North Dakota Law Review

Volume 50 | Number 4 Article 9

1973

Book Reviews

Joseph R. Maichel

BOOK REVIEWS

INSANITY DEFENSE, by Richard Arens. Philosophical Library, Inc., 15 East 40th Street, New York, N.Y., 10016, 1974, 328 Pages, $12.50.

Any lawyer reading this book for the purpose of helping prepare an insanity defense will be sadly disappointed.

The author convincingly proves that the District of Columbia courts, which seem to be the bellwether tribunals in the field of insanity defense, have so emasculated the various legal tests for insanity including the M'Naughten[1] and Durham[2] rules that there are no judicial guidelines left except a hodge-podge and mish-mash of meaningless legal double-talk that no defense counsel can possibly understand.

The book paints a bleak and gloomy outlook for any lawyer raising insanity as a defense who hopes to find some clear-cut law to support his position. Basically the author says that such law no longer exists.

The author, a trial lawyer and professor of law, was hired through funds from a private foundation and public sources to study the judicial doctrine of criminal responsibility and to try to effect a change in the behavior of these institutions that determine mental responsibility. Admittedly he failed and much of his book is devoted to his legal skirmishes with the staff of St. Elizabeth's Hospital in the District of Columbia which is the District's official institution for the insane. It is to this hospital that the District of Columbia courts commit a defendant to determine if he is competent to stand trial and assist counsel in his own defense.

Almost invariably the hospital's staff would return a conclusion the government in tax cases; the tenant in landlord-tenant cases;

---

1. M'Naughten's Case (1843), 8 Eng. Rep. 718. This rule provides that it must be clearly proved that, at the time of the committing of the act, the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or if he did know it, that he did not know he was doing what was wrong. *Id.*

2. Durham v. United States, 214 F.2d 862 (D.C. Cir. 1954). Under the Durham rule, the court declared that punishment could not be imposed for behavior which was the product of mental disorder. *Id.*

full of psychiatric jargon that the defendant was mentally competent to stand trial even though their work-up and diagnosis would be sadly incomplete and despite the fact they often times treated the defendants in a most cavalier fashion.

Their findings became frustrating and maddening to the author. He describes the various cases he defended using insanity as defense, where he hired private psychiatrists and psychologists to make in-depth studies of the defendants and to testify as to their findings. In these cases he suddenly started to get acquittals and reversals. But this led to his undoing because the Comptroller General of the U.S., from whom the author's project was partially funded, informed the author that public funds could not be used to pay expert psychiatric witnesses to testify on behalf of a defendant in a criminal case. This spelled the demise of the author's project.

Another message left to the reader by the author is that today any lawyer who intends to defend a person on the grounds of insanity had better not rely on a public supported hospital to help him prove his case, but rather, should have ample money to hire private psychiatric and psychological expertise. As the author says, "Therefore, put money in thy purse" . . . because "to bring about a re-evaluation of a St. Elizabeth's diagnosis requires the use of psychiatric experts whose services must be purchased." In other words, "Money talks."

Still, even with the strongest of this kind of private defense testimony, the book points out, through statistics and studies, how extremely difficult it is to sell a jury on the insanity defense. Above all, it clearly shows the tremendous amount of pre-trial work and preparation that must go into a defense of "Not Guilty by Reason of Insanity."

I can't recommend this book for a cozy evening around the hearth because it's laborious and painstaking reading. But it does give the lawyer-reader an insight into our public mental institutions and of the diagnostic treatment of those defendants who are committed to them for a determination of mental competency. And it shockingly discloses the great weight and credence which many of our courts attach to the findings of those institutions.

The author is to be commended for a heavy but erudite treatise.

LYLE HUSEBY*

* Husbey & Backes, Ltd., Fargo, N.D., J.D. 1969, L.L.B. 1940, University of North Dakota.

CONGLOMERATES UNLIMITED: THE FAILURE OF REGULATION, by John F. Winslow. Indiana University Press, 1973, 296 Pages, $10.00.

The corporate merger movement, prevalent over the past twenty years, is the subject of John Winslow's CONGLOMERATES UNLIMITED: THE FAILURE OF REGULATION.

Mr. Winslow approaches this subject matter by statistically demonstrating the alarming rate of the corporate merger movement in the United States. He follows this by an interesting detailed discussion of the various proven techniques utilized by corporations in the building of a conglomerate. Some of the methods emphasized were:

1. Making arrangements with a bank to transfer all of the banking business of the to-be-acquired subsidiary in return for the supply of the necessary capital required for the acquisition of controlling interest in the to-be-acquired company.
2. Purchasing controlling interest with borrowed funds and thereafter transferring the debt which arises by virtue of the cash outlay to the acquired company after the control has been accomplished.
3. Securing with debt security a company having large cash reserves and thereafter to utilize these reserves to acquire another company or companies.

The author emphasizes that the cooperation of the management of the company to be acquired and the influence that management has over the stockholders of the to-be-acquired company is an important initial factor to be considered in the acquisition process. This needed cooperation is frequently attained through establishment of interlocking directorships, promises of higher corporate salaries and contractual employment commitments to existing management for extended periods of time.

The portion of the book most appealing to lawyers is the general discussion of the applicability of existing laws which either prohibit entirely or provide safeguards in the area of industrial concentration and the general adequacy of the enforcement of those laws by the Federal Reserve Board, stock exchanges in general, the Securities and Exchange Commission, Interstate Commerce Commission, Internal Revenue Service and the Department of Justice. Mr. Winslow is highly critical of the inadequacy of the enforcement of those laws and illustrates same by reference, among others, to the extensive conglomeration endeavors of the Penn Central Railroad and the relative success thereof in spite of the fact that railroads in general are among those businesses having the longest history of governmental regulation.

While I can agree with Mr. Winslow that the merits surrounding many mergers are indeed questionable, and that the methods employed in consummating many mergers are deplorable and often unlawful, I do feel that the book is very one-sided in the presentation of the subject matter. It condemns, at least by implication, corporate mergers per se, without emphasizing the fact that many, many mergers have been established without violation of law, are not only perfectly legitimate, but are extremely desirable from the consumer as well as the corporate standpoint.

JOSEPH R. MAICHEL*

* Counsel for Montana-Dakota Utilities Co., Bismarck, N.D., B.S. 1957, J.D. 1959, University of North Dakota.