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BOOK REVIEWS

THE AMERICAN LAWYER, by Albert P. Blaustein and Charles O. Porter; The University of Chicago Press, Chicago, 1954.

During the last seven years the Survey of the Legal Profession, working under a quarter-million dollar grant from the Carnegie Corporation and the American Bar Association, has published 175 separate written reports all directed toward discovering just what is this creature, the American lawyer. Here at last in convenient book form is a distillation of this mass of statistics and written material. "The American Lawyer" points out the highlights of a survey which has made the first comprehensive attempt to define and analyze the gamut of experiences affecting and forming the men charged with the responsibility of making the phrase, a government of laws and not of men, a living reality.

This short readable volume is mandatory for the book list of any student of law or young attorney faced with the problem of determining what niche he will carve out for himself in a profession offering a myriad of possibilities. What law student has not engaged in dormitory bull sessions concerned with these topics or personally pondered these problems? Is the profession overcrowded? How many lawyers are there in the United States? In my state? What are the ratios between number of lawyers and population? What is the lawyers' average income? Do partners fare better than solo practitioners? Are the possibilities better in private practice or in government or in industry? What is the status and future of the new specialties such as labor law and workmen's compensation?

"The American Lawyer" is the lawyer's Hoyle for resolving disputes on these questions, and a reference to the book will reveal accurate and sometimes startling information. For example, there are 9,526 lawyers listed in Martindale-Hubbell for Pennsylvania which account for 4.67 per cent of the total listings, approximately one lawyer for every 1100 people. This figure compares with New York State with one lawyer for every 447, and Kansas, which is the median State, with one lawyer for every 858 persons. The relatively high population ratio in Pennsylvania is responsible in part for the relatively high average and median net income of lawyers in this state, \$8,731 and \$7,017 respectively as compared with a national average of \$7,532 and \$5,698. However, the authors point out the fallacy of predicting the need and value of attorneys' services on the basis of population figures alone. A close relationship has been found between the economic activities of a state and the demand for lawyers' services. For example, it was discovered that lawyers' incomes by state are closely related to incomes of corporations in their respective states.

The scope of the Survey is not limited to the above type of statistical information. Of more general interest to the layman as well as the professional is the chapter on legal ethics. Starting with a quotation from Wigmore, who describes legal ethics as "a whole atmosphere of life's behavior", the authors bravely and

frankly present the findings of the Survey on the methods and success of enforcement of the *Code of Professional Ethics*. A critical discussion of the canons is included accompanied by some constructive suggestions for changes.

In other chapters, Messrs. Blaustein and Porter have explored such topics as the status of legal education in the United States, the requirements for admission to the bar, legal aid program and a history of the American Bar Association. The net result of their efforts gives the reader in 360 pages an accurate up-to-date picture fully satisfying the expectations aroused in him from the sweeping scope of the title, "The American Lawyer".

Alonzo R. Horsey, III
Member of the Senior Class

HOW TO PROVE A PRIMA FACIE CASE, by Howard Hilton Spellman; Prentice-Hall, Inc., New York, 1954.

This book represents an attempt by an authority to organize and compile in a concise and readily accessible form the basic requisite elements for stating a prima facie case.

It cannot be denied that the legal education today is lacking in its practical aspect. The gap between theory and practice is, for the most part, left to "trial and error". The latter phrase, in a legal sense, is most apropos. A vast number of such errors are made needlessly during the trial. Unfortunately, the most serious of these perhaps is that of inadvertently failing to state a prima facie case. Superimposed upon this fact is that in many jurisdictions, including Pennsylvania, a compulsory non-suit results in a *res judicata* effect as to the cause of action. It is here that the author renders assistance by equipping the student with a guide to successfully overcoming this burden by reducing the requisite proof necessary to stating a prima facie case to its most practical form, questions and answers. In addition to offering a guide to eliciting the requisite proof at trial, the book necessarily offers a guide in questioning the client in the initial interview and in preparing the pleadings because the same problem regarding factual proof inheres in these instances also.

The main features used by the author in his approach may be briefly stated as follows:

(1) The author lists many of the common causes of action treating each separately by setting forth a series of questions and answers to be adducted which will be sufficient in law to establish a prima facie case. A portion of the volume is devoted to methods of establishing evidentiary matters which may attend any of the more common causes of action e.g., mailing a letter.

(2) Accompanying each cause of action there is a reference to problems and peculiarities relating to the particular cause of action which may suggest further research.

(3) Following each form there is a wealth of "Source Cases" which include leading cases as well as those giving a more fuller discussion of the subject from the various jurisdiction.

The book should also prove to be a valuable asset to the practitioner in that it affords a ready means of obtaining a quick briefing of the factual elements necessary to constitute a *prima facie* case in the various causes of action as well as being a guide to more extensive research.

Adam B. Krafczek
Member of the Senior Class

BAR ASSOCIATION ORGANIZATION AND ACTIVITIES, by Glenn R. Winters; The Lord Baltimore Press, 1954.

This book is published for the Survey of The Legal Profession and The Conference of Bar Association Presidents by the American Judicature Society.

Perhaps never before has such an intense dissertation on the bar associations been presented. Glenn R. Winters is a member of the State Bar of Michigan, the Missouri Bar, and he is an honorary member of the Bar Associations of Arkansas and Tennessee. He is secretary of the American Judicature Society and editor of its journal.

Mr. Winter's main purpose in writing this book is to acquaint his fellow attorneys with the need for and the ways of accomplishing an integrated bar association. The author systematically lists in the first three chapters the procedure and mechanics by which a bar can solicit membership, collect dues, hold meetings and elect officers. To attract members, he advocates the use of the "Star, Chain, and Hook" letter method which consists of a bright opening to attract attention and a body that follows logically to an ending which catches hold of the reader and induces him to act. As to dues, there are a number of charts that show the whole range of dues assessed by each bar association. Suggestions are given as to possible meeting places, refreshments, discussion topics and types of speakers.

The fourth and fifth chapters deal with bar association publications and legal education. Illustrations are given of all types of publications covering everything from the frequency of issue to the economics of mimeographing. These chapters are most helpful to prospective lawyers as many activities such as clerkships, legal aid clinics and placement groups are noted in which both the law student and the young lawyer can join in order to gain much needed experience.

The last seven chapters deal with services to members and to the public, ethics of the profession, legislative activities, citizenship and promoting the administration of justice and public relations. The author cites varied activities that a bar can carry out including a law library, group insurance, credit unions, memorial services, bar directories, as well as social endeavors. He shows how the public

can be benefited by such groups as a legal aid society, a lawyer reference plan and neighborhood law offices. Mr. Winters encourages education of the public in the field of law and to the lawyer's role in our society by use of television, radio, newspapers, essays and polls of the public. He advocates and explains modern systems of selecting judges, veniremen and of trying cases.

This book contains many interesting diagrams, illustrations, tables, cartoons, maps and forms which tend to explain the author's views and help the reader to better understand the book. He even goes so far as to include parts of model constitutions so that each bar has a guide from which it can form its own organization.

The foreward of the book, written by Howard L. Barkdull, former president of the American Bar Association, typifies my opinion of this book. He writes:

"Every officer of a bar association will find this handbook to be a veritable Man Friday, a gold mine of valuable information and suggestions. I have been in bar association work for many years, but have never found in one place assembled as much helpful material as here for the man who suddenly or otherwise finds himself at the helm of a bar association, local, state or national."

James M. Ecker

Member of the Senior Class

THE PSYCHOLOGY OF THE CRIMINAL ACT AND PUNISHMENT,
by Gregory Zilboorg, M.D.; Harcourt, Brace and Company, New York, 1954.

The outcome of a series of lectures presented at Yale University under the joint auspices of the schools of law and medicine, this book reveals and evaluates the great conflict between law and psychiatry and its effect on our system of criminal justice.

An eminent psychopathologist, Dr. Zilboorg has appeared as an expert at criminal trials and has not only witnessed the breadth of the chasm separating these two fields but also has come to deplore present procedural methods of psychiatric testimony with respect to its introduction at trials and the legal standard by which it must be guided.

Dr. Zilboorg generally succeeds in a sincere attempt to discuss these problems and their consequences in terms of scientific evaluation, steering clear of moral and legal considerations. Writing, intentionally so, from the psychiatrist's viewpoint, the author assaults some deeply entrenched legal concepts and practices. He attacks the *McNaughten* rule of criminal insanity as outdated by modern scientific knowledge. The "nature and quality of the act" aspect of the rule he regards as semantically obscure because "the rule intends to apply a purely moralistic criteria to a clinical or scientific problem of a certain type or degree of mental disease."¹

¹ p. 17.

Dr. Zilboorg also believes that "no realistic results can be brought forward to support the claims of the principle of 'the deterrent effect' (of punishment)."² He also states that, "The indifference of the criminal to the penalty that is ahead of him, even if this penalty be death, is more the rule than the exception."³

The author then suggests that the basis of the conflict between law and psychiatry lies in the different approach we use in considering the criminal, his act and his punishment. He states as follows:

"The criminal lawyer is taught emotionally, sociologically, and professionally to be estranged from the people who will become his major concern as a judge or prosecutor or defense counsel. . . . (he) is taught to stand up against the violator as well as the violation of the law. . . . the physician is taught to become emotionally, sociologically, and professionally one with the people and the medical conditions which are to become his chief professional concern."⁴

Dr. Zilboorg does not consider every criminal as sick and every crime the result of psychological pathology. He does recommend, however, that the lawyer, still conforming to the law, "try to dispose of people in such a manner that the people would be preserved and rehabilitated in their totality—that only the inner or outer conditions of which they had become victims would be abolished".⁵

In order to reach the proper method of so disposing of the criminal, Dr. Zilboorg believes that "both the lawyer and the psychiatrist must have a clear conception of human aggression—conscious and unconscious."⁶ Most important, they must recognize how aggression, which is a universal burden, takes the form of transgression against society (murder, etc.) in some of us and against ourselves (suicide, etc.) in others, while in the law-abiding citizenry it often takes the form of hatred toward the transgressors (capital punishment, society's general attitude of revenge).

The seriousness of what this work has to say and the ardor with which its author says it is evident throughout, but it is far from being a dull, dry treatise. The murders and murderers examined, the pointed criticisms expressed and the program of psychiatric as well as legal reform which is urged make *The Psychology of the Criminal Act and Punishment* worthy of re-reading. It is inescapable to the modern student of law that Dr. Zilboorg has presented vital and challenging issues in these pages.

Harold S. Gold
Member of the Middler Class

² p. 27.

³ p. 32.

⁴ pp. 41 and 43.

⁵ p. 43.

⁶ p. 44.

BOOK RECEIVED

CONSTITUTIONAL LAW, Cases and Materials, by Paul G. Kauper; Prentice-Hall, Inc., New York, 1954.

The approach to constitutional law in the schools must of necessity be geared to developments and trends current in the tribunal where this law is developed. Two significant characteristics of recent decisions handed down in the Supreme Court of the United States have been the length of each opinion and the increasing number of separate and concurring opinions per case. These last alone are sufficient to confound the student, and his problems become nearly insuperable when faced with the need to synthesize multiple dissenting opinions as well.

Constitutional law is vital and organic to a degree, surpassed by few other branches of the law. Consequently, no text is complete without inclusion of the latest cases illustrative of current trends. The instant volume is as current as a newspaper in this respect, and the editor has been careful to include all of last year's major decisions and even the recent (1954) school-segregation cases.

A text which is merely a collection of so-called leading cases would be of little value, but one such as this constitutes a definite contribution. Professor Kauper has analyzed the prominent problems confronting students of constitutional law and developed his case book with those problems in mind. The problem of compound opinions has been minimized by inclusion where necessary and paraphrase or restatement where practicable. The second issue of timeliness has been met, as noted above, by care to have necessary and very recent cases appear in the collection.