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Book Reviews

William F. Zacharias

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BOOK REVIEWS

AN INTRODUCTION TO CRIMINAL JUSTICE: Text and Cases. Orvill C. Snyder. New York: Prentice-Hall, Inc., 1953, Pp. xvi, 776.

ADMINISTRATION OF CRIMINAL LAW. Ernst W. Puttkammer. Chicago: The University of Chicago Press, 1953. Pp. vii, 249.

With the passage of time, publications intended for use by law students appear to have shifted from one extreme to the other. Early case-books contained little beyond selected reported decisions, out of which, by struggle and effort, students were expected to deduce applicable or controlling principles composing the body of the common law. Later works, with an eye to universal appeal, added footnotes of the catalog variety, tabulating the pertinent decisions of all jurisdictions, so that the student, whether from Maine or California, could prepare his own gloss for local use. Still later, explanatory footnotes were often used, amplifying upon the reported cases, intended to aid the novice in his effort to achieve understanding or to deal with side issues. The impact of statute law called for still further revision and supplementation in teaching materials, but the final step came with the publication of "materials," as well as cases, either to furnish a more comprehensive picture or to serve as an introduction to those problems handled in the selected cases. It has, however, been left to Professor Snyder to achieve the penultimate step, for his new book, designed to instruct the student in the basic principles of criminal law, consists more nearly of textual introduction and description than it does of selected cases.

If the book were to be shorn of the approximately one hundred illustrative decisions reproduced at length therein, each so labelled as to remove all elements of mystery, it could, more accurately, be designated as a text. Those who still believe in the "sink or swim" method of teaching will have little use for it. Others, not so drastic in their teaching approach, may find it useful but may have qualms as to whether beginning students will, from so much spoon-feeding, develop that toughness of mind which must be the concern of first-year instructors, particularly those charged with drilling students in legal method as well as the responsibility of providing instruction in basic courses. Except for these criticisms, Professor Snyder's work possesses an excellence beyond that normally found in books prepared for schoolroom use.

One area has, however, always been marked for attention, not only in the discussion of works bearing on the field of criminal law but also in the reports of bar association committees and the like. It has to do with

the matter of procedure in criminal cases. The distaste displayed on the part of many lawyers when asked to appear in court on behalf of persons accused of crime, often rationalized on the ground that the attorney prefers not to associate with such people, not infrequently stems from the fact that the civil lawyer, adept though he may be in the handling of civil trials, often feels a sense of loss when faced with the distinctive procedures utilized in a criminal case. Too frequently the real fault lies in the fact that many law schools, in circular fashion, seize upon this anticipated lack of interest as justification for giving only passing attention to criminal procedure. If that is not the source, then the fault lies in the fact that many casebook authors, from much the same motive, furnish only a modicum of material on the point. Professor Snyder's book, in this respect, does more than most others, but it still falls short of providing the full training the student should receive.

There is at hand, fortunately, still another book which can serve to fill the gaps. Professor Puttkammer, long a noted expert in the field of criminal law, through his engaging study entitled "Administration of Criminal Law," has now provided a sufficiently comprehensive account of a criminal case, from inception to conclusion, as will serve to supply all the knowledge every but the most exacting student would wish or expect to acquire short of entrance into actual practice. Written for the benefit of the interested layman as well as the student, but with thought in mind for the practicing lawyer who normally has little professional contact with the criminal law in operation, the book makes no pretension of being a technical work of the type expected from the customary legal text. It does, however, provide answers for most of the issues raised in the administration of criminal law.

One experienced in the philosophy behind this segment of law might be inclined to skip the first twenty-odd pages, although they do provide a well-stated commentary on the several theories advanced to support punishment for crime. The balance of the book should, by contrast, receive close attention, not because it is difficult to read for actually it is most lucid in its style but because, as is true with any condensed account, practically every word has been made to count. Those few digressions which do appear afford welcome relief against this need for close concentration. As the book contains both descriptive and analytic passages, it permits the author an opportunity to express his own ideas about some reforms which well could be made in an area of law long marked by a degree of irrational technicality. His thoughts on that score would alone make the book worthy of attention. The balance of its contents, therefore, represent a bonus originating from a long-distilled teaching experience.

CURRENT TRENDS IN STATE LEGISLATION 1952. Legislative Research Center, University of Michigan Law School. Ann Arbor, Michigan: University of Michigan Law School, 1952. Pp. xvii, 580.

Through an explanatory preface to this book emphasizing the need for organized study of contemporary statutes, state constitutions, and other forms of "written" law, Dean Stason describes the formation, development, and activity of one of the most significant institutions recently created to work in an area of law where opportunities for effective service are legion. Professor Estep, Director of the Legislative Research Center, in another preface, amplifies that description with a delineation of the purposes, methods, and objectives of the Center and its personnel, from the mere statement of which it is apparent that, over the years, a substantial void in the literature of the law regarding state statutory enactments will be filled. Specifically, it is the promise of the Center, not necessarily annually but at least periodically, to do much the same thing for the realm of statute law as has been done, in the past, with respect to legal developments accomplished by the courts.¹ The emphasis, however, is not to be simply along the line of a reportorial statement as to statutes enacted or amended but is, rather, to be directed toward the production of critical analyses in those areas where legislation may be needed, or with existing statutory attempts intended, to fill notable deficiencies in private law. Written for legislators who must consider the need for, as well as the form of, statutory proposals and for lawyers who will have to advise clients who may be affected thereby, these studies in current trends in legislation should prove to be a most effective tool in the promotion of reasonableness, if not of uniformity, in written law.

Turning to the current volume, the first in what it is hoped will be an extended series of equally worthy successors, it may be noted that eleven topics here chosen for current study, involving the reproduction of an equivalent number of valuable monographs by six different authors, range through such wide-spread areas as to denote that neither issues of geography nor of relative importance will be permitted to reduce the series below the rank of national, if not even of international, interest. Aspects of tort law, family law, procedural law, corporation law, mortgage law, trust law, and of evidence law here considered serve to demonstrate that the Legislative Center will be catholic, to say the least, in its selections, while the treatment accorded to legislation originating in such diverse states as North Carolina, Montana, New Jersey, and New York

¹ See, for example, any of the recent volumes of *Annual Survey of American Law*, prepared by New York University School of Law, written at the national level; the December issues of the *CHICAGO-KENT LAW REVIEW* for the last fifteen years, for changes in Illinois law; and comparable surveys published in the law reviews issued in a number of other states.

reveals that issues of narrow parochialism will not be allowed to mar the output of the Center's personnel.

Examination of these monographs also discloses that there is much at hand which should concern the Illinois lawyer. Does this state, for example, have adequate statutory coverage for the problems involved in defamation by radio;² for notice with respect to the approval of the accounts of trustees over common trust funds;³ for administrative enforcement of civil rights measures;⁴ or in relation to the protection of the rights of dissenting minority shareholders,⁵ especially with regard to the conduct of derivative suits or allocating the burden borne by the director in conducting a successful defense?⁶ Further study will reveal that the recently adopted statute designed to compel the defaulting and non-resident parent to bear the cost of support is far from complete;⁷ that the regulation concerning bank deposits made in trust⁸ is woefully inadequate; that reliance on judicially developed doctrines regarding the handling of interpleader suits⁹ or in the application of a discretionary policy concerning *forum*

² The pertinent section of the Illinois Criminal Code, reputedly enacted because a careless master of ceremonies in a Chicago night-club once broadcast the statement that a prominent public official was present at a ring-side table when he was actually home in bed, would appear to be inadequate, not only with respect to civil liability but also for its relation to defamation via television, since it is confined to malicious defamation by means "of what is commonly known as *the radio*." Ill. Rev. Stat. 1951, Vol. 1, Ch. 38, § 404.1. Italics added.

³ Contrast Ill. Rev. Stat. 1951, Vol. 1, Ch. 16-1/2, § 60, with the discussion of the Mullane doctrine, growing out of a comparable New York statute, to be found beginning at page 33 of the book under review.

⁴ Ill. Rev. Stat. 1951, Vol. 1, Ch. 38, § 125 et seq., places enforcement in the hands of the courts. The provisions of *ibid.*, Ch. 29, § 17, bearing on discrimination in connection with public contracts, and § 24a, as to defense work, are likewise limited in character.

⁵ There is a noticeable lack of stimulus to good-faith negotiation to arrive at a "fair value" for the dissenter's shares in the provisions of Ill. Rev. Stat. 1951, Vol. 1, Ch. 32, §§ 157.70 and 157.73, as well as an absence of coverage regarding the manner of distributing the burden of costs in suits based thereon. The discussion of the right of the dissenting shareholder to appraisal, beginning at page 145 of the book, demonstrates the existence of many other flaws.

⁶ See note in 29 CHICAGO-KENT LAW REVIEW 344-8 on the case of *In re E. C. Warner Co.*, 232 Minn. 207, 45 N. W. (2d) 388 (1950), for one method of handling this problem.

⁷ Ill. Rev. Stat. 1951, Vol. 1, Ch. 68, § 50 et seq., enacted in 1949, does not provide for enforcement of the non-resident child's obligation to support an indigent parent, nor does it permit a public agency, on subrogation, to secure reimbursement for money advanced to a dependent person.

⁸ *Ibid.*, Vol. 1, Ch. 16-1/2, § 23.

⁹ A crucial defect in relation thereto, insofar as it affects jurisdiction over a non-resident claimant to the fund, may be noted in the monograph entitled "Recent Legislation Designed to Eliminate Double Liability," appearing at pages 523-60.

*non conveniens*¹⁰ may be less than wise; and that the present limited statute regarding the giving of mortgages to secure future advances¹¹ might well be expanded. The discussion relating to the use of photographic copies of business records as evidence, in lieu of the originals, also opens up interesting vistas concerning proof in civil cases.¹²

Comment with respect to Illinois could readily be duplicated for practically every state in the union. Armed with material of the character to be found in this current survey, legislators and lawyers everywhere should be capable of dealing more intelligently with such matters as the constitutionality, the effectiveness, or the basic wisdom in statutory proposals; drafting bodies should be able to phrase enactments in more comprehensive or appropriate language; and schools should be in a position to do a much better job in the conduct of courses on legislation. The plaudits of the legal profession, in all its branches, should, therefore, be extended to Dean Stason and his colleagues for undertaking to do a job which sorely needed to be done and for initiating the project with a display of ability which, despite apprehensions concerning sailing over uncharted seas, speaks highly of the careful planning, extensive research, and excellent judgment revealed in these collected papers.

W. F. ZACHARIAS

EFFECTIVE LEGAL WRITING. Frank E. Cooper. Indianapolis, Indiana: The Bobbs-Merrill Company, Inc., 1953. Pp. x, 313.

"Rhetorical techniques," says Professor Cooper, opening this new book designed to do something about popular complaints concerning lawyers' writing, "are as important to the lawyer as to any other writer. In every phase of practice, the successful lawyer must be an effective writer." Since that thesis is not open to contradiction, the prime concern of the reviewer, when dealing with a book of this character, must necessarily be confined to a testing of the techniques suggested, an examination

¹⁰ There would appear to be a striking inconsistency between upholding the right of a court to refuse to take jurisdiction because of a lack of convenience in the handling of a case, as evidenced by such decisions as the one attained in *Whitney v. Madden*, 400 Ill. 185, 79 N. E. (2d) 593 (1948), cert. den. 335 U. S. 828, 69 S. Ct. 55, 93 L. Ed. 382 (1948), and denying to the legislature, as by Ill. Rev. Stat. 1951, Vol. 1, Ch. 70, § 2, the right to limit suits in wrongful death actions to those cases which arise in the forum or where the suit must, for some other reason, necessarily be conducted there. See *Hughes v. Fetter*, 341 U. S. 609, 71 S. Ct. 980, 95 L. Ed. 1212 (1951), noted in 30 CHICAGO-KENT LAW REVIEW 174, and *First Nat. Bank v. United Air Lines*, 342 U. S. 396, 72 S. Ct. 421, 96 L. Ed. 441 (1952).

¹¹ Ill. Rev. Stat. 1951, Vol. 1, Ch. 30, § 37a.

¹² The policy underlying Ill. Rev. Stat. 1951, Vol. 1, Ch. 51, § 3, authorizing the use of photographed or microfilmed business records, runs counter to Ill. Rev. Stat. 1951, Vol. 2, Ch. 120, § 446, which requires the preservation of original records for purpose of determining the extent of liability to pay a retailers' occupation tax.

of the methods followed, and an estimation of the results which might be achieved from the materials thus supplied, for it goes without saying that there is much to be deplored in the written product turned out by most students, many lawyers, and even by some judges.

The place to begin correction probably lies quite early in the educational process, where spelling, syntax, rhetoric and grammar should be, but too frequently are not, stressed as much as they ought to be. For that matter, expansion in the use made of media for mass communication, such as the radio or television, has derogated against reading, the one time primary source for the acquisition of a broad vocabulary or for training in the art of conviction through effective word organization. Too frequently, therefore, the would-be lawyer is poorly equipped in terms of language knowledge and urgently in need of books on the subject under consideration. If they are not works on correct English usage, and this one is not, one thing an author could do would be to point out some glaring examples of language faults and leave the lessons to drive themselves home as best they may. Professor Cooper has done this, using some vivid illustrations drawn from judicial records for the purpose, offering other and model specimens to heighten the contrast. The author might also, as does Professor Cooper, place emphasis on words and phrases to be avoided, particularly those likely to drop from the lips of lawyers prone to follow the embalmed language of legal tradition. In other respects also, Professor Cooper, in his own style, repeats what has been said before in works of comparable character. To this point, then, the needful person has his choice and could gain equivalent benefits from the perusal of any one of several works listed in an accompanying bibliography.

The one principal difference, one which makes this book not only significant but also one of inestimable value, lies in the fact that it is a work book, full of exercises and assignments based on included materials calling for the development of a series of skills if the user is to produce acceptable forms of opinions, letters, pleadings, briefs, contracts, wills, statutes and registration statements. Undeniably useful in connection with a class in legal writing, where individual comment could be made regarding the degree of success achieved, the book could still be used by itself for, while it furnishes no model forms to be copied slavishly, it sets up its own criteria for evaluation. Since nothing like precision in the use of language can be gained without effort in its use, the student, lawyer, or judge, who realizes his own deficiencies is invited to work out a few of the assignments. He would soon find that the author's techniques and methods are capable of producing worth while results.

ORGANIZING CORPORATE AND OTHER BUSINESS ENTERPRISES, Revised Edition. Chester Rohrllich. Albany, New York: Matthew Bender & Company, Inc., 1953. Pp. xvi, 506.

The appearance, in 1949, of the original edition of this work was noted by the comment that it was an "unconventional" book in arrangement, one that was "suggestive, instead of exhaustive" in character, but withal one that deserved attention.¹ The new edition departs but little from its progenitor, following generally upon the same arrangement and building upon much of the text originally there set forth, but it does contain considerable amplification in those areas where change has occurred and the footnotes have been brought up to date with many recent citations. One noticeable improvement lies in the fact that whereas the original edition appears to have been planographed from varitype, the revision has been printed, making it possible to reproduce a much larger volume of material in fewer pages. Any discrepancy, therefore, between the number of pages in the two editions should not be regarded as representing an undesirable condensation. If anything, the newer one actually contains more "meat" than was the case with the earlier edition for roughly one hundred pages previously devoted to tax and similar tables have been deleted in favor of an expansion of textual materials.

LEGAL EDUCATION IN THE UNITED STATES. Albert J. Harno. San Francisco, California: Bancroft-Whitney Company, 1953. Pp. v, 211.

As no analysis of the legal profession would be complete without the giving of some attention to the manner by which most lawyers gain their training for professional service, it was to be expected that one of the topics included in the current monumental Survey of the Legal Profession would deal with an historical and critical evaluation of legal education in the United States. Selection of that topic almost inevitably led to the choice of Dean Harno of the University of Illinois College of Law as the person to report thereon for he has not only been well known to all law teachers, having presided over the affairs of the Association of American Law Schools, but he has also enjoyed a wide acquaintance with practicing lawyers through his official connections with many professional associations. His recently released masterly summary of the stages through which education in law has progressed, his penetrating analysis of the difficult task the law schools have been forced to perform, and his record of the achievements they have accomplished bear evidence to the fact that the choice was well made. Lest it be assumed that this report amounts to

¹ See review of the first edition appearing in 27 CHICAGO-KENT LAW REVIEW 261-2 (1949).

no more than a paean for legal education as it is presently administered, it should be emphasized that there is much in these brief pages to prod the teaching side of the profession to a realization that not all is well in this best of all possible worlds.

In that regard, however, the practicing side of the profession is not without fault: first, for its insistence that the schools abide by quantitative, rather than qualitative, educational requirements; second, for its insistence that educational costs be kept at a low level, to preserve a democracy of the bar, without evidencing a willingness to provide the schools with adequate financial support to offset inevitable expense; third, for its unwillingness to comprehend what modern law schools are capable of accomplishing in the time allotted to them; and fourth, for an unwarranted insistence that the graduate of the law school room be prepared to perform, without hesitation and delay, those tasks which can be performed only after an apprentice-type period of training with actual, rather than theoretical, situations. The furnishing of money, the granting of an addition to the training time, will not alone provide the cure. Poor logic has been displayed, for example, in the demand that, to a large extent, the law school staff should devote its full time to instruction, cut off from the vitality of practice, while the bar bemoans the fact that the product of the law school, despite sound training in theory, emerges in far too green a state of practical ability. For that matter, organized insistence upon instruction in the ethics of the profession, based on the assumption that an ethical character can be developed simply from the perusal of some appropriate book, runs counter to those mores too frequently demonstrated in fields of practice.

It is time, therefore, that the law schools and the profession get together upon some understanding basis concerning the educational functions and capabilities of each. This book, despite its tendency to state briefly and to over-simplify, serves to mark out these fields. It provides the practicing lawyer, especially one not too well-versed in modern law school methods, with an adequate picture of what is, and what is not, within the scope of formal instruction. It marks, for the law schools, those areas wherein intensified effort or expanded development could produce desired results. While not too charitable toward part-time legal education, it nevertheless presents a reasonably comprehensive statement of the pro and con of the university, as opposed to the proprietary, school. For these and other reasons, the book is one which should command attention.

LEGAL SECRETARY'S COMPLETE HANDBOOK. Besse May Miller. New York: Prentice-Hall, Inc., 1953. Pp. xxii, 662.

Except as the practicing lawyer may be fortunate enough to be able to hire an already well-trained competent legal secretary, one on whom he may safely rely for the handling of much of the routine activity around the law office, he will find it necessary to spend many, and frequently unfruitful, hours of valuable time educating the current incumbent of the stenographer's desk in the standard practices, forms, and usages of a well-run office. Too often, alas, the job of training must be done over again when Tillie, or whatever her name might happen to be, sees fit to trade the typewriter for a wedding ring and a new incumbent arrives to take over in her place. Let the lawyer faced with that problem now take heart for here, in straight-forward but authentic fashion, is a running account of what the lawyer has a right to expect from one entitled to the designation of legal secretary, written so that she—the species is generally feminine in gender—can learn for herself the differences existing between a will, a deed, and a brief, and may then, quite rapidly, turn out an acceptable draft of each.

While not intended to make a lawyer out of a stenographer, the book contains an amazingly large amount of information of help to the uninformed. It should, if read understandingly, prevent the return to the employer of his choice dictated phrase, whether Latin or otherwise, in that garbled typewritten form which often inverts *duces tecum* into a poker hand where "deuces take 'em," or corrupts *amicus curiae* into a strange form of expletive. For that matter, the telephonic response "He ain't in" might, through recourse to this book and without too much prodding, be turned to something more appropriate for use around a refined office with an estimable clientele. It provides enough competent instruction to make a secretary into an adequate bookkeeper if not a certified public accountant. She should, after some study, to use a common expression, be able to tell a hawk from a handsaw. If, perchance, she still cannot remember all of these things, but is worth keeping around until someone better qualified appears, there is a well-compiled index to the book and a quick glance should put her in touch with what she ought to know.

Against the possibility that verbal instruction may not be enough, the author, with the aid of an advisory committee composed of members of legal secretaries associations working around the country, has provided an abundance of illustrations, charts, diagrams, and facsimile reproductions of common legal instruments to serve as working models. Some legal secretary may well be prompted to remark that she wished her employer knew as much about office practice as the author. It might be

wise, then, to read this book before passing it on to another. It should aid the lawyer as well as his secretary.

SUCCESSFUL APPELLATE TECHNIQUES. John Alan Appleman. Indianapolis, Indiana: The Bobbs-Merrill Company, Inc., 1953. Pp. vii, 1081.

Quite a few lawyers, perhaps not without pride for their authorship, have caused their appellate briefs and records to be bound in substantial volumes, backed with their names in gilt, and have thereafter placed the same in prominent spots of their library shelves as permanent, if not entirely valuable, mementos of their experiences in practice. Few such lawyers would regard collections of this character as being significant products of legal scholarship, much less consider them worth being dignified as legal texts, although they might regard them highly for their worth as form books open to use when the need for some particular specimen should arise. It has remained for the author of the current work, by the addition of necessary supplementation, to turn this not uncommon practice into an acceptable work for the guidance of those less experienced in the techniques of preparing and presenting cases on appeal before the reviewing tribunals.

The supplementation referred to takes the form of explanation, comment, criticism, and precept offered by way of preface to those model forms of appellate documents used by the author, often with success, in his practice before a wide variety of courts. Following thereon, sample forms are reproduced *in extenso* to make up the bulk of the book. Practically every problem which could arise, from the laying of the foundation for appeal in the trial court to the presentation of a petition for rehearing before the highest court, has been covered herein, yet the book falls short of being an elaborate text on appellate procedure for it lacks the treatment and documentation usually found in texts of that type. Despite this, the work should have a wide appeal to local lawyers for many of the model forms presented were successfully utilized in cases coming before the courts of Illinois. The value of these forms might have been made more apparent had the author provided appropriate citations, but these, if needed, can be uncovered with little difficulty since case names are given in connection with each. The longest, and incidentally the most effective, piece of supplementation, a discussion filled with many practical pointers, deals with oral argument on appeal. While preferring not to pose as an expert on appellate processes, the author has, in this highly practical fashion, benefited the bar and has acted to aid the courts, by making his commonplace book available to the profession.

FOOL'S HAVEN. Clifford C. Cawley. Boston, Massachusetts: House of Edinboro Publishers, 1953. Pp. 210.

Fictional works are rarely considered as suitable material for analysis in the columns of a law review, not because fiction has no bearing on law¹ but rather because busy practitioners and overworked students have little time for anything but serious reading. Nevertheless, here is a novelette of purely fictional character which, although brief and quickly read, serves to point up a serious legal problem, to-wit: whether faith healers and the like should be held criminally responsible for the harm they have caused to the State and its citizens under the guise of religious practices or with respect to advice concerning purported religious beliefs. The line between charlatanism and religion could be hard to draw;² the basis for responsibility with regard to criminal neglect might be difficult to establish;³ but the fact remains that much of that which has been done in the name of religion has possessed a profound impact on law⁴ and there is genuine occasion, at this time, to review all the applicable principles.

Mr. Cawley has not written a very good novel but he makes no secret of the fact that he believes unsuccessful faith healers are actually, if not in law, the equivalent of accessories before the fact to murder in case their misguided victims should die. Others may doubt the validity of his thesis, yet there can be no question as to the unique social significance of his ideas. His message, like a small pebble dropped in a pool, could well bring about some wide-spread repercussions, if not some worth-while reforms.

¹ Many classical novels serve to enrich the study of law or throw light on legal operations. See a list of over three hundred such novels, compiled by the late Dean Wigmore and others, in 2 Ill. L. Rev. 574 (1908).

² See the attempt to do so in Ill. Rev. Stat. 1951, Vol. 2, Ch. 38, § 290.

³ Ibid., Ch. 38, § 95, dealing with the endangering of the life or health of a child, requires that the conduct or omission must be "wilful" in character.

⁴ See, for example, *People ex rel. Wallace v. Labrenz*, 411 Ill. 618, 104 N. E. (2d) 769 (1952), cert. den. — U. S. —, 73 S. Ct. 24, 97 L. Ed. (adv.) 36 (1952), vindicating the right of the State to intervene, as *parens patriae*, when the parents of a new-born child, on religious grounds, refuse to permit the administration of vitally needed blood transfusions.