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Book Reviews

William S. Murray

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BOOK REVIEW

Dangerous Words, by Philip Wittenberg,
Columbia University Press, New York, 1947.

While the probabilities of having much libel practice in this jurisdiction are small, this brand-new treatise on libel is well worth any lawyer's time to read.

Obviously slanted for the lay journalist, the book is popular and entertaining in style. Still, it is thoroughly annotated, and obviously represents exhaustive research in bringing the available body of law up to date.

The book is exceptionally well indexed. There is an occupational index, in which, for instance, it can readily be determined what cases are available involving libel of an undertaker or any other occupation.

The section devoted to political libel is especially interesting. It is here that the balance must be struck between freedom of the press and protection of the individual. As the author says:

"Out of the conflicting interests of those who wish to say and those who wish silence, society must find a balance. The law of libel is such a mechanism of adjustment between conflicting desires and conflicting rights."

Concerning the historical background of freedom of the press, the author makes this thought-provoking historical summary:

"The notion of free speech and free press is so thoroughly ingrained in our democratic institutions that frequently the error is made of supposing that they are of ancient establishment and that they permeate the fabric of the English common law which we here in America inherited. In fact, the notion of a free press embodied in law came earlier into America than it did in England. Magna Charta was free of reference to the rights of freedom of speech and, of course, could not have contained much about freedom of the press for the printing press had not been invented.

Even during the Reformation and Cromwell's Commonwealth in England, when invasions of the right of free press had long been a public nuisance, we find no enunciation of principle. On the contrary, we find licensing acts, making the reporting of the commonest event difficult and the truth no defense to publication. * * * Our Federal Constitution and state constitutions had contained guarantees of free speech

and free press long before 1843, when the British finally passed their law making the truth a defense to allegedly libelous publication. In the meantime a long and bitter battle had been fought, . . . and men had been jailed and exiled for their part in the struggle to achieve free press."

The author then points out that, as recently quoted with approval by the Supreme Court of the United States:

"One of the objects of the Revolution was to get rid of the English common law on liberty of speech and of the press."

In this connection, the student of legal history will necessarily think of the celebrated John Peter Zenger case. Zenger was the German immigrant who achieved virtual immortality in the history of journalism, by defying the colonial governor to muzzle his weekly newspaper. Documents 84, 85 and 86 on the Freedom Train commemorate this occasion.*

It is well for Americans to realize that freedom of the press is a comparatively recent development in our Anglo-American legal tradition, and that it was only "yesterday" in the historical sense, that the very possession of a printing press was a crime in England, and the police sought them out as contraband.

The author of *Dangerous Words* has stated his objective to be that of providing a preventative tool for the journalist, to help him keep out of trouble. In this objective, he seems to succeed very well, and this book will no doubt become popular with newspapermen and their attorneys.

Aside from its reference value, there are some very entertaining passages in the book. The closing chapter deals with the fresh subject of libel via the radio. Although the law in that new field is in a state of confusion, the author points out such trends as are recognizable at this time. Radio is a new medium, developed within the memory of even the youngest members of the bar. The possibilities of libel via the airwaves are such as to frighten a station owner; especially in view of a recent Federal Communications Commission ruling which seems to forbid censorship of political speeches by the owner.

A copy of this book is available at the office of the Secretary-Treasurer.

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* See *Heritage of Freedom*, an official book of the Freedom Train. Interesting statements by Thomas Jefferson on the indispensability of a free press are included therein also.