



1950

Book Reviews

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Recommended Citation

Gunness, John C.; Healy, Richard L.; Thompson, Alfred A.; and Ford, Robert H. (1950) "Book Reviews," *North Dakota Law Review*. Vol. 26: No. 4, Article 8.

Available at: <https://commons.und.edu/ndlr/vol26/iss4/8>

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BOOK REVIEWS

SCOTTSBORO BOY. By Haywood Patterson and Earl Conrad. Doubleday & Company, Inc., Garden City, New York, 1950. Pp. 309. \$3.00.

"Nine of us were sentenced on the strength of one woman's say-so. *Nobody* backed her up. *Her word* was enough in an Alabama Court." Circumstantial evidence? Clearly so. "The circumstance of a white person's word against a black's, that's evidence in the South."

Big news in the early 1930's, the Scottsboro Case soon became internationally famous. Nine Negro youths, ranging in age from thirteen to twenty, were accused of raping two white women while they were all traveling on a freight train. The lack of justice in this case, which resulted in death sentences for the nine, aroused storms of protest. Individuals and organizations began working for the defense of the group. The book tells the story of one of the Scottsboro boys from the first day on the train in March, 1931 until he finally escaped from an Alabama prison in July, 1948. The author, it is interesting to note, was a fugitive from justice at the time of the writing of this book.

The cases of the Scottsboro boys were before the United States Supreme Court on two different occasions. On the first occasion the Supreme Court ordered a new trial for all the defendants on the grounds that they were denied the protection of the Fourteenth Amendment in that they were denied the right of counsel. The second occasion concerned later trials of two of the defendants. Again the Supreme Court ordered new trials based on the Fourteenth Amendment in that Negroes were barred from jury duty in the counties of the trials and a denial of such right is a violation of said Amendment. This marks the beginning of Negroes on the jury in Alabama.

This is not a pleasant book to read. The hate and prejudice displayed against these Negroes, the cruelty to them, and the moral degeneration induced by the prison system are powerfully told.

Out of the whole book certain high spots stand out: Samuel Liebowitz attempting to get an impartial trial; Judge Horton, of the Alabama Circuit Court, granting a new trial on the ground that the conviction was against the weight of evidence, which decision cost him his position; the appalling conditions in the

Alabama prisons; and the story of Patterson's escape. These and other vividly narrated details will hold any reader's interest.

JOHN C. GUNNESS†

SOCIAL MEANING OF LEGAL CONCEPTS, No. 2. Criminal Guilt—
 Edited by Edmond N. Cahn. New York University School of
 Law, 1950. Pp. iii, 93-187, \$1.50.

This pamphlet contains a transcript of a conference on criminal guilt held at the New York University School of Law in which the views of an anthropologist, a criminologist, a psychiatrist, and a philosopher were presented.

J. Walter McKenna¹ opens the pamphlet with a concise review of "Some Fundamental Aspects of our Criminal System," revealing the trend away from the requirement of mens rea for certain prosecutions and the new importance of the irresistible impulse test.

In "The Anthropology of Criminal Guilt," by Karl N. Llewellyn,² there is drawn a sharp distinction between the present and past concept of criminal guilt, pointing out that a decay of the family ties, distrust of our public officials, and bureaucracy have undermined basic ideals of "fair and full notice of charges, times to prepare, right to hear and right to answer, right to a fair and open minded tribunal . . ." and has sanctified the "arm's-length" approach to the criminal.

Edwin J. Lukas's³ paper, "A Criminologist Looks at Criminal Guilt," provides the foundation of an excellent history of criminal law with diagnosis of present failures in our penal system. Defining criminal guilt as only the effect of a mental condition in the man, imprisonment and punishment are shown to be ineffective to reform the offender, deter others, or protect society for the reasons that material control of a man's body in prison will not flush from his thought the very cause for his being there—a mental condition.

Frederic Wertham's⁴ paper, "The Psychiatry of Criminal Guilt,"

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⁴ Director of the Lafargue Clinic in Harlem, director of the Readjustment Center of the Quaker Emergency Service, and director of the Psychiatric Service of Queens General Hospital. His recent clinical studies on the harmfulness of comic books have received wide attention.

supporting the old concept of criminal guilt, reconciles it with our present penal system. He finds no stumbling block to justice in the legal definition of insanity but does question the "irresistible impulse" theory on the premise that it is merely a diluted term for emotional disorder. He states, "It is therefore always scientifically wrong to explain or excuse a case of murder or criminal assault as being a compulsion. There is no compulsive murder."

The last paper in this second series, "The Ethics of Criminal Guilt," by Joseph F. Fletcher,⁵ emphasizes the need for law to reflect right and wrong and the need to leave to society, not the state, the task of defining good and bad.

This series is to be recommended for its discussion of a vital part of the law and its vivid expert analysis.

RICHARD L. HEALY

Second Year Law Student.

TEN DAYS TO DIE. By Michael A. Musmanno.* Doubleday & Company, Inc., Garden City, N. Y., 1950. Pp. 276. \$3.50.

The author, a learned judge as well as a trained writer, has brought to the reader of *Ten Days to Die*; a satisfaction of the void which has existed in the minds of many concerning the final disposition of Hitler and his immediate companions following the second World War. Testimony taken at the War Crimes Trials in Nuremberg, where he presided, supplied the author with eye-witness accounts from persons who spent the last ten days in Hitler's "bunker" beneath the ruined Reichs Chancellery. The turbulent climax to the story of the Nazi regime was written in this dust-filled cement crypt which was Hitler's "bunker."

With Hitler during those last fateful ten days were his personal servants, his doctor, his personal bodyguards, his secretary, and his few remaining fanatical friends. With him also were his only trusted friends, his dog, and Eva Braun, the woman who became his bride and his partner in death in a span of a single day. Those who survived the ten-day ordeal narrated to the author their experiences during those ten days, and have revealed to the world the insatiable lust of the Nazi leaders for victory.

The reader of *Ten Days to Die* will find himself deeply interested

⁵ Professor of Pastoral Theology and Social Ethics at the Episcopal Theological School, Cambridge, Massachusetts; lecturer and preacher at Harvard, Cornell, Chicago, and other universities, and speaker at the Harvard Law School forums.

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in the writings of this author, both from the standpoint of philosophical inquisitiveness, as well as from the standpoint of purely informative reading. The author has taken advantage of a peculiarly advantageous situation wherein he could speak with those who saw the dramatic last "ten days" and has recorded his findings in a startling chronicle of the tumultous end to the Hitler era.

ALFRED A. THOMPSON

Third Year Law Student.

SUPREME COURT PRACTICE. By Robert L. Stern and Eugene Gressman. The Bureau of National affairs, Inc., Washington, D.C., 1950. Pp.xiii, 553.

This book is difficult to classify. It is not entirely a legal text nor is it a mere manual of the procedure which the Supreme Court follows in disposing of its work. The authors declare by way of preface that the book's object is to set forth everything but the substantive law which a lawyer would wish to know before trying a case in the Supreme Court. This, in its own words, is "... a descriptive and, occasionally critical, analysis of the practice before the Court." One may well sympathize with those who seek to accomplish a task of that magnitude in the short space of three hundred fifty three pages (the remaining two hundred are devoted to Forms, Rules and Statutes, Index and Table of Cases). While no one would expect to find the answer to the myriad subtleties of the problems involved in finality of judgments and decrees or the raising of a substantial federal question, for example, in a work of this type, yet the book with apparent accuracy gives the general rules with the citation of representative cases which may serve as the basis of an intensive search if that becomes necessary.

The authors have recognized that the first hurdle such a book must surmount is the same as that faced by all cases in the Federal Courts; disposal of the *sine qua non*—jurisdiction. This has resulted in the logical organization of the material.

The first section consists of an introduction to the Court and its machinery. To this reviewer this is perhaps the weakest section of the book. At the risk of "fly-specking" it seems that some of the material might better have been omitted altogether or at least greatly condensed. For example, a footnote on page 4 which covers over two-thirds of the page is devoted to a discussion of the merits of the present hours for hearing argument. It is difficult to conceive of a situation in which a lawyer might wish to know this

before handling his case. On the next page, five lines are given to merely the location of the Supreme Court Building. Fortunately, this is not at all typical of the book. The next two sections are devoted to jurisdiction over federal and state cases and the treatment is adequate for the purpose of establishing the framework upon which the practice and procedure are based.

Section four covers the exercise of certiorari jurisdiction and includes an excellent discussion of the bases upon which the Court denies 80 to 85 per cent, and grants only 15 to 20 per cent of such petitions. This discussion should be invaluable to an attorney contemplating petitioning for certiorari. The procedure which should be followed in petitioning for certiorari and on appeal is set out in the next two sections.

Sections seven through fifteen are given to certified questions, original cases, extraordinary writs, briefs, oral arguments, petitions for rehearing, motions, mootness and abatement, and admission to the bar. Though the treatment is terse and of a general nature, it is excellent. The last two sections set forth in detail forms which may be used and the rules and statutes applicable to practice before the Court.

Much that is here will be of value to lawyers practicing before state appellate courts. This is particularly true of the sections covering briefs and arguments. For the most part, however, the book will be valuable only to those whose practice may take them before the Supreme Court. That is not to say that it will not hold interest for all who are in the profession. As the authors themselves indicate, best use of the material can be made by reference to specific sections as the need may arise, rather than by a general perusal of the entire volume.

ROBERT H. FORD †

BOOKS RECEIVED

Ten Days to Die — By Michael A. Musmanno.* Garden City, New York: Doubleday & Company, Inc., 1950. Pp. 309. \$3.00. (Review in this issue).

Supreme Court Practice — By Robert L. Stern and Eugene Gressman. Washington, D. C.: The Bureau of National Affairs, Inc., 1950. Pp. xiii, 553. (Review in this issue).

The Declaration of Independence — And What It Means Today — By Edward Dumbauld. Norman, Oklahoma: University of Oklahoma Press, 1950. Pp. xiii, 194. \$3.00.

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