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Book Reviews

Authors

Robert E. Sullivan, James P. White, Robert L. McConn, Evangeline Sletwold, Robert P. Gust, and Jay D. Myster

BOOK REVIEWS

A TREATISE ON THE LAW OF OIL AND GAS. By Eugene Kuntz. Cincinnati: The W. H. Anderson Company, 1962. Pp. 466. \$25.00.

This is the first volume of a six volume set that is described as a revision of Thornton on Oil and Gas, first published in 1904. The objective of the author is stated succinctly in the Preface as follows:

“ . . . the present revision is designed to preserve the analysis of Thornton but also to supplement it and to shift emphasis where the trend of cases indicates that such a shift is required. The earlier cases involving mining law are cited only where there is no oil and gas case on the subject, and citations of cumulative cases from the same jurisdiction are avoided. Where there are two or more cases from the same jurisdiction on the same point, the latest case which refers to the earlier cases is cited, except in those instances where the earlier case has peculiar significance as a landmark case and contains background reasoning which is helpful in deciding related points. This has been done on the assumption that cumulative authority can easily be found by routine research methods involving the use of digests and citators. . . . Throughout the detailed treatment of each subject, an effort is made to preserve and trace the fundamental policies which lie behind the specific cases and thereby preserve the function of Thornton as a publication which reports the past and points to the future.” (v-vi)

Part One of the treatise contains materials dealing with the rights of owners of various types of interests in oil and gas, with emphasis on conveyancing. It is subdivided into seventeen chapters, all of which are contained in Volume One, entitled as follows: Historical and Technical Background; Ownership of Oil and Gas; Oil and Gas as a Separate Estate; Rights of Owners of Oil and Gas Among Themselves; Co-ownership

in Oil and Gas Rights; Partition; Rights of Mineral Fee Owners Owning Less Than a Fee Simple Absolute; Rights of Owners of Life Estates and the Complementary Future Interests; Rights of Owners Owning Less Than a Freehold Estate; Adverse Possession of Oil and Gas Rights; Unlawful Extraction and Conversion of Oil or Gas; Other Interference with Oil and Gas Rights; Transfers of Interests in Oil and Gas; Reservations and Exceptions; Various Interests Which May be Created in Oil and Gas; Construction of Instruments Creating Interests in Oil and Gas; and Application of the Rule Against Perpetuities.

In comparison, the last previous edition of Thornton, edited by Simeon S. Willis in 1932, contained similar materials scattered through two volumes, each of which contained a scanty outline index, arranged alphabetically consisting of a total of twenty-two pages. The present volume contains a chapter and section outline consisting of seven pages and an alphabetical index as a concluding section of the volume consisting of sixty-seven pages. Even a cursory examination of the index reveals that it is comprehensive, yet specific, and should provide ready access to the textual discussion of the point under search. References are to sections and not to pages, however, so that a reading of the complete section may be required.

Throughout this volume there is discussion of peripheral considerations that are not found in other oil and gas treatises. In a discussion of ownership of oil and gas, for example, there is a section dealing with judicial notice of the characteristics of oil and gas and of practices in the industry ("With respect to operations, it has been judicially noticed that oil cannot be located with a divining rod or a 'doodle bug' . . ."). The conceptual approach to theories of ownership has been criticized as being of questionable utility. In a discussion of the Rule of Capture and the doctrine of correlative rights the conceptual classification has been disregarded in favor of a relational approach. A good example of the departure from conventional classification of interests and rights is found in the chapter relating to co-ownership. In discussing the remedies available to obtain operation where there are co-owners of a property the author discusses the conventional remedies of receivership and partition but also considers pooling—a topic

usually discussed in relation to conservation. A similar example may be found in the chapters dealing with the rights of various classes of owners. The nature of the carried interest, a creature of the impact of the federal income tax, is analyzed with the caveat that the nature of the interest is not established as a matter of substantive law, and several pitfalls are described. A discussion of the role of fiduciaries illustrates the extent to which peripheral matters are utilized in an effort to give guidance and perspective. The provisions of the Uniform Principal and Income Act are explained as they pertain to the disposition of proceeds from oil and gas operations between life tenants and remaindermen. Various formulas for the division of royalties and other payments which relate to a permanent severance of natural resources are discussed.

This is a treatise on the law as it is, with no extensive prognostication of what the courts may do or should do to change it. It is a lucid and detailed treatment of the separate jurisprudence of oil and gas with an integration of the principles from other branches of the law where they are useful by way of analogy or general background. Quotations from cases are few but there is adequate citation to sources from which they may be extracted.

The mechanics of publication are good. The treatise will be in six bound volumes, with adequate provision for pocket part supplementation. Pocket parts are to be issued annually. The type is clear, there is good spacing between the lines, there are wide margins--all of which contribute to easy reading. This first volume is a useful addition to the research tools available to oil and gas practitioners.

ROBERT E. SULLIVAN*

ONE MAN'S FREEDOM. By Edward Bennett Williams. New York: Atheneum, 1962. Pp. 344. \$5.95.

It is an interesting commentary on the contemporary American scene that some of the most popular television

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programs are those dealing with the activities and exploits of fictional members of the bar.¹ Parallel to this public approbation of the profession via the microwaves has been a similar approval by the literary public (those reading only best-sellers). Several recent autobiographical or biographical folios about lawyers have reached the pinnacles of the best-seller list.² The most current of this latter category is *One Man's Freedom* by Edward Bennett Williams.

Among the sometimes praised, but more often scorned, members of the legal profession are those referred to as "criminal lawyers." In this sphere of legal endeavor, there is no more noted figure than Edward Bennett Williams. He has numbered among his clients such dissimilar personages as Senator Joseph McCarthy and James Hoffa; Adam Clayton Powell and Frank Costello. Many stories concerning Williams' role in defending these and other clients are contained in his book. Yet Williams, unlike many of his breed, does not resort to compulsive egotism in his role of a narrator. Refreshingly, the many personal experiences related in this book do not become odes of self-adulation, but rather are absorbing narratives of some of Williams' most interesting experiences. These experiences are obviously meant for the lay public rather than members of the legal profession. Lawyers are not precluded from reading these stories and indeed should find them, as I did, to be extremely interesting and absorbing. However, members of the bar must bear in mind that these experiences are set forth in a manner and with a purpose that will entertain as well as inform the lay public.

The basic purpose of the book is to provide a forum for a discussion by Williams of his concept of the role of Anglo-American jurisprudence in safeguarding and preserving our basic civil liberties. His vehicle for discussion is the presentation of certain principles of law, illustrating each principle by discussion of cases in which Williams has participated. Another reviewer has stated that Williams "has managed to write a book about civil liberties without being legalistic, dull or painfully self-righteous."³ Indeed, Williams' book does

1. E.g., "Perry Mason" and "The Defenders."

2. E.g., NIZER, *MY LIFE IN COURT* (1961); and ST. JOHNS, *FINAL VERDICT* (1962).

3. N.Y. Times, Book Reviews, June 24, 1962, p. 3.

deserve the above description because he has written about civil liberties in a manner that they become meaningful for the law student and lay public. For the lawyer this book supplements in a factual recitative the great concern in safeguarding civil liberties that has been expressed by a great many contemporary legal writers.⁴

Williams states, "I am sure there are dark and difficult days ahead for our country. The concept of government by consent is boldly challenged by the concept of government by compulsion. We are directing much of our national energy and talent into the efforts of the free world to prevent the spread of global Communism - all to the end that the liberty, freedom and dignity of the individual as we have known them will be preserved."

"It would be a tragic paradox if we should surrender any part of our heritage in the name of this effort, for we should then have done to ourselves from within what we fear most from without. I believe that the prevention of this surrender is the real responsibility of the American bar today. That responsibility demands the bar retain an intellectual sensitivity to and emotional concern about any encroachment of personal freedom and individual liberty regardless of whose they may be." (p. 9).

Thus Williams in his book attempts through recitation of experience, pleading and persuasion to engender in others the same deep concern in protecting, safeguarding and manifesting our basic American rights. A good portion of the book is concerned with Congressional investigating committees where the position of the advocate is unclear. Williams has represented some of the most zealous exponents of this Congressional Committee power⁵ as well as witnesses confronted with the zealous drive of a Congressional Committee.⁶ Relying upon his varied experiences in representing clients before Congressional investigating committees, Williams proposes a code of fair investigative procedures for adoption by Congressional investigating committees. This is not a new or novel idea but one that received a good deal of attention in the 1950's, culmi-

4. E.g., GELLHORN, *AMERICAN RIGHTS, THE CONSTITUTION IN ACTION* (1960); KAUPER, *CIVIL LIBERTIES AND THE CONSTITUTION* (1962).

5. E.g., Senator Joseph McCarthy, at 58-71.

6. E.g., Aldo Icardi, at 30-58.

nating in adoption of such a Code by the State of New York as well as several other states.⁷ Unfortunately such a Code was never adopted at the federal level. This reviewer hopes that Williams has restored interest in this matter of a Code of fair investigative procedure for Congressional investigation, adoption which seems to this reviewer to be a most necessary reaffirmation of basic American civil liberties.

In a recent magazine article, Vice Admiral H. G. Rickover, atomic submarine scientist and all purpose American sage, has observed: "In recent years a sense of uneasiness has crept upon the American people. We have lost some of our exuberance, some of our faith in ourselves. Many of us are disturbed by the loss of good things we cherish as peculiarly American and by the intrusion of distasteful things we never expected would invade our way of life. These changes have been many and various, but they all have a common root: They stem from factors which have conspired to diminish the freedom and dignity of the individual."

"These human values are essential in a democracy; anything that threatens them makes our whole society a little less free, our nation a little less strong. The basic tenet of democracy is respect for the equal moral worth of all human beings and the equal freedom of all men to shape their lives as they see fit, provided only that they harm no one and violate no law. Only the self-determining, independent citizen can make a success of self-government."⁸

Edward Bennett Williams in *One Man's Freedom* has given new emphasis to a basic duty of every lawyer in the United States, that of protecting the rights of individuals under a written Constitution. Williams has done more, he has emphasized the human values which are essential in our democracy. *One Man's Freedom* is a book which every American should read, reflect upon and ultimately take action upon in solving the problems presented in this book and reaffirming and strengthening the rights of the individual.

JAMES P. WHITE*

7. N.Y. Code of Fair Procedure for Investigating Agencies (1954).

8. Rickover, *The Decline of the Individual*, *The Saturday Evening Post*, March 30, 1963, at 11.

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LORING - A TRUSTEE'S HANDBOOK. Revised by James F. Farr. Boston: Little, Brown and Company, 1962. Pp. xxi, 472. \$12.50.

This book is the sixth edition of a handbook written by Augustus Peabody Loring in 1898. As stated in the preface to the first edition, this single volume was "meant to state simply and concisely, the rules which govern the management of trust estates, and the relationship existing between the trustee and beneficiary."

The book begins with a short statement of the fundamentals of the trust relationship and then examines more closely the nature of the trustee's office. In these sections such subject matter as, who can be trustee; disclaimer and acceptance; and death, removal, and resignation of the trustee, is presented. The style of the author is brief and concise yet many authorities are cited in the footnotes for further reference. The nature of the beneficiary's interest is examined at some length. The trustee's duties, powers, relationship with creditors, liability to the beneficiary, and management and accounting for the trust property are presented in what would seem to be a practical and helpful manner.

It is apparent that the author has a thorough understanding of the everyday problems which the trust administrator encounters, and has succeeded in preparing for the administrator a handbook which is useful as a quick reference. The practicing lawyer should find this book a valuable starting point for more extensive research on the subject.

ROBERT L. MCCONN*

THE LAWYER'S HANDBOOK. Prepared by American Bar Association Committee on Economics of Law Practice. St. Paul: West Publishing Co., 1962. Pp. 525. Paperbound \$5.00; hardbound \$7.00.

The Committee on Economics of Law Practice of the American Bar Association, commencing in 1958, published and distributed to its members a series of pamphlets relating to

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the economics of the legal profession and to law office management. Those pamphlets have been assembled in *The Lawyer's Handbook*, the subject of this review.¹

The purpose of the Handbook is set forth in the preface:

"This Committee is deeply concerned with improving, properly and soundly, the economic status of lawyers. The basic concept of freedom under law, which underlies our entire structure of government, can only be sustained by a strong and independent bar. It is plainly in the public interest that the economic health of the legal profession be safeguarded. One of the means toward this end is to improve the efficiency and productivity of lawyers. This handbook is dedicated to that purpose."

The book is divided into six parts, viz.: Part I - Equipping and Staffing the Law Office; Part II - Office Systems and Controls; Part III - Fees and Billing; Part IV - Insurance; Part V - Law Office Organization; Part VI - Administrative Policies and Procedures.

Listing the titles of the 17 chapters seems the best treatment for descriptive purposes. Each chapter is a treatise of its own. The editors wrote two important chapters, to-wit: "Law Office Layout, Design and Construction" and "An Insurance Program for Attorneys." Each of the other chapters was likewise written by experts in their fields. Those chapters are entitled: "Office Machines and Equipment;" "The Law Office Library;" "Nonlawyer Employees;" "Filing Equipment and Systems;" "Basic Bookkeeping for the Law Office;" "Accounting Systems;" "Pegboard Systems;" "Financial and Statistical Reports for Law Firms;" "Fees and Billing;" "The Attorney's Liability for Negligence;" "Lawyer's Professional Liability Insurance;" "Tax Problems of Attorneys;" "Law Partnership Agreements;" "Lawyer's Non-partnership Arrangements;" and "Law Office Manual."

The recommendations of the authors follow countless tried and true methods of law office operation; whereas, there are other recommendations that lean toward modernity and change. A bombshell to many lawyers will be the suggestion

1. Handbook distributed for ABA by West Publishing Co., 50 West Kellogg Blvd., St. Paul 2, Minnesota.

that legal size files are something inherited from the dead past - they are a luxury which should be replaced, where possible, by letter size files! They also state that "the best girl in the office should be assigned to the important job of filing."

Thirty-six pages are devoted to Fees and Billing. The successful lawyer will read this chapter with approval. The young lawyer should read it for an enlightening discussion of what is involved in billing the client at the proper time in the proper amount.

Useful sample forms are shown. To name a few: a transcriber sheet for the lawyer who uses a dictating machine; accounting and law office bookkeeping forms; partnership agreements.

The bibliography embracing 16 pages of references is an impressive listing of publications classified under subject matter.

The detailed index includes an important note at the beginning to the effect that the individual practitioner can increase his efficiency and income initially by concentrating on the areas of Dictating Equipment, Copying Machines, Bookkeeping System, Fees and Time Records, Billing Clients and Building a Library.

This Handbook offers explicit instructions for many law office procedural problems. It has clearly met the purpose for which it was intended. It is hoped that all persons - attorneys, bookkeepers, librarians, secretaries, clerks - all who work in a law office - will become aware of the availability of this important Handbook.

EVANGELINE SLETWOLD*

NARCOTICS AND THE LAW: A CRITIQUE OF THE AMERICAN EXPERIMENT IN DRUG CONTROL. By William Butler Eldridge. Chicago: American Bar Foundation, 1962. Pp. xiv, 204. \$5.00.

The work is based on investigations conducted by the joint

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American Bar Association and American Medical Association Committee on Narcotic drugs. The initial chapters introduce some of the social questions presented in narcotics use and traffic, enabling the reader to gain some understanding of the complex social considerations involved prior to an evaluation of the present American System of Narcotics control. The author indicates that the association of narcotics with the underworld led to the development of a large body of legislation aimed at the narcotics addict as a threat to society. He further shows that America's program has been one of applying severe penalties as an adequate solution and disputes that assumption based on investigation. Later the author discusses the rational and moral values of our society in terms of a major factor in our view of and our approach to the narcotics problem. He discusses the fallacies that narcotics ravage the body, destroy morality, that addicts are a sexual menace, or that the use of narcotic drugs creates weak and ineffective members of our society, and suggests that narcotics addiction is a symptom rather than a cause of social disorder.

Chapter four deals with an empirical evaluation of the American system of laws, and methods of enforcement and evaluation of the narcotics problem. The author indicates that there is an absence of accurate and complete data on the administration and effect of drug control policies within the United States. The reason for such being an only recent appreciation of the complexity of the problem. This lack of of narcotics traffic and addiction in the United States, so much so that we are not even aware of the scope of the problem or results of our present program.

Specific proposals for immediate utilization are made: there should be recognition that addiction and preventive medicine with respect to it are and should be dealt with as medical problems; judges should be accorded the right to individualize sentences; and parole and pardon should be utilized in narcotics offenses as in other criminal offenses.

The author cites the need for an accurate picture of narcotics use and traffic utilizing a national agency with the responsibility for accumulating information on the basis of data along with an absence of uniform standards to guide reporting agencies has resulted in the lack of a clear picture

established and uniform procedures.

In the final chapter the author indicates that the available evidence does not support claims made in behalf of the effectiveness of the present American system of narcotics control, and makes the following proposals: those dealing with narcotics problems should not be denied means found effective in other areas of criminal and anti-social behavior; new untried approaches should be postponed until information has been systematically gathered, enabling proper planning; the necessity to recognize that the whole narcotics problem cannot be merged together and dealt with as such, but that the individual professions involved should deal with those aspects of the problem for which they are trained.

Although solutions to the narcotics problem lie far in the future, the work indicates the main issues, offers recommendations for immediate application in our present practices, and shows the way to further research to achieve desired results.

ROBERT P. GUST

MAN ON TRIAL. By Gerald Dickler. Garden City. Doubleday & Company, Inc., 1962. Pp. 451. \$5.95.

Socrates, Jesus, Joan of Arc, Galileo, Charles I, Salem Witchcraft Trials, Andrew Johnson, The Dreyfus Case, The Scopes Trial, The Reichstag Fire Trials, The Moscow Trials, The Nuremberg Trials, and The Oppenheimer Hearing are thirteen trials that have left their imprint upon Western history. Mr. Dickler's impression is that, "Each represents a phenomenon seldom seen and generally unrecognized, which makes its appearance when society is at war with itself, when fresh ideas and new values are being born on the tangled bed of social upheaval." (p. 7).

Each of these trials is indicative of an attempt by society to cure an ideological conflict, bathed in the tensions of the time, by means of genuine or sham judicial process. Each trial is discussed in light of its own social and historical setting. A separate chapter, complete with an appended verbatim account of the highlights of each case, brings to view each dramatic moment.

The first chapter presents Socrates amid the dramatic

action of his public trial. The author reproduces the historical setting and the temper of the times, which found Socrates' accusers seeking to force him into exile because of his outspoken criticism of the new democracy and its leaders.

The next chapter, devoted to Jesus of Nazareth brings to light the seething trouble spot that was Galilee under the Romans and their puppet rulers the Herods. Mr. Dickler says of this period, "If Jesus' death on the Cross was preordained, he could hardly have been born at a more appropriate time and place. . . ." (p. 33).

The trial of Joan of Arc, at the hands of the English, had as its background the Hundred Years War. This trial was prompted by a military necessity. The British had to dispel the living legend of Joan of Arc with an elaborate show of legality if they were ever to claim the crown of France.

Galileo Galilei renounced his life's work in science as a sin against God when caught up in the attack of organized religion upon scientific progress. His *Dialogue on the Great World Systems*, "one of the most powerful levers in obtaining general recognition for the true order of the universe," rocked the core of Christian belief with the truth that the earth was not the center of the universe.

In 1649 Charles I lost his head. The trial of Charles was designed to allay both the legal and religious conscience of an English population raised on the doctrine that the King ruled by a divine right granted by God, and that it was wrong to oppose his authority by force.

According to Mr. Dickler the Salem Witchcraft Trials were bathed in the superstition which pervaded the "barren Puritan soil of Massachusetts." The trials were a result of popular hysteria which had its beginning in Europe even before a Puritan teen-ager's "fits" propelled the Puritans into nine months of terror in a confused hunt for witches.

Andrew Johnson sprung the trap which had been laid for Abraham Lincoln. Those who opposed Lincoln's compassionate program for the defeated South hoped to make the new President their tool. When Johnson refused to go along with their plans to punish the South, the radical forces attempted to destroy Johnson and almost succeeded in destroying the office of the Presidency.

Mr. Dickler refers to the facts of the Dreyfus case as "unbelievable." It appears that the leaders of an entire generation of France's political and military elite compromised their honor and gambled their careers to prevent the vindication of an innocent man.

The Scopes Trial in which the weary William Jennings Bryan faced the crafty Clarence Darrow centered around the peculiar attraction Darwinism held for the American Public in the early Twenties.

The Reichstag Fire and the ensuing trials catapulted Hitler and the Nazi party into power in Germany. The Reichstag Fire was just the event needed by the Nazis to sell a Communist threat of revolution to the public.

Like the Reichstag Fire Trials the Moscow Trials used an incident to destroy the last threat of opposition within a country, and to establish a personal dictatorship.

The Nuremberg Trials tried the major war criminals. It was an attempt to establish a law which would insure the conviction of the guilty in a climate where the waging of offensive war had not been considered illegal, much less criminal.

The Oppenheimer Hearing grew out of the fear surrounding the loss of scientific information to the Soviets. Mr. Dickler says, ". . . the excommunication of J. Robert Oppenheimer from government service is regarded as the nadir of his country's superstitious quest for absolute safety." (p. 376).

Man on Trial is not a book devoted to the intricacies of the law, nor the fine points of trial procedure. To this extent it is not written for the lawyer. However, it is a book laced with intensity and dramatic fire, and directed at those people interested in history and biography.

JAY D. MYSTER