

October 1959

Book Reviews

William F. Zacharias

W. H. Howery

Follow this and additional works at: <https://scholarship.kentlaw.iit.edu/cklawreview>

 Part of the [Law Commons](#)

Recommended Citation

William F. Zacharias & W. H. Howery, *Book Reviews*, 36 Chi.-Kent L. Rev. 175 (1959).

Available at: <https://scholarship.kentlaw.iit.edu/cklawreview/vol36/iss2/10>

This Book Review is brought to you for free and open access by Scholarly Commons @ IIT Chicago-Kent College of Law. It has been accepted for inclusion in Chicago-Kent Law Review by an authorized editor of Scholarly Commons @ IIT Chicago-Kent College of Law. For more information, please contact dginsberg@kentlaw.iit.edu.

BOOK REVIEWS

SOURCES OF OUR LIBERTIES. Edited by Richard L. Perry. Chicago: American Bar Foundation, 1959. Pp. xxii, 456.

According to the foreword to this book prepared by John Cobb Cooper, former Administrator of the American Bar Foundation and general supervisor of the project which led to its publication, the general purpose was "to present in a single usable volume the historic documents constituting the major legal sources of our individual liberties." If the book did nothing more than this, some comment might be made as to the worth of such a publication for, except for the utility of finding the selected materials conveniently at hand, each of the included excerpts is generally accessible in the printed literature of the law and would be found in any good library collection. In fact, there are many desirable and related documents, to be found in other somewhat similar compilations, which have not been included in this one because of space limitations. One might even, at first glance, wonder whether the generous financial support given to the project by the Sloan Foundation could not better have been channelled in a different direction.

But such cavalier critical treatment would do an injustice to the efforts of the editor, to the American Bar Foundation, and to the financial supporter of the project. Here is not just another reprint of those documents generally accepted as being the basic instruments of liberty under law. Instead, the work represents a valuable commentary upon and an explanation of, plus the tying together in connected sequence, of a series of fundamental charters which form parts of one long political process. Lawyers are accustomed to seeing the constitutional bases for jury trial and due process working out from a Magna Carta. They have recognized that representative democratic government in a free world may be attributed to such things as the Ordinances of Virginia and to the Mayflower Compact. But few may have realized the impact that an early state Bill of Rights could have on the shaping, even on the text, of a national constitution, or the part which an old Pennsylvania Charter of Privileges could play in assuring our citizens against arbitrary and capricious legislation. These are but some among the many things which this book serves to unfold as it provides the historical setting for, while pointing up the significance of, the documents reproduced in full English text.

No student of American institutions, of his own liberties as a citizen, should lack a knowledge of the story here presented. The editor's job

has made the securing of that knowledge an easy task. He has, in fact, opened the door to what could be a thrilling experience for even the casual reader. The serious student will appreciate all the more the effort that has gone into the production of this truly noteworthy compilation.

W. F. ZACHARIAS

CONTINUING LEGAL EDUCATION FOR PROFESSIONAL COMPETENCE AND RESPONSIBILITY: The Report on the Arden House Conference. Philadelphia: The American Law Institute, 1959, Pp. xviii, 315 (Paper).

The National Conference on the Continuing Education of the Bar, sponsored by a joint committee of the American Law Institute and the American Bar Association and consisting of judges, leaders of the organized bar and members of law school faculties from all parts of the American republic, met in New York late in 1958 to deal with the complex problems involved in insuring that the practicing lawyer has the means available, as well as an understanding of the obligation, to continue his education throughout his professional life. Out of the deliberations of that conference has come this five-part report with its many recommendations, its extensive bibliography and some valuable appendices. To comment on the several facets of this program would be superfluous, for the record is now open to any interested person. To enlarge upon the thesis that the bar and its members are in need of systematized continuing education following upon graduation from law school would be fatuous indeed, for the job of training a lawyer is not one to be fully accomplished in three or four years and could well last a lifetime. About all that any reviewer could do, then, is to comment on those areas of the report which might relate to things over which he may have a degree of experience.

Law schools and individual law school faculty members have, in the past, done much to promote post-admission legal education. They will, without doubt, continue their efforts in that direction. But there are limits on what the schools and their staffs can accomplish without overloading budgets or turning them from their primary responsibilities. The report acknowledges this fact together with its corollary that, percentage wise, the number of full-time law teachers is extremely small in relation to the size of the bar. While the conduct by law schools of occasional short and intensive programs for lawyers offers some value in developing professional competence, the real job will not be accomplished until either the law course is lengthened or schools are in a position to offer planned courses and seminars at the graduate level. The first alternative is an unwelcome one in the light of the present distracting economic and other

delaying factors which hamper the undergraduate student in fulfilling his ambition. The other runs counter to a standard of the American Bar Association which asserts that few schools have the faculties and the libraries needed for work leading to advanced law degrees.

A more intensive use of a law school plant, where class rooms stand idle for substantial periods of time, could easily provide the facilities for advanced instruction. The crying need is for funds and for personnel essential to operate the more advanced programs. Unless the bar, either in its organized capacity or as individuals, will produce support of the kind that industry offers for the training of its executives, post-legal education will have to worry along with the make-shift programs of the past. One might argue that industry possesses a degree of wealth far beyond that controlled by the bar, or by lawyers, and that it may properly devote some of that wealth to areas of training and research because of the enhanced returns likely to flow therefrom. Admit the point, yet the fact still is that lawyers as a class, even those who serve on boards of directors, who head foundations, or who serve in legislative capacities where they direct the flow of public funds, have been inclined to prefer all others over their own profession when distributing the funds which fall under their command. Their medical counterparts, on the other hand, have not been so inclined, with the result that the general public, influenced by example, have provided support for activities in the medical field which, important as they may be, are not more significant than some of those which could be achieved in law.

Accustomed from experience with the dictates of the trust concept to avoid any imputation of self-dealing, lawyers understandably refrain from seeking direct benefit for themselves. They should, however, realize that support for organized professional educational programs, particularly those of the non-profit variety, would involve them in no opprobrious activity. When they do so realize, and channel some of the funds they dominate in the direction of continuing legal education, they can expect to receive more general public support.

W. F. ZACHARIAS

TRIALS AND APPEALS: Cases, Text, Statutes, Rules, and Forms. Charles W. Joiner. Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1957. Pp. xxiv, 594.

It is difficult to evaluate Professor Joiner's book. The title would lead one to believe that the work contained materials adequate for two separate courses as taught in most law schools, that is, one on Trials and another on Appeals. A very superficial examination of the Appeals portion of the

text, consisting of some eighty-five pages, quickly dispels the first impression. The Appeals section, entitled "Review" by the author, consists of a collection of interesting material. It provides good reading, but would be of doubtful help in assisting any professor to teach a course in that area of law or in substantially aiding his students toward effective appellate advocacy.

The Trials portion of this compilation leads one to ask whether the book is material for a course in Trials, in Civil Procedure, in Federal Trial Practice, or merely a good bibliography, helpful to the practitioner who wants to keep on his toes in a federal court. This part of the work begins with a short chapter on the investigation of the case. It is too brief for students to grasp the significance of this most important phase of trial work. Outside of some good suggestions for obtaining statements of witnesses, the chapter contains more of a helpful check-list of things not to be overlooked. The second chapter, dealing with preparation for trial, reads more like material for a course on civil procedure, with particular emphasis on Federal Procedure as revealed through some collected forms. Then, Professor Joiner plunges into ninety pages on jury selection, almost one-sixth of his entire book. This seems to constitute a degree of waste in a work slanted to federal practice, where most of the attorney's burden of selecting the jury is assumed by the judge.

Next, the author devotes only five pages to opening statements. It would seem that this technique is at least as important a problem to the practitioner or to the student as the one involved in jury selection. The portion of the book given to the trial itself, about one hundred pages, offers much on legal ethics, judicial canons, and excerpts by experts. By contrast, it does not offer much in the way of the "how" to conduct direct or cross-examination of witnesses, to make objections or to meet problems that develop during the course of the trial. There is included a chapter on instructions which also leaves much to be desired, and closing argument is only mentioned.

Professor Joiner's efforts have produced a text, with cases and other materials, better designed as a handy reference and research bibliography for the practitioner's library, or for the professor in search of materials to use in teaching a course on Federal trial practice and procedure. The work falls short as a text for a course in Trials if it was designed to present trial techniques to equip the budding advocate to handle trial work in the various state jurisdictions.

W. H. HOWERY

MAIN STREET LAWYER. Joseph T. Karcher. Boston: Meador Publishing Company, 1959. Pp. 189.

By way of foreword to this book, the Secretary of the New Jersey State Bar Association remarks that this autobiography of a "Main Street," as contrasted with a "big city," lawyer could, with minor variations, be the "story of countless lawyers whose determination to advance the reign of justice" has existed over the ages. Except for the not so accidental choice of locale by the New Jersey lawyer who is its author, this book could indeed serve well as the autobiography of most any lawyer. Use of the term "average lawyer" would be appropriate except for the fact that it might connote one of indifferent performance. Perhaps it would be better to say that this is the story of the "usual" lawyer, one whom most people know, rather than the history of the top-flight forensic genius or the wealthy practitioner who either inherited his money or made it outside of his law practice. Since few of rank and file of the bar will find the time or inclination to prepare books of this nature, this publication should command a degree of respect if for no more than because it can serve as a mirror for a fair-sized segment of the bar.

Let no one suspect that this work will ever pass for literature, even though it has a character and a quality that is all its own. In the same vein, there is little here that is spectacular, for average lawyers rarely experience the handling of problems or cases noteworthy enough to make even transient headlines much less those significant enough to become landmarks in the records of the law. These are the sources from which great biographical works spring, to command the attention of all, lawyers as well as laymen.

Then, if this book is not of that type, why spend time on its perusal? The answer is simple; it speaks of life, of actuality, in a form to which we all are accustomed. As "log cabin to White House" was the catch phrase for success in the Nineteenth Century, and "engine wiper to railroad president" served in the early Twentieth, so "poor boy to professional man" could serve for most of the prominent men of this generation. This author's story is no different.

In it one can read of the nostalgia of youth, the tug of ambition, the struggle for success, and the joy of accomplishment. The youthful period described was not mis-spent, but was one which today would border on juvenile delinquency. Beyond that level, the story passes, by way of a variety of occupations, through the portals of a night law school into the ranks of the bar. One can visualize that school as a haven for an ambitious but economically pressured young man who, like many of his counterparts,

was not willing to take the easy way to security at taxpayers' expense. From that point on, the story almost writes itself, for there is little that is lacking in terms of what is involved in getting down to practice, to political activity and office, to judicial position, or to public and professional prominence, even when viewed on a small-town scale. In fact, there is little here that differs from the background of almost any lawyer who might have been chosen at random from any American community.

Seasoned with the salt of incidents and experiences drawn from a ramified practice, both civil and criminal, this narrative provides the law student with some of the philosophy and some sense of the spirit that turns men of earnest purpose into servants of Justice. The financial rewards, as the author was warned, are not great. But the satisfaction that can be gained from a well-spent life—a satisfaction that shines through the pages of this book—is reward enough for the average lawyer, whether he spends his time on Main Street or along the busiest thoroughfare in the largest city of this land.

W. F. ZACHARIAS