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## Book Reviews

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## BOOK REVIEWS

SOME PROBLEMS OF PROOF UNDER THE ANGLO-AMERICAN SYSTEM OF LITIGATION. By Edward Morris Morgan. New York City: Columbia University Press, 1956. 207 Pages. Price: \$3.50.

In 1903, General Horace W. Carpentier established the James S. Carpentier Lectures which were to be given by men of pre-eminent fitness and ability. In 1955, Professor Morgan presented the thirteenth of these lectures, directed to a thorough examination of the basis of many of our rules of evidence and procedure. These lectures have been divided into six segments and collected and published by the sponsor, Columbia University. The author, Edward Morris Morgan, has served with distinction on the faculties of the Universities of Harvard, Minnesota, Yale and Vanderbilt, and has spent a lifetime of practice, study, teaching and writing in the field of evidence.

Professor Morgan's approach is to briefly review the early beginnings of the adversary system of litigation to discover the practical basis of modern day procedures. Illustrative of this approach, and interesting to the student of the most modern forms of pleading and proof, is the analogy drawn between the modern Federal Rules and the practice described in the Year Books. The author further discusses the logical foundations of common law and code pleading, and the reasons leading to their perversion and abandonment. Finally he refers to the modern Federal Rules, pointing out that although this has been our best attempt to throw off the shackles of technicality, it may easily be defeated unless the Bench and Bar are determined to make them workable.

In outlining the problem of judicial notice in the field of evidence, the author notes that the proper use of this tool can greatly facilitate the limitation of unnecessary side issues. Mr. Morgan also tackles the knotty problem of the functions of Judge and Jury, giving particular attention to the burdens of proof and going forward with the evidence.

The final three lectures involve the hearsay evidence rule, its history and theory, its effect in practice, and its effect when coupled with other exclusionary rules. In this last lecture, a hypothetical lawsuit is outlined to better illustrate the totally illogical forms of evidence which may be admitted while evidence of a

highly valuable nature may be excluded. The rules of evidence excluding testimony in a former action on the same issue, where the witness who appears in the present action is forgetful or disabled, is highly criticized.

Not only are the lectures critical of the present form of our system of litigation, but they also suggest recommendations for corrective legislation of those features of our system which lie within the peculiar province of the legal profession. For these reasons, this work is useful for students and practitioners of our method of pleading and proof.

GARRY A. PEARSON.

THE RIGHT OF THE PEOPLE. By William O. Douglas, United States Supreme Court Justice. New York: Doubleday and Company, 1958. 238 Pages. Price: \$4.00.

*The Right of the People* advances before its readers the question of whether or not every American's liberty and their right to speak, to choose and to protest stands in jeopardy today. Throughout the book, the author uses the case approach to show how court decisions have gradually infringed on basic rights guaranteed to the people by the United States Constitution.

The book is conveniently divided into three parts. The first part is devoted to freedom of expression which is contained in the first amendment to the United States Constitution. The author believes that the secrecy which has clothed many governmental activities, both foreign and domestic, should be discarded, and that freedom should be enlarged to permit the people to challenge the very postulates on which the existing regime rests.

The topic of the second division is the "right to be let alone". The author reveals through court decisions how this right has been greatly impaired in recent years; however, since this right is a great part of our American heritage, there remains a constant clamor for its recognition. The author also believes that this "right to be let alone" includes the right of privacy, freedom from legislative and loyalty investigations, religious freedom and the right to defy an unconstitutional statute.

In the last part of the book, Mr. Douglas sounds an alarm at what he regards as the increasing encroachment of the military in civil affairs. He contends that the people have been willing to

sacrifice their rights of freedom in the hope the military will provide security from possible exterior oppression and present world tensions.

*The Right of the People* is an attempt to stir Americans to give more consideration to the erosion of our freedom. The book is primarily adapted for students of constitutional law, but would prove itself thought provoking to lawyers and laymen alike.

DENNIS M. SOBOLIK.

NORTH DAKOTA DISTRICT COURT JUDGES

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John C. Pollock  
Fargo



*Honorable*  
O. B. Burtness  
Grand Forks

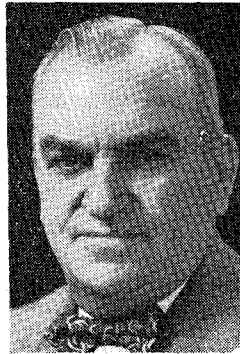


*Honorable*  
John Sad  
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SECOND JUDICIAL DISTRICT



*Honorable*  
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Grafton

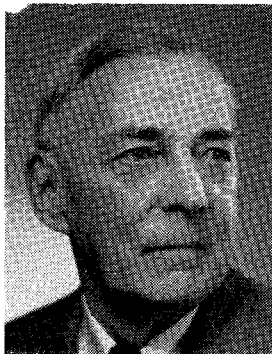


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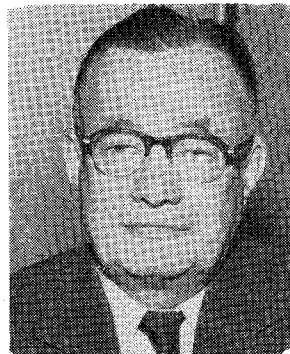


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A. G. Porter  
LaMoure



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Clifford Schneller  
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