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# Book Reviews

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# BOOK REVIEWS

EVIDENCE OF GUILT: RESTRICTIONS UPON ITS DISCOVERY OR COMPULSORY DISCLOSURE. By John MacArthur Maguire. Boston: Little, Brown & Co. 1959. Pp. xi, 295. $12.50

As its subtitle indicates, this book deals with the legal restrictions upon the discovery or compulsory disclosure of evidence of guilt. It begins with an enlightening outline of the scope and method of treatment of the subject matter and in the ensuing four chapters examines in detail the law governing the privilege against self-incrimination, "involuntary" confessions, the McNabb-Mallory doctrine and illegally obtained evidence. Each chapter is a complete unit, but an informative scheme of cross-reference makes the combination an effective comparative study. The table of contents reveals the analysis of the subject matter of each chapter, indicating the subordinate problem presented in each paragraph. There is a table of cases and of statutes including rules of court, and of secondary authorities only a few of which precede 1950. The book is well printed on good paper and legible without eye strain. The publisher has done a good job.

The author is one of the most competent scholars in the field of evidence; his knowledge and understanding of the judicial decision and opinions and his familiarity with the writings of his contemporaries have rarely, if ever, been equalled, and never surpassed. During more than a third of a century he has read every judicial decision in evidence published or available in this country. Consequently, he has personally observed the development of the law regarding the subject matter of this book and has considered both the theoretical value and practical operation of the doctrines evolved and currently applied.[1] These restrictions upon the revelation of the truth, as he points out, have recently been and still are the subject of intense investigation and heated debate. Therefore, in this book he has dealt principally with comparatively recent decisions. But he has done so against his background of adequate knowledge and experience. And he has not hesitated to indicate his own opinion upon the issues presented, whether or not it harmonizes with judicial opinions or those of the commentators for whose learning he has great respect. And he has been entirely frank in exposing the need for reform and at times his uncertainty as to the wisdom of some proposals.

The text, like all his other writings, is a demonstration of his capacity to express himself accurately in understandable, grammatical

1. Of course the author does not say so in this book, but this reviewer makes these assertions after some 25 years of close association with him as a member of the faculty of the Harvard Law School and as a co-editor with him of casebooks on Evidence.

English. When he is in doubt, he does not purport to be certain. Nor does he torture a judicial opinion or decision to make it seem to say what he would like to have it say. The cases cited for a statement in the text give it the support that he asserts for it. The footnote citations to which he appends a brief description or an explanation reveal a critical analysis of the case.

In a word, this is an excellent book in plan and execution. It is no compilation made up from copies of all pertinent headnotes furnished by the publisher. It is a good sample of the handwriting of Professor John M. Maguire. It is in full measure what it purports to be. In the final chapter he says:

> The purpose of this book is far less to accomplish reformative change in the main protections legally afforded individuals and other persons against overwhelming governmental pressure in determinations of guilt than to explain the present form and effect of those safeguards. Wise reform of social restraints can occur only after clear, just, and comprehensive statement as to what they are and how they work. . . .
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> Everybody who has tried his hand at even the clearest betterment of that part of the law of procedure which deals with the manipulation of evidence, whether on a broad sweep or in particular details, realizes sadly that the task is almost incredibly difficult. It calls for the power of Hercules, the patience of Job, and the persistence of Jacob wrestling with the angel.

He contents himself with offering a few suggestions to anyone who would undertake such a task. They emphasize some basic principles to be constantly borne in mind. The study of this book is highly recommended to every lawyer and student interested in the protection of the individual against overzealous representatives of government, state or federal. It makes clear the present condition and trends of the law, exposing its defects as well as its virtues. It is recommended also to those who have a correlative interest in preventing the abuse of legal and constitutional safeguards as a means of doing unmitigated injury to what they are designed to preserve and what we are pleased to characterize as "implicit in the concept of ordered liberty."[2]

EDMUND M. MORGAN*

THE VOICE OF MODERN TRIALS. By Melvin M. Belli. San Francisco: The Belli Foundation, 1959. Album of Three Long-playing Record-

2. Palko v. Connecticut, 302 U.S. 319, 325 (1937) (Cardozo, J.).

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These three records, which take more than two and one-half hours to play, contain Mr. Belli's opening speech to the jury in a wrongful-death case arising out of a grade-crossing collision in Kentucky; his closing speech to the jury in a California courtroom in a personal-injury case involving Maureen Connolly, the youthful tennis champion; and his closing speech to the jury in another wrongful-death case tried in California which involved the crash of a helicopter, in which liability was admitted. In all of them he speaks as counsel for the plaintiff.

The first record commences with a seven-minute introduction by Mr. Belli, in which he deprecates the lack of proper teaching methods with respect to the trial of cases, and suggests that this first album, in which he presents an opening statement and two arguments to the jury, is the first in a series of forthcoming recordings which will be made by contemporary "great trial lawyers." This vocal preliminary statement is supplemented by a written two-page statement which is a part of the album itself.

It is interesting to listen to Mr. Belli's voice as he speaks to the jury in his calm, matter-of-fact way. I thought his opening statement was the best of the lot, although some of the things which he said in it might be objected to in a Pennsylvania courtroom. The argument in the Connolly case appears to be incomplete. After listening carefully, I still do not know just what caused the accident or what particular physical injuries Miss Connolly suffered. In this case the plaintiff asked the jury for $200,000 general and special damages, plus $65,000 for punitive damages, and wound up with a $95,000 verdict. The argument contains very little analysis of the liability evidence and no satisfactory analysis of why punitive damages should be asked for, let alone awarded. I do not consider this speech to be an outstanding example of a high-grade closing argument. For a teaching tool, the short introductory statement preceding this closing speech should have been more explanatory of what was really in the case and what was considered in preparing the argument.

In the closing speech in the Allen case Mr. Belli presents the argument he made to convince the jury why the young widow and the two small children of U. S. Navy Commander Allen, who was thirty-six years old when he was killed, had suffered $450,000 pecuniary damages as a result of his death. Much of Mr. Belli's mathematics is presented to the jury with the use of a blackboard and the figures are deeply impressed upon the jury by repetition of amounts and by seeing the blackboard. In a state such as Pennsylvania the greater part of Mr. Belli's argument would not be permitted at all, and the

first mention of a demand for $450,000 would result in a mistrial. There were various apparent fallacies in the argument, but the jury brought in a verdict of $215,000.

These are all interesting talks to listen to, and the ability to play them back and recheck on certain portions of them gives an advantage which is not present when a lawyer listens to another lawyer's speech in a courtroom. These are good arguments, and the verdicts show that they were effective arguments, but they are no better in quality than the arguments which are being made regularly in Philadelphia courtrooms, for example, by any of the leading lawyers of the trial bar. Indeed, I have heard quite a number of arguments which I believe were much superior in quality to the arguments perpetuated in these recordings.

The album purports to have been made for the purpose of teaching lawyers and students how to make a good opening statement and how to make a good closing argument. From the standpoint of teaching it would be helpful to have a quite different type of introductory statement explaining why certain things were presented as they were, what counsel was striving for in the organization of the speech, and why some things were purposely left unsaid.

One leaves this album with mixed feelings. One suspects that the primary purpose of the album is not so much to educate a lawyer how to make a speech to the jury as to educate him concerning Mr. Belli and his accomplishments. In the spoken introductions and in the written preface to the records there is emphasis and re-emphasis of the amounts of the large verdicts in these cases; of the fact that the Kentucky verdict "was the highest wrongful death award in Kentucky"; of the fact that in the Allen case, with its $215,000 verdict, the highest settlement offer had been $65,000.

Mr. Belli has long stressed the use of demonstrative evidence, and the two-page printed preface in this album contains eight pictures, six of them showing Mr. Belli, and the text mentions the name Belli nineteen times. The preface tells us "Layman, lawyer and law student, too, may now hear, outside the courtroom and off the lecture platform, the familiar voice of one of America's greatest trial lawyers. In this and other albums he recreates the cases that have made him and his techniques world renowned." We are further told that his books "are the American trial lawyers' classics," that "the world is his courtroom: Besides his San Francisco and Los Angeles offices he has offices in Tokyo, Japan, and Rome, Italy." The reader is also informed that "Though in some court, in some city, almost every day, The King of Torts spends as much time in, and can find his way about, the law

library as well as the courtroom." A beginning prefatory statement describes him as "San Francisco's master of the courtroom, 'The King of Torts', MELVIN M. BELLI."

After reading this modest appraisal, I hear the trumpets bray in "Iolanthe" and recall the line, "Bow, bow, ye lower middle classes." In my mind's eye I see Prosser and Seavey and Pound and James, and Young B. Smith and Leon Green, and the ghosts of Bohlen and Pollock—to mention just a few—making proper obeisance to The King without a peer.

The preface makes it clear that Mr. Belli has no use for "old ways" of trying cases and appraising lawyers. It may be that among the things which Mr. Belli regards as obsolete "old ways" is Canon 27 of the Canons of Professional Ethics, and particularly the last sentence thereof, which says: "Indirect advertisements for professional employment, such as furnishing or inspiring newspaper comments, or procuring his photograph to be published in connection with causes in which the lawyer has been or is engaged or concerning the manner of their conduct, the magnitude of the interest involved, the importance of the lawyer's position, and all other like self-laudation, offend the traditions and lower the tone of our profession and are reprehensible."

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GOVERNMENT AND PUBLIC ADMINISTRATION. By John D. Millett. New York. McGraw-Hill Book Co. 1959. Pp. x, 477. $7.95

This volume by the President of Miami University who was formerly Professor of Government at Columbia is really two books. The first, consisting of pages 3 through 462 is an excellent survey of American government with emphasis on the federal level which would admirably serve as a text in an undergraduate course in political science or for reading by one who never had or who has forgotten undergraduate training in political science. These pages are truly responsive to the declaration of Justice Holmes: "And it seems to me that at this time we need education in the obvious more than investigation of the obscure."[1] President Millett writes with a broad brush, and although one suspects that the manuscript was virtually completed while he was at Columbia, one can be confident that teaching a course with this book as the text would be a genuine joy.

The second portion of the volume, pages 465 through 477, is a brief

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1. Holmes, *Law and the Court,* in COLLECTED LEGAL PAPERS 292 (1952 reprint).

but stimulating essay exploring the conditions required for a responsible bureaucracy. One may well agree that "the challenge is whether the institutions of our government are adequate to make the power of large-scale public administration politically responsible" (p. 465) or, perhaps only stated another way, "we have then only the choice of government with large-scale administration which is politically responsible or government by commissars." (p. 475) While we can rejoice that "the constitutional doctrine of responsible bureaucracy in our scheme of government . . . has been realized in practice" (p. 475) or again, "our constitutional system possesses the instrumentalities for adequate political control of bureaucracy" (p. 477), the author neither states nor explores the cognate problem of the extent that our bureaucracy can solve the problems which are set before it now and those that will likely arise in the years to come. One can well regret that President Millett did not extend his essay to examine this equally challenging question.

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