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BOOK REVIEWS

ALEXANDER'S FEDERAL TAX HANDBOOK. By Robert M. Musselman and Douglas D. Drysdale. Charlottesville, Virginia: The Michie Company, 1956. 1082 pages. Price. $20.00.

Few lawyers today are able to engage in general practice without at some time encountering federal tax problems. It has been their experience that a set of reported cases and a standard legal encyclopedia do not furnish adequate tools with which to solve these problems. The necessity for specialized, up to date tax material has mothered the invention of the tax "handbook" which provides a quick, ready reference to the existing law and a summary of the most recent decisions interpreting it.

Alexander's is perhaps as complete as any one volume in this field. It has been written to meet the needs of the lawyer. No technical knowledge of accounting is necessary to understand the material. A full comprehension can be gained by careful, analytical reading of the particular section involved. Cross-references are liberally supplied throughout the book by the insertion of section numbers. The search for relevant materials in the book is facilitated by an excellent index. The order of presentation follows a logical pattern with which the reader would soon become familiar.

Illustration by way of example is used extensively. The examples are sufficiently simple so as to prevent clouding the principles illustrated. Although the text material is supported liberally with footnotes, there is a noticeable absence of reference to treatises and articles. The Internal Revenue Code, cases, rulings and regulations have been cited almost exclusively. The authors have made an effort to include only the latest decisions except on well settled principles where the leading case is generally cited.

Among the more unique features found in the book, and of special interest to the North Dakota attorney, is the chapter on farm income and expenses. Accounting methods available to farmers are discussed in some detail as are tax problems peculiar to the business of farming. Another chapter of special significance details the procedure for contesting tax assessments. The authors have included the forms of several petitions to be used in such a contest. Appellate procedure in tax cases is outlined thoroughly together with information regarding admission to practice before the tax court.

Another important feature of the book is the section on "Tax Planning and Control". The tremendous influence that the imposi-

tion of income tax has had on business is illustrated by the fact that only the foolish would attempt to organize a business of any sort today without giving thorough consideration to the tax implications of its structure. It is impossible to stress too greatly the value of this chapter.

A small pamphlet containing all the amendments to the Internal Revenue Code of 1954 accompanys the book. Alexander's Federal Tax Handbook has the same inherent disadvantages as any other work which is less than a complete loose leaf service. However, in absence of any sweeping change in the present law, the publication should be of value for several years. The relatively low cost and the fact that presently it is an up to the minute reference makes this 1956 edition a sound investment for the attorney engaged in the general practice of law.

JON N. VOGEL

CASES AND MATERIALS ON THE LAW OF OIL AND GAS. By Howard R. Williams, Richard C. Maxwell, and Charles J. Meyers. Brooklyn: The Foundation Press, Inc., 1956. 790 pages. Price $9.50.

The legalistic quandaries and anomalies precipitated by Colonel Drake's "Wildcat" were multitudinous. Unassisted by either precedent or reasonably accurate geophysical information, the contemporary judiciary, when initially forced to ascertain the rights, powers, privileges, and immunities of landowners and lessees with respect to oil and gas, were hard pressed. But they were resourceful, and, in a magnificant display of factual misconception substantiated by a liberal sprinkling of commendable individualism, arrived at a variety of decisions, the most singular characteristic of which was almost total lack of uniformity. In view of the circumstances, hopeless irreconcilability was perhaps inevitable. To a considerable extent it persists today, at least in an abstract sense. But notwithstanding the diverse means employed by the various courts, the results obtained were surprisingly uniform. The evolvement of current fundamental juristic concepts in this highly specialized field of law is traced in a concise, thought provoking manner by Williams, Maxwell, and Meyers.

The transitional development of oil and gas law, as well as a succinct consideration of some of the more purely economic and political problems which have arisen by virtue of the rapid expansion of the oil and gas industry are included in the first three chap-

ters of the book, comprising approximately one hundred pages. Substantially all of this space is devoted to text rather than case material, and one is led to strongly suspect that deference to traditionalism may well have been largely responsible for the inclusion of any case material whatsoever. This is not to say that the cases are not pointedly applicable, for they are. But their illustrative rather than developmental function is glaringly apparent. Be this as it may, this portion of the book is extremely well presented. Coverage is, and is intended to be, quite superficial; the writing is "tight", but abundant references to primary and secondary source material readily facilitate more detailed examination of any particular phase of the subject matter.

The remainder of the book is presented in orthodox casebook style. As is true in similar works, extensive consideration is given to the types, clauses, and covenants of oil and gas leases.

The pragmatic approach evidenced throughout this casebook is forcefully illustrated by the chapter dealing with taxation. There can be no rational question but that the depletion allowance granted to extractive industries has had inestimable influence upon both the form and the substance of oil and gas transactions. Cognizance of at least the rudimentary aspects of this crucially important segment of tax law is vitally essential to reasonably proficient protection of a client's oil and gas interests. The cases and problems selected by the authors to exemplify this fact fulfill their function most adequately.

Perhaps the most striking single feature of this new casebook is modernity, both in content and treatment. Of the slightly more than one hundred principal cases included, approximately 40 per cent have been decided since 1950, 60 per cent since 1945, and 80 per cent since 1940. This fact attains particular significance when considered in light of the still formative stage of oil and gas law. Quite logically, the general theme of currency extends to the supplemental material.

It should be noted that the paucity of older cases has in no way detracted from the effectiveness of the casebook. Indeed, by casting off the musty aura of antiquity, the authors have lent to their work an air of freshness uniquely appropriate to the inherently dynamic field of law with which it deals.

From a pedagogical standpoint, this casebook leaves little to be desired. It is highly recommended.

HARRY M. PIPPIN

HOW AND WHERE LAWYERS GET PRACTICE. By Claude W. Rowe. Durham, North Carolina: Judiciary Publishing Company, 1955. 212 pages. Price: $5.00.

This is a most fascinating and unconventional book. Mr. Rowe is a North Carolina attorney who, over a period of twenty years collected from practicing lawyers, judges and other legal sources, off-the-cuff answers to the question contained in the title.

This is a sort of Kinsey Report on the law business. It is equally amoral, and the remarks are recorded with tape recorder fidelity. No moral judgments are passed; evidently nothing was censored or cut out. There are some frank and revealing statements, a great deal of interesting information, and enough anecdotal material to convince the reader that if nothing else, seasoned lawyers are a humorous breed of raconteurs.

One word of caution is necessary. As a scientifically selected "sample" for polling, the section of the Bar interviewed is not a real cross section. Geographically it seems confined to Washington, D. C.; New York City and upstate; North Carolina; Pennsylvania (principally Philadelphia and environs) and a few random locales. The attorneys interviewed lean heavily toward the 60-70 year age group, and certain categories of the Bar are heavily and disproportionately represented.

The period of the 1930's and 1940's appears to have been the time when most interviews were conducted. The year 1938 appears frequently. The answers naturally reflect the times.

With these qualifications in mind, the book is a goldmine of arresting and startling information, and is very entertaining. The fact that the author has interviewed many law professors with past actual experience gives special weight to those interviews. The dual background of contact with future lawyers and hard-shelled practical experience is, it would seem, a good qualification to speak.

The practical aspect of building and taking care of law business is difficult to present as part of a law school curriculum.[1] Intangibles are involved to a high degree.

Although there is a great deal of conflict and contradiction in the thousands of answers the author collected to his question, the most interesting thing is the area of agreement. Some statements are repeated ad infinitum by city and county lawyers alike, successful and unsuccessful. It seems generally agreed that word-of-

1. A good work on the subject of office management in *Law Office Management*, McCarty. Prentice-Hall. Last edition 1955.

mouth advertising by clients, jurymen and the like, is the most productive form of advertising. The word "snowballing" to describe the way a law practice should grow, is used with unusual frequency. Such practices as joining organizations, clubs and churches to get business meet with mixed opinion. Many seasoned lawyers think that procedure is worthless. They frequently listed activity of their own in a dozen organizations, but clearly imply that the natural gregariousness of the lawyer causes them to be active; that getting business was not in their minds, and that it wouldn't do much good anyway.

One thought repeated so often by attorneys hundreds of miles apart is that the young lawyer shouldn't depend on friends and relatives for business. These sources aren't good, so the story goes, because close friends don't want the attorney to know too much of their affairs, are afraid they'll be repeated, and prefer to go to a stranger. Or that friends and older people who grew up with an attorney think of him as a boy, and cannot believe, due to familiarity, that he has good professional judgment.

The aggressiveness of individual attorneys evidently knows no bounds. Mr. Rowe was told of attorneys who send condolences and pay visits to widows of men they never knew, in hope of digging up an estate; of barristers who "sit in the front pew and sing the loudest" in the best Phariseeic tradition; of someone's grandmother being hurt and the cards of "runners" being stacked inches high in the card tray.

"Chasing or soliciting business falls into two categories, listed many times by the attorneys interviewed. There is the overt type of chasing engaged in by personal injury lawyers, in collaboration with police, ambulance drivers, hospital attendants, and even telephone operators. For instance in a North Carolina city of only 75,000, one firm is said to have six "runners" on the payroll. Then there is the more subtle variety, in connection with business and banking law. The bank sends clients "up the back stairs" to its own attorney. The role of banks in getting law business is one that is mentioned repeatedly both by bank attorneys and those "on the outside looking in".

One check point on the accuracy of Mr. Rowe's survey is that criminal law, and criminal lawyers, do not stand high in the profession. This precise point is one with which the American Bar Association is deeply concerned, and the Section of Criminal Law is getting increasing attention in that association. Evidently the ABA's

soundings of opinion among the Bar and public coincide with this author's.

The variations between the ideas of the New York City and Philadelphia attorney and his North Carolina counterpart are astoundingly few.

There is much cynicism in this book, and much of disillusion. It is a remark repeated constantly, that ability and success often do not run together. The distinction between the personality type who can go out and get business and the man who can handle it when it comes in, is stressed. Perhaps this is one of the basic reasons for law firms, and statistics which show that firm lawyers have higher individual income than sole practitioners.

Along with the cynicism, though, is much backing for the old copybook maxims of hard work, doing a good job, and reward going to those who merit it. Since this book contains so many completely uninhibited remarks, and so much that runs counter to the Horatio Alger theme in American life, it can only be concluded that those many lawyers who credit old fashioned hard work and honesty for their and other's success, were sincere. This book is no collection of platitudes and do-goodism, and for that very reason, those attorneys who recommend good work and integrity should not be laughed off.

Some of the informants, presumably by request, weren't named. But most are named, together with birthdates and date of entry into practice, so that they could easily be identified from Martindale. What they say, they evidently were willing to stand back of, however frank and unvarnished it might be.

This book gives rise to several interesting avenues of thought. In the first place, why shouldn't bar associations do more of this research among their members, taking more scientific examples, in the age group 30-40, 40-50 especially? The information turned up has deep sociological significance and would have great use in orienting the law student ad the young lawyer.[2]

Actually, the man who will enjoy this book the most is the battle-scarred veteran,[3] whether he is the office lawyer or the trial breed (both are covered thoroughly in this sample). He is apt to say "That's just what *I've* always said." "That's how ——— got his business."

Of course, that presumes that the attorney is willing to put this

2. For a fascinating analysis of Wall Street attorneys and their firms, see the two article series in *Harpers* for January and February 1956.

3. This reviewer doesn't qualify, but he discussed it with some who do.

book down long enough to say anything. Once opened, it is hard to lay aside.

Summing up, this work is unique and it is unfortunate someone hasn't done it before.

WILLIAM S. MURRAY*

HOW TO PROVE A PRIMA FACIE CASE. By Howard Hilton Spellman. New York: Prentice-Hall, Inc., 1954. 701 pages. Third Edition. Price: $8.50.

To prove a prima facie case, *i.e.*, to take a case to the jury, the attorney must know the essential elements of the cause of action, what facts must be elicited to establish these elements to the judge's satisfaction, and the proper method of getting these facts before the court. The purpose of this book is to aid the practitioner in achieving these objectives.

Mechanically, the book is divided into three parts. Part I explains the proper use of the book and requires no comment except to say that the book is not difficult to use. Part II is entitled, "Prima Facie Cases" and consists of 154 "forms" alphabetically arranged and numbered. Each "form" begins with the questions and answers necessary to establish the cause of action. As the author points out, these questions and answers represent the minimum requirements necessary to carry the case to the jury. Following the questions and answers the author has listed "hints" which are set in bold-face type. These "hints" serve the purpose of pointing out possible "pitfalls" that may lurk in the action and suggest typical difficulties that may require further research. The "hints" are usually followed with one or more excerpts from cases which are designed to inform the reader by defining, distinguishing and suggesting further possibilities and contingencies. The citations contained in the extracted cases have been retained by the author and serve as a "lead-in" for further research. At the end of each "form" is appended a list of "source cases". Where possible, the author has listed cases from every jurisdiction, and a great many North Dakota citations have been included.

Part III is entitled, "Proof of Situations Common to Various Causes of Action" and deals with the proper method of introducing individual items of evidence which prove an ultimate fact.

Various other aids have been included throughout the book. For

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example, at the beginning of the "form" of an action based on alienation of affections, the author has inserted the warning that some states bar this action by statute, and may make its prosecution a crime. Possible objections to questions are often anticipated and the proper method of avoiding or overcoming them is explained.

Posing a hypothetical problem illustrates how the book may be used to the best advantage. Suppose a client comes into the office, after being bitten by a dog, and wants to know if he can sue. The attorney, if he has not been involved in "animal cases" for some time, may recall only that the owner is liable under some circumstances. While the client elaborates, the attorney opens the book to the table of contents and under "Negligence" finds the subdivision "animal bite". Under this "form" appear questions and answers which tend to establish that the dog was owned by the defendant, that it had vicious propensities and that the defendant had knowledge of these propensities. These factors constitute the elements of the case and must properly be alleged in the pleadings. Following the questions and answers is a cross reference to the "forms" which deal with proof of injuries and damages. There is also a reminder that proof of ownership or of harboring the animal can be obtained by an examination of the defendant before trial.

The first "hint" reads, "The plantiff must prove that the defendant had knowledge of the vicious propensities of the dog". There follows a discussion of the rules governing contributory negligence, assumption of risk and absolute liability. The second "hint" reads, "The owner of a watchdog is presumed to have knowledge of its ferocious character". This could be an important and enlightening bit of information, since knowledge on the part of the defendant is essential to the case. The next "hint" reads, "Where an animal trespasses upon the land of another, causing damages, scienter need not be shown.". This statement opens a new "theory of the case". The extracted case indicates the owner is liable if his domestic animals commit a trespass on the lands of another unless caused by defect in fences which the latter ought to have repaired. Another "hint" reads, "An owner of a wild animal or one of ferocious propensities is chargeable with notice of its vicious character" thus, furnishing the reader with additional helpful information. The extracted case amplifies the statement with a general discussion of the law on the subject. The last "hint" reads, "It is the duty of an owner of a multiple dwelling to exclude known vicious animals

from frequenting the same." The extracted case indicates a corporate owner may be liable for permitting known vicious animals on the premises of a multiple dwelling though it neither owned nor harbored the animal.

What has been written indicates the use of the book from the plaintiff's standpoint, but of course, the defense attorney may use the book in the same manner. What is a "pitfall" from the plaintiff is an "out" for the defendant, and the plaintiff's pleadings can quickly be examined for defects.

The book obviously cannot do all the attorney's research for him, but it will aid greatly in getting the case into court and to the jury. It will also considerably reduce the amount of time spent in research.

GERALD GLASER

IMPARTIAL MEDICAL TESTIMONY. A Report by a Special Committee of the Association of the Bar of the City of New York on the Medical Expert Testimony Project. New York: The Macmillan Company, 1956. 188 pages. Price: $3.95.

Judges, attorneys, and doctors have long been painfully aware that the sharply conflicting viewpoints adopted by partisan doctors in personal injury suits often have the undesirable effect of complicating settlement and, if the case goes to trial, of confusing rather than elucidating the jury. In a praiseworthy endeavor to partially alleviate these evils, the New York Medical Testimony Project was conceived and put into operation in December, 1952. This book is a report, both from a legal and a medical standpoint of the operation of that Project to December 1, 1954.

The Project, in its functional aspects, was quite simple. The New York Academy of Medicine and the New York County Medical Society selected from their members those most competent in various specialized fields[1] and persuaded them to serve on medical panels. Working through a Medical Report Office,[2] the judges, in

1. Experts were chosen in the fields of general surgery, plastic surgery, Ophthamology, cardiovascular diseases, dermatology, tuberculosis, internal medicine, neurosurgery, neurology, psychiatry, neuropsychiatry, roentgenology, orthopedics, otolaryngology, obstetrics & gynecology, genitourinary diseases, malignancy & trauma, and endocrinology.

2. The Medical Report Office was placed in charge of a deputy clerk of court. After an examination was ordered by a judge, it was the responsibility of the Office to select an expert from a confidential list and make arrangements between the physician and the parties litigant for an appointment. In addition, the Office paid examination fees, kept a complete set of records and, in general, acted as a coordiating agent between the medical and legal participants in the Project.

conducting pre-trial conferences, were authorized, in any personal injury case, to order an examination of the plaintiff by an impartial expert. Subsequent to the examination, which was made without cost to either party,[3] another conference was held. If, in light of the specialist's findings, settlement was still impossible and the case went to trial, either party could call the examining expert as a witness.[4]

The results of the project are impressive. Of the 238 cases referred to the panel members, settlement has been made in 120,[5] with a considerable number still awaiting trial. The judges who took part in these settlements quite generally agreed that the expert's examination had a decided tendency to narrow the area of controversy and materially contributed to the prompt disposal of the cases. In situations where dispute as to liability renders settlement unlikely, it was felt that the testimony of an impartial expert should greatly assist the jury in making a just ascertainment of damages.

An unexpected bonus derived from conducting this experiment was the disclosure of a notable lack of diagnostic ability on the part of many doctors. For example, 24 out of 100 cases revealed errors in x-ray interpretation or technique. In two instances, claimed fractures of the nose were found to be based on misinterpretation of normal suture lines. In another case, three physicians agreed that the plaintiff had a fractured skull. Two eminent roentgenologists found no evidence of fracture. While no attempt was made to determine the incidence of ignorance and deliberate distortion of the facts, the Medical Consultant conceeds that, "The most charitable interpretation which can be placed upon this serious misinterpretation of x-ray findings is that of ignorance."[6]

Among the exhibits of particular interest are approximately 190 cases which have been referred to medical experts and later disposed of either by trial or settlement. These cases contain the claims of both the plaintiff's and defendant's physicians, the findings of the expert, the amount claimed as damages, the amount offered in settlement, the amount finally received, comments by the

3. The Project was financed by grants of $20,000 each by the Alfred P. Sloan Foundation and the Ford Motor Company Fund. During the two years, $20,383.35 was expended in payment of the fees of medical experts.

4. While no decision has been made, the courts participating in this experiment have been unable to agree whether the general rule forbidding a party to impeach his own witness ought to apply in this situation.

5. Of these, 66 were settled at or before the resumed pre-trial conferences; 36 were settled after the resumed pre-trial conferences but before trial; and 18 were settled during trial. This figure does not include 8 of the 238 cases transferred to the City Court, a tribunal which has a jurisdictional limit of $6,000.

6. P. 48.

medical consultant, and comments by the judge who handled the case.

As one would expect, some members of the participating bench and bar had little to say for the Project. They insisted that by virtue of the inexactness of medical science, the opinion of an expert is not necessarily correct; that impartiality in no way obviates the possibility of error; and that by "cloaking the expert with an air of infallibility" the jury will be prone to accept his findings as gospel. The general consensus of opinion, however, was that an expert's determination is more likely to be correct than that of one less qualified; that an impartial witness is more likely than is a partisan witness to admit any uncertainty which he may have with respect to a given set of facts; and that as either party may cross examine the specialist and call his own experts to rebut the testimony of the impartial examiner, it is improbable that the jury will be unduly influenced.

This little book, in detailing the operation and results of the New York Project has, of course, presented but one of innumerable possible solutions to the medical testimony dilemma. Undoubtedly the solution proposed is imperfect in some respects. It could not reasonably be expected to be otherwise. But it is workable, and retention of the "plan" on a permanent basis by the Supreme Court in the First Department is a persuasive testimonial to its efficacy.

HARRY M. PIPPIN

SUCCESSFUL HANDLING OF CASUALTY CLAIMS. By Patrick Magarick. New York: Prentice-Hall, Inc., 1955. 495 pages.

Patrick Magarick is Attorney-in-Charge of the Casualty Claim Division of the National Surety Corporation. He has a thorough familiarity with claims work gained from twenty-five years experience holding positions of importance in such top-flight companies as Aetna Casualty and Surety Corporation and American Casualty Company. With the intent to diminish a feeling of helplessness common to most new claims men, the author has drawn on his wealth of experience and has written a book that is completely understandable to the new man, yet "meaty" enough to be of value to the experienced adjustor and attorney.

Beginning with a discussion of personality traits and special talents requisite in the makeup of a successful claims man, the author suggests the attitudes and habits which should be cultivated. In

the first chapter he lists the general qualifications deemed necessary before one embarks on a career in the claims field. He also discusses training and education but stresses that actual experience is essential to the development of proper methods.

Upon reading the first few chapters the participating attorney may become dismayed, for these chapters are devoted to what the author terms "useful principles" of law. However elementary these chapters seem to the lawyer, they afford the claims man, who is not an attorney, an opportunity to become acquainted with the legal principles which are essential in successful claims work. A little persistency, however, will carry one into topics important to both the experienced and the inexperienced claims man. Separate chapters deal with such ever present problems an investigation of claims involving fraud, practical application of subrogation rights, and coverage under public liability policies.

This is not a book which, upon completion, need be tucked away on the library shelf to gather dust. Among its most useful features are the many important "check-lists", which cover virtually every casualty situation including the often neglected workman's compensation cases. These sections will prove invaluable to the novice on his faltering entrance into the practice of law which generally involves some claims work.

While this is not a detailed study of each phase of claims work, the author has aptly illustrated the basic requirements. The book is a distinctive contribution to this field of legal literature — a rapidly growing field which is too often overlooked by textwriters.

CHARLES A. FESTE

THE FORGOTTEN NINTH AMENDMENT. By Bennett B. Patterson. Indianapolis: Bobbs-Merrill Company, Inc., 1955. 217 pages. Price: $5.00.

"The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people." This, the Ninth Amendment to the Constitution of the United States, contends the author, ". . . if given its proper meaning and construction, could be the most significant and forceful clause in the entire Constitution." His conclusion is logical on the basis of evidence submitted in this volume.

Mr. Patterson begins the support of his thesis in the chapter on legislative history. In it he shows that the government of the

United States was conceived solely as a government of delegated powers. Consistent with the philosophy of natural law which prevaded the thinking of the colonists, ". . . all men were endowed by their Creator with certain unalienable rights . . ." which were "self evident", and all of those rights not relinquished to the government in the Constitution were retained individually by the people. So basic was this idea that several of the men most responsible for the framing of the Constitution thought it unnecessary to enumerate those retained rights. Many people however, still smarting from British oppression, were suspicious of any form of government. They failed to fully understand the theory of "delegated powers" and demanded assurance of their liberties in the form of a bill of rights.

Alexander Hamilton, in *The Federalist,* argued that since government was only an exercise of delegated powers, the insertion in the proposed Constitution of certain exceptions, ". . . would afford a colorable pretext to claim more than was granted." He could see no reason for declaring things not to be done, when in fact no power had been given by which they could be done. But this argument did not allay the skepticism of all, and as a result the Bill of Rights was drafted to insure acceptance of the Constitution.

The author points out that James Madison, upon whom fell the task of drafting the Bill of Rights, recognized the validity of Hamilton's argument, and countered it by including in the proposed Bill of Rights what is now the Ninth Amendment. It, along with the Tenth, differed from the other eight which were finally adopted, in that they were not purely restrictive clauses, but were broad declarations of principles. It was recognized that all rights retained by the individual could never be enumerated, but the fact that some rights were unenumerated rendered them no less sacred nor less subject to protection from governmental encroachment.

To aid in the appreciation of the legislative history, Mr. Patterson has included in the appendix of his work, that portion of the *Annals of Congress* by Gales and Seaton which records the original Congressional debates concerning the then proposed Bill of Rights. The *Annals of Congress* are believed to be one of the most authentic and complete records of the original debates. They embody the very rare and practically inaccessible work of Thomas Lloyd, a shorthand reporter who recorded verbatim the proceedings of the first session of the House of Representatives.

In the chapter on judicial history it is shown that the Supreme

Court of the United States has never construed the Ninth Amendment. Courts have fallen into error by relying on one case in which they thought the Ninth Amendment was construed. Actually, in that case, it was the Seventh Amendment which was being discussed. This misconception was caused by the fact that the Bill of Rights was renumbered when, after having passed both houses of Congress, the first two of the proposed twelve amendments were rejected by the populace.

Mr. Patterson maintains that the true meaning of the Ninth Amendment has been lost or obscurred by some of the early decisions of the Supreme Court which announced the dictum that the first ten amendments were limitations on the Federal Government only. There is now even more convincing dictum from the same body which states that it is only the first eight amendments which are restrictions on Federal power. The author is persuasive in his argument that the Ninth Amendment should be equally applicable to state and national governments.

The contents of the latter chapters are well described by their titles, which are: "What are the Unenumerated Rights?"; "This Amendment Protects Personal Rights and Liberties Rather Than Public or Collective Rights"; "The Importance of Being an Individual"; "The Restraints on Individualism"; "Our Bill of Obligations."

Unlike the writings of many lawyers, this one is very brief. Without sacrifice of clarity unnecessary verbiage has been eliminated. As such it should find favor with those who "would like to read a good book occasionally but just don't seem to find the time." The author has presented his ideas enthusiastically but objectively in a logical, well organized fashion. Even so, the book will probably be noted more for its idea content than for its literary stature.

Recent modern history has marked the emergence of governmental power as a growing force effecting the consequental submergence of individuality. While there is much to be said in favor of such a trend, nevertheless if we purport to adhere to the philosophy which gave birth to this country and which accounts for its greatness, we should occasionally examine that philosophy and seek ways to apply it to present circumstances.

If collectivism is to be resisted, individuality must be encouraged. The Ninth Amendment would do this by protecting the individual and his rights, thereby arresting a governmental trend which in many instances seems unduly concerned with expediency.

In advocating the application of the Ninth Amendment, Mr. Patterson has made a noteworthy contribution to legal and political thought.

FRANCIS BREIDENBACH

THE UNITED STATES PATENT SYSTEM. By Floyd L. Vaughan. Norman, Oklahoma: University of Oklahoma Press, 1956. 355 pages. Price: $8.50.

Rather than being a comprehensive treatment of the subject matter as the title indicates, the contents of this book pertain more, as the author states in the preface, ". . . to abuses little known than to alleged benefits generally admitted."

The Constitution of the United States grants Congress the power to enact laws ". . . to promote the progress of science and the useful arts by securing for limited times to authors and inventors, the exclusive rights to their respective writings and discoveries."[1] Even a cursory reading of Professor Vaughan's book will reveal that almost from the inception of the patent system, the lofty objectives prescribed by the Constitution have been circumvented. The author, by reference to case law, consent decrees, and complaints filed in pending litigation, shows clearly how company after company, industry after industry, and even foreign nations have conspired to make the patent system subserve their own interests to the detriment of free enterprise and the consumer.

An excellent illustration of how these results may be attained is presented in the chapter on patent consolidation. Patent consolidation involves the acquisition, by a single manufacturer, of all the patent rights pertaining to a particular product or industry. This may be accomplished by purchasing patent rights from outsiders and by requiring employees to assign alternate or improvement patents to the employer. Any attempt by an outsider to enter the consolidator's field is thwarted by expensive infringement suits or interference proceedings in the patent office. The manufacturer must constantly strive to obtain new patents to replace those about to expire. By so doing, his position in the industry is maintained or strengthened. The goal is to eliminate competition, thus enabling exorbitant prices for his product. In addition, new inventions may be suppressed until some future date when development may be more profitable. These objectives, although desirable from the viewpoint of the consolidator, are detrimental to the consumer, as well as to a free competitive system.

1. U. S. CONST. art. I, §8.

Other chapters of the book are dedicated to analyses of similar schemes designed to achieve the same ends. Cartels, patent pools, patent licensing agreements, and forced monopoly through the use of patents are among the topics discussed. Possible remedial legislation, designed to eliminate the intrinsic weaknesses in the patent system, is explored in the final chapter of the book.

Throughout the volume the author emphasises that many of the practices set forth violate the anti-trust laws of this country. He stresses that, since 1940, the Supreme Court has struck down many patent schemes as violative of the anti-monopoly and restraint of trade provisions of the Sherman and Clayton Acts.

A major fault of the work is that too little space is utilized in analyzing the problems involved, while too much space is wasted on profuse examples of companies and industries that have engaged in the abuses under consideration. The chapter on patent pools contains, for example, more than two dozen samples of such conduct. Repetition, when carried to this extreme, becomes boring and loses its effectiveness.

The United States Patent System, although interesting and informative, has limited practical value to the practicing attorney.

LESLIE A. KAST

WE THE JUDGES. By William O. Douglas. New York: Doubleday, 1956. 480 pages. Price: $6.00.

This book consists of lectures delivered during the summer of 1955 at the University of Calcutta by the well-known Supreme Court Justice, lecturer, author and world traveler, William O. Douglas. The lectures, directed to an Indian audience, contain numerous Indian cases, but the majority of the 1015 citations are American cases familiar to the United States lawyer and law student. However, the reader need not fear boredom through familiarity as the treatment given the cases is deft and enlightening. In 12 chapters Justice Douglas has dealt with the fundamental problems of man and government as reflected in the interpretation of constitutional provisions by the higher courts from the time of Marshall to the present. Although dealing chiefly with American Constitutional provisions and cases, the author has skillfully interwoven six years of India's Constitutional law around its comparable United States counterpart in such a manner as to cast a new perspective upon our most accepted cases.

While the Indian Constitution has set up the Parliamentary or

Cabinet form of government as distinguished from our form, it appears that both federations have much in common. However the constitutions of India and the United States may vary in terms, common to both are the fundamental principles of fair trial, equal protection, free speech and ideas of due process. As Douglas sees it, India, during her brief years of independence, has already dealt with much of what has taken our government years to develop. This is due in part to the fact that the Indian Constitution was drafted with an eye toward sidestepping and avoiding some of the pitfalls and conflicts arising from our Constitutional provisions. Of particular interest were the differences of India's federation from that of the United States. As to the allocation of the various powers the Indian Constitution presents somewhat of a novelty, for powers are divided under three separate and distinct lists. List I, the Union List; List II, the State List; List III, the Concurrent List.

Another distinction is that the Constitution of India is highly particularized while that of the United States is brief and general in its terms. Perhaps one of the most marked differences relates to the organization of the judiciary. We are accustomed to our dual system of courts. India on the other hand has no such dual system. Under Indian organization cases originate in state courts regardless of the questions involved. The Supreme Court of India has much broader power over Indian courts than does our Supreme Court over the state courts. It is also significant that India has only Indian citizenship; there is no provision for state citizenship.

Justice Douglas, through the entire work, pleads for a proper balance of power, and the responsibility of the judiciary in protecting civil liberties. The reader cannot resist a deep appreciation of the author's resourcefulness, knowledge and sagacity. The brisk and weighty accounts of decisions, together with subtle or edged comments lend a literary freshness seldom found in such subject matter. The result of Justice Douglas' efforts is an extremely interesting and useful book to members of the legal profession and political scientists the world over.

ROBERT C. HEINLEY

BOOKS RECEIVED

Marriage Happiness or Unhappiness. By Tom R. Blaine. Philadelphia: Dorrance & Company, 1955. 197 pages. Price: $2.50.