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Book Reviews

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BOOK REVIEWS

A LIVING BILL OF RIGHTS. By William O. Douglas. Garden City, New York: Doubleday and Company, Inc., 1961, 72 pages. Price: $1.50.

Little controversy occurs over what provisions of the Constitution protect individual liberties. The questions arise when determining their meaning and how far they go in shielding the individual from governmental action. Justice Douglas, in his short and concise book, presents an interesting and informative point of view concerning the Bill of Rights. His purpose is to create interest and to encourage discussion and exploration of the Bill of Rights by younger people to thereby attain a better understanding of the pressures under which it is placed.

To develop his philosophy, Justice Douglas has divided the book into four sections, the first being "The Importance of Freedom in America". Here is discussed the several meanings of freedom to various people and the role the Constitution pays in determining the extent of freedom.

The next section is "What Is the Bill of Rights?" It begins by listing the first ten Amendments which restrict the power of the federal government. They embrace what John Adams called "rights derived from the Great Legislator of the Universe" and Thomas Jefferson defined as "what the people are entitled to, against every government on earth, general or particular, and what no government should refuse or rest on inference". It means different things to different people, Justice Douglas' viewpoint being that all guarantees of the rights of individuals against either federal or state government are in effect our Bill of Rights. Unless state and federal officials respect and abide by the Constitution, judgment of the courts will require adherence thereto.

The author also points out guarantees which, although archaic to the twentieth-century citizen, still reveal a profound principle of American government. These include the right to bear arms and quartering of soldiers in private homes.

The third section discusses "Basic Rights" guaranteed to us by the Constitution. It begins with a presentation of the freedom of expression and the various views that have been expressed as to the amount of control the government should exercise over it. The author continues by commenting on those things which can and which cannot be censored and the reasons therefore. It is sug-

gested that strict control by censorship is not necessary since the private person has a remedy by use of libel and slander suits. In addition the requirement of a jury trial prevents an overzealous government from exercising its power of censorship too freely. In this light the communist's right of free speech and the extent Congress can go to limit them is also discussed.

Justice Douglas suggests that freedom of assembly or association be allowed so long as such assembly is not used to incite violence. It may, however, be regulated to some extent so long as the regulation is not used as a cloak to stifle freedom of expression.

Among the basic rights are also listed freedom of religion and conscience and the right of privacy. In these areas, the author contends, the present trend is towards greater control over and inquiry into these rights.

Loyalty programs and legislative investigations are discussed and criticized. The right of freedom from discriminatory treatment in relation to the racial issues of the past and present is aired. He presents the relationship between civil and religious authority concerning the educational problem and the relationship between civil and military authority and its effects during peace and war.

He ends the discussion of basic rights by reiterating the fundamental rights of an accused before, during, and following the trial and from legislative action.

In the fourth and final section, "The Bill of Rights in Action", Justice Douglas states that "the liberties of none are safe unless the liberties of all are protected". He emphasizs and urges each citizen to share his responsibility for preserving the Bill of Rights.

Throughout the entire text land mark decisions and an occasional citation of other works are included. To fulfill the purpose of creating interest, there is also included an appendix listing additional reference material which the reader may pursue should he become interested in some particular aspect. Also, he gives some historical aspects, expresses his own views, and poses questions not yet decided by the courts.

It can in no sense be considered a treatise since it does not treat any specific subject in detail, nor does it cover material unfamiliar to the lawyers. Nevertheless, it well displays great authority in this field in a simple and concrete manner.

The two-fold purpose has been accomplished by the eloquent presentation and its relationship of the principles to today's major issues of education, racial discrimination, loyalty programs, and

communism. For these reasons, lawyer, student, or citizen will see our civil rights in a new dimension and his respect for our Bill of Rights magnified.

G. EUGENE ISAAK.

THE SUPREME COURT AND CIVIL LIBERTIES. By O. K. Fraenkel. New York: Ocena Publications, Inc., 1961, 173 pages. Price: $2.95.

Osmond K. Fraenkel, the general counsel of the American Civil Liberties Union, has produced this short summary of Supreme Court decisions concerned with the problem of civil liberties. The book is in commemoration of the fortieth anniversary of the American Civil Liberties Union. As stated the subject matter of the book is a review of decisions which, at least in the author's viewpoint, are pertinent to the subject of civil liberties. The author starts the volume with a reprinting of the parts of the constitution which, he feels, deal with this particular subject matter. The organization of the volume is thereby determined, as each named part of the constitution is taken in order and the cases decided under that particular article or amendment are enumerated. The author takes a particular subject, such as freedom of speech, and breaks it into sub-sections, such as freedom of speech and its bearing upon laws against obscenity. The cases dealing with that particular section or sub-section are listed in a very simple fashion. Usually, the basic facts are given with the opinion and dissents, if any, followng. Occasionally the author does give the reasoning of the majority or minority opinion, but more often he simply states the opinion itself. At first impression the book seems to be nothing more than a listing of cases with a bare outline of facts and a simple statement of the decision. But the author has cleverly organized the presentation of the cases, and consequently the end result is to give a basic, if superficial, picture of this area of law. By a proficient use of integration, contrast, and balance the author has managed, despite the presentation, to give an ample idea of the issues and the attempted solutions inherent in this particular field.

The book is almost entirely devoid of the author's own direct analysis or comment. But again he has successfully given a fair idea of his own position by the use of innuendo and by contrasting cases in a favorable or unfavorable position. In final analysis the work treats favorably those cases acceptable to the ideals of civil liberties as viewed by the author.

As an appendix to the volume the author has made a list of all Supreme Court decisions in this area and has placed an asterisk in front of those favorable to civil liberties. It is stated that those without such mark are to be considered unfavorable. This simple black and white treatment seems a little naive, but as it is only an appendix it undoubtedly is not meant as any final comment.

In total, the work is a brief, readable, and fairly meaningful review of the field of constitutional law as it reflects on the subject of civil liberties. It is not recommended as a competent, analytical treatment of this area, but as an introduction to the subject and its issues it is sufficient.

DAVID FOSTER KNUTSON.

CONFLICT OF INTEREST AND FEDERAL SERVICE. By The Association of the Bar of the City of New York Special Committee on The Federal Conflict of Interest Laws. Cambridge: Harvard University Press, 1960. One Volume. Price: $5.50.

Addressed primarily to the general public, this book examines the entire range of modern conflict of interest problems involved in the executive branch of the federal government and the body of obsolete legal controls that are hampering the government in its effort to recruit executive branch officials and advisers. The book has two themes. The first is that the ethical standards in the United States government must be beyond reproach. The second is that the federal government must be in a position to obtain the personnel and information it needs to meet the demands of the twentieth century. These themes are co-equal, and the book advances the proposition that neither of these themes can be safely subordinated to the other.

The topic of conflict of interest has been dramatized for the entire public by several spectacular cases, involving prominent public figures; but the discussion presented in the book indicates that the problem is not one of isolated cases of misconduct, but rather it is the inevitable result of the sheer growth of the federal establishment. This increase in size of the federal establishment, the authors say, has necessarily brought with it demands for executives and general personnel on a scale and at a level of competance never before known. In addition this same increase has induced a dramatic shift in the scale on which conflicts of interest arise among federal employees.

The book discusses the undertaking, by the government, of many

new functions formerly private, and how in many cases it has become an overt force in many functions in which it does not directly partcipate. Great stress is put upon the fact that while the United States has not moved to socialism it has long since abandoned the nineteenth century laissez faire in favor of a pragmatic and not idealogical blend of private and public enterprise. Also of prime emphasis is the importance of this new mixed economy and its relation to modern conflict of interest problems. This "mixed economy" has infinitely multiplied the contacts between citizens and the government and between private economic interest and the government. When the conflict of interest statutes of the last century were passed, it could be justifiably assumed that the most significant economic contacts between the citizens and the government would be those involving the citizen's "claims" against the government or demands for money or property. But today in the economic life of all Americans the federal government is ubiquitous. The citizens total number of direct and indirect contacts with the government is countless, and conversely, virtually any government decision on almost any issue will have critical repercussions upon the economic fortunes of individuals, industries, or geographic areas. Under these circumstances, our present outdated conflict of interest statutes, which are myopically focused on "claims" and "contracts", are obsolete at best.

The book speaks of the merger of public and private interest as a factor carrying significant implications for the whole underlying concept of conflicts of interest among government employees. Further, it says that to talk at all of a conflict of interest presupposes a separateness of interests, a dichotomy between what is a private interest and what is a governmental one. In a simple world, conforming to the Jeffersonian idyll, the government would be small and closely restricted in its activities, and the line between private and public would be clear to all. In such a world, a conflict of interest would not be hard to define. But as the line between public and private blurs into a broad gray band, the possibility of joint or overlapping interests increases, the whole premise of conflicts regulation becomes undermined, the problems become more subtle, and regulation grows more difficult.

With this merging of interests situation in mind the authors propose a program in detailed legislative form, with which they intend to supersede our present "obsolete" conflict of interest statutes. The proposal offered is contended by the authors to be based on the two

man and co-equal themes of the book; that of the necessity of the ethical standards of government being beyond reproach, and secondly that the government must be in a position to obtain the personnel and information it requires to operate under present day standards. What is needed say the authors and what they attempt to propose is "a policy that neither sacrifices integrity for opportunity nor drowns practical staffing in moralism." The authors feel that our present state, that of merged public and private interest, is the "right way, the American way" and are generally content with it. But they go on to say that one of the costs of this system lies in erosion of the basis for any easy solution to the conflict of interest problem. The authors add to this the thought that we as Americans have deliberately created these instittuions of dual or blended loyalties, and we must be prepared to live with the conflict of interest consequences. They deem the result is that any program of restraints for the United States must, of necessity, be one of approximation. Plato's philospher kings could isolate themselves from private interests; America's democratic government cannot.

The book, in and of itself, is very well written and is undoubtedly the product of prodigious research effort. It does an excellent job of reducing to an orderly, intelligible form the bramblebush of statutes, exemptions, exceptions, regulations, decisions, and rulings that have grown up during the past hundred years. It is a very readable book and gives, I am sure, what is a very clear picture of the conflicts situation. The book is not the product of an investigation calculated to expose the deliquencies of individual officials. Individual past instances of misconduct are referred to only for illustrative purposes; no new instances are discovered to the public eye. The focus of interest of the book is upon a permanent and endemic problem of all government — the continuing problem posed by the clash between public and personal life of officials.

RICHARD H. SKJERVEN.

COMMERCIAL CODE LITIGATION. Del Duca, Louis F. and King, Donald B. Carlisle, Pa.: Dickinson School of Law, 1960. 250 pages. Price: $5.50.

This compilation of Uniform Commercial Code cases offers the first complete picture of how the Commercial Code has fared in litigation since 1954. An introduction to the book was written by Wm. A. Schnader, 1960 American Bar Association Medal recipient and one of the foremost proponents of uniform legislation for many years.

Of the six jurisdictions (Connecticut, Kentucky, Massachusetts, New Hampshire, Pennsylvania and Rhode Island) which have enacted the Code, only Pennsylvania has handed down decisions citing the Code as binding authority. The 87 Pennsylvania trial, appellate and federal court cases of this type are included in this work. Those cases citing the Commercial Code only as persuasive authority and disposed of by prior law, generally because the operative facts occurred before the effective date of the Code, are appropriately noted but not reproduced. An observation to be drawn from this unique work is that the relatively small volume of litigation which has occurred refutes one of the primary objections to the adoption of the Code. The editors, however, have refrained from making any editorial comments upon the courts application of the Code.

As the authors have noted in their preface, the states are 'insulated chambers' which provide opportunities for experimentation. The corollary of such opportunities is the need for prompt and authoritative reporting and editing of such endeavors.

This volume has considerable value as an educational device for courses and seminars involving Sales, Negotiable Instruments, Secured Transactions and other commercial law subjects. It is currently in use at the Dickinson School of Law and at the University of Illinois School of Law.

As a final note of recommendation, the book's five separate indexes are indicative of its excellent usefulness as a research tool to both the library and the practitioner. All of the cases in which the Code has been cited as binding authority have been collated with their appropriate Code sections, as well as being classified under a table of contents, by alphabet and through a sectional index. The cases in which the Code was cited merely as persuasive authority are listed alphabetically and collated in a separate sectional index.

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FELIX FRANKFURTER REMINISCES. Harlan B. Phillips. New York: Reynal & Company, 1960. 301 pages. Price: $3.50.

This fascinating volume is the result of transcribing comments on questions put to Mr. Justice Frankfurter on behalf of the Oral History Department of Columbia University. Justice Frankfurter informs the reader by way of a note on the cover that it is not in-

tended to be a autobiography, but nevertheless, the end product is an interesting and charming presentation of Frankfurter's life and the world in which he has so actively participated. A wide variety of subject matter is easily digested in to the context of Frankfurter's experiences, and although the reader realizes a certain desire for more depth of coverage, the manner of presentation allows for a feeling of what transpired.

Starting with his arrival in the United States in 1894, Frankfurter leads us through a greater part of the political history pointing to his appointment to the Supreme Court in 1939. Particular emphasis is placed upon people and institutions attaching to Frankfurter's life, and the easy manner of the volume lends itself well to Frankfurter's expression of opinions on those subjects.

Harvard Law School plays an important role in the telling of Frankfurter's story, and it is obvious that he feels a great part of his success was due to his exposure to its environs. In his words, "I have a quasi-religious feeling about the Harvard Law School. I regard it as the most democratc institution I know anything about." After serving as an Assistant United States Attorney under Mr. Stimson, in the Roosevelt administration, and shifting easily to the changes to Taft and Wilson in other capacities, Frankfurter was called to the faculty of Harvard. Though teaching had never been considered by him, and as he states, ". . . I no more thought of myself as a member of the Harvard Law School faculty than I would have felt myself a member of the House of Lords — in fact, more easily, probably, considering the people who are in the House of Lords,", Frankfurter remained at Harvard until his appointment.

Retaining an active part in public life was not difficult for Frankfurter during his faculty career. He actively participated in the Zionist movement and plunged himself into the Sacco-Vanaetti controversy. An interesting relation is the battle waged by Wigmore against Frankfurter for an article published by Frankfurter on the Sacco-Vanzetti affair. Frankfurter's reply "pulverized" Wigmore due to the fact that Frankfurter had written an entirely accurate article, and Wigmore's attack had been based greatly on matters outside of the record of the trial. Harvard's President Lowell evinced this comment, "Wigmore is a fool! Wigmore is a fool! He should have known that Frankfurter would be shrewd enough to be accurate."

The Book does not deal alone with great men and great experiences. One section is devoted to the difference between students in

England and America, based upon Frankfurter's experiences at Harvard and as a lecturer at Oxford. Through this short chapter the reader is aware of Justice Frankfurter's critical analysis of all events that surround him, including social amenities and systems of instruction.

This book should be mandatory reading for a first year law student, for it presents a bright picture of what a lawyer is and should be. The reader derives an attitude that law simply cannot be limited to the courtroom or the office, but exists within a context of political and social history, and to serve the law properly, one must participate in many areas of life. The only regret that can be assigned to the reading of this volume is that the end of the relation could not be extended beyond the appoinment to the Supreme Court.

ROBERT D. LANGFORD.