authoritative, discussions of the multitude of fascinating problems which are grouped together under the title *Criminal Psychology*. Such a single collection will, no doubt, be welcomed by

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judges, lawyers, psychologists, sociologists and the like, who are professionally concerned with criminal law, and the prevention of crime, or the cure and custody of criminals. In addition, the book may prove of considerable interest to other persons who, as responsible citizens, are generally concerned with, if not directly involved in, these and related criminal and psychological problems. There is much human and sociological interest within these pages, along with the legal and psychological. What little overlap and inconsistency one finds in the writings of the nine different contributors does not appear to detract from the book as a whole. In fact, it adds to the unity of the book by giving the reader an impression of completeness and roundness through variety of presentation. Despite this variety the book does have a tone to it, a certain unity of point of view.

From the book, certain general conclusions emerge, such as the following:

The usual defendant in a criminal case has a disorder of will and character (as distinct from a disorder of the mentality), which can be characterized as resembling the infantile nature of a resentful or spoiled child. It appears to be the consensus that only those defendants should be entitled to any protection by the "insanity defense" who can prove to the satisfaction of the judge and jury that due to extreme disorders of thought and feeling they were not in fact responsible for their actions. The general belief of the contributors to this book is that even such irresponsible defendants should be convicted for their actions, but if found to be irresponsible, they should be committed to mental institutions instead of being sent to prison or executed. It is pointed out that, as a matter of practice, the "insanity plea" is predominantly used to avoid capital punishment and that, in some jurisdictions, the defendant who is able to prevail under such a plea is set free instead of being committed.

On the issue of irresponsibility ("insanity") or other psychological issues, there appears to be no sound reason why a medical degree should be a pre-requisite for qualification as an expert witness. In other words, competent psychologists, as well as psychiatrists, should be permitted to qualify as experts and give opinion testimony. It is further emphasized that mental illness, although a medical and psychological concept, has varying legal effects and therefore the expert witness should not be expected or permitted to determine the issue of guilt or innocence. The question of whether or not the illness was such as to satisfy the legal criterion or test is a legal issue on which the expert witness is not a competent or qualified judge. It is contended that courts and lawyers have had difficulty in separating the legal from the psychological issues and that uniform laws are needed to reform and unify the practice and procedure in our jurisdictions regarding the "insanity plea."

Only a small percentage (not more than 2%) of criminals are considered to be definitely psychotic. Psychiatrists and psychologists are generally con-

cerned more with the cure than with the punishment of the criminal. They regard our traditional and established legal system of punishment, by imposing jail sentences, as both unfair and ineffective. The need of immediate and certain punishment of the criminal, however, is not only recognized but it is emphasized as a deterrent and corrective. It is contended that such punishment rarely occurs in actual practice, but that only about one-fourth of the major crimes reported to the police are followed by convictions. The threat of a long-term prison sentence, on which our legal punitive system relies so heavily, is considered to be of doubtful efficacy from the psychological standpoint, because the typical criminal is relatively uninterested in the future, particularly the distant future; in any event, he usually operates on the assumption that he will not be caught. The principles of retaliation and intimidation as traditionally applied at penal institutions are seen by psychologists as prohibiting the successful reconstruction of the criminal. It is suggested that electro-shock treatment of criminals, or lobotomy operations on the brain, or even brain-washing, might be experimented with as means of changing the character of the habitual criminal; furthermore, it is felt that such correctives would be as humane as the currently accepted practice of long-term and permanent incarceration of dangerous criminals. Unqualified recommendation is made for a more humane public attitude toward all criminals in general, that commitments to penal institutions should be made for indefinite terms as to duration, and that there should be more emphasis on treatment, prevention and rehabilitation. It is suggested that the large penal institution should be replaced by comparatively small and personal, but well-staffed, institutions. It is pointed out that, paradoxically, mental institutions are even more restrictive than prisons.

Whereas the classical question of criminal psychology once was, "Is he responsible?" the more relevant question today appears to be "Can he be cured?" The psychopath or sociopath is still regarded as virtually incurable, although he is not mentally ill. His disorder is not of the mind but of the will and the character, that is, the personality. It is claimed that, almost invariably, the sociopath was an unwanted and unloved child. Other criminals and mental-defectives are the result of either having been spoiled as children or having been forced as children to attain a level of performance beyond their readiness and capacity. All such social misfits, therefore, are by and large the victims of the instability, or frustration and confusion, if not the "sickness," of the presumably "normal" persons who make up their environment.

This extremely interesting book concludes with recommendations of a man who, for a long time, had been the director of the Behavior Clinic of the Criminal Court of Cook County, Illinois. That clinic, representing either the state or the defendant, or both, in criminal proceedings, has examined

over nine thousand criminal cases in the past thirty years. It appears that such a clinic has served a very useful function and that other jurisdictions might do well to follow suit. Dr. William Haines, the experienced director of this Behavior Clinic, concludes his article with certain recommendations, which are of interest: (1) Legislation should be enacted to provide for a panel of psychiatrists (or psychologists) to be appointed by the court and to be available to both sides. (2) The hypothetical question should be abolished. (3) The expert witness should be permitted to testify along medical lines broadly and without being confined to the evidence introduced. (4) The "insanity issue" should be abolished. (5) Newspapers, radio, television, and magazines should not glamorize crime. (6) The examination of the accused by a psychiatrist should be considered as privileged communication.

Before concluding, it seems necessary to voice a serious criticism of the book as a whole: There is very little evidence of editing in the traditional sense of explaining, revising, correcting and annotating. Such traditional editorial functions would have been helpful to the reader. As it is, we are deprived of having available one man's single scheme or cohesive view of the entire field of criminal psychology, with basic definitions and boundary marks. One is curious to know, for example, why certain authors were selected from the many available and to what extent, if at all, other germane material has been omitted. Also, it would be helpful to have a brief summary of the qualifications of the author of each chapter in the book, giving not only his background but his standing among his peers. The longest chapter in the book, entitled "Justice as a Psychological Problem," is authored by a certain Joost A. M. Meerloo, M.D. There is no other description of this contributor, either outside or within the covers of the book. From internal evidence one can tell that this particular chapter obviously came from another book, but the name of that other book is not given. Furthermore, neither the editor nor any of the other co-authors refer to Dr. Meerloo or to any of his other writings. Some information regarding the qualifications of Dr. Meerloo would be desirable, not only because his chapter is the longest in the book, but also because the scope of this chapter extends far beyond matters which are within the usual competence of a medical doctor. Many varied and controversial subjects in the realm of jurisprudence are covered in an interesting and provocative manner and with innumerable dogmatic statements and seemingly unsupported generalizations. Simply put, the fact that Dr. Meerloo is an interesting and provocative writer is not enough. He does not appear as such a well-known figure that his statements should be taken on faith; and any reasonably curious and cautious reader would appreciate being referred either to some citations of authority, or else to some information as to the

stature or reputation of the personage from whom so many sweeping generalizations emanate.

J. PASCHALL DAVIS\*

SYMPOSIUM ON THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959. Edited by Ralph Slovenko. Baton Rouge: Claitor's Bookstore, 1961. Pp. xlv, 1237. \$20.00.

This *Symposium* is a big book. It spans more than twelve hundred pages and contains the comments of more than a hundred writers. The voluminous quality of the work is appropriate, for the statute which the book is designed to explain is of major importance to the millions of workers who belong to labor unions, to their employers and to the attorneys who represent both groups. This statute (which we will refer to as LMRDA) is important not only because of its own immediate effect, but also because it represents a much greater encroachment into the internal affairs of unions than the Congress had previously approved, an encroachment which having been begun may prove difficult to limit.

The essays in this symposium volume perform two principal functions. They provide an exposition of what the statute says and does, largely by pointing out how the previously existing law has been changed. And they attempt to evaluate the statute, both by analyzing the probable effect of various provisions and by discussing the need (or lack of need) for such provisions. This is not to say that any one essay can be pointed to as totally expository and another as critical; indeed most of the articles perform both functions at once.

Most of the exposition in the book revolves around the history of organized labor and the legislative background of LMRDA. This would necessarily be true since the cases interpreting LMRDA are just now reaching the reporters in any number. This of course limits to some extent the value of the book, for even the most interesting speculation cannot replace the forcefulness of court decisions. By and large, however, the authors have done their best to make their essays as concrete as possible and to support them with good research notes.

The writers have been chosen with obvious care in a conscious attempt to provide a balanced presentation. They reflect diverse perspectives. In the initial section of the book, for example, one finds commentaries by such contrasting personalities as Senators Barry Goldwater and Wayne

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Morse and Congressmen Robert Griffin and James Roosevelt. The interplay that results is increased by the practice of the editor of inviting representatives of the labor viewpoint to write short comments on the essays by management authors and vice versa. This combination of full-length essays with shorter comments is often remarkably helpful, since the shorter comment may point up the debatable theses of the longer article or call attention to additional factors which the original writer did not think important enough to include. For example, a reading of the essay on election requirements by Fred Cassibry (p. 496) and the comments by Henry Mayer and Harold Katz which follow it will give a well-balanced view of the potential vices and virtues of title IV of LMRDA. Cassibry finds the mechanical requirements of the law confusing and excessive; he points out the possible pressures on union time and money which may result. Katz, on the other hand, questions Mr. Cassibry's "unjustified hostility to title IV," and submits that even if there is language in the title which might permit unjustified intermeddling in union affairs by government officials, such a possibility is remote under the regulations thus far adopted by the Secretary of Labor.

The book is organized along the lines of the statute itself. The first section following the introduction is entitled "Congressional Views of LMRDA" in which a number of the members of Congress discuss their support of, or opposition to, the various parts of the act. Following this, the volume is divided into sections which correspond in general with the titles of the act. The dimensions of the various sections vary, as one would expect, according to the size and complexity of the title being discussed.

The last two sections of the book provide an overview of the statute as a whole. The penultimate is entitled "LMRDA in Colloquy"; this is a transcription of a conference on titles II, III, VI and VII held at the Tulane University School of Law. The vigor of the discussion fortunately survives the translation into print, although at times one is aware of disturbing disjointedness. The closing section of the book, "Summary Evaluations of LMRDA's Impact," should provide some discomfort to those who must practice under LMRDA, for the three authors chosen to prepare these comments offer scant praise. Benjamin Wyle, a New York attorney, writes there: "If a weak, chaotic labor movement is what the sponsors and supporters of LMRDA desire, their aim is short-sighted and not directed toward their own best interests nor the best interests of the country." Professor Carth Mangum of Brigham Young University states a few pages later: "[O]ne can give the Labor-Management Reporting and Disclosure Act only the negative praise which all too often is par for the course in public labor policy: It has not done any particular harm." But perhaps the least encouraging comment of all is a terse sentence in the essay by Professor Chester A. Morgan of the University of Iowa with which the

book closes: "This law may well prove quite difficult to enforce and cumbersome to administer, and, hence, it may fail to accomplish what is expected of it." On the whole, however, Professor Morgan is more optimistic than many, and one is tempted to share his hope that one result of the law will be at least "a lesser degree of corruption and racketeering" in labor-management relations.

In sum, one must say that the greatest value of this book lies in its comprehensiveness and balance, the outgrowth of the editor's willingness to allow both labor and management spokesmen to speak fully about each section of the statute. The volume's weaknesses correspond to its strengths; the book is too often repetitious and, as a result, sometimes tedious and dull. On the whole, however, it is a good book, one that will be of value to the lawyer who wishes to plumb the background of LMRDA and indeed to all those interested in this venture by the federal government into the details of union operation.

ROBERT N. COVINGTON\*

HANDLING ACCIDENT CASES, Vol. 3. By Albert Averbach. Rochester: The Lawyers Co-operative Publishing Company, 1960. Pp. 716.

Some time ago I reviewed in these pages the first two volumes of this treatise. These the author has now supplemented with a third, which makes an already excellent work even more useful. The present volume deals primarily with two areas, both highly specialized but of extreme importance to the practitioner handling personal injury negligence cases. They are medical malpractice and products liability, the major portion being devoted to the former. In addition, there are two appendices, one on the "collateral source" rule (that special damages are recoverable even though mitigated by contributions from a collateral source) and the other upon the defenses of subjective complaints and malingering. As usual, the author's conclusions are well documented, and the volume contains a wealth of useful material for the practicing lawyer. It is indeed a welcome addition to Mr. Averbach's earlier publication.

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