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Book Reviews

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BOOK REVIEWS

DEFENSE LAW JOURNAL, Vols. I, II. Indianapolis: Allen Smith Co.
Price: \$25.00 per year.

In recent years, much effort and emphasis has been placed upon educating plaintiffs' attorneys upon proper preparation and trial of the personal injury action. This trend, coupled with the phrase "Adequate Award" (translation: big verdicts), is usually associated with the National Association of Claimants Compensation Attorneys (NACCA) and with such practicing authors as Melvin M. Belli of San Francisco, whose *Modern Trials* was reviewed in this Journal in July 1955.

The *NACCA Law Journal*, now consisting of about twenty volumes, has been frequently cited in appellate court opinions. Its logical opponent and counterpart on the defensive side has now commenced publication. The first two volumes of *The Defense Law Journal* are now published. The format of the *NACCA Law Journal* is rather closely followed.

Among the interesting features of *The Defense Law Journal* is a section analyzing, case-by-case, some of the larger "adequate verdicts" previously publicized in the *NACCA Law Journal*. As rueful experience by any experienced trial lawyer might indicate, a large number of these "adequate verdicts" were scalped, trimmed, sliced or obliterated in the course of appeal. This probably points up a misleading aspect of *NACCA Law Journal*, even though there surely is no overt misrepresentation.

To make a military analogy, Field Marshal Rommel won many brilliant victories in North Africa, but his side did not in the end, occupy the ground in that theatre of operations.

The *Defense Law Journal* goes on to cite cases under a section purporting to show the "true adequate verdict". North Dakota is honored in this respect by a citation of *Dahl v. North American Creameries*, — N.D. — 61 N.W.2d 916 (1953), wherein a minor daughter received \$10,000.00 for the death of her father and \$7,500.00 for the death of her mother. It is interesting to note that in this case, a District Judge held the verdict excessive but the state Supreme Court said it was not. In any event, this case, also cited in *Modern Trials* (*supra*) points up the fact that our state is a "low verdict area" in *NACCA* terminology. The merits of the case in question, and of high and low verdicts, depend on the point of view.

There is also a section containing summaries of personal injury

cases won by the defense on typical fact situations. Other examples of meaty articles are those on such subjects as evaluation of cases for settlement of trial, discovery depositions, and the like.

A most interesting article, found in Volume II, is entitled "Automobile Insurance". This treatise is detailed and exhaustive, giving first the historical background, and giving a particularized analysis of each of the more standard provisions in policies.

This article, as is the remainder of the contents of the *Journal*, is amply equipped with footnote citations.

A rather unusual article for a "defense" publication is that by a Toronto lawyer on the subject of Canadian comparative negligence statutes. In view of the largely subsided controversy about this type of statutory enactment, this author felt such laws are realistic, tend towards settlement, and are not especially disadvantageous to the defense or to insurance companies. He states, in part:

"To insurance counsel who feel that in the interests of their clients they ought to oppose such legislative reform, let it be said emphatically Canadian insurance companies operate very happily under our legislation."

Comparative negligence acts were pioneered in the Province of Ontario in 1924, but now exist in all Provinces. A summary of the Ontario act is appended to the article and is representative of the common-law provinces (as distinguished from Quebec, following the Civil Law by virtue of its French heritage.)

Summing up:

Our North Dakota bar is less clearly divisible into plaintiffs' attorneys and defendants' attorneys than in some jurisdictions. This *Journal*, which will be issued at the rate of two volumes a year, will be a valuable adjunct to any law library, however.

THE DEFENSE ATTORNEY AND BASIC DEFENSE TACTICS. By Welcome D. Pierson. Indianapolis: Bobbs-Merrill & Co., 390 pages. Price: \$15.00.

The Defense Attorney And Basic Defense Tactics is reviewed here jointly with the *Journal* above referred to because it is a textbook aimed at the same segment of the Bar as is the *Journal*.

The author is identified merely as an Oklahoma attorney, Welcome D. Pierson. Reference to Martindale indicates he practices in Oklahoma City, is 58, and has about thirty-five years of experience.

These facts are pertinent because too many works of trial practice are written by metropolitan attorneys whose frame of reference is alien to courtroom realities in North Dakota. This has been true of every book on the subject previously read by the reviewer, but it is happily not true of Mr. Pierson. He is obviously at home in the courthouse in the county-seat towns in outlying Oklahoma. His approach is thorough and highly practical.

A representative sample is the approximately two pages he devotes towards "Attitude Toward Courts" which might be bluntly translated as "Care and Handling of Judges". Possibly in some future regimented Utopia such as one reads about in Orwell's "1984", judges will have been replaced by calculating machines and automats, dispensing perfectly efficient and objective justice. In the meantime, lawyers will have to contend with human beings like themselves, and probably will not look with anticipation towards the mechanized future. These are matters understood by a lawyer in Oklahoma or North Dakota, but not by an attorney practicing in a city jurisdiction wherein judges are assigned with anonymous efficiency and less advance knowledge by counsel of the capabilities and attitudes of the judge to preside.

The brief section on "getting along with the judge" is noted here only as an example, chosen from many similarly practical topics.

Mr. Pierson admonishes the city-based defense attorney not to park his Cadillac or station wagon around on a side street when he arrives in the county seat. The natives will spot it, and him, anyway, and will merely resent the pretension. Whether either of these vehicles would attract any attention in a North Dakota town is open to question, among others of like type owned by local residents. It may indicate that Oklahoma, despite its precedence over us among oil states (to date) is not as well off as we might suppose.

Those elements of Federal or "new rules" practice such as pretrial procedures, interrogatories, depositions, demands for production and inspection, and physical examinations are especially well handled in this work. For ready primary reference on these topics, it is superior to the longer standard works we are learning to use here.

These two works were jointly reviewed because they cover the same general subject. Each, however, serves a different purpose. For those lawyers still considering themselves as students of the

law, they constitute good additions to the library. For those attorneys needing no further instruction, if any such exist, the books are very interesting reading.

WILLIAM S. MURRAY °

THE LAW OF AWOL. By Alfred Avins, Member of New York, Florida, District of Columbia, and Court of Military Appeals, Bars: Oceana Publications, 1957. 288 Pages. Price \$4.95.

The Law of AWOL, although intended to be of assistance to all lawyers, is primarily designed to aid military men who are not lawyers but who are confronted with problems concerning absence without leave. The purpose of the author is to present to those who lack the facilities of a large law library, or the ability to use one, a workable knowledge or source of reference on the problem

In order to properly present this aspect of military law the author has utilized a format resulting in a combination casebook, textbook, and law review type of treatment, thereby enabling the author to present a clear picture of the problem discussed.

The subject involved is treated on a logical basis beginning with a historical analysis, the magnitude of the problem in modern times, and the necessity of adequate regulation. After a brief discussion of AWOL in general, with emphasis on what conduct constitutes the offense and who is subject to the law of AWOL, a detailed treatment is given to the topic, first from the point of view of preparing a case for the prosecution and second from the aspect of preparation of a case for the defense.

The Law of AWOL presents a concise and complete treatment of the topic, coupled with good indexing of materials, resulting in a valuable aid to both lawyers and non-lawyers who deal with this aspect of military law.

RALPH KOENIG

THE LION AND THE THRONE. By Catherine Drinker Bowen. Boston, Massachusetts: Little, Brown, and Co. 1957. 651 Pages. Price: \$6.00.

The Lion and the Throne is a biography of the life of Sir Edward Coke, one of the most outstanding lawyers and statesmen that England has ever known. The author of this novel, Catherine Drinker

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Bowen, has also written *Yankee from Olympus*, which is a biography of Justice Oliver Wendall Holmes.

Sir Edward Coke was born in 1552 of noble parents and inherited the legal tradition of his family. After a brilliant career as a public solicitor and holder of several minor public offices, Coke was appointed Attorney General in 1594.

The setting of the story is during the days of Queen Elizabeth and her successor, James the First. The intrigue of court life is brought out very vividly in the plottings and ambitions of those seeking favors from the throne. The trial of Sir Walter Raleigh, who was accused of treason, is one of the many historical events in this book. Coke's chief adversary and antagonist was Sir Francis Bacon, whose ambitions paralleled those of Coke, but Bacon lost favor in later life and was imprisoned while Coke reached the height of his ambition.

Coke became Speaker of the House of Commons and later Chief Justice of England. One can notice the change which occurred in Coke from his almost worship of Queen Elizabeth and her power, to his attack of King James and his royal prerogative, which resulted in brief imprisonment of Coke.

Probably the most outstanding contribution of Sir Edward Coke was his compilation of the law. Up to his time there was little attempt made to keep a complete record of previous cases and decisions. His Reports and Commentaries were recognized as authority and a citation from Sir Edward Coke is still regarded as ruling law in many instances.

This novel does not attempt to deal strictly with the legal system or legal problems of 17th century England. The author has written in a style that will appeal to the general public, rather than solely to those of the legal profession. The historical value of this novel exceeds the legal value and it should be read with this in mind.

RONALD G. SPLITT

MUNICIPAL LAW. By Charles S. Rhyne. Washington: National Institute of Municipal Law Officers, 1957. 1125 pages. Price: \$22.50.

This single volume work by the President of the American Bar Association and long-time General Counsel of the National Institute of Municipal Law Officers (NIMLO) presents today's law of Municipal Corporations in a compact, practical and usable form.

The growth of the law in this field in the past decade or two

has been so rapid that it would appear to be an impossible task to compress this body of law into one volume.

Mr. Rhyne has accomplished the task by the use of a tight writing style, without repetition, argumentation or circumlocution, and the use of a physical layout permitting a maximum of text in a minimum of space.

The text is authenticated by literally thousands of citations to reported cases, the footnotes comprising about half of each printed page. The numerical extent of the citations is demonstrated by this reviewer's count of over one hundred from North Dakota alone, from the 1896 case of *State v. Archibald*, 5 N.D. 359, to the 1956 case of *Kessler v. Thompson*, 75 N.W.2d 172.

A large share of the credit for the authenticated detail of the work must go to the unique source material readily available to the author in the files of NIMLO, where Mr. Rhyne, as Executive Director and General Counsel, has accumulated and indexed one of the largest collections of municipal legal material in existence.

Some of the chapters, such as those on Federal-City Relations, Parking and Parking Facilities, and Public Housing and Urban Renewal, and some of the sections such as those on union activities of city employees, loyalty oath requirements, regulation of federal aid highways in cities, establishment of truck routes, exclusive use of certain streets by learners, etc., cover fields which are so new that there is a dearth of reported authority. Here the author has made use of his access to the opinions, research reports and correspondence expressing the thoughts and experience of the city attorneys of more than a thousand cities across the country, accumulated over a period of twenty years. His concise statements of the problems presented and of the present state and probable course of the law in these new fields will furnish the guide for much of the case law in the future.

Written by a "city attorneys' attorney" as a quick and authoritative handbook for the daily use of the city attorney, the work has far transcended this original purpose. It has become a compressed encyclopedia of local governmental law for the use of every lawyer who deals with municipalities, their officers or agencies.

The text is in clear, readable print; the organization, chapter titles, paragraph headings and paragraph numbering system are logical and convenient; and the 144-page index provides an excellent facility for quick reference.

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