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BOOK REVIEWS

CIVIL JUSTICE AND THE JURY, by Charles W. Joiner, Prentice-Hall, Inc., Englewood Cliffs, N.J., 1962, 233 pages. Price: \$6.95.

Professor Joiner's book is both timely and enlightening, particularly for members of the Pennsylvania Bench and Bar who are, or should be, interested in the jury-trial aspect of Project Constitution of the Pennsylvania Bar Association.¹ After discussing the history and development of the civil jury in the United States, the author concisely and adequately describes the basic strengths of the jury system in the administration of civil justice, its weaknesses, and various methods for strengthening it. The presentation reveals the author as a powerful advocate of the retention of the system despite its declining use in England and Canada. He points out its general acceptance by the public as a part of the decision-making process, as well as the juror's ability to apply general standards. He suggests that "the laws by which all of us live are not series of hard and fast rules but, on the whole, a number of general statements full of ambiguities, full of 'reasonableness,' and so on. These general standards must be interpreted in individual cases in a way that is understood by the community, otherwise, it will not live by them. . . . The jury is probably not an unfair way to obtain a sense of that community in interpreting these general standards. A judge is much less a representative of the cross section of the community."² He also stresses the great value of citizen participation in government by the jurors, and discusses the curbing effect of the jury system on the undue expansion of bureaucracy in the decision-making field.

Despite his obvious advocacy of the system, Professor Joiner devotes an entire chapter to a frank discussion of the criticisms which have been leveled against the system over the years, including the factors of arbitrariness, court congestion, expense, and others. More than one half of the book is devoted to a worthwhile, fact-filled recount of the serious thoughts of legal scholars concerning civil juries, from Blackstone to the present day. One who reads Professor Joiner's book is not likely to precipitately join the ranks of civil jury abolitionists.

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1. See The Proposed Revised Constitution of Pennsylvania, 34 PA. B.A.Q. 160 (1963). Resolution No. 1B, included under the heading, "Recommended Supplemental Amendments to Individual Sections of the Foregoing Proposed Revised Constitution," reads as follows: "Trial by jury in criminal cases shall be as heretofore, and the right thereof remain inviolate." *Id.* at 223. This provision would presumably permit the legislature, in its discretion, to fashion the mode of trial in all civil cases.

2. JOINER, CIVIL JUSTICE AND THE JURY 65 (1962).

THE SOUTHERN CASE FOR SCHOOL SEGREGATION, by James Jackson Kilpatrick, The Crowell-Collier Press, New York, 1962, 220 pages. Price: \$3.95.

A century after the Emancipation Proclamation and the passage of the fourteenth amendment to the Constitution, James Jackson Kilpatrick, southern segregationist and editor of the *Richmond News Leader*, has written a comprehensive explanation and defense of the South's attitudes, actions, and inaction in regard to racially segregated schools. That such a book has any pertinence at all in twentieth century America is perhaps an indictment of this country's professed faith in the processes of democracy, its avowed commitment to equality. But such a book has been written, and in the face of Little Rock, New Orleans, Albany, and Oxford, the pertinence of such a book cannot be denied. The struggle of the Negro American for legal equality has, within the past decade, been spearheaded by the assault upon school segregation in the South. Segregation's battlements in the South are manned by all kinds of people, and they defend their hallowed "separateness" in a number of ways. Women in New Orleans shout obscenities at a little girl; men in white sheets burn a cross; a school board closes all of its schools; students riot. Like Mr. Kilpatrick's book, these incidents are primarily directed toward the continued maintenance of "separateness." Mr. Kilpatrick makes clear that in his "case" he defends not the methods, but the goal.

The author has organized his book as a presentation of a legal case. It is divided into three sections: *The Evidence*, *The Law*, and the *Prayer of the Petitioner*.

The evidence which Mr. Kilpatrick has gathered is voluminous and indicates that the author has spent a great deal of time in its compilation. He has obviously searched widely, if not deeply, for this evidence. The evidence which he presents is aimed at substantiating two main premises: first, that the Negro has proven himself an inherently inferior individual possessed of loose morals and little aptitude for "white" education; and second, that integration of schools in the South will result in a general lowering of educational standards, unemployment of vast numbers of Negro teachers, a mass exodus of white teachers, and eventual "resegregation" of races because of the Negro's inherent incapability to keep up with white classmates, and because all of the more intelligent white people will move away from areas where the schools are integrated. The evidence in support of Mr. Kilpatrick's first premise seems to be composed entirely of *symptoms* of segregation and not *reasons* for it. Comparative IQ scores, illegitimacy figures, and many other items of proof of the Negro's inferiority might well be the results of segregation rather than its justification. The second premise

is supported largely by the concrete example of the public schools of Washington, D.C., which have been integrated since 1954. The results of eight years of integration there are urged as reasons for segregation elsewhere. Mr. Kilpatrick's point is well taken—Washington's experience must indeed not be ignored—but once again we are perhaps faced with the symptoms of segregation and not its justification.

In the second section of the book, *The Law*, Mr. Kilpatrick attacks the original validity of the fourteenth amendment and the wisdom of its interpretation by the Supreme Court in *Brown v. Board of Education*.¹ Mr. Kilpatrick contends that the fourteenth amendment was not passed according to the procedures set forth in the Constitution, and therefore is not the law of the land—or at least should not be. And even if the amendment is valid, the author contends that it was not intended at the time of its passage to embrace integration of public schools. The framers of the amendment assertedly had no such objective in mind, and numerous Supreme Court cases from the latter nineteenth century are cited as proof. Mr. Kilpatrick's discussion of these premises, although lacking somewhat in legal precision, is the most interesting portion of the book to those in the legal profession.

The Prayer of the Petitioner departs from the more insistent and assured sections of the book preceding it. The *Prayer* is a plea for moderation and patience. In some ways the reader will find this third section of the book inconsistent with Mr. Kilpatrick's *Evidence* in that the author seems to admit that even in the face of obvious Negro inferiority there is something to be said for integration. But integration must come slowly.

Patience, the South would ask of its adversaries; Be patient; be tolerant of imperfection; be mindful that in these difficult areas of race and race relations, wisdom and virtue do not reside exclusively in the North, nor sin and ignorance exclusively in the South. The white man most surely has been at fault; that is conceded. But in his own way, the black man has been at fault too. And in neither racial camp can these faults be corrected in the twinkling of a generation.²

Mr. Kilpatrick's choice of words, "twinkling of a generation," though journalistically clever, was perhaps unfortunate in that it seems to confirm what many have long suspected—to the Southerner, "someday" means "never."

The reader may disagree with all points of the author's "case," or he may agree with it in its entirety. In any event this is the southern case for school segregation. This is what the South largely believes. To the integrationist this book has great value as an unhurried and nonemotional presentation of the "enemy" viewpoint. To the segregationist this book has

1. 347 U.S. 483 (1954).

2. KILPATRICK, THE SOUTHERN CASE FOR SCHOOL SEGREGATION 204 (1962).

equal value as a crystallization of the intellectual view of segregation in the South. To the attorney it has value for both of these reasons. The book should be read. Right or wrong, what Mr. Kilpatrick says he obviously believes. These beliefs and the corresponding beliefs of so many people in the South are not going to go away like shadows when the lights go on. They are going to be with us, it seems, for quite some time longer. It is well that we be familiar with them.

DANIEL E. ROGERS