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## Book Reviews

William F. Zacharias

E. G. Robbins

R. S. Bauer

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## BOOK REVIEWS

REVENUE ACT OF 1948: Legislative History Series. Paul A. Wolkin and Marcus Manoff. Albany, New York: Matthew Bender & Company, 1948. Pp. xxiv, 667.

Within the last half century, the United States Supreme Court has effected a considerable change in tack in statutory interpretative theory.<sup>1</sup> While the recent tendency to examine minutely into the legislative history of a given statute is certainly the more rational approach, that tendency imposes an almost insuperable burden on the attorney. He can no longer feel secure in his knowledge of a law merely from reading the text of an enacted statute. He must, instead, become adept at predicting what the court will determine Congress had in mind when enacting the law and what it intended that statute should mean. To be able to do so takes more than clairvoyance; it requires a careful study of the voluminous mass of data to be found, among other places, in the congressional hearings and debates incident to the passage of the particular statute. The United States Supreme Court, the government attorneys, and perhaps some of the more prosperous law firms, will have this material available. The average firm or the individual lawyer, however, could hardly afford to house, let alone collect and index, the huge mass of printed matter which may have been produced. Even assuming that it was available, a vast amount of time-consuming effort would be required to winnow the chaff of the irrelevant, immaterial political soundings from the pertinent thinking on the point.

The editors of this book, cognizant of the problem created by the general inaccessibility of legislative material and its normally disorganized state, have set out to encroach upon chaos. Their approach is eminently logical. They chose, for purpose of demonstrating the utility of their plan, a single federal statute, the Revenue Act of 1948. They

<sup>1</sup>The court once said that "the province of construction lies wholly within the domain of ambiguity. . . ." See *Hamilton v. Rathbone*, 175 U. S. 414 at 421, 20 S. Ct. 155 at 158, 44 L. Ed. 219 at 222 (1899). In more recent years, by contrast, the court has noted that "there is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes. Often these words are sufficient in and of themselves to determine the purpose of the legislation. In such cases we have followed their plain meaning. When that meaning has led to absurd or futile results, however, this court has looked beyond the words to the purpose of the act. Frequently, however, even when the plain meaning did not produce absurd results but merely an unreasonable one 'plainly at variance with the policy of the legislation as a whole' this court has followed that purpose, rather than the literal words." See *United States v. American Trucking Association*, 310 U. S. 534 at 543, 60 S. Ct. 1059 at 1063, 84 L. Ed. 1345 at 1350 (1940).

gathered all of the material concerning its legislative history and arranged that material in a planned sequence under the section, or sub-section, of the act to which the material related. In addition to editorial reorganization, they liberally applied a blue pencil to congressional verbiage which pertained to no section of the statute when viewed from a dispassionate standpoint. By and large, the editing has been done with discrimination and with ready reference to title and source for those who desire more complete information. There has been no attempt made at editorial rationalization nor is this a textual restatement of the law. The book does, however, reduce to intelligible status the source material, hence it should prove invaluable to workers in the tax field. For counsel preparing an appellate brief on a tax question, the book is clearly a "must."

One may, however, indulge in some speculation regarding the volume. The editors, both from the standpoint of practical utility and also that of conserving space, have been obliged to delete considerable of the material brought out in the congressional hearings and debates, material which was deemed unessential to or unrelated to the statute. The necessary consequence is that the reader must rely on the editors' perspicacity if entire dependence is to be placed on this volume rather than on the original source materials. When one reads, for example, the purely political, self-laudatory exchange between Representatives Reeves and Dingell, as it appears on pages 200-4, one's faith is somewhat shaken. An even more serious defect, one which it is hoped will be cured in later works of the series, is the failure to date the material cited. It is true that there is a chart setting forth the chronology of events as they appear in the Congressional Record, but there is no inkling of date for the House and Senate Hearings. Unless the reader is able, constantly, to make reference to the chart he will rapidly lose all sense of time, a factor the significance of which ought not be lost.

E. G. ROBBINS

LAW AND TACTICS IN JURY TRIALS: The Art of Jury Persuasion. Francis X. Busch. Indianapolis: The Bobbs-Merrill Company, Inc., 1949. Pp. xxvii, 1147.

The principal title for this book should be especially noticed for the work in question deals with both law and tactics in the conduct of jury trials. No case, of course, can be properly tried without an observance to the requirements of law. Until one has become thoroughly seasoned in practice, however, the appearance of tactics as a trial problem is less manifest. The term "tactics," primarily a military expression, has been

much bandied about and often improperly used. The author, long a prominent member of the Illinois bar, as well as being dean-emeritus of a mid-western law school, uses the term in its strictly proper sense. It has been defined as the "art of handling troops in the presence of the enemy" from whence comes the secondary meaning of "any method of procedure, especially of adroit devices or expedients to accomplish an end." Viewed in that light, the work most ably discusses and illustrates the strategic uses to be made of available trial materials. It relies upon tested courtroom procedures.

The scope of the contents of this book is broad. It delves into historical backgrounds, elucidates upon the right to jury trial, and comments on the selection of jurors, both from the standpoint of their qualifications and their challenge. It advises on the preparation and presentation of a case, with unusually authentic treatment of the subject of direct examination. It is honest, realistic and complete in its treatment of the process of cross-examination. It covers other aspects of the trial, yet finds space in which to deal with such specialized matters as the use of expert testimony, opinion evidence, jury argument, instructions and verdicts. Each point made is replete with citation to authority and, whenever possible, verbatim excerpts from actual trial records, in question and answer form, have been used for illustrative purposes. The book is both scholarly and practical, as might well be expected from one with Mr. Busch's background. All in all, it is as complete and authoritative a work as may be found between the covers of a single volume.

R. S. BAUER

ORGANIZING CORPORATE AND OTHER BUSINESS ENTERPRISES. Chester Rohrlich. Albany, New York: Matthew Bender & Company, 1949. Pp. xv, 533.

A conventional law textbook usually purports to provide answers to all the questions apt to develop in the given field, the answers being arranged in schematic fashion by subjects. Here is an unconventional work. It takes up the problem of organizing a business enterprise, whether in corporate or other form, but it provides a parallel rather than a topical discussion of the relative advantages and disadvantages of each type of business arrangement. The reader is left to decide for himself, not asked to accept the author's judgment in the matter. It should not be inferred that the author lacks judgment; he is, in fact, a practicing lawyer, a writer of legal articles and a law teacher of graduate

rank. It is the suggestive, instead of the exhaustive, character of the publication which provides one of its finest features.

The entire field is surveyed, from the preliminary discussions, through protection against disclosures, problems of promotion, selection of domicile, incorporation procedures, and capitalization and financing. Organization is not limited to the creation of the utterly new but includes discussion of the taking over of existing enterprises. Just as the preacher contemplates the grave at moment of baptism, so the lawyer is urged and shown how to give attention to death and its attendant consequences on the business being organized at the moment of its birth. No small part of the book is devoted to tax matters. In fact, some eighty pages have been turned over to tables disclosing the tax expense or saving attendant upon the choice of one form of enterprise over another, material not readily available elsewhere. The argument which has been raging over whether dividend rights on preferred stock should be vested or not has been aptly summarized and tendencies in the law have been charted. Other expected features in a work of this character have not been overlooked. The lawyer may here well find guidance in a not uncomplicated field.

W. F. ZACHARIAS